

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

2 _____

3 ARMANDO VASQUEZ-REYES,) No. 80293

4 Appellant,)

5 v.)

6)

7 THE STATE OF NEVADA,)

8 Respondent.)

Electronically Filed
Aug 27 2020 11:20 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

9 _____)

10 **APPELLANT'S APPENDIX VOLUME III PAGES 481-730**

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ARMANDO VASQUEZ-REYES
Case No. 80293

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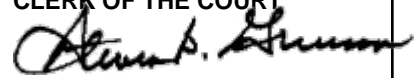
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ARMANDO VASQUEZ-REYES,
#7030886

Defendant.

CASE NO: **C-16-316382-1**

DEPT NO: **XII**

STATE'S OPPOSITION TO DEFENDANT'S MOTION
TO EXCLUDE IMPROPER EXPERT TESTIMONY

DATE OF HEARING: **MAY 14, 2019**
TIME OF HEARING: **8:30 A.M.**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney, and hereby submits this Opposition to Defendant's Motion to Exclude Improper Testimony.

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

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1 **STATEMENT OF FACTS RELEVANT TO THIS OPPOSITION**

2 Defendant, ARMANDO VASQUEZ-REYES is charged by way of Criminal
3 Information with two (2) counts of Lewdness with a Child Under the Age of 14 (Category A
4 Felony – NRS 201.230) and eight (8) counts of Sexual Assault with a Minor Under Fourteen
5 Years of Age (Category A Felony – NRS 200.364, 200.366). The crimes occurred on or
6 between January 21, 2007 and December 31, 2015. The victims are G.A. and D.A.

7 The facts of this case are such that on April 16, 2016, LVMPD Patrol Officers
8 responded to a domestic dispute at 2213 Berkley Avenue, Las Vegas, Nevada 89101. Details
9 of the call stated that the dispute was between the caller and Defendant (her husband). While
10 the police officers were investigating the dispute, they were approached by the caller's
11 daughter, the victim in this case, who asked the officers if she could speak with them away
12 from the family. Officers agreed and spoke to G.A., away from her family members. G.A.
13 told the officers that Defendant (her step-father) had been sexually abusing her "her whole
14 life." She went on to tell them that Defendant had repeatedly sexually assaulted her by putting
15 his penis inside her vagina, with the most recent occurring one week prior. Based upon G.A.'s
16 statement, patrol officers contacted LVMPD Sex Crimes Detective M. Pretti, who responded
17 to the scene along with Spanish Interpreter, M. Corral, P#12133.

18 Due to the number of family members present, and the fact there was no active crime
19 scene, Detective Pretti determined the investigation would be better suited to the interviews
20 being conducted in a more sterile environment at the LVMPD Headquarters. With the
21 assistance of the interpreter, Detective Pretti explained to Defendant that there had been some
22 allegations made against him and he would like to speak with Defendant about them at
23 LVMPD headquarters and requested that Defendant consent to be transported to LVMPD HQ,
24 which he granted verbally. Detective Pretti explained to Defendant that he would be
25 transported in a marked LVMPD patrol vehicle, and that he would be handcuffed, as is
26 LVMPD policy, to which Defendant agreed.

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1 Detective Pretti then spoke with G.A. and her mother, with the assistance of the
2 interpreter, and requested that they respond to LVMPD HQ to participate in interviews, to
3 which they both agreed.

4 In the interview with G.A. she told Detective Pretti that Defendant has been sexually
5 abusing her for as long as she has known him. G.A. stated that she has known Defendant from
6 the time she was five or six years old, when she moved to Las Vegas from Mexico. At time
7 G.A. moved here to Las Vegas, her mother was already living here and had been dating
8 Defendant.

9 The first incident G.A. recalled happening occurred when she was very small.
10 Defendant told her to come into his room and not to tell her mother because she would get into
11 trouble. Defendant told her to touch his penis and “make him feel good.” G.A. described
12 Defendant telling her to touch his penis and move her hand up and down, masturbating him.
13 G.A. told Detective Pretti that Defendant has been sexually assaulted by Defendant from the
14 time she was five or six years old; and, he had anally assaulted her approximately thirty (30)
15 times. Defendant would sexually assaulted G.A. while her mother was at work, and while her
16 brother and sister were out of the house with friends.

17 G.A. described an incident that happened in one their old homes near Bridger Middle
18 School, where Defendant sexually assaulted her in the laundry room of the house. On that
19 occasion, G.A. was in the laundry room doing laundry for her and her sister. Defendant came
20 into the room, took off her clothes, and anally assaulted her with his penis. G.A. stated that
21 her brother and sister were both home but were in their rooms watching television.

22 G.A. stated that Defendant has had vaginal intercourse with her on at least two
23 occasions, the most recent being around November 2015. When that occurred, G.A. stated
24 that she told Defendant to stop because it was causing her pain.

25 G.A. described an incident that occurred approximately one week prior, where
26 Defendant touched her buttocks, over her clothes. The last sexual assault occurred in
27 several months prior, in November 2015. Defendant called G.A. into his room and asked her
28 to watch a movie with him. G.A. was laying on the bed with Defendant when he began

1 touching her hands and arms and G.A. told him to stop. Defendant told her it was alright and
2 began taking her clothes off, grabbing her breasts, buttocks, and vagina. Defendant then took
3 off his own clothes and inserted his penis into her anus, without a condom, until he ejaculated.
4 G.A. pushed Defendant off of her, left the room, and went to take a shower. G.A. stated that
5 she has become more agitated and aggressive with her family since the incident because she
6 feels disgusted about what Defendant has done to her. G.A. stated that she has cut herself in
7 the past and has had suicidal thoughts because of the Defendant's sexual abuse of her.

8 G.A. stated that she was afraid to tell her mom because she thought her mother would
9 judge her and she was afraid her mother might think that G.A. was trying to steal her husband.
10 G.A. stated that she decided to tell the police because she was scared of Defendant and she
11 was afraid that he would hit her mother or someone else because he was angry about the
12 (domestic) incident that occurred at the residence earlier, regarding the tools.

13 With the assistance of the interpreter, Detective Pretti explained to G.A.'s mother that
14 G.A. had disclosed being sexually abused by Defendant from the time she first moved to Las
15 Vegas from Mexico. G.A.'s mother stated that G.A. moved to Las Vegas in 2007 and that she
16 did not believe that G.A. would lie about these things. She further stated that G.A. had been
17 more agitated and aggressive in the last few months and agreed to take her to Sunrise Hospital
18 for a medical exam.

19 G.A.'s sister, D.A., testified at the preliminary hearing in this matter, that when she was
20 twelve years old and they lived on Stafford Street, Defendant called her into his bedroom,
21 removed her clothes and his clothes, and inserted his penis into her vagina. D.A. testified that
22 this happened one time.

23 On May 3, 2019, Defendant filed a Motion to Exclude Improper Expert Testimony.
24 The State's Opposition follows.

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1 **LEGAL ARGUMENT**

2 Relevant evidence is defined as any evidence having any tendency to make the
3 existence of any fact that is of consequence to the determination of the action more or less
4 probable than it would be without the evidence. NRS 48.015. The statutes governing the
5 testimony of expert witnesses are very clear and would permit the State's expert to provide
6 relevant testimony to the jury at the time of trial.

7 NRS 50.275 provides as follows:

8 If scientific, technical or other specialized knowledge will assist the
9 trier of fact to understand the evidence or to determine a fact in issue,
10 a witness qualified as an expert by special knowledge, skill,
experience, training or education may testify to matters within the
scope of such knowledge.

11 NRS 50.285 further provides the following:

12 1. The facts or data in the particular case upon which an expert bases
13 an opinion or inference may be those perceived by or made known to
him at or before the hearing.

14 2. If of a type reasonably relied upon by experts in forming opinions
15 or inferences upon the subject, the facts or data need not be
admissible in evidence.

16 Under NRS 50.285, an expert witness can rely on and base their opinions on facts or
17 data which might normally be inadmissible at trial, including hearsay evidence. Once a
18 witness is qualified as an expert, he or she may testify to all matters within his or her
19 experience or training, and an expert is generally given reasonably wide latitude in opinions
20 and conclusions he or she can state, being subject only to the general exercise of discretion by
21 the district court concerning whether the expert is truly qualified to render such testimony.
22 Fernandez v. Admirand, 108 Nev. 963, 843 P.2d 354 (1992).

23 NRS 50.345 permits expert testimony to show victim's behavior or condition is
24 consistent with behavior or condition of victim of sexual assault, providing as follows:

25 In any prosecution for sexual assault, expert testimony is not
26 inadmissible to show that the victim's behavior or mental or physical
condition is consistent with the behavior or condition of a victim of
sexual assault.

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Pediatricians such as Dr. Cetl are entrusted to medically treat and care for children. In doing so, these physicians are trained in the taking of histories when a patient presents for treatment. Thus, when a child presents for any examination after having suffered sexual abuse at the hands of another, the treating physicians must use their training and experience in having treated other patients who suffered from the same misconduct and/or received the same kind of injuries, to treat the victim and give an opinion as whether the history and/or injury is consistent with sexual abuse.

While the State has no intention of eliciting testimony that references the STD from Dr. Cetl; however, she should be permitted to give her expert opinion regarding her medical examination of the victim in this case, to include her overall impression based upon her knowledge, experience, and examination of the victim. To preclude the testimony of any witness prior to trial is counterproductive.

CONCLUSION

Based upon the above, the State respectfully requests Defendant's Motion Exclude Improper Expert Opinion must be DENIED.

DATED this 9th day of May, 2019.

STEVEN B. WOLFSON
DISTRICT ATTORNEY
Nevada Bar #001565

BY /s/ JAMES R. SWEETIN
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

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CERTIFICATE OF SERVICE

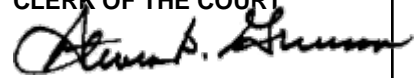
I hereby certify that service of the above and foregoing was made this 9th day of May,
2019, to:

MIKE FELICIANO, ESQ.
Deputy Public Defender
Email address:feliciam@ClarkCountyNV.gov

Ann McMahan, Secretary
Office of the Public Defender
Email address: mcmahaae@ClarkCountyNV.gov

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

hjc/SVU



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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ARMANDO VASQUEZ-REYES,
#7030886

Defendant.

CASE NO: **C-16-316382-1**

DEPT NO: **XII**

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DISMISS FOR FAILURE TO PRESERVE EVIDENCE

DATE OF HEARING: **MAY 14, 2019**
TIME OF HEARING: **8:30 A.M.**

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17 to the scene along with Spanish Interpreter, M. Corral, P#12133.

18 Due to the number of family members present, and the fact there was no active crime
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24 which he granted verbally. Detective Pretti explained to Defendant that he would be
25 transported in a marked LVMPD patrol vehicle, and that he would be handcuffed, as is
26 LVMPD policy, to which Defendant agreed.

27 //

28 //

1 Detective Pretti then spoke with G.A. and her mother, with the assistance of the
2 interpreter, and requested that they respond to LVMPD HQ to participate in interviews, to
3 which they both agreed.

4 In the interview with G.A. she told Detective Pretti that Defendant has been sexually
5 abusing her for as long as she has known him. G.A. stated that she has known Defendant from
6 the time she was five or six years old, when she moved to Las Vegas from Mexico. At time
7 G.A. moved here to Las Vegas, her mother was already living here and had been dating
8 Defendant.

9 The first incident G.A. recalled happening occurred when she was very small.
10 Defendant told her to come into his room and not to tell her mother because she would get into
11 trouble. Defendant told her to touch his penis and “make him feel good.” G.A. described
12 Defendant telling her to touch his penis and move her hand up and down, masturbating him.
13 G.A. told Detective Pretti that Defendant has been sexually assaulted by Defendant from the
14 time she was five or six years old; and, he had anally assaulted her approximately thirty (30)
15 times. Defendant would sexually assaulted G.A. while her mother was at work, and while her
16 brother and sister were out of the house with friends.

17 G.A. described an incident that happened in one their old homes near Bridger Middle
18 School, where Defendant sexually assaulted her in the laundry room of the house. On that
19 occasion, G.A. was in the laundry room doing laundry for her and her sister. Defendant came
20 into the room, took off her clothes, and anally assaulted her with his penis. G.A. stated that
21 her brother and sister were both home but were in their rooms watching television.

22 G.A. stated that Defendant has had vaginal intercourse with her on at least two
23 occasions, the most recent being around November 2015. When that occurred, G.A. stated
24 that she told Defendant to stop because it was causing her pain.

25 G.A. described an incident that occurred approximately one week prior, where
26 Defendant touched her buttocks, over her clothes. The last sexual assault occurred in
27 several months prior, in November 2015. Defendant called G.A. into his room and asked her
28 to watch a movie with him. G.A. was laying on the bed with Defendant when he began

1 touching her hands and arms and G.A. told him to stop. Defendant told her it was alright and
2 began taking her clothes off, grabbing her breasts, buttocks, and vagina. Defendant then took
3 off his own clothes and inserted his penis into her anus, without a condom, until he ejaculated.
4 G.A. pushed Defendant off of her, left the room, and went to take a shower. G.A. stated that
5 she has become more agitated and aggressive with her family since the incident because she
6 feels disgusted about what Defendant has done to her. G.A. stated that she has cut herself in
7 the past and has had suicidal thoughts because of the Defendant's sexual abuse of her.

8 G.A. stated that she was afraid to tell her mom because she thought her mother would
9 judge her and she was afraid her mother might think that G.A. was trying to steal her husband.
10 G.A. stated that she decided to tell the police because she was scared of Defendant and she
11 was afraid that he would hit her mother or someone else because he was angry about the
12 (domestic) incident that occurred at the residence earlier, regarding the tools.

13 With the assistance of the interpreter, Detective Pretti explained to G.A.'s mother that
14 G.A. had disclosed being sexually abused by Defendant from the time she first moved to Las
15 Vegas from Mexico. G.A.'s mother stated that G.A. moved to Las Vegas in 2007 and that she
16 did not believe that G.A. would lie about these things. She further stated that G.A. had been
17 more agitated and aggressive in the last few months and agreed to take her to Sunrise Hospital
18 for a medical exam.

19 G.A.'s sister, D.A., testified at the preliminary hearing in this matter, that when she was
20 twelve years old and they lived on Stafford Street, Defendant called her into his bedroom,
21 removed her clothes and his clothes, and inserted his penis into her vagina. D.A. testified that
22 this happened one time.

23 On May 3, 2019, Defendant filed a Motion to Dismiss for Failure to Preserve Evidence.
24 The State's Opposition follows.

25 //

26 //

27 //

28 //

1 **LEGAL ARGUMENT**

2 **I. THE STATE HAS NOT FAILED TO PRESERVE MATERIAL,**
3 **EXCULPATORY EVIDENCE IN THIS CASE**

4 Defendant wrongfully asserts that this Court should dismiss this case on the grounds
5 that the State failed to the preserve body camera footage from the patrol officers who were
6 initially called to the residence for a domestic disturbance. Defendant further alleges that he
7 has been unduly prejudiced by the loss of the evidence in this case, in that the body camera
8 footage would show inconsistencies in the victim's statements. This is simply untrue, as no
9 inconsistencies in what the victims claim exists.

10 In Daniels v. State, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998), the Nevada Supreme
11 Court indicated the police may have a duty to gather evidence if the exculpatory value of the
12 evidence is readily apparent to an officer under the circumstances. The Court defined three
13 types of activity associated with this duty and the appropriate sanction or instruction to be
14 given for a violation. If the police deliberately, in bad faith, failed to collect the evidence
15 knowing its exculpatory value, then the case may be dismissed. Id. If the failure to gather is
16 deemed gross negligence, then the jury is instructed to presume that the evidence would be
17 favorable to the defense. Id. Finally if the failure to gather is deemed mere negligence, then
18 no instruction is warranted and counsel may point out the failure through cross-examination
19 and argument. Id.

20 The Nevada Supreme Court reaffirmed this position in Steese v. State, 114 Nev. 479,
21 960 P.2d 321 (1998). In that case, the defendant was convicted of first degree murder with
22 use of a deadly weapon. The defendant claimed that a pair of bloody jeans found in his trailer
23 which police did not find during their search and a gold chain which was later found in the
24 victim's truck and which police had not discovered could have exculpated him. Like Daniels,
25 *supra*, Steese claimed that the failure of police to gather this evidence required reversal of his
26 conviction.

27 //

28 //

1 The Steese Court once again distinguished between situations in which the State fails
2 to preserve evidence over which it has possession and control and in which it simply fails to
3 gather evidence. They concluded that this situation fell under the latter scenario. Steese at
4 960 P.2d 321, 329.

5 The Nevada Supreme Court has adopted a two part test to be used when presented with
6 an issue dealing with the State's failure to gather evidence. That test was articulated in both
7 Daniels and Steese.

8 "First, the evidence which the police failed to gather must be
9 constitutionally material. Evidence is material when there is a
10 reasonable probability that had the evidence been available to the
11 defense, the result of the proceeding would have been different. If the
12 evidence is material, the second inquiry concerns the good faith of the
13 police. If the police acted in bad faith or were grossly negligent in
14 failing to gather the evidence, then the trial court may instruct the jury
15 that the material evidence not gathered from the crime scene would
16 be unfavorable to the State." (Citations omitted)

17 Steese at 960 P.2d 321, 329.

18 In Steese, the court said, "[w]hile Steese alleges in his brief that testing of the blood on
19 the jeans may have exculpated him, he has failed to point to any facts in the record which
20 support this. We conclude that Steese's naked speculation is insufficient to show that a
21 different result was likely at trial had the police located this evidence." Steese at 960 P.2d
22 321, 329. The Court used identical reasoning when addressing the issue of the gold chain
23 found in the victim's car. Although the defendant claimed that the jewelry possibly retained
24 some substances subject to DNA testing, the court concluded that "the materiality
25 requirement...is simply not met by Steese's naked speculation." Steese at 960 P.2d 330. Thus,
26 neither item of evidence was found to be constitutionally material.

27 Likewise, in Daniels, the court concluded that "whether the blood evidence would
28 likely have prevented Daniels' conviction is pure speculation." Daniels at 956 P.2d 111, 115.
As the court went on to say, even if blood evidence had been obtained, such a test would not
have proven beyond mere speculation that the defendant ingested the drug before the
shootings. Daniels at 956 P.2d at 111, 115 (Emphasis added).

//

1 In Randolph v. State, 36 P.2d 424 (2001) the Nevada Supreme Court set forth the
2 standard regarding the State's failure to gather evidence. In Randolph, a security guard
3 observed two men leave Doc Holliday's, enter a late model Cadillac and leave. Concerned,
4 the guard called Doc Holliday's, but did not get an answer. He called the Las Vegas
5 Metropolitan Police Department who responded to the bar. Inside the bar, officers found the
6 female bartender in the cooler with two gunshots to the head. Officers found the video
7 recorder to the surveillance system missing and money from the cash register and a safe gone
8 as well.

9 Officers received a tip as to the whereabouts of the two men involved in the murder
10 and ultimately retrieved a video recorder from the aforementioned vehicle. The videotape
11 showed defendant, Charles Randolph, enter the bar and pull a gun from his waistband in front
12 of the bartender. Randolph appeared in and out of the view of the tape several times. Randolph
13 admitted taking money from the bar but denied shooting the bartender. He claimed that the
14 other co-defendant, Tyrone Garner, Garner shot the victim. A jury convicted Randolph and
15 sentenced him to death.

16 On appeal, the defendant argued that the court erred in denying his jury instruction that
17 the State failed to gather evidence. Id. 36 P.2d at 435. He argued that the police failed to
18 gather evidence from Garner's clothing and test it for blood of the victim. The police were
19 aware that Garner had changed clothing prior to being arrested, but they impounded the
20 clothing Garner wore on the day of the arrest. The police did not impound clothing found in
21 Garner's car.

22 The Nevada Supreme Court held that in a criminal investigation, police officers
23 generally have no duty to collect all potential evidence. Id. at 435. However, in some cases a
24 failure to gather evidence may result in sanctions against the State. Id.

25 "The defense must show that the evidence was material, i.e. that there is a reasonable
26 probability that the result of the proceedings would have been different if the evidence had
27 been available. Second, if the evidence was material, the court must determine whether the
28 failure to gather it resulted from negligence, gross negligence, or bad faith. In the case of mere

1 negligence no sanctions are imposed, but the defendant can examine the State's witnesses
2 about the investigative deficiencies; in the case of gross negligence, the defense is entitled to
3 a presumption that the evidence would have been unfavorable to the State: and in the case of
4 bad faith depending on the case as a whole, dismissal of the charges may be warranted." Id.
5 at 435.

6 The Court held that the defendant failed to show that the ungathered evidence was
7 material because he failed to show any reasonable probability that testing would reveal any
8 blood. Id. Furthermore, Randolph provided no corroborating evidence that Garner shoot the
9 bartender and the possibility that testing Garner's shoes and clothing would have been
10 favorable to his case was speculative at most. Id. The Court stated that assuming the evidence
11 was material at best the police acted negligently and the remedy was to examine the witnesses
12 about the deficiency in the investigation. Id.

13 In Chapman v. State, 16 P.2d 432 (2001), the Nevada Supreme Court found that the
14 State had no obligation to preserve an answering machine tape the child victim's mother had
15 in her possession. A jury convicted Chapman of sexual assault and lewdness with a minor,
16 for sexually assaulting his girlfriend's daughter. On appeal, Chapman claimed that the State
17 failed to preserve tapes from the victim's mother's answering machine. Id. at 434.

18 The Court held that the defendant Chapman failed to show that the tapes were material
19 and the loss of the tapes resulted from bad faith on the part of the State or the loss resulted in
20 prejudice to Chapman's defense. Id. The Court found that even if the tapes contained the
21 statements alleged, it would not have "directly exculpated him but only support his alternative
22 defense theory that the charges against him were fabricated." Id.

23 For the purposes of this analysis, the burden of demonstrating prejudice lies with the
24 defendant and requires some showing that the evidence is exculpatory and material to a
25 defense. Sheriff v. Warner, 112 Nev. 1234, 1239-40 (1996). Moreover, "[i]t is not sufficient
26 that the showing disclose merely a hoped-for conclusion from examination of the destroyed
27 evidence, nor is it sufficient for the defendant to show only that examination of the evidence
28 would be helpful in preparing his defense." Boggs v. State, 95 Nev. 911, 913 (1979).

1 First, Defendant's claim of perceived inconsistencies in the police reports do not exist
2 in this case. LVMPD Patrol Officer, Thomas Murray prepared the initial report in this matter
3 with the following narrative:

4 On 4-16-16, Officers responded to 2213 Berkley Avenue reference a
5 family disturbance. Officers made contact with the caller, Rosalba
6 Cardenas who stated that there was an argument over rent money
7 between her and Defendant (her husband) and her daughter's
8 husband, Sergio Torres. While speaking with Rosalba, her other
9 daughter, G.A., who is 14 years old, approached officers and asked to
10 speak away from the other family members. Once away from the
11 others, **G.A. informed officers that Defendant had been sexually
assaulting her for many years, starting when she was younger.
G.A. stated that Defendant regularly puts his penis inside her
vagina and had sex with her. The last time being approximately
one week ago from today.**

12 (Arrest/Detective Report, p. 3, a copy of which is attached hereto as State's Exhibit "1").

13 Based upon Officer Murray's conversation with G.A., he contacted sexual assault
14 Detective M. Pretti, who responded to the Berkley address along with LVMPD Spanish
15 interpreter, M. Corral. Based upon the amount of family member and the fact that there was
16 no active crime scene, Detective Pretti felt the investigation would be better suited to the
17 interviews being conducted in a more sterile environment at LVMPD Headquarters.

18 Detective Pretti's Arrest report with regard to the Initial Patrol Response states, in
19 relevant portion:

20 On 4-16-2016 at 1553 hours at approximately 1553 hours, LVMPD
21 Patrol Officers T. Murray and R. Theobald responded to a Domestic
22 Dispute at 2213 Berkley Avenue, Las Vegas, Nevada 89101. Details
23 of the call stated that the dispute was between the caller, Rosalba
24 Cardenas and her husband. While Officers Murray and Theobald
25 were investigating the domestic dispute they were approached by
26 Cardenas' daughter, G.A., who asked the officers if she could speak
27 away from the family. Officers agreed and spoke with G.A. who
28 disclosed that **Defendant has been sexually assaulting her for "her
whole life." G.A. went on to state that Defendant has repeatedly
sexually assaulted her by putting his penis inside her vagina, and
the most recent incident was approximately one week ago.**

29 (Arrest Report, p. 6; paragraph 1, a copy of the report is attached hereto as State's Exhibit
30 "2").

31 //

1 While interviewing G.A. at LVMPD Headquarters, she told Detective Pretti the
2 following information relevant to the issue being raised by Defendant in his motion:

3 **G.A. stated that Defendant has had vaginal intercourse with her**
4 **on at least two occasions, the most recent being around November**
5 **2015.** When that occurred, G.A. stated that she told Defendant to stop
because it was causing her pain.

6 **G.A. described an incident that occurred approximately one week**
7 **prior, where Defendant touched her buttocks, over her clothes.**
8 **The last sexual assault occurred in several months prior, in**
9 **November 2015.** Defendant called G.A. into his room and asked her
10 to watch a movie with him. G.A. was laying on the bed with
11 Defendant when he began touching her hands and arms and G.A. told
12 him to stop. Defendant told her it was alright and began taking her
clothes off, grabbing her breasts, buttocks, and vagina. Defendant then
took off his own clothes and inserted his penis into her anus, without
a condom, until he ejaculated. G.A. pushed Defendant off of her, left
the room, and went to take a shower. G.A. stated that she has become
more agitated and aggressive with her family since the incident
because she feels disgusted about what Defendant has done to her. . .

13 (State's Exhibit 2, Arrest Report, p. 3 of 4, paragraph 3)

14 G.A. was certainly consistent in giving patrol officers information that Defendant had
15 been sexually abusing her starting **when she was younger** and **"her whole life"**, which has
16 been documented in State's Exhibits 1 and 2, respectively. Additionally, when G.A. gave her
17 voluntary statement to Detective Pretti, she indicated that that an incident occurred one week
18 prior where Defendant touched her buttocks over her clothes; and, the last time Defendant
19 sexually assaulted her was several months prior when he **put his penis into her anus**, in
20 November 2015. The police reports are clear and reflect that at no time did G.A. tell law
21 enforcement the last time he put his penis in her vagina was a week prior. What she did tell
22 Detective Pretti was that he put his penis in her anus in November 2015, which was the last
23 time he sexually assaulted her.

24 On May 27, 2016, S.A., then age 19, went to LVMPD Headquarters to report that she
25 had been sexually assaulted by Defendant when she was 11 or 12 years old, when they lived
26 at 1920 Stanford Street, North Las Vegas. S.A. stated that she decided to report what happened
27 after her younger sister reported that she had also been sexually assaulted by Defendant.
28 During the preliminary hearing in this matter, S.A. testified that the police did not ask her if

1 Defendant had touched her; however, someone who works with them did while she was at the
2 police station and she told them no. (PHT, pp. 82-83). G.A. stated that at the time she did not
3 feel strong enough to say anything about it. (Id., p. 83). G.A. testified that she also did not
4 want her husband to know and he did not know anything about it still. (Id.). G.A. testified that
5 she finally told the police because she wanted Defendant to pay for what he did to her and her
6 sister. (Id.). G.A. explained during her preliminary hearing testimony why she answered no
7 when she was first asked if Defendant touched her and why she ultimately did go and speak
8 to the police about Defendant touching her. Any inconsistencies in that regard can be hashed
9 out by the defense during cross-examination of the victim at the time of trial.

10 With regard to issue raised by Defendant regarding actual bodycam footage from the
11 domestic disturbance call on April 16, 2016, the State contacted Detective Jane Pinot from the
12 LVMPD Systems Administration Unit, who provided the following information with regard
13 to the body camera information for each officer that responded.

14 P#12133: no camera; not mandatory

15 P#5542: no camera; not mandatory

16 P#7863: no camera; not mandatory

17 P# 9639: no camera; not mandatory

18 P#13458: 1st camera issued on 6/6/2016; not mandatory

19 P#6468: 1st camera issued 9/29/2014 (pilot program); account deactivated

20 7/16/2015 (pilot ended); new camera issued 7/12/2016; not mandatory

21 As of April 16, 2016, the date Police Officers responded to call for a domestic dispute,
22 body cameras were not mandatory and were not being worn four of the police officers who
23 responded. The information for another officer who assisted during the call (P#13458)
24 indicates that he did not receive a body camera until June 6, 2016, two months after being
25 called to the residence in the instant case; and, the camera was not mandatory. Finally, the
26 officer with P#6468 was issued a camera on September 29, 2014, for a pilot program. That
27 account was deactivated on July 16, 2015, when the pilot ended. That officer received a new
28 camera on July 12, 2016, three (3) months after responding to assist in the call reference this

1 case. Apparently, there were no body cameras being worn by any of the responding officers
2 in this case, on April 16, 2016, as they were not mandatory. Under the circumstances,
3 Defendant not entitled to the relief he requests.

4 **CONCLUSION**

5 Based upon the above, the State respectfully requests Defendant's Motion to Dismiss
6 for Failure to Preserve Exculpatory Evidence be DENIED.

7 DATED this 9th day of May, 2019.

8 STEVEN B. WOLFSON
9 DISTRICT ATTORNEY
Nevada Bar #001565

10
11 BY /s/ JAMES R. SWEETIN
12 JAMES R. SWEETIN
13 Chief Deputy District Attorney
14 Nevada Bar #005144

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that service of the above and foregoing was made this 9th day of May,
17 2019, to:

18 MIKE FELICIANO, ESQ.
19 Deputy Public Defender
20 Email address: feliciam@ClarkCountyNV.gov

21 Ann McMahan, Secretary
22 Office of the Public Defender
23 Email address: mcmahaae@ClarkCountyNV.gov

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

27
28 hjc/SVU

EXHIBIT "1"

Las Vegas Metropolitan Police
Department
400 S. Martin Luther King Blvd.
Las Vegas, NV 89106



Arrest / Detective Report

Case Report No.: LLV160416002346

Administrative

Location **2213 Berkley Ave Las Vegas, NV**
Occurred On (Date / Time) **Saturday 4/9/2016 12:00:00 AM**
Reporting Officer **13458 - Murray, Thomas J**
Entered By **13458 - Murray, Thomas J**
Supervisor **08878 - Kelvington, Andrew**
Jurisdiction **Las Vegas, City of**
Route To: **Follow Up**
Connecting Reports **Report Type**
Or Between (Date / Time)
Reported On **4/16/2016**
Entered On **4/16/2016 5:06:01 PM**
Pro Squad **DT 34**
Sector / Beat **B4**
Follow Up
Disposition **Active**
Related Cases

Assisting Officers:
09639 - Pretti, Mark W
12133 - Corral, Maria C
06468 - Theobald, Ronald J
Detective
Language Interpreter
Officer

Offenses

Sex Assault Against Child Under16(F)-NRS 200.366.3B
Completed **Yes**
Entry **Hate/Bias Anti-White**
Weapons **None**
Criminal Activities **Premises Entered**
Type Security
Location Type **Residence/Home**
Domestic Violence
Tools **No**

Victims

Name: **Alvarez, Guadalupe**

Victim Type **Individual**
Victim of **50106 - Sex Assault Against Child Under16(F)-NRS 200.366.3B**
Written Statement **No**
Can ID Suspect **Yes**
Domestic Battery **No**
SSN **DOB 1/20/2002**
Age **14**
Sex **Female**
Race **White**
Ethnicity **Hispanic or Latino**
Height **Weight**
Employer/School **Hair Color**
Occupation/Grade **Eye Color**
DLN **DL State**
Resident **Resident**
Injury **None Observed**
Work Schedule
DL Country
Tourist Departure Date
Injury Weapons **None**

Addresses
Residence **2213 Berkley Ave Las Vegas, NV**

Phones

Email

Offender Relationships
S - Vasquez-Reyes, Armondo
Victim Was Stepchild

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

Notes:

Suspects

Name: **Vasquez-Reyes, Armondo**

Written Stmt. **Refused**
Alerts
Non-English **Yes**
Language

Aliases
Moniker

Scope ID
Race **White**
Sex **Male**
Employer/School
Hair Length
Complexion
Appearance
Speech manner
DLN
Resident **Resident**
Habitual Offender Status
Primary Means of Attack/Weapon
Employer/School
DOB **6/15/1967**
Ethnicity **Hispanic or Latino**
Height **5' 8"**
Weight **200**
Age **48**
Build
Hair Color
Occupation/Grade
SSN **Medium Brown**
Handedness
Eye Color **Brown**
Eyes
Teeth
Hair Style
Facial hair
Injury/Condition
Speech Characteristics
DL State
Tourist Departure
DL Country
MO Factors
Weapon Features
Occupation/Grade
Place of Birth

Scars, Marks and Tattoos

Addresses

Residence

2213 Berkley Ave Las Vegas, NV

Phones

Domestic Violence Information

TPO in Effect

Injury Severity

Photos Taken

Drug/Alcohol Involvement

Medical Attention

Suspect Demeanor

Voluntary Statement

DV Info provided

Notes:

Arrestees

Witnesses

Other Entities

Name: Legal Guardian Cardenas, Rosalba

Written Statement **No**

Can ID Suspect **No**

SSN
Sex **Female**
Employer/School
Tourist
DLN
DOB **12/2/1976**
Height
Weight
Age **39**
Occupation/Grade
Departure Date
Race **White**
Hair Color
Ethnicity **Hispanic or Latino**
Eye Color
DL State
DL Country

Addresses

Residence

Phones

Cellular

2213 Berkley Ave Las Vegas, NV

(702) 410-4934

Missing Person / Runaway

Physical Appearance

Skin Complexion

Hair Length

Speech Characteristics

Injury or Condition

Medical Info

Headwear Color

Disappearance Type

Responsible Adult

Last seen by

Last seen wearing

Footprints Available

Photo Attached

Physical Build

Eye Description

Hair Style

Speech Manner

Distinctive Jewelry

Headwear Color

Teeth Description

Facial Hair

Dominant Hand

Blood Type

Probable Destination

How long at present address

POB

Last seen Date/Time

Fingerprints Available

Dental Available

Circumcised

**Missing Before
Relationship to MP
Last seen where**

X-rays Available

Corrected Vision

Scars, Marks, Tattoos:

Dead Body Report Information

Coroner/Physician

Coroner Case #

Case of Death

Public Administrator

Facility Name

Photos Taken

Synopsis

Coroner/Physician Name

Coroner Seal #

Date/Time Pronounced

Hospital/Mortuary

Attendant Name

Investigation

Scene

Body

Evidence at Scene

Notes:

Properties

Solvability

Modus Operandi

MO General

Occupied? Yes

General Premise Single Family Residence

MO Against Property

Entry Point

Entry/Attempt Method

Safe Entry

Victim Location

Maid

Exit Point

Entry Tool

Suspect Actions

Electronic Locks

Inspectress

Surrounding Area

Specific Premise

Middle of Block

Room

Entry Location

Vehicle Entry

Additional Factors

Video Surveillance

MO Against People

Victim-Suspect Relationship

Victim Condition Under 18

Suspect Pretended to Be

Sexual Acts Vaginal Intercourse

Pre-Incident Contact

Suspect Solicited/Offered

Suspect Actions

Vehicle Involvement

Narrative

On 04-16-16 Officers responded to 2213 Berkley Ave reference a family disturbance. Officers made contact with the caller, Rosalba Cardenas, who stated there was an argument over rent money between her husband, Armondo Vasquez-Rayas, and her daughters husband, Sergio Torres. While speaking with Rosalba, her other daughter, Guadalupe Alvarez, who is 14 years old approached Officers and asked to speak away from the other family members. Once away from the others, Guadalupe informed Officers that Armondo has been sexually assaulting her for many years, starting when she was younger. Guadalupe stated Armondo regularly puts his penis inside her vagina and had sex with her unwillingly. The last time being approximately one week ago from today.

Patrol Follow-Up

I contacted sexual assault Detective M. Pretti P#9639 who responded to the Berkley address. Hispanic Interpretation Services also responded to the Berkley address. I transported Armondo to headquarters voluntarily.

EXHIBIT "2"

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST

Event #: 160416-2348

I.D. #: _____

True Name: ARMANDO VASQUEZ REYES

Date of Arrest: 04/16/2016

Time of Arrest: 1845

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

Other Charges

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of 9.5 YEARS.

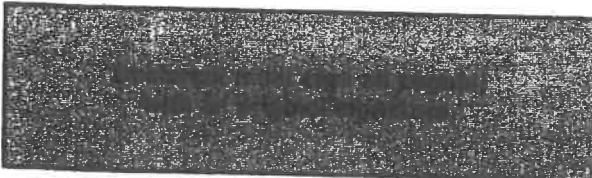
That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense(s) of SEXUAL ASSAULT AGAINST CHILD < 14 (32 COUNTS); LEWDNESS WITH CHILD < 14 (3 COUNTS) at the location of 2213 BERKLEY AVE, LAS VEGAS, NV, 89101, and that the offense(s) occurred at approximately VARIOUS hours on the VARIOUS day of VARIOUS, 2016, in the:

☐ County of Clark

☒ City of Las Vegas

DETAILS FOR PROBABLE CAUSE:
SEE ARREST REPORT.

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).



DET. M. PRETTI

Print Declarant's Name

Declarant's Signature

7259

P#

16F06076X / 05

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
ARREST REPORT**

☒ City

☐ County

☒ Adult

☐ Juvenile

Sector/Beat

B4

ID/EVENT# 7030886		ARRESTEE'S NAME (Last) (First) (Middle) Vasquez-Reyes Armando			S.S.#	
ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code) 2213 Berkley Avenue, Las Vegas, NV, 89101						
CHARGES SEXUAL ASSAULT AGAINST CHILD < 14 (32 COUNTS); LEWDNESS WITH CHILD < 14 (3 COUNTS)						
OCCURRED DATE 2007-2016		DAY OF WEEK Varies		TIME Varies		LOCATION OF ARREST (Number, Street, City, State, Zip Code) 400 S Martin Luther King, Las Vegas, NV, 89106
RACE H	SEX M	D.O.B. 06/15/67	HT. 5'8"	WT. 215	HAIR Bro	EYES Bro
PLACE OF BIRTH Guadalajara, Mexico						
ARRESTING OFFICER #1: Det. M. Pretti			P#: 9639		ARRESTING OFFICER #2: P#:	
CONNECTING REPORTS (Type or Event Number) Felony Arrest Packet; 160416-2346						

APPROVED BY (PRINTED NAME): _____

CIRCUMSTANCES OF ARREST:

Initial Patrol Response:

On 04/16/2016, at approximately 1553 hours, LVMPD Patrol Officers T. Murray, P#13458, and R. Theobald, P#6468, responded to a Domestic Dispute at 2213 Berkley Avenue, Las Vegas, NV, 89101. Details of the call stated the dispute was between the caller, Rosalba Cardenas (DOB 12/02/1976), and her husband, Armando Vasquez-Reyes (DOB 06/15/1967). While Officers Murray and Theobald were investigating the Domestic Dispute, they were approached by Cardenas' daughter, Guadalupe Alvarez (DOB 01/20/2002). Alvarez asked the Officers if she could speak with them away from the family. Officers agreed and spoke with Alvarez away from her family. Alvarez disclosed to Officers that Vasquez-Reyes, who is her step-father, has been sexually abusing her for "her whole life." Alvarez went on to state that Vazquez-Reyes has repeatedly sexually assaulted her by putting his penis inside her vagina, and the most recent incident was approximately one week ago.

Based on the circumstances of the call, Officer Murray contacted me, Sex Crimes Detective M. Pretti, P#9639, to advise me of the call. Upon learning the details of the call, I responded to the scene along with LVMPD Spanish Interpreter M. Corral, P#12133. Due to the number of family members present, and that there was no active crime scene, I felt that the investigation would be better suited to the interviews being conducted in a more sterile environment, LVMPD Headquarters.

With the assistance of Interpreter Corral, I explained to Vasquez-Reyes that there had been some allegations made against him, and I would like to speak with him about them at LVMPD HQ. I requested Vasquez-Reyes consent to be transported to LVMPD HQ, which he granted verbally. I explained to Vasquez-Reyes that he would be transported in a marked LVMPD patrol vehicle, and that he would be handcuffed, as is LVMPD policy, and Vasquez-Reyes agreed.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/EVENT #: 7030886

I then spoke with Alvarez and her mother, Cardenas, again with the assistance of Interpreter Corral, and requested that she respond to LVMPD HQ to participate in interviews, and both agreed to come to LVMPD HQ.

While I was explaining the instructions to Cardenas and Alvarez, a vehicle I later learned belonged to Alvarez' brother, Mael, arrived at the residence. I then began to assist Officers Murray and Theobald with handcuffing and preparing Vasquez-Reyes to be transported to LVMPD HQ. During this time, the situation was explained to Mael by the family and he became very upset. Mael began walking quickly and aggressively towards the front of Officer Murray's patrol vehicle, where Officers Murray and Theobald, as well as Vasquez-Reyes were standing. I instructed Mael to stop approaching the Officers and Vasquez-Reyes multiple times, however, he ignored my commands and continued walking aggressively towards the vehicle. At that time, I physically restrained Mael, and, with the assistance of Officer Murray, walked him away from Vasquez-Reyes and back towards the family. Officer Murray and I were able to get Mael to calm down and left him with the family, however, as we moved Vasquez-Reyes into the patrol vehicle, Mael began to yell at Vasquez-Reyes in Spanish, and continued yelling at him until we left the area.

Interview Phase:

-Interview with Guadalupe Alvarez:

Alvarez was transported to LVMPD HQ by Cardenas. I spoke with Alvarez in an interview room, with audio and video recording. Alvarez agreed to participate in the interview and was comfortable speaking. The following is a summary of her statement and is not considered verbatim:

I began the interview with Alvarez by asking her questions about school, which she said she does not like, and her family. Alvarez told me she lived with her mom, sister, brother-in-law, sister-in-law, nephew, and "I don't really want to call him that anymore, my step-dad," and her brother. Alvarez explained that the police were called to her house today because Vasquez-Reyes was upset that her brother-in-law and sister-in-law were using his tools. Vasquez-Reyes then began arguing with Cardenas about rent, so she called the police. Once the police arrived, Alvarez told them that Vasquez-Reyes had been sexually abusing her.

Alvarez went on to say that Vasquez-Reyes has been sexually abusing her for as long as she has known him. Alvarez has known Vasquez-Reyes since she was 5 or 6 years old, since she moved to Las Vegas from Mexico. Alvarez stated that her mother was already in Las Vegas and had been dating Vasquez-Reyes by the time she moved here later. Alvarez remembers the first incident being when she was "very small." Vasquez-Reyes told her to come to his room and not to tell her mother, because she would get in trouble. Once she was in the room, Vasquez-Reyes told her to touch his penis and "make him feel good." Alvarez described him telling her to touch his penis and move her hand up and down, masturbating him. (Lowdness with a Child < 14 - Count 1).

Alvarez remembers being sexually assaulted by Vasquez-Reyes, starting when she was approximately 5 or 6 years old. Alvarez could not remember specific details, but estimates that Vasquez-Reyes has anally sexually assaulted her approximately thirty (30) times. Alvarez stated that she was usually sexually assaulted by Vasquez-Reyes when her mom was at work, and while her brother and sister were out of the house with friends. (Sexual Assault Against Child < 14 - Counts 1-28).

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/EVENT #: 7030886

Alvarez described an incident, which occurred in one of their old houses, near Bridger Middle School, where Vasquez-Reyes sexually assaulted her in the laundry room of the house. Alvarez is unsure when this occurred. Alvarez was in the laundry room doing laundry for her and her sister. Vasquez-Reyes came into the room, took her clothes off and anally sexually assaulted her with his penis. Alvarez stated her sister and brother were both home, but were in their rooms watching television. **(Sexual Assault Against Child < 14 – Count 29).**

Alvarez stated that Vasquez-Reyes has also had vaginal intercourse with her on at least two occasions, the most recent being around November 2015, but she told him to stop because it was causing her pain. Alvarez was unable to recall further details about being vaginally sexually assaulted by Vasquez-Reyes. **(Sexual Assault Against Child < 14 – Counts 30-31).**

* Alvarez described an incident, approximately 1 week ago; where Vasquez-Reyes touched her buttocks, over her clothes, but stated that the last sexual assault occurred several months ago, sometime around November, 2015. Vasquez-Reyes called her into his bedroom and asked her to watch a movie with him. Alvarez stated that she was laying on the bed with Vasquez-Reyes when he began to touch her hands and arms, and Alvarez told him to stop. Vasquez-Reyes told her it was alright, and began taking her clothes off and grabbing her breasts and touching her vagina and buttocks. **(Lewdness with a Child < 14 – Counts 2-3).** Vasquez-Reyes then took his clothes off and inserted his penis into Alvarez' anus, without a condom. Alvarez believes that Vasquez-Reyes ejaculated inside of her anus. **(Sexual Assault Against Child < 14 – Count 32).** Alvarez was able to push Vasquez-Reyes off of her, left the room and took a shower. Alvarez stated that, after this incident, she has become more agitated and aggressive with her family, because she feels disgusted about what Vasquez-Reyes has done to her. Alvarez admitted to cutting herself in the past, as well as having thoughts of suicide because of the sexual abuse.

Alvarez stated that she was scared to tell her mom what was going on because she was scared that her mother would judge her. Alvarez thought that her mother may think she was trying to steal her husband and was scared of what her mother would think. Alvarez stated that she decided to tell the police what happened because she was scared of Vasquez-Reyes and was worried that he would hit her mother or someone else because he was angry about today's incident with the tools. Alvarez stated that she wanted Vasquez-Reyes to "rot in jail," and never to be around her family again.

-Interview with Rosalba Cardenas:

I spoke with Rosalba Cardenas, with the assistance of Interpreter Corral, to describe my interview with Alvarez. I spoke with Cardenas in an interview room at LVMPD HQ, the interview was video recorded. I explained that Alvarez had disclosed being sexually abused by Vasquez-Reyes from the time she first moved to Las Vegas from Mexico. Cardenas stated that Alvarez moved to Las Vegas in approximately 2007. Cardenas stated that she did not believe that Alvarez was lying about what happened. Cardenas admitted that she has noticed that Alvarez has been more agitated and aggressive in the last few months. Cardenas agreed to take Alvarez to Sunrise Hospital for a medical exam.

-Interview with Armando Vasquez-Reyes:

I spoke with Vasquez-Reyes, with the assistance of Interpreter Corral, along with Detective F. Gabron, P#5542, in an interview room at LVMPD HQ. The interview was audio and video recorded. I began the interview by advising Vasquez-Reyes of his Miranda Rights, directly from LVMPD card 99. Vasquez-Reyes

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/EVENT #: 7030886

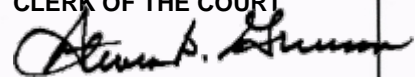
stated that he understood his rights and agreed to participate in the interview. Vasquez-Reyes signed the card, which will be impounded as evidence.

Initially during the interview, Vasquez-Reyes denied any allegations made against him by Alvarez. Vasquez-Reyes stated that the police were called to his residence because of an argument he was having with his family over them using his tools and not putting them away. Vasquez-Reyes admitted that Alvarez was not involved in this argument and otherwise would have no reason to speak with the officers that responded to his residence.

After several denials, Vasquez-Reyes admitted that he had inappropriately touched Alvarez one or two times; however he did not remember how long ago it happened, but it happened when he used to drink and use drugs. Vasquez-Reyes stated that he had touched her breasts and her legs. Vasquez-Reyes then admitted that there had been penetration by him on Alvarez one time, when she was approximately 8 years old. Vasquez-Reyes stated that he had walked into her room and saw that she was masturbating, so he entered the room and penetrated her anus with his penis, but stated he was not forceful. Vasquez-Reyes stated that was the only time there was any penetration against Alvarez. Vasquez-Reyes stated, "If I have to pay, I have to pay," and then stated that he did not want to speak with us any further. The interview was then concluded.

Conclusion:

Based on the above listed facts and circumstances, that Alvarez disclosed multiple incidents of sexual assault and lewdness by Vasquez-Reyes, occurring over several years, and that Vasquez-Reyes admitted to at least one incident each of lewdness and sexual assault, Vasquez-Reyes was placed under arrest and transported to Clark County Detention Center where he was booked accordingly for 32 counts of Sexual Assault against Child < 14 and 3 counts of Lewdness with a Child < 14.



1 **NOTM**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JAMES R. SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

10 THE STATE OF NEVADA,
11
12 Plaintiff,

13 -vs-

14 **ARMANDO VASQUEZ-REYES,**
15 **#7030886**

16 Defendant.

CASE NO: C-16-316382-1

DEPT NO: XII

DEPARTMENT XII

NOTICE OF HEARING

DATE 5.14.19 TIME 8:30 Am

APPROVED BY 

17 **STATE'S NOTICE OF MOTION AND MOTION IN LIMINE**

18 DATE OF HEARING: MAY 14, 2019

19 TIME OF HEARING: 8:30 A.M.

20 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the State of
21 Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JAMES R.
22 SWEETIN, Chief Deputy District Attorney, will bring a Motion in Limine before the above
23 entitled Court on the 14th day of May, 2019, at the hour of 8:30 o'clock AM, or as soon
24 thereafter as counsel may be heard.

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26 //

27 //

28 //

1 **STATEMENT OF FACTS**

2 Defendant, ARMANDO VASQUEZ-REYES is charged by way of Criminal
3 Information with two (2) counts of Lewdness with a Child Under the Age of 14 (Category A
4 Felony – NRS 201.230) and eight (8) counts of Sexual Assault with a Minor Under Fourteen
5 Years of Age (Category A Felony – NRS 200.364, 200.366). The crimes occurred on or
6 between January 21, 2007 and December 31, 2015. The victims are G.A. and D.A.

7 The facts of this case are such that on April 16, 2016, LVMPD Patrol Officers
8 responded to a domestic dispute at 2213 Berkley Avenue, Las Vegas, Nevada 89101. Details
9 of the call stated that the dispute was between the caller and Defendant (her husband). While
10 the police officers were investigating the dispute, they were approached by the caller's
11 daughter, the victim in this case, who asked the officers if she could speak with them away
12 from the family. Officers agreed and spoke to G.A., away from her family members. G.A.
13 told the officers that Defendant (her step-father) had been sexually abusing her "her whole
14 life." She went on to tell them that Defendant had repeatedly sexually assaulted her by putting
15 his penis inside her vagina, with the most recent occurring one week prior. Based upon G.A.'s
16 statement, patrol officers contacted LVMPD Sex Crimes Detective M. Pretti, who responded
17 to the scene along with Spanish Interpreter, M. Corral, P#12133.

18 Due to the number of family members present, and the fact there was no active crime
19 scene, Detective Pretti determined the investigation would be better suited to the interviews
20 being conducted in a more sterile environment at the LVMPD Headquarters. With the
21 assistance of the interpreter, Detective Pretti explained to Defendant that there had been some
22 allegations made against him and he would like to speak with Defendant about them at
23 LVMPD headquarters and requested that Defendant consent to be transported to LVMPD HQ,
24 which he granted verbally. Detective Pretti explained to Defendant that he would be
25 transported in a marked LVMPD patrol vehicle, and that he would be handcuffed, as is
26 LVMPD policy, to which Defendant agreed.

27 //

28 //

1 Detective Pretti then spoke with G.A. and her mother, with the assistance of the
2 interpreter, and requested that they respond to LVMPD HQ to participate in interviews, to
3 which they both agreed.

4 In the interview with G.A. she told Detective Pretti that Defendant has been sexually
5 abusing her for as long as she has known him. G.A. stated that she has known Defendant from
6 the time she was five or six years old, when she moved to Las Vegas from Mexico. At time
7 G.A. moved here to Las Vegas, her mother was already living here and had been dating
8 Defendant.

9 The first incident G.A. recalled happening occurred when she was very small.
10 Defendant told her to come into his room and not to tell her mother because she would get into
11 trouble. Defendant told her to touch his penis and “make him feel good.” G.A. described
12 Defendant telling her to touch his penis and move her hand up and down, masturbating him.
13 G.A. told Detective Pretti that Defendant has been sexually assaulted by Defendant from the
14 time she was five or six years old; and, he had anally assaulted her approximately thirty (30)
15 times. Defendant would sexually assaulted G.A. while her mother was at work, and while her
16 brother and sister were out of the house with friends.

17 G.A. described an incident that happened in one their old homes near Bridger Middle
18 School, where Defendant sexually assaulted her in the laundry room of the house. On that
19 occasion, G.A. was in the laundry room doing laundry for her and her sister. Defendant came
20 into the room, took off her clothes, and anally assaulted her with his penis. G.A. stated that
21 her brother and sister were both home but were in their rooms watching television.

22 G.A. stated that Defendant has had vaginal intercourse with her on at least two
23 occasions, the most recent being around November 2015. When that occurred, G.A. stated
24 that she told Defendant to stop because it was causing her pain.

25 G.A. described an incident that occurred approximately one week prior, where
26 Defendant touched her buttocks, over her clothes. The last sexual assault occurred in several
27 months prior, in November 2015. Defendant called G.A. into his room and asked her to watch
28 a movie with him. G.A. was laying on the bed with Defendant when he began touching her

1 hands and arms and G.A. told him to stop. Defendant told her it was alright and began taking
2 her clothes off, grabbing her breasts, buttocks, and vagina. Defendant then took off his own
3 clothes and inserted his penis into her anus, without a condom, until he ejaculated. G.A.
4 pushed Defendant off of her, left the room, and went to take a shower. G.A. stated that she has
5 become more agitated and aggressive with her family since the incident because she feels
6 disgusted about what Defendant has done to her. G.A. stated that she has cut herself in the past
7 and has had suicidal thoughts because of the Defendant's sexual abuse of her.

8 G.A. stated that she was afraid to tell her mom because she thought her mother would
9 judge her and she was afraid her mother might think that G.A. was trying to steal her husband.
10 G.A. stated that she decided to tell the police because she was scared of Defendant and she
11 was afraid that he would hit her mother or someone else because he was angry about the
12 (domestic) incident that occurred at the residence earlier, regarding the tools.

13 With the assistance of the interpreter, Detective Pretti explained to G.A.'s mother that
14 G.A. had disclosed being sexually abused by Defendant from the time she first moved to Las
15 Vegas from Mexico. G.A.'s mother stated that G.A. moved to Las Vegas in 2007 and that she
16 did not believe that G.A. would lie about these things. She further stated that G.A. had been
17 more agitated and aggressive in the last few months and agreed to take her to Sunrise Hospital
18 for a medical exam.

19 G.A.'s sister, D.A., testified at the preliminary hearing in this matter, that when she was
20 twelve years old and they lived on Stafford Street, Defendant called her into his bedroom,
21 removed her clothes and his clothes, and inserted his penis into her vagina. D.A. testified that
22 this happened one time.

23 Detectives Pretti and Gabron also spoke to Defendant with the assistance of an
24 interpreter. The interview began with Detective Pretti advising Defendant of his Miranda
25 rights directly from a LVMPD issued advisement card, which Defendant signed and dated
26 after stating that he understood his rights as read to him. During the interview, Defendant
27 confessed to sexually abusing G.A. who was the daughter of Defendant's girlfriend. This
28 included a specific description of an incident in which Defendant placed his penis in G.A.'s

1 anus when G.A. was approximately 8 years of age A copy of Defendant's voluntary statement
2 to police is attached hereto, and incorporated herein, as "Exhibit 1".

3 **STATEMENT OF THE CASE RELEVANT TO THIS MOTION**

4 Trial of this matter is scheduled to commence on May 28, 2019. Defendant previously
5 filed a Motion to Suppress Defendant's Statement in this matter. The State filed its opposition
6 and the Court ultimately denied Defendant's motion.

7 On March 25, 2019, Defendant filed an Amended Notice of Expert Witness endorsing
8 Greg Harder, Psy.D., asserting that he would testify as follows: "**Dr. Harder will testify
9 regarding his findings after completing a neurological evaluation of Vasquez-Reyes. The
10 evaluation included an I.Q. test and a memory test. Dr. Harder will testify regarding the
11 results of those tests and the meaning of the tests as they relate to Vasquez-Reyes' ability
12 to understand and communicate with law enforcement officers in this case.**"

13 The State herein files this Motion in Limine on Order Shortening Time.

14 **LEGAL ARGUMENT**

15 **I. DEFENDANT'S ADMISSION TO LAW ENFORCEMENT THAT HE USED
16 DRUGS AND DRANK AS AN EXCUSE FOR THE SEXUAL ABUSE HE
17 COMMITTED UPON VICTIM G.A. AND AS AN APPARENT REASON WHY
18 HE COULD NOT REMEMBER SOME OF THE ABUSE ALLEGED TO HAVE
19 BEEN COMMITTED BY HIM IS RELEVANT AND ADMISSIBLE TO
20 ILLUSTRATE THE DEFENDANT'S STATE OF MIND AT THE TIME HE
21 GAVE HIS STATEMENT TO LAW ENFORCEMENT**

22 Evidence that a Defendant was drinking at the time he committed the subject sexual
23 offenses would normally be admissible at trial, as it is not a crime for an adult to drink alcohol.
24 Under some circumstances, evidence in a Defendant's statement that he used drugs during the
25 commission of his crimes might be redacted from his voluntary statement under NRS 48.045
26 as improper character evidence. In this case, the State moves to admit, without redaction, the
27 portion of Defendant's Voluntary Statement where Defendant references his use of drugs and
28 drinking. Defendant appears to use this reference as an excuse for the sexual abuse committed
upon Victim G.A. and as an apparent reason why he could not remember some of the abuse
alleged to have been committed by him (See Exhibit 1, pgs. 11-13). Such evidence is not
sought to be admitted to prove Defendant's character, but rather to show his state of mind at

1 the time he gave his statement to law enforcement, the context of his statements and the
2 voluntariness of his statements.

3 “Relevant evidence is defined as any evidence having any tendency to make the
4 existence of any fact that is of consequence to the determination of the action more or less
5 probable than it would be without the evidence.” NRS 48.015.

6 In the subject case, the State submits that evidence of Defendant’s state of mind, and
7 the context of his statements, at the time he gave his statement to law enforcement is extremely
8 relevant. Defendant has noticed Dr. Harder as his expert witness to provide testimony in regard
9 to Defendant’s state of mind and/or mental capacity as it impacts his **“ability to understand
10 and communicate with law enforcement officers in this case”**. The communication
11 referred to is the previously referenced statement which Defendant gave to law enforcement
12 in which he admitted sexual conduct committed upon Victim G.A. In noticing this expert,
13 Defendant has placed at issue his state of mind at the time of his statement to police.
14 Specifically, it is anticipated that Defendant will use Dr. Harder’s testimony to relate to and/or
15 to reference the portions of such statement in which he indicates that he could not remember
16 specific dates or the extent of his sexual abuse in this case to challenge the reliability of his
17 confession. This might include a conclusion and/or inferential argument that Defendant was
18 effected by mental degeneration or inability to remember his disclosure of abuse as actual
19 events at the time he gave such statement.

20 References to the use of drugs or drinking in Defendant’s statement to police is essential
21 in showing the source of any memory lapse suffered by Defendant as detailed by Defendant.
22 Specifically, Defendant indicated to police he couldn’t remember additional sexual
23 misconduct, besides what he already disclosed, while referencing his use of drugs or drinking
24 during the abuse.

25 Additionally, it is noted that the State is required to show that Defendant’s statement
26 was voluntary in order for it to be considered by the jury. The State submits that the
27 voluntariness of Defendant’s statement is exemplified by his making excuses for his conduct
28 (i.e., the use of drugs or drinking). These self-serving statements are very probative of the

1 voluntariness of Defendant's statements.

2 As such, the State submits the references to the use of drugs or drinking made in
3 Defendant's statements are extremely relevant to give context to and explain Defendant's
4 failure to remember additional sexual abuse as well as to show the voluntariness of his
5 statement to police. The State submits that such evidence should be admitted.

6 **II. DEFENDANT'S ALLEGATION IN THE VOLUNTARY STATEMENT THAT**
7 **THE VICTIM HAS MADE A PRIOR FALSE ALLEGATION OF SEXUAL**
8 **ABUSE BY ANOTHER PERSON IS INADMISSIBLE UNDER RAPE SHIELD**
9 **AND MUST BE REDACTED FROM THE VOLUNTARY STATEMENT**

10 On pages 21-23 of Defendant's voluntary statement (See "Exhibit 1") he makes
11 allegations that Victim G.A. has made a prior allegation of sexual abuse by another person.
12 These statements should be excluded from this case pursuant to NRS 50.090. The State is not
13 aware of an exception to NRS 50.090 which might allow the admission of this evidence.
14 Clearly, Defendant has not filed a motion to admit these statements as a prior false allegation
15 of abuse by Victim pursuant to Miller v. State, 105 Nev. 497, 779 P.2d 87, (1989), or pursuant
16 to any other exception, in the subject case. As such, any allegation of such abuse is not
17 admissible in this case. Thus, that portion of Defendant's statement which makes reference to
18 such allegation must be redacted. See NRS 50.090. As such, the State asks this Court to find
19 that any reference to these allegations is not admissible at trial. This would require the
20 redaction of such allegation made in the above revered statement Defendant gave to police.

21 **CONCLUSION**

22 Based upon the above, the State respectfully requests this Court grant the State's
23 Motion in Limine on Order Shortening Time.

24 DATED this 9th day of May, 2019.

25 STEVEN B. WOLFSON
26 DISTRICT ATTORNEY
27 Nevada Bar #001565

28 BY /s/ JAMES R. SWEETIN
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that service of the above and foregoing was made this 9th day of May,
3 2019, to:

4 MIKE FELICIANO, ESQ.
5 Deputy Public Defender
6 Email address: feliciam@ClarkCountyNV.gov

7 Ann McMahan, Secretary
8 Office of the Public Defender
9 Email address: mcmahaae@ClarkCountyNV.gov

10 BY /s/ HOWARD CONRAD
11 Secretary for the District Attorney's Office
12 Special Victims Unit

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EXHIBIT "1"

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 1

EVENT #: 160416-2346

STATEMENT OF ARMANDO VASQUEZ REYES

SPECIFIC CRIME: SEXUAL ASSAULT AGAINST VICTIM UNDER 14

DATE OCCURRED:

TIME OCCURRED:

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: ARMANDO VASQUEZ REYES

DOB: 06-15-67

SOCIAL SECURITY #:

RACE:

SEX:

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS: 2213 BERKLEY AVE, LV NV

PHONE 1:

WORK ADDRESS:

PHONE 2:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE PRETTI, P# 9639, LVMPD Sexual Assault Section on April 16, 2016, at 1827 hours.

Q: Operator, this is Detective Pretti, P. number 9639, uh... conducting one taped interview reference event number 160416-2346. Person being interviewed uh... last name is going to be hyphenated, Vasquez Reyes. Uh... V-A-S-Q-U-E-Z, R-E-Y-E-S. Uh... first is Armando, A-R-M-A-N-D-O. His date of birth is June 15th, of 1967. Home address is 2213 Berkley Avenue, uh... in Las Vegas Nevada. Uh... also present is Detective Gabron, uh... P. number 5542. As well as uh... LVMPD HIS interpreter Corral, P. number 12133. We're currently in an interview room at LVMPD headquarters, at 400 South Martin Luther King. It is 1827 hours on Saturday April 16th, 2016. Uhm... Armando, before we start, I'm going to read you

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 2

EVENT #: 160416-2346

STATEMENT OF ARMANDO VASQUEZ REYES

your rights, okay?

HIS: Armando, before starting, I am going to read you your rights, okay?

Q: You have the right to remain silent.

HIS: You have the right to remain silent.

Q: Anything you say can be used against you in court of law.

HIS: Anything you say can be used against you in a, in a court of law.

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

HIS: You have the right to consult an attorney before the questioning.

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

HIS: You have the right to the presence of an attorney during the questioning.

Q: If you cannot afford an attorney, one will be appointed before questioning.

HIS: If you cannot pay for an attorney, one will be assigned to you before the questioning.

Q: Do you understand these rights?

HIS: Do you understand these rights?

A: Yes.

HIS: Yes.

Q: Okay. Do you still want to speak with us?

HIS: You still uh... wish to speak with you... with, with us? Do you still want to...

A: ... yes.

HIS: Want to talk to us? Yes.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 3

EVENT #: 160416-2346

STATEMENT OF ARMANDO VASQUEZ REYES

Q: Okay sir. Let me have you uh... signature right here.

HIS: I need...

Q: ...just stating that you understand your rights.

HIS: I need you to sign here. It just says you understood your rights.

Q: Okay. Okay Armando, first of all uh... do you know why we're talking today?

HIS: Armando, do you know why we are talking today?

A: No.

Q: Okay. Well, some allegations were made against you by Guadalupe.

HIS: There are some accusations against you made by Guadalupe.

A: I want to know what they are.

HIS: I wanna know what they are.

Q: Okay. Well, they're pretty serious. Okay?

HIS: They, they are very serious, okay?

Q: Her allegations are that you have been abusing her since she was a little girl.

HIS: Her allegations are that you have, have been abusing her since she was a little girl.

A: No.

HIS: No.

A: The only thing I have done is to love all of them because I've been with them for thirteen years.

HIS: The only thing I've done...

A: ... helping them out.

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HIS: The only thing I've done is love them all because I've been with them for about thirteen years.

A: We have been together through the good and the bad. My wife and I.

HIS: We've been in the good and the bad. My wife and I. My woman and I.

A: Maybe because she was upset because I sometimes come back from work tired and I do, I do tell them what do to. (unintelligible)

HIS: Maybe she was mad because yeah, I do come home and I tell them you know, what things that have, they have to do. I come home mad.

Q: Okay. So uhm... I just spent almost an hour with her, speaking with Guadalupe.

HIS: I spoke with Guadalupe for, for almost an hour now.

A: Uh-huh.

Q: Okay? She, there's a lot of emotion in the interview.

HIS: There was a lot of emotions during the interview.

Q: She wasn't angry at all.

HIS: She was not angry.

Q: So, if you want me to understand why you think she would say this just because she's angry, what happened today? Why did the police come to your house?

HIS: If you want to say that, that she is upset and that is why she is saying this, can you tell me the reason why the police went to your house today?

A: Today... (clearing his throat)... sorry... today... I... I was laying on my bed.

HIS: Today I was in my bed.

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- A: Uh... and I have my garage right there in the front, with my tools.
- HIS: I have my garage in the front with all my tools.
- A: So then uh... my son and his wife live in the house.
- HIS: And at the house, my son and his wife live there.
- A: My other daughter with her husband live there.
- HIS: My other daughter with his, with her husband.
- A: So then, I got upset because I have to pay almost the whole rent, I pay all the bills.
Uhm... the food, and everything.
- HIS: I got mad because, you know, I pay all of the rent. I pay most of the pays, food and everything.
- A: So then uhm... they grab my tools and leave them laying around.
- HIS: They grab my tools and they just leave it laying around. That's why.
- A: The only thing I did was to tell them to put my, my vacuum to (unintelligible).. to put it back in there.
- HIS: What I, the only thing I did was ask them to take the vacuum that they were vacuuming with and to put it back in there.
- A: Because I was not drunk or anything. I simply... get upset when they grab my things and they leave them laying around.
- HIS: Because I wasn't drunk or anything. I simply get mad because they grab my things and leave it laying around, leave them laying around.
- A: And the only thing I have told them, I tell them to help me with the rent, with bills

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and everything.

HIS: The only thing I've asked of them is for them to help me with the rent, help, help me pay the bills.

A: And I take my check and...

HIS: ... that's it.

A: And I put it all in there, in the house.

HIS: I get my paycheck and, you know, it's all spent there with everything at the house.

Q: Okay. So why, why did the police show up today?

HIS: So then why did the police went there today?

A: Because of that.

HIS: Because of that. Exactly because of that.

Q: So you got upset because they left your tools out and...

HIS: ... you got angry because they left your tools out there?

A: Uh... yes.

HIS: Yes.

A: Because I told them not to use them, to put them in the small room.

HIS: Because I told them not to use it. For them to put it back in the small room.

A: And I told my wife why had they grabbed the vacuum. And she said she didn't care, that they were going to grab it.

HIS: And I asked my, my wife why, why did they grab the vacuum. And she said she didn't care, that they were going to use it.

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A: And so then she told me I'm going to call the police and I told her call them. I'm not doing anything.

HIS: And then she said I'm going to call the police. And I said go ahead and call them, I'm not doing anything.

Q: Okay. So, that was all between your wife and ... which daughter?

HIS: That was between you, your wife and which daughter?

A: The, the one who just got married. The oldest one.

HIS: The older one, the one that just got married.

Q: Stephanie?

HIS: Stephanie?

A: Stephanie.

HIS: Yeah.

Q: Okay. So, what did all that have to do with Guadalupe?

HIS: And what does that have to do with Guadalupe?

A: No, I don't know. Because Guadalupe...

HIS: ... I don't know.

A: Came out.

HIS: No, well, I don't know because Guadalupe came out there.

Q: Okay. So, you're right. The police was called for a disturbance. Okay?

HIS: You are right. Uh...the police was called because there was a disturbance.
Uh-huh.

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Q: And then...

A: ...and even, and I was even laying down... after that happened, I was laying down... and my wife slapped me and I asked her why are you hitting me?

HIS: After that ...

A: ... and the pol-, and you guys were there... uh... in the kitchen.

HIS: As a matter of fact, after all that happened, I went to bed, to lay down, go back and lay down and my wife came over and slapped me. You guys were already out there, talking.

A: So then she told me get out.

HIS: And she told me ...

A: ... so then I told her give me my money, the money ...

HIS: ... and then she said get out of here.

A: From my rent.

HIS: She said get out of here...

A: ... to give me my money, and so then...

HIS: ... and he said...

A: ...she grabbed the money and threw it at me, but it was like ten dollars. I told her... I can't leave.

HIS: Then she, she said get out of here. And I said yeah, I'll get out of here but first give me the money, the rent money. And then she threw some money at me but it was only like ten dollars. She said, he said I need more money than that for me to leave.

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Q: Okay. So, the police came out to your house for a disturbance.

HIS: The police came to your house because of a disturbance there.

A: Uh-huh.

HIS: Uh-huh.

Q: They're dealing with the stuff between you, your wife and Stephanie.

HIS: They are dealing with the issue between you, your wife and Stephanie.

A: Uh-huh.

Q: They had nothing to do with Guadalupe.

HIS: They had nothing to do with Guadalupe.

A: Uh-huh.

Q: They didn't talk to her. They didn't do anything to her at the beginning.

HIS: They didn't talk to her. They didn't tell her anything at the beginning.

Q: She came out to them.

HIS: She is the one who went to them.

Q: She approached them.

HIS: She approached them.

Q: And said that you had been abusing her.

HIS: And she said you were abusing her.

Q: Okay? She has no reason to do that.

HIS: She has no reason to do that.

Q: Anything that was going on today, didn't have anything to do with her.

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HIS: Everything that happened today, had nothing to do with her.

Q: Okay? She finally just got fed up of holding it inside and needed to tell somebody.

HIS: At the end, she got tired of holding it all inside and she, she saw the need to tell somebody.

Q: She had no other reason to talk to the police.

HIS: She didn't have any other reason to talk to the police.

Q: Okay?

HIS: Okay?

Q: So, if you're saying that all you've done is love them. You've only provided for them. You've never hurt Guadalupe.

HIS: If you are saying you haven't done anything just, just uh... love them, provide for them and you didn't do anything to Guadalupe.

Q: Okay? If you're saying all that.

HIS: If you are saying all that.

Q: Then, and Guadalupe is saying what she saying.

HIS: And Guadalupe is saying what she is saying.

Q: Somebody is a liar.

HIS: Somebody here is lying.

Q: Are you going to tell me it's her?

HIS: You are going to tell me it's her?

Q: Or are you going to tell me what really happened?

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HIS: Or will you tell me what, what really happened?

A: Yes, it's true. I did touch.

HIS: Yes, it's true. I have touched her.

Q: Okay. Thank you for admitting it.

HIS: Thank you for admitting it.

Q: Okay? So, when did it all start.

HIS: So then when did it all start?

A: Uh... it was... I don't remember the time but...

HIS: ... I don't remember...

A: ... but, but one, one or two times.

HIS: I think it was one or two times, but I don't remember how long ago.

Q: Okay. Well, it's more than one or two.

HIS: It's more than one or two times.

Q: And you know that and I know that.

HIS: You know it and I also know it.

Q: Okay? So, let's talk about everything that happened.

HIS: So then we are going to talk about everything that happened.

Q: Okay? Uhm... you've already told me you, you've touched her.

HIS: You have already told me you have touched her.

Q: Like I said, I appreciate your honesty.

HIS: And like I told you, I appreciate your honesty.

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Q: A lot of people in your position, would sit there and deny and call their daughter a liar.

HIS: A lot of people in your position, would sit there and would lie and say ... their daughter is a liar.

Q: Okay?

A: (two people talking at the same time – unintelligible)...

Q: ...so, so we know it was more than one or two times...

HIS: ... no, I'm not going do that.

Q: Right.

HIS: We known it happened more than one or two times.

Q: Okay? So, when did everything start?

HIS: So then when did everything start?

A: I don't remember.

HIS: I don't remember.

Q: Okay. How did it start?

HIS: How did it start?

A: During, during those times, I was... uh...

HIS: ... back in those days...

A: ... I was doing a lot of drugs and everything.

HIS: Back in those days...

A: ... doing a lot of drugs, and drank a lot.

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HIS: I used to use a lot of drugs and I used to drink a lot.

A: And so then... that happened.

HIS: And so that happened.

A: Then afterwards, I realized I was doing wrong and... I stopped, stopped taking drugs and everything.

HIS: I realized that I was doing wrong and uhm... in what I was doing, so I stopped taking drugs, everything.

Q: Okay. How were you touching her?

HIS: How were you touching her?

A: Well, touching her body.

HIS: Well, touching her body.

Q: Okay. Where on her body?

HIS: What part of her body?

A: Her breasts, her legs.

HIS: Her breast, her legs.

Q: And what else?

HIS: And what else?

A: Nothing else.

HIS: Only that.

Q: There, there's more, Armando, come on.

HIS: There is more, Armando.

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Q: Okay? When was the last time you touched her?

HIS: When was the last time you touched he?

A: No, a long time ago. Like four years ago.

HIS: About, it's been a long time. About four years.

Q: Okay. What happened around Thanksgiving?

HIS: What happened ...

Q: ... a few months ago.

HIS: What happened some months ago, around Thanksgiving Day?

A: I don't remember.

HIS: I don't remember.

Q: Okay. Because she said the last time that anything happened was a few months ago, probably around Thanksgiving.

HIS: Because she is saying that the last time something happened... a couple of months ago, maybe around, around Thanksgiving Day.

A: I don't remember things.

HIS: I don't remember.

Q: Okay. Well, here's the thing. You have no reason to lie to me anymore, okay?

HIS: Now, you don't have a reason to lie to me. Okay?

A: Okay.

Q: And I know she has no reason to lie to me.

HIS: And I know she has no reason to lie to me.

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Q: So, I know something happened recently, a few months ago.

HIS: I know something happened recently. A couple of months ago.

Q: And it's more than just touching her breasts and her legs.

HIS: And it's more than just, it's more than just touching her breasts and her, her legs.

Q: And I know that more has happened over the years.

HIS: And I know more has happened over the years.

Q: So... what's, what's best for you right now is to tell me everything that happened with her.

HIS: The best for you is to tell me everything that happened with her.

A: It was just that. And...

HIS: ... it was only that.

A: One time there was a penetration. Just one time.

HIS: Uh... let me...

A: ... there was penetration...

HIS: ... oh, there was only one time that there was penetration.

Q: And when was that?

HIS: And when was that?

A: I don't remember when.

HIS: I don't remember when.

Q: Okay. Uhm... tell me about the penetration.

HIS: Tell me about the penetration.

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A: I'm embarrassed.

HIS: I'm embarrassed.

Q: I, I understand.

HIS: I understand.

Q: Okay? This is what we do every day.

HIS: This is what we do every day.

Q: Okay? And like I said we appreciate your honesty.

HIS: And like I told you before, I appreciate your honesty.

A: I feel terrible now because of what I've done.

HIS: I feel, I feel terrible for what I have done.

Q: Okay. Well, the first step is admitting what you're done.

HIS: The first step is to admit what you have done.

Q: Okay?

HIS: Okay?

Q: The more honest you are with me and the more you talk to me about what happened, the better we can do for Guadalupe and get her help.

HIS: The more honest you are with us, and, and... we can give Guadalupe more help.

Q: Because at this point, everything going forward is about her and making sure she's okay as she grows up.

HIS: Because from now on, we have to make sure she is okay while she grows up.

A: We need to give her help.

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HIS: We need, we need to get help for you, I need for you guys to get her help.

Q: And I'm working on that.

HIS: And we are working on that.

Q: But I need to know from you the extent of what's happened with her.

HIS: But I need to know from you in extent what happened with her.

A: Just that. One time I went in her bedroom, and she was masturbating and I went in... and...

HIS: ... well, one time I walked into the room and she was masturbating, so I walked in and I...

Q: ...what did you do?

HIS: What did you do?

A: Well, I was with her.

HIS: Well, I was with her.

A: But I did not rape her. Like... it's a rape, but not forced.

HIS: I didn't abuse her, I mean, it was abuse but it wasn't forced.

Q: Okay. So, what did you do to her?

HIS: So then what did you do to her?

A: I just penetrated her.

HIS: I just penetrated her.

Q: Okay. With your penis?

HIS: With your penis?

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A: Yes.

HIS: Yes.

Q: Okay. And her vagina or her anus or something else?

HIS: In her vagina, her anus or something else?

A: Just in her anus.

HIS: In her anus only.

Q: In her anus only? Okay. How many times did that happen?

HIS: How many times did that happen?

A: No, only one time.

HIS: Once, only one time.

Q: Okay. How old was she when that happened?

HIS: How old was she when that happened?

A: Like eight years old.

HIS: About eight years old.

Q: She was about eight years old and she was masturbating?

HIS: She was like eight years old and she was masturbating?

A: Uh-huh.

HIS: Yes.

Q: Okay. So, how many other times did you penetrate her anus?

HIS: So then how many times, how many times have you penetrate her anus?

A: Just one time.

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HIS: Only one time.

Q: Okay. I know it's more than that.

HIS: I know it was more than one time.

Q: She told me it was more than that.

HIS: She told me it was more than one time.

A: Well, I am telling you the truth now.

HIS: Now I am telling you the truth.

Q: Okay. So, what happened a few months ago?

HIS: So then what happened some months ago?

A: I don't know.

HIS: There I don't, I don't know.

Q: Okay. Uhm... when was the last time you touched her?

HIS: When was the last time you touched her?

A: That time only.

HIS: Only that time.

Q: Okay. I know you said you're embarrassed, I know it's tough to talk about.

HIS: I know you told me you are, you are embarrassed. And it's very hard to talk about this.

Q: Okay? I know this stuff happened more than one time.

HIS: I know this happened more than one time.

Q: Okay? She told me it happened more than one time.

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HIS: She told me it happened more than one time.

Q: Okay? The way you said at first nothing happened. Then oh, I just touched her breast. And oh, I just penetrated her one time. Okay? That's how I know that she's telling me the truth.

HIS: Since you started saying at the beginning... you said no, nothing happened. Then you said that yes, you had touched her. And then afterwards you said you penetrated her. I know she is not lying to me...

A: ... but now I am telling you everything that happened.

HIS: But now I am telling you everything that happened.

Q: Okay. I... like I said, I appreciate your honesty.

HIS: Like I told you I appreciate your honesty.

Q: But... I don't believe you now.

HIS: But I don't believe you now.

Q: Okay? Uh... I know this happened more than once.

HIS: I know this happened more than one time.

Q: I know it's been ongoing for a number of years.

HIS: I know it's been happening for, for a number of years.

Q: Okay? She has...

HIS: ... (two people talking at the same time - unintelligible)

Q: Zero reason to lie to me.

HIS: She has no reason to lie to me.

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Q: Okay? So, if you're just going to stick with it happened one time.

HIS: So then if you are going to stick with that, that it happened only one time.

Q: And you're going to keep the rest of it inside you.

HIS: And the rest you are going to keep inside of you.

Q: Then that doesn't, that doesn't help her.

HIS: That does not help her.

A: Right now, I have nothing else to say. That's all.

HIS: Right now, I have nothing else to say. That's all.

A: The only thing I know is that... the little boy, the one took in the car

HIS: The only thing I, I do know is that the child that...

A: ...one...

HIS: ... came in, that was there in the car. That arrived in the car.

A: One time... uh... Guadalupe told her mother.

HIS: One time Guadalupe told her mom.

A: That the little boy had raped her.

HIS: That that they boy had uh...abused her. Had raped her.

A: Her mom told her no, not to tell lies, that it was not true.

HIS: And that her mother said no, don't be telling lies, that is not true.

A: And it's what happened.

HIS: That is what happened.

Q: Okay. So, was that Mael (no sp given)?

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A: Mael.

Q: Okay. So, he was obviously upset with you at the house.

HIS: Obviously he was upset with you at the house.

A: Yes, I saw he was upset.

HIS: Yes, I noticed that he was upset.

Q: Yes. So, uhm... I don't know what he was saying to you.

HIS: I don't know what he was saying to you.

Q: But it didn't sound friendly.

HIS: But it didn't seem it was very friendly.

A: The only thing...

Q: ... and the fact... hang on. And the fact that he would try and go after you when there's three police officers around you.

HIS: And the fact that he tried to, to go after you while there were three police officers there.

Q: That, that doesn't strike me as a guy who has been accused of this before.

HIS: That does not, not, I don't think that is a person who has been accused about this before.

Q: Okay? So, I'm not talking to you about Mael.

HIS: So like I am not talking to you about Mael.

Q: I'm talking about you, and I'm talking about Guadalupe.

HIS: We are talking about you and Guadalupe.

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Q: Okay?

HIS: Okay?

Q: So... what else happened with her?

HIS: So then what else happened with her?

A: Nothing else.

HIS: Only that. Nothing else.

A: I don't have anything else to tell you. (two people talking at the same time – unintelligible) ...

HIS: ... but I have nothing else to say. That's all that happened.

Q: All right. You got nothing else to say?

HIS: You don't have nothing else to say?

A: If I have to pay for it, I will pay for it.

HIS: If I have to pay, I have, I will pay.

Q: Okay. So, I just want to clarify.

HIS: I just want to clarify.

Q: Are, are you done talking to us or do you want to talk to us more?

HIS: Are you done talking to us or do you want to continue talking to us?

A: That's all.

HIS: That's all.

Q: Okay. Operator, it's going to be end of interview. The same four people are present. Time is 1847 hours.

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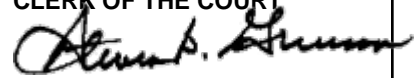
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STATEMENT OF ARMANDO VASQUEZ REYES

THIS VOLUNTARY STATEMENT WAS COMPLETED AT 400 S. MARTIN LUTHER KING BLVD, LV NV ON THE 16TH DAY OF APRIL, 2015, AT 1847 HOURS.

Transcribed and translated by Claudia Sutton, #7863

MP015



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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-16-316382-1
)	
v.)	DEPT. NO. XII
)	
ARMANDO VASQUEZ-REYES,)	
)	
Defendant,)	
_____)	

DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234

TO: CLARK COUNTY DISTRICT ATTORNEY:

You, and each of you, will please take notice that the Defendant, ARMANDO VASQUEZ-REYES, intends to call the following witness in his case in chief:

Bruce E. McAllister - PD, Investigator

DATED this 13th day of May, 2019.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/Mike Feliciano
MIKE FELICIANO, #9312
Deputy Public Defender

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Case Name: Armando Vasquez-Reyes
Case No.: C-16-316382-1
Dept. No.: District Court, Department XII

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Steven D. Grierson

1 **ROC**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JAMES R. SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

14 THE STATE OF NEVADA,

15 Plaintiff,

16 -vs-

17 **ARMANDO VASQUEZ-REYES,**
18 **#7030886**

19 Defendant.

CASE NO: C-16-316382-1

DEPT NO: XII

20 **RECEIPT OF COPY**

21 RECEIPT OF COPY of

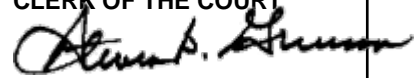
- 22 1) CD of 911 PHONE RECORDS
23 2) MEDICAL RECORDS OF VICTIM
24 3) PICTURES OF VICTIM
25 4) VOLUNTARY STATEMENT OF ROSALBA CARDENAS

26 is hereby acknowledged this 13 day of MAY, 2017.

27 MIKE FELIGIANO, DPD
28 ATTORNEY FOR DEFENDANT

BY *[Signature]*

hjc/SVU



SLOW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ARMANDO VASQUEZ-REYES,
#7030886

Defendant.

CASE NO: **C-16-316382-1**
DEPT NO: **XII**

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

TO: ARMANDO VASQUEZ-REYES, Defendant; and

TO: MIKE FELICIANO, DPD, Counsel of Record:

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

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

ABUKAMIL, RAMI M.D.; STEIN FORENSIC HOSPITAL, 1090 WIGWAM #100, LVN; Will testify as an expert as to the observations and psychological testing of Defendant on or about July 27, 2018 as well as Defendant's demonstrated and/or cognitive ability on or about that date, as well as limitations in ascertaining cognitive ability through observation and testing; will also testify in rebuttal as to Defendant's Expert Dr. Greg Harder.

1 ALVAREZ, MAEL
2 CASINOVA, DR EFRIN; UNIVERSITY MEDICAL CENTER/CCDC; Will testify as
3 to the medical records of ARMANDO VASQUEZ-REYES; the symptoms of diabetes and
4 high blood pressure, and the effect of such symptoms on an individual; the physical and
5 mental condition of ARMANDO VASQUEZ-REYES at the time of his arrest, and
6 subsequently as demonstrated by his medical records and audio/video of a statement given by
7 him to police at approximately the same time as his arrest.

8 CETL, DR SANDRA; SNCAC/SUNRISE HOSPITAL; Will testify as an expert as to
9 the nature, process and limitations of sexual assault examinations, and/or as to the sexual
10 assault examination(s) conducted in the instant case.

11 COR or Designee; CCDC

12 COR or Designee; LVMPD COMMUNICATIONS

13 COR or Designee; LVMPD RECORDS

14 COR or Designee; SOUTHERN NEVADA ADULT MENTAL HEALTH
15 SERVICES/STEIN FORENSIC HOSPITAL, 6161 W CHARLESTON BLVD, LVN 89146

16 COR or Designee; SUNRISE HOSPITAL

17 CORRAL, MARIA; LVMPD#12133; Will testify as an expert in Spanish/English
18 translation and/or as to the Spanish/English translation(s) conducted in the instant case.

19 DEVILLEZ, AMANDA PH.D.; STEIN FORENSIC HOSPITAL, 1090 WIGWAM
20 #100, LVN; Will testify as an expert as to the observations and psychological testing of
21 Defendant on or about July 27, 2018 as well as Defendant's demonstrated and/or cognitive
22 ability on or about that date, as well as limitations in ascertaining cognitive ability through
23 observation and testing; will also testify in rebuttal as to Defendant's Expert Dr. Greg Harder.

24 G.A.; c/o CCDA-SVU/VWAC

25 GABRON; LVMPD#05542

26 EKROOS, DR RACHELL; UNLV SCHOOL OF NURSING; Will testify as an expert
27 as to the nature, process and limitations of sexual assault examinations, and/or as to the sexual
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1 KAPEL, LAWRENCE, PH.D; STEIN FORENSIC HOSPITAL, 1090 WIGWAM
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3 Defendant on or about July 27, 2018 as well as Defendant's demonstrated and/or cognitive
4 ability on or about that date, as well as limitations in ascertaining cognitive ability through
5 observation and testing; will also testify in rebuttal as to Defendant's Expert Dr. Greg Harder.

6 LEON, RUTH; CCDA-SVU INVESTIGATIONS

7 *MALONE, DR ALEX; UNIVERSITY MEDICAL CENTER/CCDC; Will testify as
8 to the medical records of ARMANDO VASQUEZ-REYES; the symptoms of diabetes and
9 high blood pressure, and the effect of such symptoms on an individual; they physical and
10 mental condition of ARMANDO VASQUEZ-REYES at the time of his arrest, and
11 subsequently as demonstrated by his medical records and audio/video of a statement given by
12 him to police at approximately the same time as his arrest.

13 MARTINEZ, YANNET, C/O DISTRICT ATTORNEY'S OFFICE

14 MURRAY; LVMPD#13458

15 PARENT/GUARDIAN of G.A.; c/o CCDA-SVU/VWAC

16 *PINTO; LVMPD#13729

17 PRETTI; LVMPD#09639

18 RAMOS, DR. JIMMY; NEM MEDICAL CENTER, 2670 LAS VEGAS
19 BOULEVARD NORTH #109, NLV 89030; Will testify as an expert as to the examination,
20 treatment, observations and diagnosis of Defendant.

21 R.C.; c/o CCDA-SVU/VWAC

22 RETA, MYRA; CCDA VWAC; Will testify as to Will testify as an expert in
23 Spanish/English translation and/or as to the Spanish/English translation(s) conducted in the
24 instant case.

25 ROLEY, LIA PSY.D.; STEIN FORENSIC HOSPITAL, 1090 WIGWAM #100, LVN;
26 Will testify as an expert as to the observations and psychological testing of Defendant on or
27 about July 27, 2018 as well as Defendant's demonstrated and/or cognitive ability on or about
28 that date, as well as limitations in ascertaining cognitive ability through observation and

1 testing; will also testify in rebuttal as to Defendant's Expert Dr. Greg Harder.

2 S.A.; c/o CCDA-SVU/VWAC

3 SUTTON, CLAUDIA; LVMPD#07863; Will testify as an expert in Spanish/English
4 translation and/or as to the Spanish/English translation(s) conducted in the instant case.

5 THEOBALD; LVMPD#06468

6 TORRES, SERGIO, C/O DISTRICT ATTORNEY'S OFFICE

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

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

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

13
14 BY /s/ JAMES R. SWEETIN
15 JAMES R. SWEETIN
16 Chief Deputy District Attorney
Nevada Bar #005144
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 6th day of MAY,
2018, to:

MIKE FELICIANO, DPD
mcmahaae@ClarkCountyNV.gov

BY: /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

K. Alexander Malone, MD, FAAEM, FACEP

HOME

2332 French Alps Ave.
Henderson, NV 89044
702-445-2220
AlexMaloneMD@icloud.com

WORK

Occupational Medicine / MSTs
Building C1
2621 Losee Road
North Las Vegas, NV 89030

CLINICAL EMPLOYMENT/APPOINTMENTS

12/18-Present **SOMD (Site Occupational Medical Director) – Nevada National Security Site
North Las Vegas, Nevada and Mercury, Nevada, USA**

- Work for NNSS M&O subcontractor, MSTs (Mission Support and Test Services, LLC).
- Medical Director serving 4,000-person workforce at nation's premiere nuclear stockpile stewardship facility.
- Support fire and rescue services as Fire Medical Director, with direction in accordance with NFPA 1582.
- Support the protective force as the Protective Personnel Medical Director under 10 CFR 1046.
- Operate as the SOMD for the Human Reliability Program under 10 CFR 712.
- Serve as the medical liaison for Industrial Hygiene and Occupational Safety in their execution of various surveillance programs, including asbestos, beryllium, and silica.
- Provide direct patient care to various members of the workforce and direct oversight to a directorate of 20 personnel.

04/17-01/18 **Emergency Department Attending Physician, North Vista Hospital, 1409 E.
Lake Mead Blvd., North Las Vegas, NV 89030**

- Provided emergency healthcare to high-risk demographic at inner-city, 20 bed, 200 patient/day ED.
- Evaluated, diagnosed, and treated wide range of disorders including workplace injuries. In addition, I was responsible for the initial stabilization and care of all acute medical, obstetrical and surgical ailments which present, including traumatic, pediatric, and psychiatric emergencies.
- Responsibilities also included real-time supervision of three LIPs (both PA and NP) during any single shift.

10/16-08/18 Emergency Department Attending Physician, VA Southern Nevada Healthcare System, 6900 N Pecos Rd, North Las Vegas, NV 89086

- Provided emergency healthcare to our some of our nation's finest citizens.
- Served as an attending physician at 5th busiest ED in VA system.
- Evaluated, diagnosed, and treated a wide range of disorders including workplace injuries.

10/16-03/17 Emergency Department Physician, Western Arizona Regional Medical Center, 2735 Silver Creek Road, Bullhead City, AZ 86442

- Worked as a full-time attending ED physician in 25 bed rural hospital serving a catchment area of nearly 100,000 inhabitants.
- Duties include providing single-physician coverage for facility seeing over 100 patients/day in a state-designated trauma center and EMS base station. Scope of practice included a diverse range of medical and surgical pathology, including, but not limited to adult, pediatric, OB/GYN, trauma, psychiatric, and work-related etiologies.
- Discontinued active staffing responsibilities (remain credentialed) to complete law enforcement training and to work closer to my residence.

10/13-01/16 Emergency Department Physician, Fremont Emergency Services Dignity Health/St. Rose de Lima Hospital-San Martin campus

- Served as medical director of newest and most modern community emergency department in Southern Nevada.
- Provided daily direction of clinical activities and patient care for team of approximately 30 physicians providing care at this 32-bed adult ED.
- Represented the Emergency Department physicians at all hospital-related functions including Medical Executive Committee, P&T Committee, and various leadership meetings.
- Scope of practice included a diverse range of medical and surgical pathology, including, but not limited to adult, pediatric, OB/GYN, trauma, psychiatric, and work-related etiologies.
- Continued to work as an emergency medicine physician for FES after voluntarily terminating medical directorship that lasted 10/13-10/14 to pursue academic opportunities and clinical ventures.

07/12-10/13 **Emergency Department Medical Director, Valley View Medical Center**

- Director of 16 bed emergency department within a hospital serving the community of Fort Mohave, AZ, along with a larger “Tri-State population” of approximately 50,000.
- Provided direct supervision of day-to-day ED operations along with ED Nurse Manager, including core-measure and patient satisfaction benchmarking goals.
- Provided leadership for 10-physician group of emergency department physicians staffing ED with annual census of 20,000 patients.
- Negotiated State / CMS / Joint Commission inspections and audits of facilities during 2012-2013.
- Scope of practice included a diverse range of medical and surgical pathology, including, but not limited to adult, pediatric, OB/GYN, trauma, psychiatric, and work-related etiologies.
- Voluntarily terminated employment to pursue directorship closer to residence.

7/10-7/12 **Staff Physician, Dept. of Emergency Medicine, Kadlec Regional Medical Center, 888 Swift Boulevard, Richland, WA 99352**

- Provided emergency medicine physician coverage to 35-bed emergency department with an annual census of approximately 75,000 patients. Duties include rapid assessment, resuscitation, and disposition of both pediatric and adult patients at a regional tertiary care center serving southern and western Washington, Northern and Western Oregon, and Southern Idaho.
- Voluntarily terminated employment to pursue directorship opportunity at Valley View Medical Center in Fort Mohave, Arizona.

8/04-7/12

**Attending Physician and Assistant Professor of Emergency Medicine,
University of Nevada School of Medicine/University Medical Center of
Southern Nevada, 1800 W. Charleston Blvd., Las Vegas, NV 89106**

- Member of first EM residency in Nevada's initial core faculty.
- Transitioned to Assistant Clinical Professor in January 2010.
- Served as Director of Emergency Ultrasound from 07/07-01/09, providing ongoing supervision of residency-based ultrasound program and curriculum.
- Provided direct patient care for diverse population experiencing a myriad of complex medical and surgical problems ranging from workplace accident evaluation and industrial exams to leading resuscitation of critically ill and injured adults.
- Provide didactic instruction and supervision to emergency medicine residents within the Department of Emergency Medicine, University of Nevada School of Medicine/University Medical Center of Southern Nevada, Las Vegas, NV.
- UMCSN is a level-1 emergency, trauma, and burn center providing treatment for 125,000 patients per year from a four-state area.

1995-1996

Hyperbaric Technician, Hyperbaric Technologies Incorporated

- Provided direct medical supervision and EMT-level treatment of patients undergoing hyperbaric treatment at UMC of Southern Nevada.
- included standard wound-healing regimens, as well as USN Treatment Table 6 dives for acute carboxyhemoglobinemia and DCS. Resigned to attend medical school.

MEDICAL DIRECTORSHIPS

2/17-Present Medical Director, MSTS

- Provide ongoing EMS resource for daily operations and chart review/training on an as-needed basis.
- Provide ongoing chart review and medical direction for dedicated staff of two physician assistants providing occupation health and wellness assessments of NNSS/DOE employees.

1/16-Present Medical Director, Nye County Department of Emergency Management, Nye County, Nevada

- Provide administrative oversight to the primarily volunteer-based EMS services serving the geographically 3rd-largest county in the United States of America
- Perform online medical control 24/7 for these agencies.
- Perform periodic teaching for various modules and mass casualty incident scenarios.

4/07-Present Medical Director, Mercy Air Services-Nevada, Air Methods Inc.

- Duties include ongoing medical education, flight quality improvement reviews, and protocol revision. Have successfully supervised preparations for 6 annual CAMTS inspections and reviews.
- Perform quarterly cadaver-based procedure teaching labs and flight reviews.
- Provide 24-hour online medical control for all rotary-wing EMS flights within a 250-mile radius of Clark County, Nevada.
- Currently, the only actively flying rotary-wing EMS physician within the state of Nevada.
- Served as Assistant Medical Director from 04/07-12/09.
- Perform regional insurance/managed care denial appeals for Air Methods.

4/07-Present **Medical Director, North Las Vegas Fire Department, North Las Vegas, NV**

- Duties include providing medical oversight to the emergency medical service (EMS) operations of a large urban fire service and acting as its representative in the Southern Nevada Health District Medical Advisory Board for the metropolitan Las Vegas area.
- Serve as a team physician to the Federal Emergency Management Agency Urban Search and Rescue Team (Nevada Task Force – 1).
- Supervised the formation of the first Fire Department-based tactical EMS team in southern Nevada, serving the NLV Police Dept. SWAT Team.

4/07-2016 **Medical Manager (White Team), Nevada USAR Task Force One, FEMA**

- Provided direct medical supervision and team leadership to one of 27 national Urban Search & Rescue teams serving FEMA. Teams respond to any location within the U.S. in the event of a large environmental, or industrial catastrophe or terrorist event.

1/12-07/13 **Medical Director, Native Air-Northern Arizona, Air Methods, Inc.**

- Duties included ongoing medical education, flight quality improvement reviews, and protocol revision.
- Provided 24-hour online medical control for all rotary-wing EMS flights throughout northern Arizona.
- Provided interim medical direction while company was evaluating suitable replacement for previous director. Voluntarily resigned temporary assignment once suitable alternative was hired.

4/07-3/11 **Assistant Medical Director, Las Vegas Motor Speedway**

- Supervision of EMS operations for NASCAR-affiliated racetrack.
- Provision of care for emergency medicine & trauma patients at special-events venues and serving as racetrack physician for NASCAR/NHRA drivers.
- Operated on a volunteer basis and voluntarily terminated employment to devote more of my professional attention to other obligations within the local EMS community.

1/07-12/10 **Medical Director, MedFlight Air Ambulance, Inc.**

- Provided education, quality improvement, and supervision/medical control capabilities to fixed-wing aeromedical ambulance crews based in Las Vegas, NV.
- Operated as a Flight Physician caring for critically ill and injured patients requiring long-distance aeromedical care.
- Parent company terminated Las Vegas-based operations to consolidate business efforts in two other states.

7/06-6/08 **Medical Director, JTM Training Group, LLC, Las Vegas, Nevada**

- Provided medical oversight and education for military contractor providing medical training to United States Special Operations Command and OGA personnel.
- Voluntarily resigned employment to pursue more consistent opportunities within local EMS community.

EDUCATION

2008 Fellow, American College of Emergency Physicians

2006 Fellow, American Academy of Emergency Medicine

2005 Diplomate, American Board of Emergency Medicine

2004 Certificate of Completion. Emergency Medicine Residency Program, University of Arizona Health Sciences Ctr., Tucson, AZ

2001 M.D. University of Nevada School of Medicine, Reno, NV.

1994 B.S. Biological Sciences, East Carolina University, Greenville, NC.

PUBLICATIONS

Malone, Alex, et al. "Providers Use Algorithmic Approach to Manage Traumatic Airway." Journal of Emergency Medical Services. Apr. 2012

Associate Editor. Mattu & Woolridge: *Avoiding Common Errors in Emergency Medicine*, 1st ed. Philadelphia, Lippincott Williams & Wilkins, 2010

Malone, K. Alexander. "A Handle on Trauma." Journal of Emergency Medical Services. Aug. 2009: Vol. 34 Issue 8.

Markarian MK, MacIntyre DA, Cousins BJ, Fildes JJ, Malone A. Adolescent pneumopericardium and pneumomediastinum after motor vehicle crash and ejection. *Am J Emerg Med*. 2008 May; 26(4): 515.e1-2.

Malone KA: Lumbar Puncture. In Keim: *Emergency Medicine On Call*, 1st ed. New York, Lange Medical Books/McGraw-Hill Companies, Inc., 2004, pp 459-462.

Malone KA: Hyperthermia. In Keim: *Emergency Medicine On Call*, 1st ed. New York, Lange Medical Books/McGraw-Hill Companies, Inc., 2004, pp 139-142.

Meislin HW, Malone KA: Soft-tissue Infections. In Markovchick and Pons (ed): *Emergency Medicine Secrets*, 3rd ed. Philadelphia, Hanley & Belfus, Inc., 2003, pp 243-247.

Editorial board member for the *Journal of Emergency Medicine*, Elsevier, Inc.

Editorial board member for the *Western Journal of Emergency Medicine*.

LECTURES/PRESENTATIONS/TRAINING

"Heat-related Illness." Mercy Air Community Lecture Series, Henderson, Nevada, May 20, 2009.

"Video Laryngoscopy-The Glidescope." Resident Lecture, Department of Emergency Medicine, University of Nevada School of Medicine, Las Vegas, NV, December 3, 2008.

"Emergency Ultrasound." Resident Skills Lab, Department of Emergency Medicine, University of Nevada School of Medicine, Las Vegas, NV, November 26th, 2008.

"Diving Emergencies/Dysbarisms." Resident Lecture, Department of Emergency Medicine, University of Nevada School of Medicine, Las Vegas, NV, September 10, 2008.

"Ultrasound Evaluation of 1st Trimester Pregnancy." Resident Lecture, Department of Emergency Medicine, University of Nevada School of Medicine, Las Vegas, NV, July 9, 2008.

“Ultrasound Evaluation of the Kidneys and Bladder.” Resident Lecture, Department of Emergency Medicine, University of Nevada School of Medicine, Las Vegas, NV, June 4, 2008.

“The Violent Patient.” Resident Lecture, Department of Emergency Medicine, University of Nevada School of Medicine, Las Vegas, NV, April 9, 2008.

“U/S-guided Procedures in the Emergency Department.” Resident Lecture, Department of Emergency Medicine, University of Nevada School of Medicine, Las Vegas, NV, April 2, 2008.

“U/S Detection of Gallbladder Disease.” Resident Lecture, Department of Emergency Medicine, University of Nevada School of Medicine, Las Vegas, NV, January 6, 2008.

“Advanced Airway Management Techniques.” Resident Lecture, Department of Emergency Medicine, University of Nevada School of Medicine, Las Vegas, NV, November 28, 2007.

“U/S Detection of Abdominal Aortic Aneurysms.” Resident Lecture, Department of Emergency Medicine, University of Nevada School of Medicine, Las Vegas, NV, November 14, 2007.

“The FAST Exam.” Resident Lecture, Department of Emergency Medicine, University of Nevada School of Medicine, Las Vegas, NV, September 13, 2007.

“Introduction to Emergency Ultrasound.” Resident Lecture, Department of Emergency Medicine, University of Nevada School of Medicine, Las Vegas, NV, July 14, 2007.

“Dislocations/Soft Tissue Injuries.” Resident Lecture, Dept. of Emergency Medicine, University of Nevada School of Medicine, Las Vegas, NV, October 25, 2006.

“Pelvic Fractures.” Resident Lecture, Dept. of Emergency Medicine, University of Nevada School of Medicine, Las Vegas, NV, August 31, 2006.

“Cardiomyopathies.” Resident Lecture, Dept. of Emergency Medicine, University of Nevada School of Medicine, Las Vegas, NV, July 12, 2006.

“OB/GYN Emergencies.” Classroom Lecture. UMC of Southern Nevada Paramedic Academy, Las Vegas, NV, Spring 2006.

“Shock.” Classroom Lecture. UMC of Southern Nevada Paramedic Academy, Las Vegas, NV, Spring 2006.

“Pulmonary Emergencies.” Classroom Lecture. UMC of Southern Nevada Paramedic Academy, Las Vegas, NV, Spring 2006.

“Medical Support During Military Special Operations.” Paid Instructor for Specialized Medical Operations Inc./JTM Training LLC. Instruction of USSOCCOM/USAFSOC personnel undergoing paramedic and tactical refresher courses. Spring, Summer, Fall, Winter 2005-2006.

“Resuscitation Techniques.” Cadaver Lab and Instruction for members of the Las Vegas Metropolitan Police SWAT Team. Spring, Fall 2005-2006.

“Helicopter-based EMS Resuscitation Techniques.” Paid Instructor for Mercy Air Services-Nevada flight crews. Spring, Fall 2005-2006.

“Advanced Airway Management.” Emergency Medicine Grand Rounds, UNSOM / UMC of Southern Nevada, Las Vegas, NV. November 2005.

“Airway Management 101.” Dept. of Internal Medicine Morning Conference, UNSOM, Las Vegas, NV, Fall 2005.

“Lateral Canthotomy.” Dept. of Emergency Medicine Trauma Grand Rounds, University of Arizona Health Sciences Center. Summer 2003.

“Strangulation Injuries.” Dept. of Emergency Medicine Trauma Grand Rounds, University of Arizona Health Sciences Center. Spring 2003.

“The GCS.” Southern Arizona Trauma Network Annual Conference, Tucson, AZ, Sep. 26, 2002.

Peripartum Cardiomyopathy.” Dept. of Emergency Medicine Grand Rounds, University of Arizona Health Sciences Center. Fall 2002.

“Acetaminophen Toxicity.” Dept. of Emergency Medicine Grand Rounds, University of Arizona Health Sciences Center. Spring 2002.

AWARDS/HONORS

2016 Leadership Award, Silver State Law Enforcement Academy, Class 2016-1.

2004 Joseph O’Dwyer Excellence in Airway Management Award, Dept. of Emergency Medicine, University of Arizona Health Sciences Center.

2003 Outstanding Resident in Toxicology Award, Department of Emergency Medicine, University of Arizona Health Sciences Center.

VOLUNTEER/COMMUNITY ACTIVITIES

2017-Present Team Rider, TEAM VEGAS, Police Unity Tour

01/15-Present Reserve Deputy, Nye County Sheriff's Office, Pahrump, Nevada P# 378863
Nevada POST ID # 32946

03/07-03/17 Tactical Physician, North Las Vegas Police SWAT Team

2005 Special Event Physician, Las Vegas Marathon. Las Vegas, Nevada.

1996 Volunteer of the Year, UMC of Southern Nevada.

PROFESSIONAL ORGANIZATION MEMBERSHIPS

Air Medical Physician Association

American College of Emergency Physicians

American Academy of Emergency Medicine

Medical Advisory Board of Southern Nevada Health District

National Association of EMS Physicians

LICENSES & CERTIFICATIONS

Active "Q" Clearance, United States Department of Energy, Expires: 01/2024

Nevada State Police Officers Standards and Training ID # 32946

Diplomate, American Board of Emergency Medicine, 11/29/2005

Diplomate, National Board of Medical Examiners, 2004

Licensee, Nevada State Board of Medical Examiners #11053

Licensee, Arizona Medical Board #46462

Current ATLS, ACLS, PALS

HOBBIES & PERSONAL INTERESTS

FAA certificated private pilot

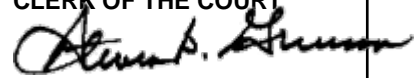
2nd Degree Black Belt (NiDan) Shaolin Ch'uan Fa

United States Parachuting Association License A-46075

Proficient in spoken Spanish

REFERENCES

Excellent references available on request.



SLOW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ARMANDO VASQUEZ-REYES,
#7030886

Defendant.

CASE NO: **C-16-316382-1**
DEPT NO: **XII**

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

TO: ARMANDO VASQUEZ-REYES, Defendant; and

TO: MIKE FELICIANO, DPD, Counsel of Record:

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5 mental condition of ARMANDO VASQUEZ-REYES at the time of his arrest, and
6 subsequently as demonstrated by his medical records and audio/video of a statement given by
7 him to police at approximately the same time as his arrest.

8 CETL, DR SANDRA; SNCAC/SUNRISE HOSPITAL; Will testify as an expert as to
9 the nature, process and limitations of sexual assault examinations, and/or as to the sexual
10 assault examination(s) conducted in the instant case.

11 *COLLINS, SUNSHINE PSY.D; 1820 E WARM SPRINGS RD #115, LVN 89119;
12 Will testify as an expert as to the nature, process and limitations of competency evaluations,
13 and/or as to the competency evaluation conducted on Defendant on or about June 1, 2019.

14 COR or Designee; CCDC

15 COR or Designee; LVMPD COMMUNICATIONS

16 COR or Designee; LVMPD RECORDS

17 COR or Designee; SOUTHERN NEVADA ADULT MENTAL HEALTH
18 SERVICES/STEIN FORENSIC HOSPITAL, 6161 W CHARLESTON BLVD, LVN 89146

19 COR or Designee; SUNRISE HOSPITAL

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27 G.A.; c/o CCDA-SVU/VWAC

28 GABRON; LVMPD#05542

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13 mental condition of ARMANDO VASQUEZ-REYES at the time of his arrest, and
14 subsequently as demonstrated by his medical records and audio/video of a statement given by
15 him to police at approximately the same time as his arrest.

16 MARTINEZ, YANNET, C/O DISTRICT ATTORNEY'S OFFICE

17 MURRAY; LVMPD#13458

18 PARENT/GUARDIAN of G.A.; c/o CCDA-SVU/VWAC

19 PINTO; LVMPD#13729

20 PRETTI; LVMPD#09639

21 RAMOS, DR. JIMMY; NEM MEDICAL CENTER, 2670 LAS VEGAS
22 BOULEVARD NORTH #109, NLV 89030; Will testify as an expert as to the examination,
23 treatment, observations and diagnosis of Defendant.

24 R.C.; c/o CCDA-SVU/VWAC

25 RETA, MYRA; CCDA VWAC; Will testify as to Will testify as an expert in
26 Spanish/English translation and/or as to the Spanish/English translation(s) conducted in the
27 instant case.

28 //

1 ROLEY, LIA PSY.D.; STEIN FORENSIC HOSPITAL, 1090 WIGWAM #100, LVN;
2 Will testify as an expert as to the observations and psychological testing of Defendant on or
3 about July 27, 2018 as well as Defendant's demonstrated and/or cognitive ability on or about
4 that date, as well as limitations in ascertaining cognitive ability through observation and
5 testing; will also testify in rebuttal as to Defendant's Expert Dr. Greg Harder.

6 S.A.; c/o CCDA-SVU/VWAC

7 *SUSSMAN, DR DANIEL ; 4205 MONT BLANC WAY, MT. CHARLESTON, NV
8 89124; Will testify as an expert as to the nature, process and limitations of competency
9 evaluations, and/or as to the competency evaluation conducted on Defendant on or about May
10 22, 2019.

11 SUTTON, CLAUDIA; LVMPD#07863; Will testify as an expert in Spanish/English
12 translation and/or as to the Spanish/English translation(s) conducted in the instant case.

13 THEOBALD; LVMPD#06468

14 TORRES, SERGIO, C/O DISTRICT ATTORNEY'S OFFICE

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

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

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

22 BY /s/ JAMES R. SWEETIN
23 JAMES R. SWEETIN
24 Chief Deputy District Attorney
25 Nevada Bar #005144
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 9th day of
SEPTEMBER, 2019, to:

MIKE FELICIANO, DPD
mcmahaae@ClarkCountyNV.gov

BY: /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

DANIEL SUSSMAN, MD, JD, MBA

181 Mont Blanc Way
 Mt. Charleston, Nevada 89124
 (702)493-5203 (Cell) / (702)872-5505 (H/Fax)
 E-mail: dsmdjd@gmail.com

**EDUCATION JD
& TRAINING:***UNLV, Boyd School of Law, 2009*

RESIDENCY - PSYCHIATRY
INTERN - INT MED/ PSYCHIATRY
MD

Johns Hopkins Hospital, 2000
East Carolina University, 1996
Jefferson Medical College, 1995

MSEE
MBA, MANAGEMENT
MS, COMPUTER SCIENCE
BA, BIOCHEMISTRY

Virginia Polytechnic Institute, 1990
Univ. of Southern Mississippi, 1987
Villanova University, 1985
Johns Hopkins University, 1981

EXPERIENCE:

- North Vista Hospital - Geropsychiatry Unit**
 7/04-present 1409 E. Lake Mead Blvd. - North Las Vegas, NV 89030 (702) 657-5754
 • *Daily, Weekend and backup coverage / former Associate Medical Director*
- Las Vegas Paiute Tribe**
 11/05-present moonlighting 1 Paiute Drive - Las Vegas, NV 89106 (702) 382-0784
 • *Independent Contractor: 3 clinic days for psychiatric eval. & treatment (all ages)*
- Prison Health Services at Henderson Detention Center**
 12/03-present moonlighting 243 S. Water Street, Henderson, NV 89015 (702) 267-4615
 LV Det Ctr 3300 Stewart Avenue (11/04-11/07) / Clark Cty Det Ctr- (12/03-1/05)
 • *Evaluation & treatment: all modules & booking, call coverage.*
- Correct Care Solutions at Las Vegas Detention Center**
 2/09-present moonlighting 3300 Stewart Avenue, Las Vegas, Nevada 89101 (702) 385-4041
 • *Evaluation & treatment: all modules & booking, call coverage.*
- Anthem Behavioral Health Associates**
 06/09-present moonlighting 2401 West Horizon Ridge Pkwy., Henderson, NV 89052 (702) 221-7001
 • *MEDICAL DIRECTOR - Oversight of Medicaid 400 child/adolescent services*
- Nevada Dept. of Corrections - So. NV Corr. Ctr. / High Desert State Prison**
 2/07-2/10 High Desert SP PO Box 650, Indian Springs, NV 89070 (702) 879-6751
 • *SR. PSYCHIATRIST - Infirmary, Intakes, Ext. Care Unit, O/P Clinic, Rx panel*
- Nursing Home Coverage:** North Las Vegas Care Center/Delmar Gardens
 2/05 - 12/08 moonlighting Past coverage at Plaza Regency, NV State Veterans Home, Desert Lane, TLC, Henderson HC Center
 9/05-8/08 moonlighting **Center for Behavioral Health**
 3050 E. Desert Inn Rd., LV, NV (702) 796-0660 / 1311 S. Casino Ctr. Blvd. LV, NV 382-6262
 • *MEDICAL DIRECTOR: CARPA certified Methadone Maint/Suboxone Clinic*
- Southern Nevada Adult Mental Health Services - Rawson-Neal Hospital**
 10/03-2/07 1600 Community College Drive - Las Vegas, NV 89146-1126 (702) 486-0732
 • *SR. PSYCHIATRIST - Crisis Stabilization Unit, Ambulatory Clinic Intakes*

DANIEL SUSSMAN

Page 2

12/00-5/06 <i>moonlighting</i>	<u>Lourdes Hospital - Behavioral Health Center</u> 1530 Lone Oak Rd. - Paducah, KY 42001 (270) 444-2250 • I/P Psychiatric Unit, C&L and Partial Hospital weekend call provider.
9/02-8/04 <i>moonlighting</i>	<u>Deaconess Cross Pointe</u> 7200 East Indiana St. - Evansville, Indiana 47715 (812) 471-4505 • Child/Adolescent, Adult, & Geriatric Inpatient weekend coverage.
7/00-10/03 Staff Psychiatrist	<u>Western State Hospital</u> 2400 Russellville Road- Hopkinsville, Kentucky 42241 (270) 886-4431 • On-Call: Psychiatric & medical mgmt/admissions/emergent procedures for all units • Committees: Special Case, Compliance, Patient's Rights, Environment of Care • Admissions & Screening Unit (7/00 - 6/01); Acute Unit /Intensive Tx Unit (6/01-10/03)
12/00-10/03 <i>moonlighting</i>	<u>FHC Cumberland Hall</u> 210 West 17 th St. - Hopkinsville, KY 42240 (270) 886-1919 • Child, Adolescent, & Adult Inpatient Mgmt., On-Call Provider
8/01-7/02, 7/03-11/03 <i>moonlighting</i>	<u>Trover Clinic / Regional Medical Center</u> 200 Clinic Drive - Madisonville, KY 42431 (270) 825-7355 • Outpatient clinic day, Psychiatric I/P Unit weekend call provider & Hospital C&L.
11/98-6/00 <i>moonlighting</i>	<u>National Institute for the Study, Prevention & Treatment of Sexual Trauma</u> 104 East Biddle Street - Baltimore, MD 21202 (Supervisor Dr. Fred Berlin) • Sex Offender Group therapy, medication management, & forensic coordination
5/92-9/92	<u>Jefferson University Hospital / Family Medicine Department</u> STUDENT INTERN: 5 th Floor 1100 Walnut Street - Philadelphia, PA 19107
9/90-9/91	<u>Computer Sciences Corporation / Integrated Systems Division</u> COMPUTER SCIENTIST: 304 West Route 38 - Moorestown, NJ 08057
11/87-5/90	<u>Raytheon / Missile Systems Division</u> LEAD DESIGN ENGINEER: 100 Vance Tank Road - Bristol, TN 37620
12/83-11/87	<u>RCA Missile and Surface Radar</u> SYSTEM DESIGN ENGINEER: Borton Landing Road - Moorestown, NJ 08057
9/81-7/82	<u>The Wistar Institute</u> CANCER RESEARCH TECHNICIAN: 36 th & Spruce St. - Philadelphia, PA 19104
5/79-9/79	<u>The Johns Hopkins University / Department of Chemistry</u> RESEARCH ASSISTANT: Homewood Campus - Baltimore, MD 21218
10/78-3/80	<u>Union Memorial Hospital</u> OR / ER VOLUNTEER: 33 rd & Calvert Streets - Baltimore, MD 21218
6/77-3/78	<u>Veterans Affairs Medical Center</u> RADIOLOGY / HEMATOLOGY LAB VOLUNTEER: Northport, NY 11768

LOCUMS TENENS ASSIGNMENTS:

S. Nevada Adult MHS (VISTA) 3/25-4/12/02 / Highlands RMC (HORIZON HEALTH) 8/02, 10/02
 STAFFCARE: Ely State Prison 3/24-4/12/03 / Counseling Services Inc. 5/26-6/13/03 /
 Alaska Psychiatric Inst. 9/7-9/30/04 / Indiana State Prison 2/14-2/22/05 / Douglas Cty MH 12/7-22/06
 Wabash Cty Det Ctr (PHS) 6/07 - 8/07 / Colorado West Regional MHC (LOCUM TENENS.COM) 8/6-8/22/08

FORENSIC: Certified Competency Evaluator with ongoing Eighth Judicial District authorization.

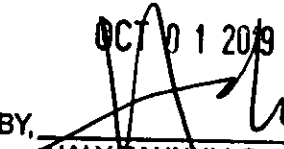
LICENSURE: Diplomate of the American Board of Psychiatry & Neurology/ ACLS /NPI 1275575870
 States active: Nevada (10116), Oregon MD27155 / Colorado 4672
 DEA F50170376, X90170376 (Suboxone waiver) / Medicare V39284, UPTN H17797 Medicaid 100505480

EXTERNSHIP: U.S. Dept. of Justice, Civil Division 2/09 - 5/09, 230 hours, mostly environmental law.

MEMBER: APA (nat./local), ABA, Japan Karate Assoc., Founder: MHP Film Soc. of Hopkinsville
BSL ORGS: Environmental Law Society (President 2008-09, member '06-'09)
 Student Animal Legal Defense Fund (President 2008-09, member '06-'09)

NOTM
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Attorney for Plaintiff

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

OCT 01 2019
BY, 
TALY PANNULLO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

C-16-316382-1
MLIM
Motion In Limine
4867052



THE STATE OF NEVADA,
Plaintiff,

-vs-

ARMANDO VASQUEZ-REYES
#7030886

Defendant.

CASE NO: C-16-316382-1

DEPT NO: XI

HEARING DATE
REQUESTED

**NOTICE OF MOTION AND MOTION IN LIMINE TO PRECLUDE OR PERMIT
EVIDENCE OF SPECIFIC STATEMENTS IN DEFENDANT'S
STATEMENT TO POLICE ON APRIL 26, 2018**

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney, will bring a **Motion In Limine To Preclude Or Permit Evidence Of Specific Statements In Defendant's Statement To Police On April 26, 2018** before the above entitled Court on a date and time to be determined by the Clerk of the Court.

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

//

1 POINTS AND AUTHORITIES

2 FACTUAL BACKGROUND

3 Defendant, ARMANDO VASQUEZ-REYES is charged by way of Criminal
4 Information with two (2) counts of Lewdness with a Child Under the Age of 14 (Category A
5 Felony – NRS 201.230) and eight (8) counts of Sexual Assault with a Minor Under Fourteen
6 Years of Age (Category A Felony – NRS 200.364, 200.366). The crimes occurred on or
7 between January 21, 2007 and December 31, 2015 and involved two (2) victims: G.A. (DOB:
8 1/20/02) and D.A. (DOB: 5/17/97). The first victim to disclose, G.A., was sexually abused on
9 several occasions. The second victim to disclose is D.A., G.A.'s older sister, who is alleged
10 to have been sexually assaulted by Defendant on one (1) occasion in approximately 2010 when
11 she was approximately thirteen (13) years of age.

12 In regard to G.A., the facts of this case are such that on April 16, 2016, when G.A. was
13 fourteen (14) years of age, LVMPD Patrol Officers responded to a domestic dispute at 2213
14 Berkley Avenue, Las Vegas, Nevada 89101. Details of the call stated that the dispute was
15 between the caller and Defendant (her husband). While the police officers were investigating
16 the dispute, they were approached by the caller's daughter, one of the victims in this case, who
17 asked the officers if she could speak with them away from her family. Officers agreed and
18 spoke to G.A., away from her family members. G.A. told the officers that Defendant (her
19 step-father) had been sexually abusing her "her whole life." She went on to tell them that
20 Defendant had repeatedly sexually assaulted her by putting his penis inside her. The last
21 incident in which G.A. was sexually penetrated was in approximately November of 2015,
22 approximately five (5) months earlier. Based upon G.A.'s statement, patrol officers contacted
23 LVMPD Sex Crimes Detective M. Pretti, who responded to the scene along with Spanish
24 Interpreter, M. Corral, P#12133.

25 Due to the number of family members present, and the fact there was no active crime
26 scene, Detective Pretti determined the investigation would be better suited to have the
27 interviews conducted in a more sterile environment at the LVMPD Headquarters. With the
28 assistance of the interpreter, Detective Pretti explained to Defendant that there had been some

1 allegations made against him and he would like to speak with Defendant about them at
2 LVMPD headquarters and requested that Defendant consent to be transported to LVMPD HQ,
3 which he agreed to verbally. Detective Pretti explained to Defendant that he would be
4 transported in a marked LVMPD patrol vehicle, and that he would be handcuffed, as is
5 LVMPD policy, to which Defendant agreed.

6 Detective Pretti then spoke with G.A. and her mother, with the assistance of the
7 interpreter, and requested that they respond to LVMPD HQ to participate in interviews, to
8 which they both agreed.

9 In the interview with G.A. she told Detective Pretti that Defendant has been sexually
10 abusing her for as long as she has known him. G.A. stated that she has known Defendant from
11 the time she was five (5) or six (6) years old, when she moved to Las Vegas from Mexico. At
12 the time G.A. moved here to Las Vegas, her mother was already living here and had been
13 dating Defendant.

14 The first incident G.A. recalled happening occurred when she was very small.
15 Defendant told her to come into his room and not to tell her mother because she would get into
16 trouble. Defendant told her to touch his penis and "make him feel good." G.A. described
17 Defendant telling her to touch his penis and move her hand up and down, masturbating him.
18 G.A. detailed that Defendant would fondle her breasts, buttocks and vaginal area. G.A. told
19 Detective Pretti that she has been sexually assaulted by Defendant from the time she was very
20 young. G.A. indicated that he had anally penetrated her approximately thirty (30) times. G.A.
21 stated that Defendant has had vaginal intercourse with her on at least two (2) occasions, the
22 most recent being around November 2015. Defendant would sexually assault G.A. while her
23 mother was at work and while her brother and sister were asleep, in other rooms within their
24 residence, or out of the house with friends.

25 G.A. described an incident that occurred approximately one week prior, where
26 Defendant touched her buttocks, over her clothes. The last sexual assault occurred in several
27 months prior, in November 2015.

28 //

1 G.A. stated that she was afraid to tell her mom because she thought her mother would
2 judge her and she was afraid her mother might think that G.A. was trying to steal her husband.
3 G.A. stated that she decided to tell the police because she was scared of Defendant and she
4 was afraid that he would hit her mother or someone else because he was angry about the
5 (domestic) incident that occurred at the residence earlier, regarding the tools. She was also
6 afraid that her brother and sister might move out of the residence leaving her continuing to
7 live at the residence alone with Defendant and her mother.

8 With the assistance of the interpreter, Detective Pretti explained to G.A.'s mother that
9 G.A. had disclosed being sexually abused by Defendant from the time she first moved to Las
10 Vegas from Mexico. G.A.'s mother stated that G.A. moved to Las Vegas in 2007 and that she
11 did not believe that G.A. would lie about these things. She further stated that G.A. had been
12 more agitated and aggressive in the last few months and agreed to take her to Sunrise Hospital
13 for a medical exam.

14 A sexual assault exam was completed upon G.A. on or about April 21, 2016 by Dr.
15 Cetl. Dr. Cetl reported non-specific physical findings as a result of the exam which neither
16 confirmed or negated abuse.

17 Detective Pretti also spoke to Defendant, with the assistance of an interpreter, and
18 Detective Gabron. Detective Pretti began by advising Defendant of his Miranda rights directly
19 from a LVMPD issued advisement card, which Defendant signed and dated after stating that
20 he understood his rights as read to him. As the interview began, Defendant was asked if he
21 knew why he was speaking with police that day. Defendant indicated he did not know.
22 Defendant was then, initially, told by Detective Pretti that G.A. alleged that he had been
23 **"abusing her since she was a little girl"**. Detective Pretti was not specific on what abuse to
24 which he was referring. Defendant initially denied those allegations and indicated that G.A.
25 might be making up the allegations because she was "upset" because Defendant sometimes
26 comes home from work tired and tells "them" to do things. Detective Pretti then told
27 Defendant that G.A. did not appear angry but had a lot of emotion. Detective Pretti then
28 engaged in a conversation with Defendant about what happened at his residence before police

1 arriving on that day after which Defendant acknowledged that none of those events had
2 anything to do with G.A.

3 Detective Pretti then told Defendant that if he was saying he didn't do anything to G.A.,
4 and G.A. was saying "what she is saying", then somebody is lying. Detective Pretti asked
5 Defendant if he was going to tell him it was G.A. who was lying or was he going to tell him
6 what really happened. Defendant then responded "Yes, it's true. I have touched her". There
7 was no discussion of touching prior to this comment by Defendant.

8 Detective Pretti then thanks Defendant for "admitting" it and then asks him when it
9 started. Defendant indicates he didn't remember the time but remembered it was one or two
10 times. Detective Pretti pointed out that Defendant had already admitted there was touching
11 and Detective Pretti knew it was more than one or two times and asked again when it started.
12 It was at this time that Defendant indicated he did not remember and described why he did not
13 remember. Specifically, Defendant stated:

14 A: During, during those times, I was... uh...

15 HIS: ... back in those days...

16 A: ... I was doing a lot of drugs and everything.

17 HIS: Back in those days...

18 A: ... doing a lot of drugs, and drank a lot.

19 HIS: I used to use a lot of drugs and I used to drink a lot.

20 A: And so then... that happened.

21 HIS: And so that happened.

22 A: Then afterwards, I realized I was doing wrong and... I stopped, stopped
23 taking drugs and everything.

24 HIS: I realized that I was doing wrong and uhm... in what I was doing, so I
stopped taking drugs, everything.

25 (See Defendant's Statement to Police on 4/16/16 at Pgs. 12-13).

26 Defendant then told Detective Pretti that he touched G.A. on her breasts and legs and
27 nothing else. Defendant said the last time he touched G.A. was about four (4) years ago.
28 Detective Pretti indicated to Defendant that he knew there was more and asked Defendant

1 what about what happened around Thanksgiving, a few months ago. Defendant again
2 indicated he didn't remember and "I don't remember things". Detective Pretti then told
3 Defendant he knew it was more than just touching G.A.'s breast and legs and he knew it
4 happened over the years; however, Detective Pretti did not detail what the other allegations
5 were. Defendant then told Detective Pretti that "it was just that. And . . . One time there was
6 penetration. Just one time."

7 Detective Pretti asked Defendant what was the act of penetration to which he was
8 referring. Defendant then again stated he didn't remember when. Defendant indicated he was
9 embarrassed and then stated that "One time I went in her bedroom, and she was masturbating,
10 and I went in . . . and . . . Well, I was with her, But I did not rape her. Like . . . It's a rape, but
11 not forced." Defendant then indicated "I just penetrated her". Defendant was asked by
12 Detective Pretti if he penetrated G.A. with his penis to which Defendant indicated "Yes".
13 Detective Pretti asked Defendant if he penetrated G.A.'s vagina or anus to which Defendant
14 indicated "Just in her Anus." Defendant indicated it only happened one time when G.A. was
15 eight (8) years of age.

16 When Detective Pretti tells Defendant that he knows there were other times and asked
17 about what happened a few months ago, Defendant again says "I don't know". Defendant
18 then told Detective Pretti the time he described was the only time. Defendant then relates the
19 following:

20 A: The only thing I know is that... the little boy, the one took in the car

21 HIS: The only thing I, I do know is that the child that...

22 A: ...one...

23 HIS: ... came in, that was there in the car. That arrived in the car.

24 A: One time... uh...Guadalupe told her mother.

25 HIS: One time Guadalupe told her mom.

26 A: That the little boy had raped her.

27 HIS: That that they boy had uh...abused her. Had raped her.

28 A: Her mom told her no, not to tell lies, that it was not true.

1 HIS: And that her mother said no, don't be telling lies, that is not true.
2 A: And it's what happened.
3 HIS: That is what happened.
4 Q: Okay. So, was that Mael (no sp given)?
5 A: Mael.
6 Q: Okay. So, he was obviously upset with you at the house.
7 HIS: Obviously he was upset with you at the house.
8 A: Yes, I saw he was upset.
9 HIS: Yes, I noticed that he was upset.
10 Q: Yes. So, uhm... I don't know what he was saying to you.
11 HIS: I don't know what he was saying to you.
12 Q: But it didn't sound friendly.
13 HIS: But it didn't seem it was very friendly.
14 A: The only thing...
15 Q: ... and the fact... hang on. And the fact that he would try and go after you
16 when there's three police officers around you.
17 HIS: And the fact that he tried to, to go after you while there were three police
18 officers there.
19 Q: That, that doesn't strike me as a guy who has been accused of this before.
20 HIS: That does not, not, I don't think that is a person who has been accused
21 about this before.
22 Q: Okay? So, I'm not talking to you about Mael.
23 HIS: So like I am not talking to you about Mael.
24 Q: I'm talking about you, and I'm talking about Guadalupe.
25 HIS: We are talking about you and Guadalupe.
26 Q: Okay?
27 HIS: Okay?

(See Defendant's Statement to Police on 4/16/16 at Pgs. 21-23).

//

1 Defendant subsequently told police that he had nothing else to say and "If I have to pay
2 for it, I will pay for it." It was at this time that the interview concluded.

3 On or about May 27, 2016, D.A. came to the police station and reported being sexually
4 assaulted by Defendant when she was eleven (11) or twelve (12) years of age. Defendant had
5 her come into his room after which he began touching her all over her body. Defendant then
6 penetrated her vagina with his penis. D.A. remembers that it hurt her to urinate after this
7 happened. She did not report the abuse until her younger sister reported that she was also
8 abused.

9 ARGUMENT

10 **I. DEFENDANT'S STATEMENTS RELATIVE TO HIS PRIOR DRUG AND** 11 **ALCOHOL USE ARE RELEVANT IN DETERMINING THE** 12 **VOLUNTARINESS OF DEFENDANT'S STATEMENT TO POLICE**

13 The prosecution has the burden at trial of proving by a preponderance of the evidence
14 (1) the voluntariness of a confession, as well as (2) the waiver of a suspect's Fifth Amendment
15 Miranda rights as being voluntary, knowingly, and intelligently made. Falcon v. State, 110
16 Nev. 530, 874 P.2d 772 (1994). The "totality of the circumstances" test is the standard for
17 determining voluntariness of a statement. Alward v. State, 112 Nev. 141, 912 P.2d 243 (1996);
18 Passama v. State, 103 Nev. 212, 735 P.2d 321 (1987).

19 Defendant has filed two (2) motions to suppress Defendant's statement. He has also
20 noticed Dr. Harder as an expert to testify as to Defendant's ability to understand and
21 communicate with law enforcement officers in this case. During Defendant's prior evidentiary
22 hearing on his first Motion to Suppress, defense counsel asked extensive questions on the
23 number of times Defendant commented during his interview with police that he didn't
24 remember. The State submits that, if Defendant is going to challenge the voluntariness of
25 Defendant's statement, the reasoning Defendant gave police as to why he didn't remember
26 some things (i.e., his used of drugs and alcohol) is clearly relevant.

27 The threshold question for the admissibility of evidence is relevance. Brown v. State,
28 107 Nev. 164, 168, 807 P.2d 1379, 1382 (1991). NRS 48.025(1) provides "all relevant
evidence is admissible." NRS 48.015 states "'relevant evidence' means evidence having any

1 tendency to make the existence of any fact that is of consequence to the determination of the
2 action more or less probable than it would be without the evidence.” Such determinations of
3 relevancy are within the discretion of the trial court. Brown v. State, 107 Nev. 164, 168, 807
4 P.2d 1379, 1382 (1991).

5 In the instant case, if Defendant is going to challenge the voluntariness of his statement
6 to police, the State submits evidence of the reason why he indicated he could not remember
7 certain things, including his use of drugs and alcohol, should be admitted into evidence.

8 **II. NRS 50.090 AND 48.069 PRECLUDE THE REFERENCE IN DEFENDANT’S**
9 **STATEMENT TO ALLEGED PRIOR SEXUAL CONDUCT OF G.A.**

10 Nevada, joining a vast majority of jurisdictions, passed statutes limiting the
11 admissibility at trial of evidence concerning the sexual history of a complaining witness in a
12 rape or sexual assault case. To this end, NRS 50.090 prohibits the accused from impeaching
13 a rape victim’s credibility with evidence of her prior sexual conduct, unless the victim has
14 testified regarding her sexual history or the prosecution has presented evidence regarding the
15 victim’s prior sexual conduct. In addition, NRS 48.069 provides:

16 In any prosecution for sexual assault or for attempt to commit or
17 conspiracy to commit a sexual assault, if the accused desires to
18 present evidence of any previous sexual conduct of the victim of
the crime to prove the victim's consent:

19 1. The accused must first submit to the court a written offer of
20 proof, accompanied by a sworn statement of the specific facts that
he expects to prove and pointing out the relevance of the facts to
the issue of the victim's consent.

21 2. If the court finds that the offer of proof is sufficient, the court
22 shall order a hearing out of the presence of the jury, if any, and at
23 the hearing allow the questioning of the victim regarding the offer
of proof.

24 3. At the conclusion of the hearing, if the court determines that the
offered evidence:

25 (a) Is relevant to the issue of consent; and

26 (b) Is not required to be excluded under NRS 48.035, the court
27 shall make an order stating what evidence may be introduced by
28 the accused and the nature of the questions which he is permitted
to ask. The accused may then present evidence or question the
victim pursuant to the order.

1 In Summit v. State, 101 Nev. 159, 697 P.2d 1374 (1985), the Nevada Supreme Court
2 explained that the general policy behind rape victim shield laws is to (1) reverse the common
3 law rule that use of evidence of a female complainant's general reputation for morality and
4 chastity is admissible to infer consent and to attack credibility, (2) protect rape victims from
5 degrading and embarrassing disclosure of intimate details about their private lives, and (3)
6 encourage rape victims to come forward and report crimes and testify in court protected from
7 unnecessary indignities and needless probing into their respective sexual histories. See also,
8 Drake v. State, 108 Nev. 523, 836 P.2d 52 (1992); Brown v. State, 107 Nev. 164, 807 P.2d
9 1370 (1991); Lane v. Second Judicial Dist. Court, 104 Nev. 427, 760 P.2d 1245 (1988).

10 In the instant case, Defendant has not filed a Motion seeking that admission of the
11 reference in Defendant's statement to alleged prior sexual conduct of G.A. to show consent.
12 As such, such statements should be excluded from evidence pursuant to NRS 50.090 and
13 48.069.

14 Additionally, in Miller v. State, 105 Nev. 497, 779 P.2d 87, (1989), the Supreme Court
15 of Nevada ruled that the district court had properly excluded evidence the defense attempted
16 to elicit regarding prior sexual abuse allegations made by the complaining witness. The court
17 held that Defendant must prove, by a preponderance of the evidence, the following three
18 elements:

- 19 (1) the accusation or accusations were in fact made;
- 20 (2) that the accusation or accusations were in fact false;
- 21 (3) that the evidence is more probative than prejudicial.

22 Id at Nev. 502, P.2d 90 (emphasis supplied); State v. Brown, 107 Nev. 164, 165, 807 P.2d
23 1379, 1380 (1991).

24 Upon such a showing, the trial court is to permit cross examination of the victim and
25 upon denial or failure of memory, can permit extrinsic evidence. Miller, at 502. The Nevada
26 Supreme Court discussed a defendant's burden in Brown, *supra*. Proof of falsity must be
27 something more than a bare unsupported opinion that the complaining witness is lying.
28 Brown, at 166. Before a sexual assault defendant can commence cross-examination of a

1 victim as to prior complaints of sexual misconduct, he must provide some independent basis
2 that the accusations are false. Id. Moreover, without a showing that the prior complaints are
3 false, they become irrelevant. Brown at 168-169. As an aside, there is no violation of a sexual
4 assault defendant's Sixth Amendment Right to Confrontation by refusing to permit cross
5 examination regarding prior complaints when a defendant has not met the Miller burden at a
6 hearing. Id.

7 The reasoning for this law is sound. Even to suggest to a jury that a victim has made
8 prior false or unsubstantiated sexual abuse allegations can be extremely detrimental to the
9 State's case. Simply asking the question would be enough to unfairly taint the credibility of a
10 victim. Because of this, the law places a high burden on the defense to back up any claims of
11 prior false allegations before the questions can even be asked. If the Defendant cannot show
12 that the prior allegations are false, any reference to alleged prior false allegations by G.A.
13 should be precluded.

14 Again, Defendant has not filed a motion seeking to admit his reference to alleged prior
15 sexual conduct of G.A. as a prior false allegation. As such, such evidence is not admissible as
16 a prior false allegation.

17 CONCLUSION

18 Based upon the above, the State seeks to admit evidence of Defendant's reference in
19 his statement to police of prior drug and alcohol use to support his reasoning as to why he
20 cannot remember more specific facts surrounding his abuse of G.A. Additionally, the State
21 submits that Defendants reference to alleged prior sexual conduct of G.A. in his statement to
22 police should be excluded pursuant to NRS 50.090 and 48.069.

23 DATED this 30th day of SEPTEMBER, 2019.

24 STEVEN B. WOLFSON
25 Clark County District Attorney
Nevada Bar #001565

26
27 BY /s/ JAMES R. SWEETIN
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

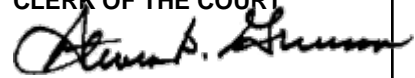
CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 30th day of
SEPTEMBER, 2019, to:

MIKE FELICIANO, DPD
mcmahaae@ClarkCountyNV.gov

BY: /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU



NOTC
DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
MIKE FELICIANO, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 9312
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
FeliciaM@clarkcountynv.gov
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-16-316382-1
)	
v.)	DEPT. NO. XII
)	
ARMANDO VASQUEZ-REYES,)	
)	
Defendant,)	
_____)	

DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234

TO: CLARK COUNTY DISTRICT ATTORNEY:

You, and each of you, will please take notice that the Defendant, ARMANDO VASQUEZ-REYES, intends to call the following witness in his case in chief:

Bruce E. McAllister - PD, Investigator

COR – CCDC

James Duke or designee – Naphcare/CCDC

DATED this 4th day of October, 2019.

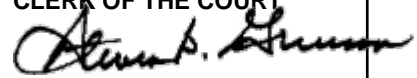
DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/Mike Feliciano
MIKE FELICIANO, #9312
Deputy Public Defender

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

Case Name: Armando Vasquez-Reyes
Case No.: C-16-316382-1
Dept. No.: District Court, Department XII



ATEAR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

ARMANDO VASQUEZ-REYES
#7030886
Defendant.

CASE NO: **C-16-316382-1**

DEPT NO: **XII**

AUDIOVISUAL TRANSMISSION EQUIPMENT APPEARANCE REQUEST

Pursuant to Rule 4 of the Nevada Supreme Court RULES GOVERNING APPEARANCE BY AUDIOVISUAL TRANSMISSION EQUIPMENT, the State of Nevada, by and through JAMES R. SWEETIN, Chief Deputy District Attorney, requests that DR. SANDRA CETL be permitted to testify by remote court appearance via video conference for the trial scheduled for THURSDAY, OCTOBER 10, 2019.

Date: THURSDAY, OCTOBER 10, 2019

Time: 1:00 P.M.

Courtroom: 14D

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

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

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

7 *Name of Party:* State of Nevada / JAMES R. SWEETIN

8 *Email Address:* james.sweetin@clarkcountyda.com

9 *Phone Number:* (702) 671-2788

10 *Name of Witness:* DR. SANDRA CETL

11 *Email Address:* drsandracetl@gmail.com

12 *Phone Number:* (702) 378-3931

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

15 DATED this 7th day of October, 2019.

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

19 BY /s/ JAMES R. SWEETIN
20 JAMES R. SWEETIN
21 Chief Deputy District Attorney
22 Nevada Bar #005144
23
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that service of the above and foregoing was made this 7th day of
3 October, 2019, to:

4 MIKE FELICIANO, DPD
5 feliciam@ClarkCountyNV.gov

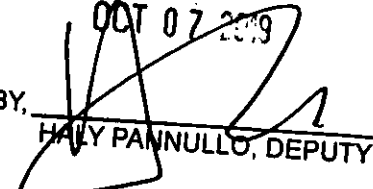
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7 BY: /s/ HOWARD CONRAD
8 Secretary for the District Attorney's Office
9 Special Victims Unit
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hjc/SVU

ORIGINAL

DARIN F. IMLAY, PUBLIC DEFENDER
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FeliciaM@clarkcountynv.gov
Attorneys for Defendant

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

OCT 07 2019
BY, 
HALEY PANNULLO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

ARMANDO VASQUEZ-REYES,

Defendant,

CASE NO. C-16-316382-1

DEPT. NO. XII

DATE: October 7, 2019
TIME: 10:30 a.m.

**DEFENDANT'S OPPOSITION TO STATE'S MOTION TO PRECLUDE OR PERMIT
EVIDENCE OF SPECIFIC STATEMENTS IN DEFENDANT'S STATEMENT TO
POLICE ON APRIL 26, 2018**

COMES NOW, the Defendant, ARMANDO VASQUEZ-REYES, by and through MIKE FELICIANO, Deputy Public Defender and hereby files this motion.

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

DATED this 6th day of October, 2019.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: 
MIKE FELICIANO, #9312
Deputy Public Defender

C-16-316382-1
OPPM
Opposition to Motion
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DECLARATION

MIKE FELICIANO makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Deputy Public Defender for the Clark County Public Defender's Office appointed to represent Defendant Armando Vasquez-Reyes in the present matter;

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

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

EXECUTED this 6th day of October, 2019.


MIKE FELICIANO

POINTS AND AUTHORITES

Armando Vasquez-Reyes (Vasquez-Reyes) is currently charged with two counts of Lewdness With a Child Under the Age of 14 and eight counts of Sexual Assault With a Minor Under Fourteen Years of Age. The charges are based on allegations of sexual contact made by G.A and D.A. Vasquez-Reyes is the stepfather to G.A. and D.A. Trial is scheduled to start on October 7, 2019.

On April 16, 2016, police responded to a domestic disturbance call at the residence of Vasquez-Reyes and his family. While officers were at the residence, G.A. made sexual assault allegations against Vasquez-Reyes. Vasquez-Reyes was taken to police headquarters and interrogated. During the interrogation, Vasquez-Reyes made statements regarding his prior drinking and drug use. The State is seeking to introduce those statements at trial. Vasquez-Reyes also made statements regarding a prior incident of abuse involving G.A. and another individual. The State is seeking to have these statements redacted from Vasquez-Reyes statement.

ARGUMENT

I. Vasquez-Reyes' statements regarding his prior drug and alcohol abuse are not relevant and should not be introduced at trial.

The State argues that Vasquez-Reyes' prior drug and alcohol use are somehow relevant to the voluntariness of his statement to police. When speaking to police during the interrogation, Vasquez-Reyes described drug and alcohol abuse in the past. DS (Defendant's Statement to Police on April 16, 2016) at 12-13. He then stated he stopped this conduct. DS at 13. Vasquez-Reyes was referencing a time period that was long before the interrogation. This is irrelevant to voluntariness of the statement on April 16, 2016. Vasquez-Reyes did not say he was drinking alcohol or using drugs at the time of the interrogation. Essentially, the State is arguing that because Vasquez-Reyes used alcohol and drugs in the past, it is somehow relevant to voluntariness of the interrogation when no drugs or alcohol were used. These statements are

1 only being offered to make Vasquez-Reyes look like a bad person. These statements should be
2 redacted from the interrogation.

3 **II. NRS 50.090 and 48.069 do not preclude reference to G.A.'s abuse by another**
4 **person.**

5 NRS 48.069 states:

6 In any prosecution for sexual assault or for attempt to commit or conspiracy to commit a
7 sexual assault, if the accused desires to present evidence of any previous sexual conduct of
8 the victim of the crime to prove the victim's consent...

9 NRS 50.090 states:

10 In any prosecution for sexual assault or statutory sexual seduction or for attempt to commit
11 or conspiracy to commit either crime, the accused may not present evidence of any previous
12 sexual conduct of the victim of the crime to challenge the victim's credibility as a witness
13 unless the prosecutor has presented evidence or the victim has testified concerning such
14 conduct, or the absence of such conduct, in which case the scope of the accused's cross-
15 examination of the victim or rebuttal must be limited to the evidence presented by the
16 prosecutor or victim.

17 Vasquez-Reyes made a statement to police regarding in incident of abuse involving G.A. and
18 another person. The language in NRS 48.069 and NRS 50.090 is relevant when an accused
19 attempts to use a prior incident of sexual conduct to prove consent or to challenge credibility.
20 Vasquez-Reyes' statement is not being used to show consent or challenge credibility. Therefore,
21 NRS 48.069 and NRS 50.090 do not apply. Vasquez-Reyes statement to police should not be
22 excluded.

23 ///

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1 **CONCLUSION**

2 For the foregoing reasons, the State's motion should be denied.

3 DATED this 6th day of October, 2019.

4 DARIN F. IMLAY
5 CLARK COUNTY PUBLIC DEFENDER

6 By: 
7 ~~/s/ Mike Feliciano~~
8 MIKE FELICIANO, #9312
9 Deputy Public Defender
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District Attorney's Office
E-Mail Address:
Jennifer.Georges@clarkcountyda.com

6

ORIGINAL

DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
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Facsimile: (702) 455-5112
FeliciaM@clarkcountynv.gov
Attorneys for Defendant

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

OC 07 2019
BY, 
HALY PANNULLO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

v.

ARMANDO VASQUEZ-REYES,
Defendant,

CASE NO. C-16-316382-1

DEPT. NO. XII

DATE: October 7, 2019
TIME: 10:30 a.m.

DEFENDANT'S OPPOSITION TO STATE'S MOTION TO PRESENT PROPENSITY
EVIDENCE AND/OR RES GESTAE EVIDENCE

COMES NOW, the Defendant, ARMANDO VASQUEZ-REYES, by and through MIKE
FELICIANO, Deputy Public Defender and hereby files this opposition.

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

DATED this 6th day of October, 2019.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: 
MIKE FELICIANO, #9312
Deputy Public Defender

C-16-316382-1
OPPM
Opposition to Motion
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1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Deputy Public Defender for the Clark County Public Defender's Office appointed to represent Defendant Armando Vasquez-Reyes in the present matter;

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

Mike Feliciano
MIKE FELICIANO

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POINTS AND AUTHORITES

Armando Vasquez-Reyes (Vasquez-Reyes) is currently charged with two counts of Lewdness With a Child Under the Age of 14 and eight counts of Sexual Assault With a Minor Under Fourteen Years of Age. The charges are based on allegations of sexual contact made by G.A and D.A. Vasquez-Reyes is the stepfather to G.A. and D.A. Trial is scheduled to start on October 7, 2019.

On April 16, 2016, police responded to a domestic disturbance call at the residence of Vasquez-Reyes and his family. While officers were at the residence, G.A. made sexual assault allegations against Vasquez-Reyes. Vasquez-Reyes was arrested and has been in custody for over three years awaiting trial. On October 4, 2019 the State sent the Court and Defense a Motion to Present Propensity Evidence and/or Res Gestae Evidence based on information the State learned from a pretrial interview with G.A.

ARGUMENT

I. **The State's motion should be denied as untimely in violation of NRS 174.125 and EDCR 3.20**

NRS 174.125 (1) states:

All motions in a criminal prosecution to suppress evidence, for a transcript of former proceedings, for a preliminary hearing, for severance of joint defendants, for withdrawal of counsel, and all other motions which by their nature, if granted, delay or postpone the time of trial must be made before trial, unless an opportunity to make such a motion before trial did not exist or the moving party was not aware of the grounds for the motion before trial.

NRS 174.125(3)(a) states:

All motions subject to the provisions of subsection 1 must be made in writing not less than 15 days before the date set for trial, except that if less than 15 days intervene between entry of a plea and the date set for trial, such a motion may be made within 5 days after entry of the plea.

1 The Court may consider an untimely motion upon showing of good cause. NRS 174.125 (3)(b).
2 Good cause may be shown by affidavit. NRS 174.125(4). EDCR 3.20 mirrors the language in
3 NRS 174.125.

4 In the State's untimely motion, no good cause has been demonstrated. Furthermore, no
5 affidavit was included in the motion. Therefore, the motion should be denied.

6
7 **II. Even if the State's motion was timely, the evidence is not admissible pursuant**
8 **to NRS 48.045(3) under the test established by the Nevada Supreme Court in**
9 **Franks v. State.**

10 The State would have this Court believe that any evidence that a defendant committed
11 another sexual offense is automatically admissible under NRS 48.045(3). In Franks, the Court
12 was concerned that in passing NRS 48.045(3), "the Legislature failed to outline any procedural
13 safeguards to mitigate against the risk that a jury will convict for crimes other than those
14 charged—or that, uncertain of guilt, it will convict anyway because a bad person deserves
15 punishment." Franks v. State, 135 Nev. Adv. Op 1, 6 (2019) (citing Old Chief v. United States,
16 519 U.S. 172, 181 (1997)). The Court held that prior to the admission of other bad acts under
17 NRS 48.045(3), the district court must determine that the prior bad act is (1) relevant to the crime
18 charged, (2) proven by a preponderance of the evidence, and (3) weighed to determine that its
19 probative value is not substantially outweighed by the danger of unfair prejudice. Id. at 2. To
20 properly evaluate the third prong of the analysis, the Court adopted the modified balancing
21 analysis stated by the Ninth Judicial Circuit in United States v. LeMay: (1) the similarity of the
22 prior acts to the acts charged, (2) the closeness in time of the prior acts to the acts charged, (3)
23 the frequency of the prior acts, (4) the presence or lack of intervening circumstances, and (5) the
24 necessity of the evidence beyond the testimonies already offered at trial. 260 F.3d 1018, 1028
25 (9th Cir. 2001).
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1 In Franks, the defendant was on trial for one count Lewdness with a Child under the Age of
2 14, for pulling down his twelve-year-old niece's pants while wrestling and rubbing her genitals.
3 Id. at 2. The defendant admitted that he did pull down his niece's pants and may have "grazed"
4 her genitals. Id. The other bad acts the State introduced at the defendant's trial were all involving
5 this same niece, who said the defendant also touched her on top of her clothes with his hand four
6 other times, and that the charged incident was "the last time." Id. at 3. The Court applied the
7 balancing test and found that it was not plain error for the trial court to allow in the other bad
8 acts, given that the prior acts were identical to the charged act and that each act targeted the same
9 child. Id. at 9.

11 As NRS 48.045(3) is a relatively new statute, there are very few Nevada cases that deal with
12 this issue beyond Franks. However, there are many other states that allow propensity evidence in
13 sexual assault trials, like Nevada now does. These courts typically exclude evidence of prior
14 sexual offenses that are qualitatively different from the charged offenses, where the victims were
15 different ages, and where the offenses occurred remotely in time (i.e.: bad acts that are not
16 relevant). See, e.g., People v. Abilez, 41 Cal.4th 472, 498–502 (2007), as modified (Aug. 22,
17 2007) (in a 1997 prosecution for sodomy and murder of an elderly woman, a 1973 juvenile
18 adjudication for attempted unlawful intercourse with a minor was not relevant for trial); State v.
19 Salazar, 181 Ariz. 87 (1994) (in prosecution for attempted molestation of defendant's 13-year-
20 old niece, evidence that defendant raped a 19-year-old woman 18 years previously was
21 inadmissible to show propensity for sexual aberration); People v. Jandres, 226 Cal.App.4th 356,
22 (in prosecution for kidnapping and forcible rape of 18-year-old, evidence that defendant had
23 broken into an 11-year-old girl's home and touched her was inadmissible propensity evidence);
24 see also People v. Earle, 172 Cal.App.4th 372, 396–400 (2009) (prior commission of indecent
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1 exposure does not rationally support an inference that the perpetrator has a propensity to commit
2 felony sexual assault). In Earle, the California appellate court noted:

3 The statute would clearly authorize the admission of evidence of an indecent
4 exposure in a second prosecution for indecent exposure, on the rationale that the
5 defendant's commission of the first crime supports an inference that he is
6 predisposed to such conduct, and that since it shared the same essential nature as
the conduct underlying the charged offense, its occurrence increased the
likelihood that the defendant committed that offense.

7 However, the statute cannot infuse an uncharged offense with relevance or
8 probative value it cannot rationally be found to possess. In order for evidence of
9 another crime to be relevant under Evidence Code section 1108, it must have
10 some tendency in reason to show that the defendant is predisposed to engage in
conduct of the type charged. . . . If the uncharged crime does not rationally support
such an inference, then it is simply irrelevant in a prosecution for the charged one.

11 Does the commission of indecent exposure rationally support an inference that the
12 perpetrator has a propensity or predisposition to commit rape? Not without some
kind of expert testimony, it doesn't. Id.

13 Here, the State is improperly seeking to use evidence learned over three years from the
14 date of arrest that include new allegations of fellatio, cunnilingus and digital penetration of the
15 anus. This is entirely new and different conduct than the initial charged conduct. This fails the
16 test set out by the Nevada Supreme Court in Franks:
17

18 1) The bad acts are not relevant.

19 This bad acts and charged offenses are different conduct. Vasquez-Reyes is not charged
20 with fellatio, cunnilingus or digital penetration of the anus. This is completely different that the
21 charged conduct.
22

23 2) The acts the State proposes to admit are not proven by a preponderance of the
24 evidence.

25 The State provides scant evidence for the bad act they seek to admit. The State alleges it
26 learned new evidence on October 3, 2019. The original Criminal Complaint was filed on or
27 about April 18, 2016. That complaint charged Vasquez-Reyes with a total of four counts. All
28

1 involving G.A. On or about May 18, 2016, the State filed an Amended Criminal Complaint,
2 charging Vasquez-Reyes with nine counts. All involving G.A. On or about July 5, 2016, the
3 State filed a Second Amended Criminal Complaint. This complaint added one charge for
4 conduct involving D.A. The State presumably had multiple conferences with G.A. during the
5 pendency of this case, well over three years. Now, several days before trial, new allegations
6 have surfaced. The State's assertion that "this far surpasses the preponderance of evidence
7 standard" is not persuasive.
8

9 3) Any probative value the bad act may have is substantially outweighed by the danger
10 of unfair prejudice under the LeMay factors.

11 Admitting the bad act evidence carries a huge risk of the jury convicting Vasquez-Reyes
12 because they think he is a bad person. The Nevada Supreme Court talked about the dangerous
13 prejudice of admitting sexual bad act evidence in Braunstein v. State, stating, "This court has
14 stated that the use of bad acts is heavily disfavored and is likely to be prejudicial or irrelevant.
15 Prior bad act evidence forces the accused to defend himself against vague and unsubstantiated
16 charges and may result in a conviction because the jury believes the defendant to be a bad
17 person." 118 Nev. 68 at 73 (2002). This is why the Supreme Court has established a fairly
18 involved balancing test that needs to be done before allowing bad acts, by adopting the 9th
19 Circuit's test in LeMay. Applying the LeMay factors, it is clear that the bad act evidence the
20 State seeks to admit is substantially outweighed by the danger of unfair prejudice to Vasquez-
21 Reyes:
22

- 23 1. **The similarity of the prior acts to the acts charged:** There is no similarity
24 between the charged conduct and bad acts because it is completely different
25 type of conduct. The only common factor is the involvement of G.A.
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- 1 2. **The closeness in time of the prior bad acts to the acts charged:** The State
2 claims G.A. stated that some of the bad acts and charged conduct occurred the
3 same time. The Defense has not been provided with any discovery to verify
4 this claim.
- 5 3. **The frequency of the bad acts:** The State has provided no information of the
6 frequency of the bad acts.
- 7 4. **The presence or lack of intervening circumstances:** It is unclear if there are
8 any intervening circumstances in this case, because the State cannot establish
9 when the bad act actually occurred. Again, the Defense has not been provided
10 any evidence regarding G.A.'s new claims.
- 11 5. **The necessity of the evidence beyond the testimonies already offered at**
12 **trial:** This evidence is not necessary here, as it was in Franks. In that case, the
13 victim was unclear on when exactly the charged offense took place, because
14 the exact same thing had happened so many times. 135 Nev. Adv. Opp. 1 at 2-
15 3. It was necessary for the State to show that the defendant had a propensity
16 to do the exact same thing to the exact same victim, so that her timeline and
17 confusion as to when things occurred could be explained. Id. In this case, that
18 is unnecessary. G.A. will testify as to what she claims to remember happening
19 when she made the allegations of abuse. The State may want this evidence to
20 vouch for G.A.'s story, by showing this is not an isolated incident, but that is
21 not allowed under the law.

22 Overall, the admission of this bad act evidence fails the LeMay test adopted by the Nevada
23 Supreme Court. It is undoubtedly more prejudicial than it is probative and would force Vasquez-
24 Reyes to defend against uncharged conduct and would ultimately result in a conviction based
25 on this evidence.

only on the fact that the jury believes Vasquez-Reyes is a bad person, rather than the evidence itself.

III. The doctrine of res gestae or complete story of the crime does not apply pursuant to NRS 48.035

The Nevada Supreme Court considered the applicability of the res gestae doctrine in Bellon v. State, 121 Nev. 436, 117 P.3d 176 (2005). In that case, the Court held that the res gestae doctrine must be construed narrowly. Id. at 444. Moreover, "a witness may only testify to another uncharged act or crime if it is so closely related to the act in controversy that the witness cannot describe the act without referring to the other uncharged act or crime." Id.

In this case, G.A. can easily describe the charged conduct with referring to the bad act evidence. Therefore, res gestae does not apply.

CONCLUSION

The bad acts are prohibited from being introduced under NRS 48.045(2) and/or (3) and the relevant case law. Further, any probative value the evidence has is substantially outweighed by the risk of unfair prejudice and confusion of the issues. The defense requests that the State's motion be denied.

DATED this 6th day of October, 2019.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Mike Feliciano
MIKE FELICIANO, #9312
Deputy Public Defender

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10

ORIGINAL

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

OCT 07 2019
BY: 
HALY PANNULLO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ARMANDO VASQUEZ-REYES
#7030886

Defendant.

CASE NO: C-16-316382-1

DEPT NO: XII

NOTICE OF MOTION AND MOTION TO PRESENT PROPENSITY

EVIDENCE AND/OR RES GESTAE EVIDENCE

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney, will bring a **Motion to Present Propensity Evidence and/or Res Gestae Evidence** before the above entitled Court on the 7TH day of **OCTOBER, 2019**, at the hour of **8:30 o'clock AM**, or as soon thereafter as counsel may be heard.

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

//

C-16-316382-1
NOTM
Notice of Motion
4868300



1 POINTS AND AUTHORITIES

2 STATEMENT OF FACTS PERTINENT TO THE INSTANT CASE

3 Defendant, ARMANDO VASQUEZ-REYES is charged by way of Criminal
4 Information with two (2) counts of Lewdness with a Child Under the Age of 14 (Category A
5 Felony – NRS 201.230) and eight (8) counts of Sexual Assault with a Minor Under Fourteen
6 Years of Age (Category A Felony – NRS 200.364, 200.366). The crimes occurred on or
7 between January 21, 2007 and December 31, 2015. The victims are G.A. and D.A.

8 The facts of this case are such that on April 16, 2016, LVMPD Patrol Officers
9 responded to a domestic dispute at 2213 Berkley Avenue, Las Vegas, Nevada, 89101. Details
10 of the call stated that the dispute was between the caller and Defendant (her husband). While
11 the police officers were investigating the dispute, they were approached by the caller's
12 daughter, the victim in this case, who asked the officers if she could speak with them away
13 from the family. Officers agreed and spoke to G.A., away from her family members. G.A.
14 told the officers that Defendant (her step-father) had been sexually abusing her "her whole
15 life." Based upon G.A.'s statement, patrol officers contacted LVMPD Sex Crimes Detective
16 M. Pretti, who responded to the scene along with Spanish Interpreter, M. Corral, P#12133.

17 Due to the number of family members present, and the fact there was no active crime
18 scene, Detective Pretti determined the investigation would be better suited to the interviews
19 being conducted in a more sterile environment at the LVMPD Headquarters. With the
20 assistance of the interpreter, Detective Pretti explained to Defendant that there had been some
21 allegations made against him and he would like to speak with Defendant about them at
22 LVMPD headquarters and requested that Defendant consent to be transported to LVMPD HQ,
23 which he granted verbally. Detective Pretti explained to Defendant that he would be
24 transported in a marked LVMPD patrol vehicle, and that he would be handcuffed, as is
25 LVMPD policy, to which Defendant agreed.

26 Detective Pretti then spoke with G.A. and her mother, with the assistance of the
27 interpreter, and requested that they respond to LVMPD HQ to participate in interviews, to
28 which they both agreed.

1 In the interview with G.A. she told Detective Pretti that Defendant has been sexually
2 abusing her for as long as she has known him. G.A. stated that she has known Defendant from
3 the time she was five or six years old, when she moved to Las Vegas from Mexico. At time
4 G.A. moved here to Las Vegas, her mother was already living here and had been dating
5 Defendant.

6 The first incident G.A. recalled happening occurred when she was very small.
7 Defendant told her to come into his room and not to tell her mother because she would get into
8 trouble. Defendant told her to touch his penis and "make him feel good." G.A. described
9 Defendant telling her to touch his penis and move her hand up and down, masturbating him.
10 G.A. told Detective Pretti that Defendant has been sexually assaulted by Defendant from the
11 time she was five or six years old; and, he had anally assaulted her approximately thirty (30)
12 times. Defendant would sexually assaulted G.A. while her mother was at work, and while her
13 brother and sister were out of the house with friends.

14 G.A. described an incident that happened in one their old homes near Bridger Middle
15 School, where Defendant sexually assaulted her in the laundry room of the house. On that
16 occasion, G.A. was in the laundry room doing laundry for her and her sister. Defendant came
17 into the room, took off her clothes, and anally assaulted her with his penis. G.A. stated that
18 her brother and sister were both home but were in their rooms watching television.

19 G.A. stated that Defendant has had vaginal intercourse with her on at least two
20 occasions, the most recent being around November 2015. When that occurred, G.A. stated
21 that she told Defendant to stop because it was causing her pain.

22 G.A. described an incident that occurred approximately one week prior, where
23 Defendant touched her buttocks, over her clothes. The last sexual assault occurred in several
24 months prior, in November 2015. Defendant called G.A. into his room and asked her to watch
25 a movie with him. G.A. was laying on the bed with Defendant when he began touching her
26 hands and arms and G.A. told him to stop. Defendant told her it was alright and began taking
27 her clothes off, grabbing her breasts, buttocks, and vagina. Defendant then took off his own
28 clothes and inserted his penis into her anus, without a condom, until he ejaculated. G.A.

1 pushed Defendant off of her, left the room, and went to take a shower. G.A. stated that she has
2 become more agitated and aggressive with her family since the incident because she feels
3 disgusted about what Defendant has done to her. G.A. stated that she has cut herself in the past
4 and has had suicidal thoughts because of the Defendant's sexual abuse of her.

5 G.A. stated that she was afraid to tell her mom because she thought her mother would
6 judge her and she was afraid her mother might think that G.A. was trying to steal her husband.
7 G.A. stated that she decided to tell the police because she was scared of Defendant and she
8 was afraid that he would hit her mother or someone else because he was angry about the
9 (domestic) incident that occurred at the residence earlier, regarding the tools.

10 With the assistance of the interpreter, Detective Pretti explained to G.A.'s mother that
11 G.A. had disclosed being sexually abused by Defendant from the time she first moved to Las
12 Vegas from Mexico. G.A.'s mother stated that G.A. moved to Las Vegas in 2007 and that she
13 did not believe that G.A. would lie about these things. She further stated that G.A. had been
14 more agitated and aggressive in the last few months and agreed to take her to Sunrise Hospital
15 for a medical exam.

16 G.A.'s sister, D.A., testified at the preliminary hearing in this matter, that when she was
17 twelve years old and they lived on Stafford Street, Defendant called her into his bedroom,
18 removed her clothes and his clothes, and inserted his penis into her vagina. D.A. testified that
19 this happened one time.

20 Detectives Pretti and Gabron also spoke to Defendant with the assistance of an
21 interpreter. The interview began with Detective Pretti advising Defendant of his Miranda
22 rights directly from a LVMPD issued advisement card, which Defendant signed and dated
23 after stating that he understood his rights as read to him. During the interview, Defendant
24 confessed to sexually abusing G.A. who was the daughter of Defendant's girlfriend. This
25 included a specific description of an incident in which Defendant placed his penis in G.A.'s
26 anus when G.A. was approximately 8 years of age.

27 //

28 //

1 **STATEMENT OF THE CASE RELEVANT TO THIS MOTION**

2 A preliminary hearing was held in the matter on July 12, 2016, when G.A. was 14 years
3 of age. Both G.A. and D.A. testified. As a result, Defendant was bound over to stand trial, as
4 to G.A., on two counts of Lewdness with a Child Under the Age of 14, for causing G.S. to
5 touch his penis and for touching G.A.'s breasts, genital area and buttocks with his hand, and
6 eight (8) counts of Sexual Assault with a Minor Under Fourteen Years of Age for vaginal and
7 anal penetration with Defendant's penis. As to D.A., Defendant was charged with one count
8 of Sexual Assault with a Minor Under Fourteen years of Age for penetrating D.A.'s vagina
9 with his penis. The case is currently set for trial on October 7, 2019.

10 On October 3, 2019, the State met with G.A. to discuss her upcoming testimony at trial.
11 G.A. is now seventeen (17) years of age. During the course of her testimony, G.A. described
12 sexual conduct committed upon her in more detail than she had as a younger child.
13 Specifically, G.A. described other sexual acts committed in conjunction with, and sometimes
14 at the same time as, the currently charged crimes. These other sexual acts include the acts of
15 fellatio and cunnilingus. Although it has long been known by both parties that the evidence
16 at trial would encompass a course of sexual conduct over time constituting many previously
17 described and repetitious sexual acts surrounding those sexual acts which are currently
18 charged, the additional acts of fellatio, cunnilingus, and digital penetration of the anus and
19 vagina were not disclosed by G.A. previously. The State seeks to admit this evidence at trial.

20 **LEGAL ARGUMENT**

21 **I. EVIDENCE OF DEFENDANT'S OTHER SEXUAL OFFENSES IS**
22 **ADMISSIBLE TO SHOW DEFENDANT'S PROPENSITY TO COMMIT**
23 **SEXUAL OFFENSES**

24 NRS 48.045(3), as amended and effective as of October 1, 2015, provides:

25 3. Nothing in this section shall be construed to prohibit the
26 admission of evidence in a criminal prosecution for a sexual
27 offense that a person committed another crime, wrong or act that
28 constitutes a separate sexual offense. As used in this subsection,
 "sexual offense" has the meaning ascribed to it in NRS
 179D.097."

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1 Further, NRS 179D.097 defines “sexual offense”, in relevant portion, as follows:

2 1. “Sexual offense” means any of the following offenses:

3 ...

4 (b) Sexual assault pursuant to NRS 200.366.

5 ...

6 (d) Battery with intent to commit sexual assault pursuant to
subsection 4 of NRS 200.400.

7 ...

8 (g) Abuse of a child pursuant to NRS 200.508, if the abuse
involved sexual abuse or sexual exploitation.

9 ...

10 (j) Open or gross lewdness pursuant to NRS 201.210.

11 ...

12 (l) Lewdness with a child pursuant to NRS 201.230.

13 ...

14 (r) Any other offense that has an element involving a sexual act
or sexual conduct with another.

15 (s) An attempt or conspiracy to commit an offense listed in
paragraphs (a) to (r), inclusive . . .”

16 NRS 200.364(9) is also applicable and defines sexual penetration and states:

17 9. “Sexual penetration” means cunnilingus, fellatio, or any
intrusion, however slight, of any part of a person's body or any
object manipulated or inserted by a person into the genital or
anal openings of the body of another, including sexual intercourse
18 in its ordinary meaning. The term does not include any such
conduct for medical purposes.
19

20 In Franks v. State, 135 Nev. Adv. Op. 1, 432 P.3d 752 (2019), the Nevada Supreme
21 Court held:

22 We conclude that the plain language of NRS 48.045(3) permits the
23 district court to admit evidence of a separate sexual offense for
purposes of proving propensity in a sexual offense prosecution.

24 Id., 135 Nev. Adv. Op. 1 at p. 8, 432 P.3d 752 at p. 755.

25 The Court further noted that no Petrocelli hearing is necessary, as sexual offenses are
26 excluded from the requirements of NRS 48.045(1) and (2). The Court then set forth a three-
27 part analysis for district court’s to adhere to when determining whether evidence is admissible
28 under NRS 48.045(3):

Therefore, prior to its admission under NRS 48.045(3), the district court must determine that the prior bad sexual act is (1) relevant to the crime charged, (2) proven by a preponderance of the evidence, and (3) weighed to determine that its probative value is not substantially outweighed by the danger of unfair prejudice as articulated by United States v. LeMay, 260 F.3d 1018, 1027-28 (9th Cir. 2001).

Id. 135 Nev. Adv. Op. 1 at p. 8, 432 P.3d 752, pp. 755-756.

1. Relevant to the crime charged.

In determining whether the evidence is relevant to the crime(s) charged, the Court stated:

First, similar to the Petrocelli framework, we conclude that the State must request the district court's permission to introduce the evidence of the prior sexual offense for propensity purposes outside the presence of the jury. See Bigpond, 128 Nev. at 117, 270 P.3d at 1250. The State must then proffer its explanation of how the prior sexual offense is relevant to the charged offense, i.e., tends to make it more probable that the defendant engaged in the charged conduct. See NRS 48.015.

Id., 135 Nev. Adv. Op. 1 at p. 9, 432 P.3d 752 at , p. 756.

In this case, evidence that this Defendant performed cunnilingus on G.A., forced G.A. to perform acts of fellatio on him, and digitally penetrated G.A.'s anus and vagina in conjunction with, and sometimes at the same time as, he committed the crimes charged falls squarely within the definition of "sexual offense" under NRS 179D.097(1)(b). Here, Defendant's additional acts of sexual assault involving fellatio and cunnilingus which occurred in conjunction with, or during the same incident of Defendant committing the crimes charged involving G.A. are extremely relevant because it shows his propensity to sexually assault her and D.A. in this case, making it more probable that he engaged in the charged conduct.

2. Proven by a preponderance of the evidence.

Regarding the burden the State must meet in order to admit the evidence, the Franks Court stated:

... prior to the admission of prior sexual offense evidence for propensity purposes under NRS 48.045(3), the district court must make a preliminary finding that the prior sexual offense is relevant for propensity purposes, and that a jury could reasonably find by a preponderance of the evidence that the bad act constituting a sexual offense occurred.

Id., 135 Nev. Adv. Op. 1 at p. 9, 432 P.3d 752 at , p. 756.

1 The Franks Court found that the victim's testimony alone was sufficient to meet this
2 burden, *citing Keeney v. State*, 109 Nev. 220, 229 (1993) (holding that even a higher burden,
3 clear and convincing evidence, can be provided by a victim's testimony alone). *Id.* Here, G.A.
4 will be made available to testify regarding Defendant uncharged acts of fellatio and
5 cunnilingus that occurred in conjunction with, or during the same time that Defendant
6 committed the crimes charged. This far surpasses the preponderance of the evidence standard
7 required by our Supreme Court.

8 **3. Weighed to determine that its probative value is not substantially**
9 **outweighed by the danger of unfair prejudice.**

10 Finally, the Supreme Court noted that the district court must conduct a weighing
11 analysis to determine whether the evidence's probative value is *substantially* outweighed by
12 the risk of unfair prejudice. In conducting this analysis, the Court requires that the factors set
13 forth in United States v. LeMay, 260 F.3d 1018, 1027-28 (9th Cir. 2001) be addressed: (1) the
14 similarity of the prior acts to the acts charged, (2) the closeness in time of the prior acts to the
15 acts charged, (3) the frequency of the prior acts, (4) the presence or lack of intervening
16 circumstances, and (5) the necessity of the evidence beyond the testimonies already offered at
17 trial.

18 **4. The Similarity of the Uncharged Acts and the Acts Charged**

19 In Franks, the court noted that the prior acts and the act for which Franks was charged
20 were identical, thus weighing in favor of the probative value of the evidence. Likewise, in this
21 case Defendant's uncharged acts of fellatio, cunnilingus and digital penetration involving G.A.
22 are deviant sexual acts of sexual penetration committed against the child that occurred in
23 conjunction with, or during the same time Defendant committed the crimes charged; thus, the
24 probative value of the evidence is extremely high.

25 **5. The Closeness in Time of the Uncharged Acts to the Acts Charged**

26 In this case, Defendant performed cunnilingus on and digitally penetrated G.A. and
27 forced G.A. to perform acts of fellatio on him in conjunction with, and sometimes at the same
28 time as, he committed the crimes charged, thus the time frame of the uncharged conduct within

1 the same time frame of the crimes charged.

2 **6. The Frequency of the Uncharged Acts**

3 This particular factor was not addressed by Franks, and the application of the factor as
4 set forth in LeMay likewise received little analysis:

5 The "frequency of events" factor discussed in Glanzer also cuts in favor of the
6 government. Although it was not introduced at trial, the government also had
7 evidence of a third incident in which LeMay had sexually abused his young
8 relatives. True, this incident occurred even before the 1989 abuse of his cousins
9 when LeMay himself was extremely young, and, as the prosecutor noted, was
"triple hearsay." However, that there was evidence of a third similar incident
suggests that LeMay's abuse of his cousins in 1989 was not an isolated
occurrence.

10 LeMay at 1029. Here, the "frequency of events" factor appears to weigh in favor of the
11 probative value of the evidence.

12 **7. The Presence or Lack of Intervening Circumstances**

13 The Franks Court noted that there were no "intervening circumstances that would alter
14 the balance of the acts probative value and risk of unfair prejudice." Likewise, there are no
15 intervening circumstances in the instant case that would alter this analysis.

16 **8. The Necessity of the Evidence Beyond the Testimonies Already Offered at**
17 **Trial**

18 In Franks, the Court addressed this factor as follows:

19 Lastly, while evidence regarding the prior bad acts may not have
20 been necessary to establish the State's case, the "evidence need not
21 be absolutely necessary to the prosecution's case in order to be
introduced; it must simply be helpful or practically necessary."

22 This analysis also applies to the instant case. While the evidence of Defendant's
23 uncharged conduct may or may not be absolutely necessary, it is certainly helpful to the State's
24 case in that it provides a complete set of circumstances in relationship to the charged acts.
25 Additionally, it is "practically necessary" in that same vein. The probative value of the fact
26 Defendant also engaged in acts of cunnilingus and/or fellatio and/or digital penetration with
27 G.A., in conjunction with, and sometimes at the same time that he committed the crimes
28 charged cannot be said to be *substantially* outweighed by the risk of unfair prejudice.

1 Our Supreme Court has now made it clear that NRS 48.045(3) clearly indicates the
2 legislature's intent to allow admission of the type of evidence the State seeks to admit in this
3 case *for propensity purposes*. Thus, evidence of Defendant's uncharged sexual offenses
4 involving G.A. should be admitted in this case for propensity purposes.

5 **II. EVIDENCE OF DEFENDANT'S UNCHARGED CONDUCT WITH G.A. IS**
6 **ADMISSIBLE UNDER THE DOCTRINE OF RES GESTAE OR THE**
7 **COMPLETE STORY OF THE CRIME PURSUANT TO NRS 48.035**

8 NRS 48.035(3) states in relevant part:

9 3. Evidence of another act or crime which is so closely related to
10 an act in controversy or a crime charged that an ordinary witness
11 cannot describe the act in controversy or the crime charged
without referring to the other act or crime shall not be excluded,
but at the request of an interested party, a cautionary instruction
shall be given explaining the reason for its admission.

12 In reading NRS 48.035(3) as a whole, it is clear that where the res gestae doctrine is
13 applicable, the determinative analysis is not a weighing of the prejudicial effect of evidence
14 of other bad acts against the probative value of that evidence. If the doctrine of res gestae is
15 invoked, the controlling question is whether witnesses can describe the crime charged without
16 referring to related uncharged acts. If the court determines that testimony relevant to the
17 charged crime cannot be introduced without reference to uncharged acts, it must not exclude
18 the evidence of the uncharged acts.

19 The general rule of law pertaining to the "complete story" or res gestae was set forth
20 by the Nevada Supreme Court in Dutton v. State, 94 Nev. 461, 581 P.2d 856 (1978). The State
21 is entitled to present a full and accurate account of circumstances of the commission of a crime.
22 "All the facts... necessary to prove the crime charged in the indictment, when linked to chain
23 of events which support that crime, are admissible. The state is entitled to present full and
24 accurate account of the circumstances of the commission of the crime, and if such account
25 also implicates the defendant or defendants in the commission of other crimes for which they
26 have not been charged, the evidence is nevertheless admissible. (See NRS 48.035.) Dutton v.
27 State, 94 Nev. 461, 464, 581 P.2d 856 (1978), cited People v. Anderson, 518 P.2d 828, 830
28 (Colo. 1974), cited Schults v. State, 96 Nev. 742, at 748, 616 P.2d 388 (1980), Brackeen v.

1 State, 104 Nev. 547 at 553, 763 P.2d 59 (1988). See also, Bletcher v. State, 111 Nev. 1477,
2 907 P.2d 978 (1995).

3 The facts in Dutton reveal that he and a co-offender entered a police sponsored store
4 which was fronting as a "fencing" operation. Negotiations were entered into with regard to
5 several items of property, including some bronze wear and a camera. As a result of that
6 conduct, he was indicted for possession of the stolen camera. In finding no error with regard
7 to the evidence dealing with his possession of the bronze wear, which was likewise stolen
8 from the victim at the same time as the camera, the court stated, "Courts have long adhered to
9 the rule that all the facts necessary to prove the crime charged in the indictment, when linked
10 to the chain of events which support that crime, are admissible."

11 The Nevada Supreme Court reaffirmed the doctrine in State v. Shade, 111 Nev. 887,
12 900 P.2d 327 (Nev. 1995). Shade was charged with possession of controlled substances:
13 Methamphetamine and Cocaine. The drugs were found by officers pursuant to a vehicle stop,
14 following an investigation involving the purchase/sale of a quantity of heroin by defendant
15 Shade and his son-in-law. The trial court prohibited the prosecution from revealing to the trial
16 jury evidence pertaining to the uncharged heroin transaction. The Nevada Supreme Court in
17 overruling the trial court stated:

18 If the agents are not allowed to testify regarding their surveillance,
19 the State cannot inform the jury how Shade obtained the drugs or
20 that officers suspected Shade was participating as a lookout during
21 the purchase of the drugs that were ultimately found in the car he
22 was driving. Without such testimony, the State cannot effectively
23 prosecute the transportation of illegal narcotics charges pending
24 against Shade.

25 . . . The charges at issue were contemporaneous to the heroin
26 purchase, arose out of the same transaction, and involved the same
27 participants. The excluded evidence was inextricably intertwined
28 with the charged crimes and completed a story leading up to
Shade's ultimate arrest. We conclude that the State's witnesses
could not adequately testify about the methamphetamine and
cocaine charges without some reference to the heroin sale and the
accompanying surveillance activity. The district court, thus
abused its discretion by granting the motion in limine. The district
court should have admitted the evidence and issued a cautionary
instruction to the jury.

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1 It is important to note that the Shade court relied upon Allan v. State, 92 Nev. 318
2 (1976), a case where the defendant complained that the trial court erred by admitting evidence
3 of uncharged lewd behavior in a Sexual Assault on Minor case. The Allan court explained the
4 complete story doctrine and stated that “[w]hen several crimes are intermixed or blended with
5 one another, or connected such that they form an indivisible criminal transaction and when
6 full proof by testimony, whether direct or circumstantial, of any one of them cannot be given
7 without showing the others, evidence of any or all of them is admissible against a defendant
8 on trial for any offense which is itself a detail of the whole criminal scheme.” Id. at 7 (*citing*
9 Allan, *supra* at 321).

10 Ultimately, the Allan court found the evidence admissible stating:

11 The testimony regarding the additional acts of fellatio, as well as
12 the act of masturbation, was admissible as part of the *res gestae* of
13 the crime charged. Testimony regarding such acts is admissible
14 because the acts complete the story of the crime charged by
proving the immediate context of happenings near in time and
place. Such evidence has been characterized as the same
transaction or the *res gestae*. Id. at 8 (*citing Allan*, *supra* at 320).

15 Returning to the facts of Shade, *supra*, the Nevada Supreme Court found that the district
16 court improperly denied the undercover officer from testifying about the uncharged acts.
17 Specifically, the district court erroneously relied on NRS 48.035(1), which provides for the
18 weighing of the relative, probative and prejudicial value of the evidence. The Shade court
19 recognized that when the complete story doctrine applies:

20 The determinative analysis is not a weighing of the prejudicial
21 effect of evidence of other bad acts against the probative value of
22 that evidence. If the doctrine of *res gestae* is invoked, the
controlling question is whether witnesses can describe the crime
charged without referring to related uncharged acts. If the court
determines that the testimony relevant to the uncharged acts, it
must not exclude the evidence of the uncharged acts.

23
24 Id. at 9.

25 The Shade court found that the uncharged acts should be admitted because, “the charges at
26 issue were contemporaneous to the heroin purchase, arose out of the same transaction, and
27 involved the same participants.” Id. at 10. Therefore, it was necessary for the officer to be
28 able to explain the events leading up to the arrest of the defendant for sale of controlled

1 substance.

2 Brackeen v. State, 104 Nev. 547, 763 P.2d 59 (1988) is another Nevada Supreme Court
3 decisions with a similar holding. In that case, the defendant was convicted of Burglary and
4 Possession of Credit Card without Consent of the Owner. Defendant Brackeen entered a
5 Round Table Pizza Parlor, sat down at a table occupied by the Millers, and began eating their
6 pizza and drinking their beer without their permission. The defendant, thereafter, left the pizza
7 parlor and was observed by the Millers to burglarize several automobiles. The trial court
8 allowed into evidence testimony that the defendant had helped himself to the Millers' pizza
9 and beer even though the defendant had not been charged with that conduct. The Nevada
10 Supreme Court ruled that this evidence was admissible in that it bore on the identification of
11 Brackeen by the Millers, and:

12 Additionally, the description of Brackeen's pilfering was
13 admissible as an integral part of the Millers' narration of the events
14 leading up to Brackeen's removal of the personal property from
15 the vehicles in the parking lot. We have adopted the rule that the
16 State is entitled to present a full and accurate account of the
circumstances surrounding the commission of a crime, and such
evidence is admissible even if it implicates the accused in the
commission of other crimes for which he has not been charged.

17 Apparent from the Nevada Supreme Court's holdings, is the preference for permitting
18 the State to present a full and accurate picture of the offense charged. In this case, evidence
19 that the Defendant engaged in acts of cunnilingus, fellatio and digital penetration with G.A. in
20 conjunction with, or sometimes at the same time as the currently charged acts is extremely
21 relevant in presenting a full and accurate account of circumstances surrounding the crimes for
22 which Defendant is charged. The State therefore requests that this Court allow the State to
23 present the full and complete story of the crime in this case.

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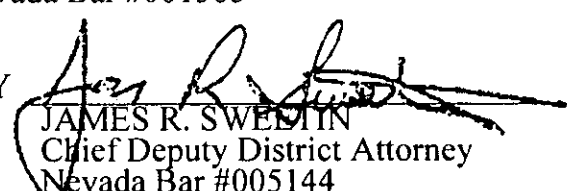
1 CONCLUSION

2 Based upon the above, the State herein requests this Court grant its Motion to Admit
3 Propensity Evidence.

4 DATED this 4th day of OCTOBER, 2019.

5 STEVEN B. WOLFSON
6 Clark County District Attorney
7 Nevada Bar #001565

8 BY


9 JAMES R. SWEETIN
10 Chief Deputy District Attorney
11 Nevada Bar #005144

12 CERTIFICATE OF SERVICE

13 I hereby certify that service of the above and foregoing was made this 4th day of
14 OCTOBER, 2019, to:

15 MIKE FELICIANO, DPD
16 mcmahaae@ClarkCountyNV.gov

17 BY: /s/ HOWARD CONRAD
18 Secretary for the District Attorney's Office
19 Special Victims Unit

20 hjc/SVU

ORIGINAL

BREF

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
W.C. ROWLES
Deputy District Attorney
Nevada Bar #013577
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

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

OCT 09 2019

BY, 
HALY PANNULLO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

ARMANDO VASQUEZ-REYES
#7030886
Defendant.

CASE NO: C-16-316382-1

DEPT NO: XII

STATE'S BENCH BRIEF REGARDING UNCONSCIOUS BIAS

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney, and W.C. ROWLES, Deputy District Attorney, and hereby submits this Bench Brief Regarding Unconscious Bias.

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

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BREF
Brief
4869000



POINTS AND AUTHORITIES

From the outset, the State notes that the authority relied on in support of providing an unconscious bias instruction is from a different jurisdiction. Decisions of federal district court and panels of the federal circuit court of appeals are not binding on this Court. See Blanton v. North Las Vegas Mun. Court, 103 Nev. 623, 633 (1987). Decisions from the Nevada Supreme Court and the United States Supreme Court are binding on this Court and the State has been unable to find any guidance on the subject through those two courts.

Nonetheless, defense counsel asks this Court to adopt an approach from a different jurisdiction without going through the same procedures that jurisdiction did. It appears that the Western District of Washington created a committee to investigate the subject, vet the research, and create whatever proposed instructions the committee found to be important after discussion with the bench and the bar. In the instant matter, defense is asking this Court to adopt a different jurisdiction's research and findings without even looking into the research.

Indeed, the documents provided suggest that "some literature has raised questions regarding whether highlighting the notion of unconscious bias would do more harm than good." Yet, without even providing this Court (or the bench and the bar as a collective) ample time to research the matter, defense insists that this instruction be given. Some of the research even suggests that this instruction is designed for "priming" jurors—preparing for action. The goal of a jury is to be fair and impartial. The instructions should not be used as a tool to prepare jurors for anything other than being fair and impartial and this Court's standard instructions do that.

The State has no objection to the Court instructing the jury on implicit bias. The Supreme Court recently emphasized the importance of jury instructions as a safeguard against bias in Pena Rodriguez v. Colorado, 137 S. Ct. 855, 871 (2017). To start instructing the jury based on "emerging social and neuroscience research" without first reviewing said research and discussing it as a committee, however, is something the State would object to.

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1 This is highlighted from the fact that the research is from not only an entirely different
2 Court system, but from another State and may not be reflective of our community. The
3 Western District of Washington may not have the same demographic mix that Clark County
4 has and, what worked for them may not work for us.

5 DATED this 9th day of October, 2019.

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #1565

9 BY /s/ W.C. Rowles
10 W.C. ROWLES
11 Deputy District Attorney
12 Nevada Bar #013577
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JURL

ORIGINAL

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

OCT 09 2019

DISTRICT COURT
CLARK COUNTY, NEVADA

BY, HALY PANNULLO, DEPUTY

State of Nevada

CASE NO.: C-16-316382-1

Vs

DEPARTMENT 12

ARMANDO VASQUEZ-REYES

JURY LIST

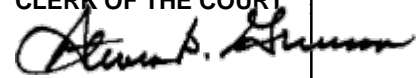
- | | |
|-------------------------|-----------------------------|
| 1. MEIVYS TUTAJ | 8. ESTEFANIA CARO |
| 2. LIDIA DE JAIME | 9. KELLY LUTZ |
| 3. BERNADETTE BARTOLOME | 10. CAROLINE MILLSAPS |
| 4. BEAU WILLIAM BRACKS | 11. HERIBERTO BENITEZ |
| 5. PATRICIA CARKEEK | 12. BELIA GUZMAN |
| 6. VERONICA RODRIGUEZ | 13. LYNN DUNTON-SNIDER |
| 7. DANYEL GARRETT | 14. ADRIAN TOLLIVER-HAYWOOD |

ALTERNATES

SECRET FROM ABOVE

C - 16 - 316382 - 1
JURL
Jury List
4869789





1 EXPR
2 DARIN F. IMLAY, PUBLIC DEFENDER
3 NEVADA BAR NO. 5674
4 MIKE FELICIANO, DEPUTY PUBLIC DEFENDER
5 NEVADA BAR NO. 9312
6 **PUBLIC DEFENDERS OFFICE**
7 309 South Third Street, Suite 226
8 Las Vegas, Nevada 89155
9 Telephone: (702) 455-4685
10 Facsimile: (702) 384-1969
11 FeliciaM@clarkcountynv.gov
12 *Attorneys for Defendant*

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

9 THE STATE OF NEVADA,)
10)
11 Plaintiff,) CASE NO. C-16-316382-1
12)
13 v.) DEPT. NO. XII
14)
15 ARMANDO VASQUEZ-REYES,)
16 Defendant,)
17)
18)

14 **EX PARTE ORDER FOR TRANSCRIPT**

15 Upon the ex parte application of the above-named Defendant, ARMANDO
16 VASQUEZ-REYES, by and through, MIKE FELICIANO, Deputy Public Defender, and good
17 cause appearing therefor,

18 IT IS HEREBY ORDERED that the certified court reporter/recorder, prepare at
19 State expense, a transcript of the proceedings for case C-16-316382-1 heard on October 7, 2019
20 in DC12 (Jackson v. Denno hearing).

21 DATED this 9 day of October, 2019.


22 
23
24 DISTRICT COURT JUDGE

25 Submitted by:
26 DARIN F. IMLAY
27 CLARK COUNTY PUBLIC DEFENDER

28 By /s/Mike Feliciano
MIKE FELICIANO, #9312
Deputy Public Defender

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District Court Department 12
Kristine Santi
200 Lewis Ave
Las Vegas, NV 89101


Annie McMahan
An Employee of the
CLARK COUNTY PUBLIC DEFENDER'S OFFICE

Dept No. XII

1 ATEAR

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

OCT 11 2019

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA BY,

Kory Schlitz
KORY SCHLITZ, DEPUTY

5 * * *

6 State of Nevada

CASE NO. C-16-316382-1

7 Plaintiff,

DEPT. NO. 12

8 vs.

9 Armando Vasquez-Reyes

**Audiovisual Transmission
Equipment Appearance Request**

10 Defendants.
11

12 Pursuant to Rule 4 of the Nevada Supreme Court's RULES GOVERNING
13 APPEARANCE BY AUDIOVISUAL TRANSMISSION EQUIPMENT, Mike Feliciano
14 requests that Dr. Gregory Harder be permitted to testify by remote court appearance via video
15 conference for the trial scheduled to begin on October 7, 2019.

16 Date: October 14, 2019

17 Time: 2:45pm

18 Courtroom No.: 12

19 Dr. Gregory Harder by executing the attached Audiovisual Transmission
20 Equipment Appearance Consent, agrees to be bound by the oath given by the Court Clerk,
21 Eighth Judicial District Court and to be subject to the jurisdiction of this Court for purposes
22 related to this testimony.

23 Mike Feliciano agrees to provide all exhibits to Dr. Gregory Harder in advance in the
24 same form as have been or will be submitted to the Court Clerk.

25 C-16-316382-1
26 ATEAR
27 Audiovisual Transmission Equipment Appe:
28 4869411



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

3 Mike Feliciano agrees that by submitting this request, the party and witness (or their
4 respective representatives) will test and verify the functionality of video conference connectivity
5 with the Court's IT department at least two (2) judicial days before the scheduled appearance.
6

7 Contact information for the test is:

8 Name of Counsel/Party: Mike Feliciano

9 Email Address: feliciam@ClarkCountyNV.gov

10 Phone Number: 702-455-3275

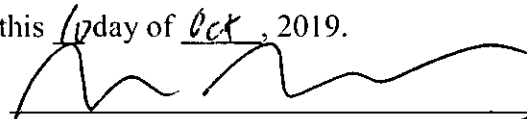
11 Name of Witness: Dr. Gregory Harder

12 Email Address: drgreggharder@gmail.com

13 Phone Number: 702-685-5297
14

15 Mike Feliciano certifies that the video connection has been successfully tested at
16 <http://bluejeans.com/111>, prior to submitting this application.
17

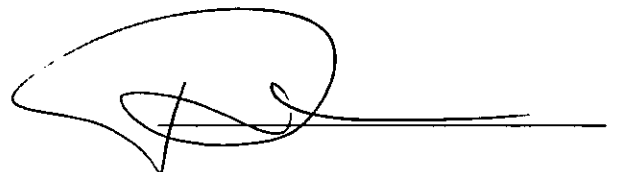
18 Dated this 17 day of Oct, 2019.

19 
(Counsel/Party)

20 Certificate of Service

21 
District Court Judge
MICHELLE LEAVITT

22 I hereby certify, that on the date filed, this Audiovisual Transmission 10.10.19
23 Equipment Appearance Request were served on the parties identified on the District Court E-File
24 system e-service list (or alternate method).
25

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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State of Nevada

CASE NO. C-16-316382-1

7

Plaintiff,

DEPT. NO. 12

8

vs.

9

Armando Vasquez-Reyes

**Audiovisual Transmission
Equipment Appearance Consent**

10

Defendants.

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By making this request for Audiovisual Transmission Equipment Appearance, the undersigned agrees to be bound by the oath given by the Court Clerk over the video conference connection and to be subject to the jurisdiction of this Court for purposes related to this testimony.

Print Name: Greg Harder

Date: 10/11/19


Email Address: dr.gresharder@gmail.com

Phone Number: (702) 685-5297


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

Executed on

(date)



(signature)

 **BRUCE EDWARD MCALLISTER**
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 06-27-21
Certificate No: 97-4826-1

County of _____)
) ss
 State of _____)


SUBSCRIBED AND SWORN TO BEFORE
ME THIS 1 day of January, 2018.

Notary Public in and for said County and State

My Commission Expires: 6-27-21

Certificate of Service

I hereby certify, that on the date filed, this Audiovisual Transmission Equipment Appearance Consent were served on the parties identified on the District Court E-File system e-service list (or alternate method).



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

OCT 11 2019

DISTRICT COURT
CLARK COUNTY, NEVADA BY,

Kory Schlitz
KORY SCHLITZ, DEPUTY

* * *

State of Nevada

Plaintiff,

vs.

Armando Vasquez-Reyes

Defendants.

CASE NO. C-16-316382-1

DEPT. NO. 12

**Audiovisual Transmission
Equipment Appearance Request**

Pursuant to Rule 4 of the Nevada Supreme Court's RULES GOVERNING
APPEARANCE BY AUDIOVISUAL TRANSMISSION EQUIPMENT, Mike Feliciano
requests that Dr. Gregory Harder be permitted to testify by remote court appearance via video
conference for the trial scheduled to begin on October 7, 2019.

Date: October 14, 2019

Time: 2:45pm

Courtroom No.: 12

Dr. Gregory Harder by executing the attached Audiovisual Transmission
Equipment Appearance Consent, agrees to be bound by the oath given by the Court Clerk,
Eighth Judicial District Court and to be subject to the jurisdiction of this Court for purposes
related to this testimony.

Mike Feliciano agrees to provide all exhibits to Dr. Gregory Harder in advance in the
same form as have been or will be submitted to the Court Clerk.

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

Mike Feliciano agrees that by submitting this request, the party and witness (or their respective representatives) will test and verify the functionality of video conference connectivity with the Court's IT department at least two (2) judicial days before the scheduled appearance.

Contact information for the test is:

Name of Counsel/Party: Mike Feliciano

Email Address: feliciam@ClarkCountyNV.gov

Phone Number: 702-455-3275

Name of Witness: Dr. Gregory Harder

Email Address: drgreggharder@gmail.com

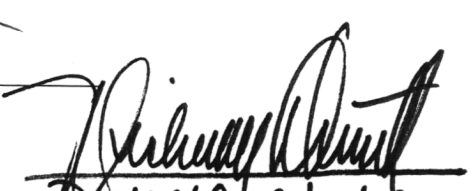
Phone Number: 702-685-5297

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

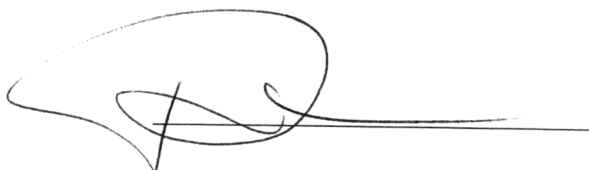
Dated this 10 day of Oct, 2019.

(Counsel/Party)

Certificate of Service


District Court Judge
MICHELLE LEAVITT

I hereby certify, that on the date filed, this Audiovisual Transmission
Equipment Appearance Request were served on the parties identified on the District Court E-File system e-service list (or alternate method).



1 ATEAC

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

6 * * *

7 State of Nevada

8 Plaintiff,

9 vs.

10 Armando Vasquez-Reyes

11 Defendants.

CASE NO. C-16-316382-1

DEPT. NO. 12

**Audiovisual Transmission
Equipment Appearance Consent**

12
13 By making this request for Audiovisual Transmission Equipment Appearance, the
14 undersigned agrees to be bound by the oath given by the Court Clerk over the video conference
15 connection and to be subject to the jurisdiction of this Court for purposes related to this
16 testimony.
17

18
19 Print Name: Greg Harder

20 Date: 10/11/19

21 Email Address: dr.gresharder@gmail.com

22 Phone Number: (702) 685-5297

23
24 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true
and correct.

25 Executed on

(date)

26  10/11/19

27 (signature)

DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
MIKE FELICIANO, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 9312
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
FeliciaM@clarkcountynv.gov
Attorneys for Defendant

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

OCT 14 2019

BY, *Denise Husted*
DENISE HUSTED, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

ARMANDO VASQUEZ-REYES,

Defendant,

CASE NO. C-16-316382-1

DEPT. NO. XXII

DEFENDANT'S PROPOSED JURY INSTRUCTIONS

COMES NOW, the Defendant, ARMANDO VASQUEZ-REYES, by and through
MIKE FELICIANO, Deputy Public Defender and hereby submits the following proposed jury
instructions.

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

DATED this 13th day of October, 2019.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/Mike Feliciano
MIKE FELICIANO, #9312
Deputy Public Defender

C-16-316382-1
PINU
Proposed Jury Instructions Not Used At Tr:
4869410



Before you may rely on circumstantial evidence to conclude that a fact necessary to find the Defendant guilty has been proved, you must be convinced that the State has proven each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to find the Defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the Defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to the Defendant being not guilty and another to the Defendant's guilt, you must accept the one that points to the Defendant being not guilty. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

CALCRIM 224

Before you may rely on circumstantial evidence to conclude that a fact necessary to find the Defendant guilty has been proved, you must be convinced that the State has proven each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to find the Defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the Defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to the Defendant being not guilty and another to the Defendant's guilt, you must accept the one that points to the Defendant being not guilty. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

DEFENSE PROPOSED INSTRUCTION NO. B

The credibility or believability of a witness should be determined by anything that reasonably tends to prove or disprove the truth or accuracy of that testimony. Among the factors that you may consider are the witness's ability to see, hear, or otherwise perceive the things about which the witness testified; the witness's ability to remember and describe what happened; the witness's behavior while testifying; whether the witness understood the questions and answered them directly; whether the witness's testimony was influenced by a factor such as bias or prejudice, a personal relationship with someone involved in the case, or a personal interest in how the case is decided; the witness's attitude about the case or testifying; whether the witness made a statement in the past that is consistent or inconsistent with his or her testimony; whether the witness's testimony was reasonable when considering all the other evidence in the case; whether other evidence proved or disproved any fact about which the witness testified; whether the witness admitted to being untruthful; the witness's character for truthfulness; whether the witness has been convicted of a felony; whether the witness engaged in conduct that reflects on his or her believability; and was the witness promised immunity or leniency in exchange for his or her testimony.

If you do not believe a witness's testimony that he or she no longer remembers something, that testimony is inconsistent with the witness's earlier statement on that subject.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

CALCRIM 105

The credibility or believability of a witness should be determined by anything that reasonably tends to prove or disprove the truth or accuracy of that testimony. Among the factors that you may consider are the witness's ability to see, hear, or otherwise perceive the things about which the witness testified; the witness's ability to remember and describe what happened; the witness's behavior while testifying; whether the witness understood the questions and answered them directly; whether the witness's testimony was influenced by a factor such as bias or prejudice, a personal relationship with someone involved in the case, or a personal interest in how the case is decided; the witness's attitude about the case or testifying; whether the witness made a statement in the past that is consistent or inconsistent with his or her testimony; whether the witness's testimony was reasonable when considering all the other evidence in the case; whether other evidence proved or disproved any fact about which the witness testified; whether the witness admitted to being untruthful; the witness's character for truthfulness; whether the witness has been convicted of a felony; whether the witness engaged in conduct that reflects on his or her believability; and was the witness promised immunity or leniency in exchange for his or her testimony.

If you do not believe a witness's testimony that he or she no longer remembers something, that testimony is inconsistent with the witness's earlier statement on that subject.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

DEFENSE PROPOSED INSTRUCTION NO. C

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the Defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

Carter v. Kentucky, 450 U.S. 288 (1981)

INSTRUCTION NO. _____

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the Defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

DEFENSE PROPOSED INSTRUCTION NO. D

Where multiple sexual acts occur as part of a single criminal encounter, a defendant may be found guilty for each separate or distinct act of sexual assault and/or lewdness. However, when the sexual acts are part of the same episode, the Defendant may be found guilty of only one count of sexual assault or lewdness. When there is no interruption between the acts, or any interruption amounts to merely a hypertechnical division of a single act, the sexual acts are part of the same episode and the Defendant may be convicted of only one count of sexual assault or lewdness.

Crowley v. State, 120 Nev. 30, 34, 83 P.3d 282, 285 (2004); Townsend v. State, 103 Nev. 113, 120-21, 734 P.2d 705, 709-10 (1987).

Where multiple sexual acts occur as part of a single criminal encounter, a defendant may be found guilty for each separate or distinct act of sexual assault and/or lewdness. However, when the sexual acts are part of the same episode, the Defendant may be found guilty of only one count of sexual assault or lewdness. When there is no interruption between the acts, or any interruption amounts to merely a hypertechnical division of a single act, the sexual acts are part of the same episode and the Defendant may be convicted of only one count of sexual assault or lewdness.

Where multiple counts are charged, the alleged victim must testify with some particularity regarding each incident in order to uphold each charge. There must be some reliable indicia that the number of acts charged actually occurred.

LaPierre v. State, 108 Nev. 528, 531, 836 P.2d 56, 57-58 (1992).

INSTRUCTION NO. _____

Where multiple counts are charged, the alleged victim must testify with some particularity regarding each incident in order to uphold each charge. There must be some reliable indicia that the number of acts charged actually occurred.

To find the Defendant guilty of sexual assault or lewdness with a child, you must first find that the State has proven beyond a reasonable doubt that there is some reliable indicia that the number of acts charged actually occurred. Mere conjecture on the part of the alleged victim is not enough. If you find that the State has not proven that there is a reliable indicia that the number of acts alleged actually occurred, you must find the Defendant not guilty of sexual assault and lewdness with a child.

LaPierre v. State, 108 Nev. 528, 531, 836 P.2d 56, 57-58 (1992), “We do not require that the victim specify exact numbers of incidents, but there must be some reliable indicia that the number of acts charged actually occurred.”

INSTRUCTION NO. _____

To find the Defendant guilty of sexual assault or lewdness with a child, you must first find that the State has proven beyond a reasonable doubt that there is some reliable indicia that the number of acts charged actually occurred. Mere conjecture on the part of the alleged victim is not enough. If you find that the State has not proven that there is a reliable indicia that the number of acts alleged actually occurred, you must find the Defendant not guilty of sexual assault and lewdness with a child.

DEFENSE PROPOSED INSTRUCTION NO. G

If the State failed to prove beyond a reasonable doubt that Mr. Vasquez-Reyes sexually penetrated Guadalupe Alvarez, then you must find the Defendant not guilty of the offenses of Sexual Assault with a Minor Under Fourteen.

Crawford v. State, 121 Nev. 744, 753, 121 P.3d 582, 588 (2005) (footnotes omitted), “More specifically, this [C]ourt has consistently recognized that specific jury instructions that remind jurors that they may not convict the defendant if proof of a particular element is lacking should be given upon request. This [C]ourt has also recognized that ‘[a] positive instruction as to the elements of the crime does not justify refusing a properly worded negatively phrased “position” or “theory” instruction.’”

INSTRUCTION NO. _____

If the State failed to prove beyond a reasonable doubt that Mr. Vasquez-Reyes sexually penetrated Guadalupe Alvarez, then you must find the Defendant not guilty of the offenses of Sexual Assault with a Minor Under Fourteen.

DEFENSE PROPOSED INSTRUCTION NO. H

If the State failed to prove beyond a reasonable doubt that Mr. Vasquez-Reyes sexually penetrated Darey Stefani Alvarez, then you must find him not guilty of the offense of Lewdness with a Child Under 14.

Crawford v. State, 121 Nev. 744, 753, 121 P.3d 582, 588 (2005) (footnotes omitted), “More specifically, this [C]ourt has consistently recognized that specific jury instructions that remind jurors that they may not convict the defendant if proof of a particular element is lacking should be given upon request. This [C]ourt has also recognized that ‘[a] positive instruction as to the elements of the crime does not justify refusing a properly worded negatively phrased “position” or “theory” instruction.’”

INSTRUCTION NO. _____

1
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3 If the State failed to prove beyond a reasonable doubt that Mr. Vasquez-Reyes sexually
4 penetrated Darey Stefani Alvarez, then you must find him not guilty of the offense of Lewdness
5 with a Child Under 14.
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DEFENSE PROPOSED INSTRUCTION NO. 1

There is no law or requirement that you believe the testimony of an alleged victim beyond a reasonable doubt. Whether you choose to do so is left to the sound discretion of you as the jurors after considering all of the evidence.

INSRUCTION NO. _____

There is no law or requirement that you believe the testimony of an alleged victim beyond a reasonable doubt. Whether you choose to do so is left to the sound discretion of you as the jurors after considering all of the evidence.

The State has the burden of proving the voluntariness of a confession. You are instructed that, before you can consider any alleged confession of the Defendant as evidence against him, you must believe that such alleged confession was freely and voluntarily made. Voluntariness is a question of fact to be determined from the totality of the circumstances on the will of the accused. A voluntary confession must be the product of rational intellect and free will. Unless you believe that the alleged confession was freely and voluntarily made by the Defendant, with knowledge of its meaning, then you must disregard such confession entirely from your consideration.

State v. Fouquette, 67 Nev. 505, 533, 221 P.2d 404, 419 (1950) (giving the above instruction); see also, Carlson v. State, 84 Nev. 534, 445 P.2d 157 (1968) (concluding that it is error not to give this instruction); Brust v. State, 108 Nev. 872, 839 P.2d 1300 (same) (1992).

INSTRUCTION NO. _____

The State has the burden of proving the voluntariness of a confession. You are instructed that, before you can consider any alleged confession of the Defendant as evidence against him, you must believe that such alleged confession was freely and voluntarily made. Voluntariness is a question of fact to be determined from the totality of the circumstances on the will of the accused. A voluntary confession must be the product of rational intellect and free will. Unless you believe that the alleged confession was freely and voluntarily made by the Defendant, with knowledge of its meaning, then you must disregard such confession entirely from your consideration.

DEFENSE PROPOSED INSTRUCTION NO. K

The fact that the Defendant did not flee after he is accused of a crime is not sufficient in itself to establish that he is not guilty, but is a fact which may be considered by you in light of all other proved facts in deciding the question of whether he is guilty or not guilty.

Given by Dist. Ct., Dept. 20, in State of Nevada v. Renteria-Novoa (Guillermo), C268285; Gwin v. State, 2010 WL 3533308 (2010) (unpublished order, cited to show the Court's approval of inverse flight instructions); Crawford v. State, 121 Nev. 744, 121 P.3d 582 (2005).

The fact that the Defendant did not flee after he is accused of a crime is not sufficient in itself to establish that he is not guilty, but is a fact which may be considered by you in light of all other proved facts in deciding the question of whether he is guilty or not guilty.

If you find that Guadalupe Alvarez made up the allegations against Armando Vasquez-Reyes in order to have him arrested and taken away from her family, you must find Mr. Vasquez-Reyes not guilty of the charges which relate to her.

“A defendant is entitled to a jury instruction on his theory of the case if any evidence supports the theory, however improbable it may be.” Allen v. State, 97 Nev. 394, 397, 632 P.2d 1153, 1155 (1981); Brooks v. State, 103 Nev. 611, 613-14, 747 P.2d 893, 894-95 (1987) (stating that a defendant is entitled to a “position” or “theory” instruction).

INSTRUCTION NO. _____

If you find that Guadalupe Alvarez made up the allegations against Armando Vasquez-Reyes in order to have him arrested and taken away from her family, you must find Mr. Vasquez-Reyes not guilty of the charges which relate to her.

If you find that Darey Stefani Alvarez made up the allegations against Armando Vasquez-Reyes in order to support her little sister Guadalupe, you must find Mr. Vasquez-Reyes not guilty of the charge which relates to her.

“A defendant is entitled to a jury instruction on his theory of the case if any evidence supports the theory, however improbable it may be.” Allen v. State, 97 Nev. 394, 397, 632 P.2d 1153, 1155 (1981); Brooks v. State, 103 Nev. 611, 613-14, 747 P.2d 893, 894-95 (1987) (stating that a defendant is entitled to a “position” or “theory” instruction).

If you find that Darey Stefani Alvarez made up the allegations against Armando Vasquez-Reyes in order to support her little sister Guadalupe, you must find Mr. Vasquez-Reyes not guilty of the charge which relates to her.

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VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

ARMANDO VASQUEZ-REYES,

Defendant.

CASE NO: C-16-316382-1
DEPT NO: XII

VERDICT

We, the jury in the above entitled case, find the Defendant ARMANDO VASQUEZ-REYES, as follows:

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

(Please check the appropriate box, select only one)

☐

Not Guilty

☐

Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14

COUNT 2 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

(Please check the appropriate box, select only one)

☐

Not Guilty

☐

Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14

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

(Please check the appropriate box, select only one)

☐

Not Guilty

☐

Guilty of SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN
YEARS OF AGE

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

(Please check the appropriate box, select only one)

- ☐ Not Guilty
- ☐ Guilty of SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN
YEARS OF AGE

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

(Please check the appropriate box, select only one)

- ☐ Not Guilty
- ☐ Guilty of SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN
YEARS OF AGE

COUNT 6 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(Please check the appropriate box, select only one)

- ☐ Not Guilty
- ☐ Guilty of SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN
YEARS OF AGE

COUNT 7 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(Please check the appropriate box, select only one)

- ☐ Not Guilty
- ☐ Guilty of SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN
YEARS OF AGE

COUNT 8 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(Please check the appropriate box, select only one)

- ☐ Not Guilty

☐ Guilty of SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN
YEARS OF AGE

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

(Please check the appropriate box, select only one)

☐ Not Guilty

☐ Guilty of SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN
YEARS OF AGE

COUNT 10 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(Please check the appropriate box, select only one)

☐ Not Guilty

☐ Guilty of SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN
YEARS OF AGE

DATED this ____ day of October, 2019

FOREPERSON

1
2
3 DATED this 13th day of October, 2019.

4 DARIN F. IMLAY
5 CLARK COUNTY PUBLIC DEFENDER

6
7 By: /s/Mike Feliciano
8 MIKE FELICIANO, #9312
9 Deputy Public Defender
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OCT 15 2019

BY, Daralyn 3:23 PM
DARAYORKE, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ARMANDO VASQUEZ-REYES,

Defendant.

CASE NO: C-16-316382-1

DEPT NO: XII

VERDICT

We, the jury in the above entitled case, find the Defendant ARMANDO VASQUEZ-REYES, as follows:

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

(Please check the appropriate box, select only one)

- ☒ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14
☐ Not Guilty

COUNT 2 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

(Please check the appropriate box, select only one)

- ☒ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14
☐ Not Guilty

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C-16-316382-1
VER
Verdict
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1 **COUNT 3** - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
2 AGE

3 *(Please check the appropriate box, select only one)*

- 4 ☒ Guilty of SEXUAL ASSAULT WITH A MINOR UNDER
5 FOURTEEN YEARS OF AGE
6 ☐ Not Guilty

7 **COUNT 4** - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
8 AGE

9 *(Please check the appropriate box, select only one)*

- 10 ☒ Guilty of SEXUAL ASSAULT WITH A MINOR UNDER
11 FOURTEEN YEARS OF AGE
12 ☐ Not Guilty
13

14 **COUNT 5** - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
15 AGE

16 *(Please check the appropriate box, select only one)*

- 17 ☒ Guilty of SEXUAL ASSAULT WITH A MINOR UNDER
18 FOURTEEN YEARS OF AGE
19 ☐ Not Guilty
20

21 **COUNT 6** - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
22 AGE

23 *(Please check the appropriate box, select only one)*

- 24 ☒ Guilty of SEXUAL ASSAULT WITH A MINOR UNDER
25 FOURTEEN YEARS OF AGE
26 ☐ Not Guilty
27
28

OCT 15 2019

BY, Dara Yorke
DARA YORKE, DEPUTY

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ARMANDO VASQUEZ-REYES,

Defendant.

CASE NO: C-16-316382-1

DEPT NO: XII

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

C-16-316382-1
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Instructions to the Jury
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If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

An information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an information that on or between January 21, 2007 and December 31, 2015, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, the defendant

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

did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to-wit: G.A., a child under the age of fourteen years, by Defendant directing and/or causing and/or encouraging the said G.A., to touch and/or rub and/or fondle his penis, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of defendant, or G.A.

COUNT 2 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to-wit: G.A., a child under the age of fourteen years, by Defendant using his hand(s) to touch and/or rub and/or fondle the breast(s) and/or genital area and/or buttock(s) of the said G.A., with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of defendant, or G.A.

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

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

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

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

8 COUNT 5 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
9 AGE

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

15 COUNT 6 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
16 AGE

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

22 COUNT 7 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
23 AGE

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

1 COUNT 8 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
2 AGE

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

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

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

15 COUNT 10 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
16 AGE

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

22 It is the duty of the jury to apply the rules of law contained in these instructions to the
23 facts of the case and determine whether or not the Defendant is guilty of one or more of the
24 offenses charged.

25 Each charge and the evidence pertaining to it should be considered separately. The
26 fact that you may find a defendant guilty or not as to one of the offenses charged should not
27 control your verdict as to any other offense charged.
28

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

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2 The Defendant is presumed innocent until the contrary is proved. This presumption
3 places upon the State of Nevada the burden of proving beyond a reasonable doubt every
4 element of the crime charged and that the Defendant is the person who committed the
5 offense.

6 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a
7 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
8 the jurors, after the entire comparison and consideration of all the evidence, are in such a
9 condition that they can say they feel an abiding conviction of the truth of the charge, there is
10 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
11 speculation.

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a
13 verdict of not guilty.
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The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

The credibility or believability of a witness should be determined by his/her manner upon the stand, his/her relationship to the parties, his/her fears, motives, interests or feelings, his/her opportunity to have observed the matter to which he/she testified, the reasonableness of his/her statements and the strength or weakness of his/her recollections.

If you believe a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of the testimony which is not proved by other evidence.

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

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2 It is a constitutional right of a defendant in a criminal trial that he may not be
3 compelled to testify. Thus the decision as to whether he should testify is left to the
4 defendant on the advice and counsel of his attorney. You must not draw any inference of
5 guilt from the fact that he does not testify, nor should this fact be discussed by you or enter
6 into your deliberations in any way.

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2 A person who subjects another person to sexual penetration, against the victim's will,
3 or under conditions in which the perpetrator knows or should know that the victim is
4 mentally or physically incapable of resisting or understanding the nature of his/her conduct,
5 is guilty of sexual assault.

6 "Sexual penetration" means any intrusion, however slight, of any part of a person's
7 body or any object manipulated or inserted by a person into the genital or anal openings of
8 the body of another, including sexual intercourse in its ordinary meaning. Evidence of
9 ejaculation is not necessary.

10 Sexual intercourse is the intrusion, however slight, of the penis into the genital
11 opening of another person.

12 Anal intercourse is the intrusion, however slight, of the penis into the anal opening of
13 another person.
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Physical force is not necessary in the commission of sexual assault. The crucial question is not whether a person was physically forced to engage in a sexual assault but whether the act was committed without his/her consent or under conditions in which the defendant knew or should have known, the person was incapable of giving his/her consent or understanding the nature of the act. There is no consent where a person is induced to submit to the sexual act through fear of death or serious bodily injury.

A person is not required to do more than his/her age, strength, surrounding facts and attending circumstances make it reasonable for him/her to do to manifest opposition to a sexual assault.

There is no requirement that the testimony of a victim of sexual assault be corroborated, and his/her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.

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2 If the State failed to prove beyond a reasonable doubt that Mr. Vasquez-Reyes
3 sexually penetrated Guadalupe Alvarez, then you must find the Defendant not guilty of
4 the offenses of Sexual Assault with a Minor Under Fourteen Years of Age.
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2 If the State failed to prove beyond a reasonable doubt that Mr. Vasquez-Reyes
3 sexually penetrated Darey Stefani Alvarez, then you must find him not guilty of the
4 offense of Sexual Assault With A Minor Under Fourteen Years of Age.
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Any person who willfully commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with any part of the body of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, is guilty of lewdness with a minor.

The law does not require that the lust, passions or sexual desires of either of such persons actually be aroused, appealed to, or gratified.

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To constitute a lewd or lascivious act it is not necessary that the bare skin be touched.
The touching may be through the clothing of the child.

Consent in fact of a minor child under fourteen years of age to sexual activity is not a defense to a charge of Lewdness with a Child Under the Age of 14.

If the State failed to prove beyond a reasonable doubt that Mr. Vasquez-Reyes committed a lewd or lascivious act with Guadalupe Alvarez, then you must find him not guilty of the offenses of Lewdness With a Minor Under Fourteen Years of Age.

Where a child has been the victim of sexual assault with a minor under the age of 14 and/or lewdness with a minor under the age of 14, and does not remember the exact date of the act, the State is not required prove a specific date, but may prove a time frame within which the act took place.

Where multiple sexual acts occur as part of a single criminal encounter a defendant may be found guilty for each separate or different act of sexual assault and/or lewdness. However, when the sexual assault acts are part of the same episode, the defendant may be found guilty of only one count of sexual assault or lewdness.

Where a defendant commits a specific type of act constituting sexual assault/lewdness he/she may be found guilty of more than one count of that specific type of act of sexual assault/lewdness if:

1. There is an interruption between the acts which are of the same specific type,
2. Where the acts of the same specific type are interrupted by a different specific type of sexual assault and/or lewdness, or
3. For each separate object manipulated or inserted into the genital or anal opening of another.

Only one sexual assault and/or lewdness occurs when a defendant's actions were of one specific type of sexual assault and/or lewdness and those acts were continuous and did not stop between the acts of that specific type.

Where multiple counts are charged, the alleged victim must testify with some particularity regarding each incident in order to uphold each charge. There must be some reliable indicia that the number of acts charged actually occurred.

The State has the burden of proving the voluntariness of a confession. You are instructed that, before you can consider any alleged confession of the Defendant as evidence against him, you must believe that such alleged confession was freely and voluntarily made. Voluntariness is a question of fact to be determined from the totality of the circumstances on the will of the accused. A voluntary confession must be the product of rational intellect and free will. Unless you believe that the alleged confession was freely and voluntarily made by the Defendant, with knowledge of its meaning, then you must disregard such confession entirely from your consideration.

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2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind such inferences should not
7 be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the State of Nevada has met its burden of proof as to the Defendant.

During your deliberations you are not to communicate with anyone, in any manner regarding the facts and circumstances of this case or its merits, either by phone, email, text messaging, internet, or other means.

You are admonished not to read, watch, or listen to any news or media accounts or commentary about the case. You are not permitted to do any independent research, such as consulting dictionaries, using the internet, or any other reference materials.

You are further admonished not to conduct any investigation, test a theory of the case, re-create any aspect of the case, or in any other manner investigate or learn about the case on your own.

When you retire to consider your verdict, you must first select one of your member to act as foreperson who will preside over your deliberation, and will be your spokesperson in court.

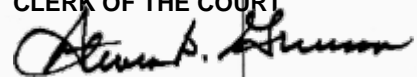
During your deliberation, you will have all the exhibits admitted into evidence, these written instructions, and forms of verdict prepared for your convenience.

Your verdict must be unanimous. As soon as you agree upon a verdict, the foreperson shall sign and date the verdict form and return with it to this room.

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:


DISTRICT JUDGE



JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ARMANDO VASQUEZ-REYES
aka Armando Vasquiezreyes
#7030886

Defendant.

CASE NO. C-16-316382-1

DEPT. NO. XII

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1 and 2 – LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category A Felony) in violation of NRS 201.230; and COUNTS 3, 4, 5, 6, 7, 8, 9, and 10 – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony) in violation of NRS 200.364, 200.366; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNTS 1 and 2 – LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category A Felony) in violation of NRS 201.230; and COUNTS 3, 4, 5, 6, 7, 8, 9, and 10 – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Category A

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1 Felony) in violation of NRS 200.364, 200.366; thereafter, on the 10th day December,
2 2019, the Defendant was present in court for sentencing with counsel MIKE
3 FELICIANO, Deputy Public Defender, and good cause appearing,
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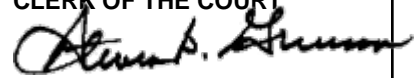
5 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
6 addition to the \$25.00 Administrative Assessment and \$150.00 DNA Analysis Fee
7 including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the
8 Defendant is sentenced to the Nevada Department of Corrections (NDC) as follows:
9 **COUNT 1** – LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS; **COUNT 2** –
10 LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS, CONCURRENT with
11 COUNT 1; **COUNT 3** – LIFE with a MINIMUM Parole Eligibility of THIRTY-FIVE (35)
12 YEARS, CONSECUTIVE to COUNT 2; **COUNT 4** – LIFE with a MINIMUM Parole
13 Eligibility of THIRTY-FIVE (35) YEARS, CONCURRENT with COUNT 3; **COUNT 5** –
14 LIFE with a MINIMUM Parole Eligibility of THIRTY-FIVE (35) YEARS, CONCURRENT
15 with COUNT 3; **COUNT 6** – LIFE with a MINIMUM Parole Eligibility of THIRTY-FIVE
16 (35) YEARS, CONCURRENT with COUNT 3; **COUNT 7** – LIFE with a MINIMUM
17 Parole Eligibility of THIRTY-FIVE (35) YEARS, CONCURRENT with COUNT 3;
18 **COUNT 8** – LIFE with a MINIMUM Parole Eligibility of THIRTY-FIVE (35) YEARS,
19 CONCURRENT with COUNT 3; **COUNT 9** – LIFE with a MINIMUM Parole Eligibility of
20 THIRTY-FIVE (35) YEARS, CONCURRENT with COUNT 3; and **COUNT 10** – LIFE
21 with a MINIMUM Parole Eligibility of THIRTY-FIVE (35) YEARS, CONCURRENT with
22 COUNT 3; with ONE THOUSAND THREE HUNDRED THIRTY-FOUR (1,334) DAYS
23 for credit for time served. The AGGREGATE TOTAL sentence is LIFE with a
24 MINIMUM Parole Eligibility of FORTY-FIVE (45) YEARS.
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1 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION
2 is imposed to commence upon release from any term of imprisonment, probation or
3 parole. In addition, before the Defendant is eligible for parole, a panel consisting of
4 the Administrator of the Mental Health and Development Services of the Department
5 of Human Resources or his designee; the Director of the Department of corrections or
6 his designee; and a psychologist licensed to practice in this state; or a psychiatrist
7 licensed to practice medicine in Nevada must certify that the Defendant does not
8 represent a high risk to re-offend based on current accepted standards of assessment.
9
10

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

14 DATED this 12 day of December, 2019.

15
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17 MICHELLE LEAVITT
18 DISTRICT COURT JUDGE HP
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NOAS

DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR No. 5674
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-16-316382-1
)	
v.)	DEPT. NO. XII
)	
ARMANDO VASQUEZ-REYES,)	
)	
Defendant.)	

NOTICE OF APPEAL

TO: THE STATE OF NEVADA

STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY,
NEVADA and DEPARTMENT NO. XII OF THE EIGHTH JUDICIAL
DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK.

NOTICE is hereby given that Defendant, Armando Vasquez-Reyes, presently incarcerated in the Nevada State Prison, appeals to the Supreme Court of the State of Nevada from the judgment entered against said Defendant on the 17 day of December, 2019, whereby he was convicted of Cts. 1 and 2 - Lewdness with a Child Under the Age of 14; Cts. 3, 4, 5, 6, 7, 8, 9 and 10 - Sexual Assault with a Minor Under Fourteen Years of Age and sentenced to \$25 Admin. Fee; \$150 DNA analysis fee; genetic markers \$3 DNA collection fee; Cts. 1 and 2 - Ten Years to Life in Prison, Ct. 2 concurrent with Ct. 1; Ct. 3 - 35 years to Life consecutive to Ct. 2; Ct. 4 - 35 years to Life concurrent with Ct. 3; Ct. 5 - 35 years to life concurrent with Ct. 3; Ct. 6 - 35 years to Life

1 concurrent with Ct. 3; Ct. 7 - 35 years to Life concurrent to Ct.
2 3; Ct. 8 - 35 years to Life concurrent with Ct. 3; Ct. 9 - 35
3 years to Life concurrent with Ct. 3 - Ct. 9 - 35 years to Life
4 concurrent with Ct. 3 - Ct. 10 - 35 years to Life concurrent with
5 Ct. 3; 1,333 days CTS. The aggregate total sentence is 45 years
6 to Life. Special sentence of Lifetime supervision, register as a
7 sex offender 48 hours after any release from custody.

8 DATED this 19 day of December, 2019.

9 DARIN F. IMLAY
10 CLARK COUNTY PUBLIC DEFENDER

11 By: /s/ Howard S. Brooks
12 HOWARD S. BROOKS, #3374
13 Deputy Public Defender
14 309 S. Third Street, Ste. 226
15 Las Vegas, Nevada 89155
16 (702) 455-4685
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing
was made this 19 day of December, 2019, by Electronic Filing to:

District Attorneys Office
E-Mail Address:

PDMotions@clarkcountyda.com

Jennifer.Garcia@clarkcountyda.com

Eileen.Davis@clarkcountyda.com

/s/ Carrie M. Connolly
Secretary for the
Public Defender's Office

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 14, 2016

C-16-316382-1 State of Nevada
 vs
 ARMANDO VASQUEZ-REYES

July 14, 2016 10:00 AM Initial Arraignment

HEARD BY: Hillman, Ralph R. **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Kristen Brown

RECORDER: Kiara Schmidt

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Deputized Law Clerk, Vivian Luong appearing for the State.

At the request of counsel, COURT ORDERED, matter CONTINUED.

CUSTODY

8/02/16 10:00 AM ARRAIGNMENT COURT (LLA)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 02, 2016

C-16-316382-1 State of Nevada
vs
ARMANDO VASQUEZ-REYES

August 02, 2016 10:00 AM Arraignment Continued

HEARD BY: De La Garza, Melisa **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Kristen Brown

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT:	Cannizzaro, Nicole J.	Attorney for the State
	Feliciano, Mike	Attorney for the Defendant
	Public Defender	Attorney
	State of Nevada	Plaintiff
	VASQUEZ-REYES, ARMANDO	Defendant

JOURNAL ENTRIES

- DEFT. VASQUEZ-REYES ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript.

CUSTODY

9/20/16 8:30 AM CALENDAR CALL (DEPT. 12)

9/27/16 1:30 PM JURY TRIAL (DEPT. 12)

PRINT DATE: 08/10/2016

Page 1 of 1

Minutes Date: August 02, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 20, 2016**

C-16-316382-1

State of Nevada

vs

ARMANDO VASQUEZ-REYES

September 20, 2016**8:30 AM****Calendar Call****HEARD BY:** Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Susan Jovanovich**RECORDER:** Kristine Cornelius**REPORTER:****PARTIES****PRESENT:**

Clemons, Jennifer M.

Deputy District Attorney

Navarro, Melissa C.

Deputy Public Defender

Public Defender

State of Nevada

Plaintiff

VASQUEZ-REYES, ARMANDO

Defendant

JOURNAL ENTRIES

Deft. present with assistance from Certified Spanish Court Interpreter, Maria Peralta De Gomez. Mr. Feliciano not present. Court TRAILED and RECALLED matter. Spanish Interpreter not present. Mr. Feliciano not present. Ms. Clemons advised Mr. Feliciano is out sick today, further noting she spoke with defense counsel, and parties agreed to vacate the current trial date. Court stated Deft. invoked. Ms. Navarro advised she speaks Spanish, and can let Deft. know that the trial date will be pushed further out. Court TRAILED and RECALLED matter. Ms. Navarro stated she spoke with Deft. in Spanish about what is going on, and Mr. Feliciano had gone over ramifications with Deft, and he agrees to waive the 60 day rule. Ms. Clemons advised parties do not have Mr. Feliciano's trial schedule. At request of counsel, and there being no objection by State, COURT ORDERED, trial date VACATED; status check hearing SET. Ms. Clemons noted for the record that State does not object to having the trial date reset, and this is Deft's Motion to continue trial. SO NOTED; Motion is GRANTED.

PRINT DATE: 09/20/2016

Page 1 of 2

Minutes Date: September 20, 2016

C-16-316382-1

CUSTODY

10/04/16 8:30 A.M. STATUS CHECK: RESET TRIAL DATE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****October 04, 2016**

C-16-316382-1

State of Nevada

vs

ARMANDO VASQUEZ-REYES

October 04, 2016**8:30 AM****Status Check: Reset Trial
Date****HEARD BY:** Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Susan Jovanovich**RECORDER:** Kristine Cornelius**REPORTER:****PARTIES****PRESENT:**

Feliciano, Mike
Kollins, Stacey L.
Public Defender

State of Nevada

VASQUEZ-REYES, ARMANDO

Deputy Public Defender

Chief Deputy District Attorney

Plaintiff

Defendant

JOURNAL ENTRIES

Deft. present in custody with assistance from Certified Spanish Court Interpreter, Alex Andrade. Mr. Feliciano advised it was the first trial setting, and defense will request a new trial date, further noting he just got the discovery. Additionally, Deft. agrees to waive. Court stated Deft. waived back on September 20, 2016. COURT ORDERED, Deft's Motion to continue trial date GRANTED; trial date VACATED AND RESET.

CUSTODY

3/07/17 8:30 A.M. CALENDAR CALL

3/14/17 1:30 P.M. TRIAL BY JURY

PRINT DATE: 10/04/2016

Page 1 of 2

Minutes Date: October 04, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 07, 2017

C-16-316382-1 State of Nevada
vs
ARMANDO VASQUEZ-REYES

**February 07, 2017 8:30 AM Deft's Motion To Dismiss
Counsel And Appointment
Of Alternate Counsel**

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Jovanovich

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT:	Beverly, Leah C.	Deputy District Attorney
	DeVaney-Sauter, Kelli M.	Deputy Public Defender
	Public Defender	
	State of Nevada	Plaintiff
	VASQUEZ-REYES, ARMANDO	Defendant

JOURNAL ENTRIES

Deft. present in custody with assistance from Certified Spanish Court Interpreter, Maria Peralta De Gomez. Ms. Sauter appeared for Mr. Feliciano. At request of defense counsel, COURT ORDERED, matter CONTINUED two weeks.

CUSTODY

2/21/17 8:30 A.M. DEFT'S MOTION TO DISMISS COUNSEL AND APPOINTMENT OF ALTERNATE COUNSEL

3/07/17 8:30 A.M. CALENDAR CALL

PRINT DATE: 02/07/2017

Page 1 of 2

Minutes Date: February 07, 2017

3/14/17 1:30 P.M. TRIAL BY JURY

CLERK'S NOTE: Mr. Feliciano had contacted Chambers earlier, and had requested a continuance of two weeks to meet with Deft. to resolve the issues outlined in Motion, which was filed by Deft. on his own. /// sj

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 21, 2017**

C-16-316382-1

State of Nevada

vs

ARMANDO VASQUEZ-REYES

February 21, 2017**8:30 AM**

**Deft's Motion Dismiss
Counsel And Appointment
Of Alternate Counsel**

HEARD BY: Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Susan Jovanovich**RECORDER:** Kristine Santi**REPORTER:****PARTIES****PRESENT:**

Clemons, Jennifer M.

Feliciano, Mike

Public Defender

State of Nevada

VASQUEZ-REYES, ARMANDO

Chief Deputy District Attorney

Deputy Public Defender

Plaintiff

Defendant

JOURNAL ENTRIES

Deft. present in custody with assistance from Certified Spanish Court Interpreter, Maria Peralta De Gomez. Mr. Feliciano not present. Court TRAILED and RECALLED matter. Mr. Feliciano is now present in Court. Upon Court's inquiry, Mr. Feliciano advised the issue did not resolve, further noting he will provide discovery to Deft, except medical records, however, he will show him everything. Upon Court's inquiry, Deft. stated he understands, but he needs his discovery. Court clarified to Deft. he can have discovery, and he can look at the medical records with his attorney, however, he is not permitted to have copies of medical records in his possession, and nobody will give him copies of the medical records either. Deft. stated he needs his discovery in Spanish. Court clarified his attorney will review the discovery with him, and a Spanish Interpreter will also be present, to interpret the discovery in Spanish for him. COURT ORDERED, Motion OFF CALENDAR.

PRINT DATE: 02/21/2017

Page 1 of 2

Minutes Date: February 21, 2017

C-16-316382-1

CUSTODY

3/07/17 8:30 A.M. CALENDAR CALL

3/14/17 1:30 P.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 07, 2017

C-16-316382-1 State of Nevada
 vs
 ARMANDO VASQUEZ-REYES

March 07, 2017 8:00 AM Calendar Call

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Susan Jovanovich

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT:	Feliciano, Mike	Deputy Public Defender
	Mendoza, Erika	Deputy District Attorney
	Public Defender	
	State of Nevada	Plaintiff
	VASQUEZ-REYES, ARMANDO	Defendant

JOURNAL ENTRIES

Deft. present in custody with assistance from Certified Spanish Court Interpreter, Yul Haasmann.

At request of defense counsel, due to needing more time to prepare for trial, and there being no objection by State, COURT ORDERED, Deft's Motion to continue trial GRANTED; trial date VACATED AND RESET.

CUSTODY

6/13/17 8:30 A.M. CALENDAR CALL

6/20/17 1:30 P.M. TRIAL BY JURY

PRINT DATE: 03/07/2017

Page 1 of 1

Minutes Date: March 07, 2017

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 13, 2017**

C-16-316382-1 State of Nevada
vs
ARMANDO VASQUEZ-REYES

June 13, 2017 8:30 AM Calendar Call

HEARD BY: Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Susan Jovanovich**RECORDER:** Kristine Santi**REPORTER:****PARTIES**

PRESENT:	Feliciano, Mike Public Defender State of Nevada Sweetin, James R. VASQUEZ-REYES, ARMANDO	Deputy Public Defender Plaintiff Chief Deputy District Attorney Defendant
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JOURNAL ENTRIES

Deft. present in custody with assistance from Certified Spanish Court Interpreter, Alex Andrade. CONFERENCE AT BENCH. At request of counsel, and there being no objection by State, COURT ORDERED, Motion to continue trial GRANTED; trial date VACATED AND RESET. Deft. objected to the trial continuance; and asked to come to the Bench. Court DENIED the request. Deft. argued he requested discovery. Mr. Feliciano advised Deft. wants a copy of the medical records. Court advised Deft. he is not entitled to have medical records, and his attorney will not give medical records to him, as he is not entitled to them, however, he can review the records with his attorney. Court advised Deft. it told Mr. Feliciano to get discovery to him, and his attorney is going to provide him a copy of appropriate discovery. Deft. argued his attorney is violating his rights. Mr. Feliciano disagreed; and stated he does not want to address Deft. at this time in Court.

CUSTODY

PRINT DATE: 06/13/2017

Page 1 of 2

Minutes Date: June 13, 2017

C-16-316382-1

1/09/18 8:30 A.M. CALENDAR CALL

1/16/18 1:30 P.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 07, 2017**

C-16-316382-1

State of Nevada

vs

ARMANDO VASQUEZ-REYES

September 07, 2017 8:30 AM

**Deft's Motion To Dismiss
Counsel And Appointment
Of Alternate Counsel**

HEARD BY: Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Susan Jovanovich**RECORDER:** Kristine Santi**REPORTER:****PARTIES****PRESENT:**

Feliciano, Mike

Deputy Public Defender

Public Defender

State of Nevada

Plaintiff

Sweetin, James R.

Chief Deputy District Attorney

VASQUEZ-REYES, ARMANDO

Defendant

JOURNAL ENTRIES

Deft. present in custody with assistance from Certified Spanish Court Interpreter, Irma Sanchez-Gastelum. Court stated it reviewed the Motion; and asked Deft. if there is anything he wants to say. Mr. Feliciano advised the issue is with medical records of complaining witness. Court stated Deft. is not going to have possession of those records. Mr. Feliciano advised he can review a copy of the records with him. Court reminded Deft. it told him last time he was here in Court, that his attorney can come and show him the records, however, the attorney is required to take the medical records back, and he cannot have them in his possession at the jail. Upon Court's inquiry, Mr. Feliciano confirmed the records are not voluminous, and there were subsequent follow up doctor visits. SO NOTED. Court provided Deft. with the trial date. Deft. stated he does not want Mr. Feliciano as his attorney anymore, he has done nothing for him, he is only lying to him, he has come to see him twice, and says he is going and never shows up. Mr. Feliciano informed Court he told Deft. he will see him

PRINT DATE: 09/07/2017

Page 1 of 2

Minutes Date: September 07, 2017

next week, it has been difficult in the beginning, there are things that need to get done before trial, and he can work with Deft. on defending him. Deft. stated he has never been difficult, and the attorney is only telling him lies. Upon Court's inquiry, Mr. Feliciano confirmed Deft. has been provided with discovery, but no medical records, further noting he can go visit Deft, and see what he has and compare it to what defense has. Deft. stated he does not want Mr. Feliciano as his attorney. Court reminded Deft. he does not get to choose court appointed counsel, and based on what has been said, Court will not dismiss Mr. Feliciano as his attorney. Deft. stated he just gave him the police report. Court advised Deft. Mr. Feliciano said he gave him more than that. Mr. Feliciano stated he will make another copy of discovery and provide it to him. Court asked Mr. Feliciano to provide a receipt of copy of discovery for the record. Court advised Deft. it is ready for trial, and it does not need anything. Mr. Feliciano advised defense should be ready to go. Mr. Sweeten confirmed State will be ready. Following discussions, Court advised Deft. Mr. Feliciano can convey any offers to him, and his attorney is doing what he is supposed to do, if State makes an offer. Deft. stated he just wants his attorney to do his job. COURT ORDERED, Motion DENIED. Matter OFF CALENDAR.

CUSTODY

1/09/18 8:30 A.M. CALENDAR CALL

1/16/18 1:30 P.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 09, 2018

C-16-316382-1

State of Nevada

vs

ARMANDO VASQUEZ-REYES

January 09, 2018

8:30 AM

Calendar Call

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES**PRESENT:**

Feliciano, Mike

Deputy Public Defender

Public Defender

State of Nevada

Plaintiff

Stephens, Robert

Chief Deputy District Attorney

VASQUEZ-REYES, ARMANDO

Defendant

JOURNAL ENTRIES

Deft. present in custody with assistance from Certified Spanish Court Interpreter, Alicia Herrera. CONFERENCE AT BENCH. Court advised Deft. the assigned prosecutor trying this case is not here, and Court will continue this matter to Thursday, January 11, 2018, as the Court will know more on that day as to whether the trial will proceed forward next week. Mr. Feliciano estimated one week for trial. COURT ORDERED, matter CONTINUED; trial date STANDS.

CUSTODY

1/11/18 8:30 A.M. CALENDAR CALL

1/16/18 1:30 P.M. TRIAL BY JURY

PRINT DATE: 01/09/2018

Page 1 of 1

Minutes Date: January 09, 2018

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 11, 2018

C-16-316382-1 State of Nevada
vs
ARMANDO VASQUEZ-REYES

January 11, 2018 8:30 AM Calendar Call

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT:	Feliciano, Mike	Deputy Public Defender
	Public Defender	
	State of Nevada	Plaintiff
	Sweetin, James R.	Chief Deputy District Attorney
	VASQUEZ-REYES, ARMANDO	Defendant

JOURNAL ENTRIES

Mr. Sweetin is present on behalf of State. Deft. is present in custody with assistance from Certified Spanish Court Interpreter, Maria Peralta De Gomez. CONFERENCE AT BENCH. COURT ORDERED, trial date SET. Pre-trial motions will be heard on January 16, 2018 at 8:30 a.m.

CUSTODY

1/16/18 8:30 A.M. DEFT'S MOTION TO SUPPRESS...DEFT'S MOTION TO COMPEL PRODUCTION OF DISCOVERY AND BRADY MATERIAL

1/22/18 10:30 A.M. TRIAL BY JURY

PRINT DATE: 01/11/2018

Page 1 of 1

Minutes Date: January 11, 2018

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 16, 2018**

C-16-316382-1

State of Nevada

vs

ARMANDO VASQUEZ-REYES

January 16, 2018**8:30 AM****All Pending Motions
(1/16/2018)****HEARD BY:** Bixler, James**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Susan Botzenhart**RECORDER:** Kristine Santi**REPORTER:****PARTIES****PRESENT:**

Feliciano, Mike

Deputy Public Defender

Public Defender

State of Nevada

Plaintiff

Sweetin, James R.

Chief Deputy District Attorney

VASQUEZ-REYES, ARMANDO

Defendant

JOURNAL ENTRIES

DEFT'S MOTION TO COMPEL PRODUCTION OF DISCOVERY AND BRADY MATERIAL...DEFT'S
MOTION TO SUPPRESS

Mr. Feliciano requested the motions be continued to Thursday, January 18, 2018 for Judge Leavitt to handle proceedings. Mr. Sweetin advised based on side bar discussions both parties had with the Court at the last hearing, he believes it would be easier to continue these motions, to see whether Judge Leavitt decides if a Jackson vs. Denno hearing would be appropriate. COURT ORDERED, matters CONTINUED. Trial date STANDS.

CUSTODY

1/18/18 8:30 A.M. DEFT'S MOTION TO COMPEL PRODUCTION OF DISCOVERY AND BRADY

PRINT DATE: 01/16/2018

Page 1 of 2

Minutes Date: January 16, 2018

MATERIAL...DEFT'S MOTION TO SUPPRESS

1/22/18 10:30 A.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 18, 2018**

C-16-316382-1

State of Nevada

vs

ARMANDO VASQUEZ-REYES

January 18, 2018**8:30 AM****All Pending Motions
(1/18/2018)****HEARD BY:** Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Susan Botzenhart**RECORDER:** Kristine Santi**REPORTER:****PARTIES****PRESENT:**

Feliciano, Mike

Deputy Public Defender

Public Defender

State of Nevada

Plaintiff

Sweetin, James R.

Chief Deputy District Attorney

VASQUEZ-REYES, ARMANDO

Defendant

JOURNAL ENTRIES

Deft. present in custody with assistance from Certified Spanish Court Interpreter, Maria Peralta De Gomez.

DEFT'S MOTION TO SUPPRESS

Court stated it is not sure what the contention is, and whether defense put forth enough for this Motion. Mr. Feliciano advised there are certain things not in the motion, that only Deft. can explain. Upon Court's inquiry, Mr. Feliciano confirmed he will request a Jackson vs. Denno hearing on this. Mr. Sweetin submitted. Mr. Feliciano advised he will meet with Deft. to prepare him for the hearing, and he will show Deft. the video. Discussions as to Deft. having received the transcript of the proceedings. COURT ORDERED, Motion CONTINUED; hearing also SET. State provided a copy of the video to Court for review.

PRINT DATE: 01/18/2018

Page 1 of 2

Minutes Date: January 18, 2018

DEFT'S MOTION TO COMPEL PRODUCTION OF DISCOVERY AND BRADY MATERIAL

Mr. Sweetin advised he believes parties worked out discovery issues at this point, and one issue is regarding CPS records, and the records relate to this particular incident. Thereafter, Mr. Sweetin provided CPS records to Court for review. Upon Court's inquiry, Mr. Sweetin advised he believes these records are discoverable to defense counsel. Court stated it will review records, and based on what State said, the Court may provide a copy of the records to defense. As to therapy records, Court asked what the basis is, for defense to have them. Mr. Feliciano advised he would want those records reviewed by Court. Mr. Sweetin advised there was counseling that occurred after the incident was reported to police, he does not know if there are records, State does not have possession of them, and State's position is that these records are privileged. Mr. Feliciano advised those records will not be provided to defense directly. Discussions. Arguments by counsel. Court noted it does not believe defense put a showing that this Court would need to review the records, defense would not be entitled to them, and State does not have therapy records and is not required to turn them over. COURT ORDERED, request for therapy records DENIED. As to request No.'s 33 and 34, as to any prior allegations and other source of knowledge, Mr. Feliciano requested State to make inquiry during pre-trial, to see if those materials exist. Mr. Sweetin made no objection; and stated he has no knowledge at this point. COURT ORDERED, State to make initial disclosure and determine whether there is any information. Court advised defense counsel if State was aware of such information, the State would be required to turn it over.

Mr. Sweetin noted for the record he spoke with defense counsel, and there were redactions made on Deft's recorded statements, to which State is seeking to play at trial.

CONFERENCE AT BENCH.

CUSTODY

1/22/18 10:30 A.M. JACKSON VS. DENNO HEARING...TRIAL BY JURY

Felony/Gross Misdemeanor

COURT MINUTES

January 22, 2018

C-16-316382-1 State of Nevada
 vs
 ARMANDO VASQUEZ-REYES

January 22, 2018 10:30 AM All Pending Motions

HEARD BY: Leavitt, Michelle COURTROOM: RJC Courtroom 14D

COURT CLERK: Botzenhart, Susan

RECORDER: Santi, Kristine

REPORTER:

PARTIES PRESENT:

ARMANDO VASQUEZ-REYES	Defendant
James R Sweetin	Attorney for Plaintiff
Jennifer M. Clemons	Attorney for Plaintiff
Mike Feliciano	Attorney for Defendant
Nadia Hojjat	Attorney for Defendant
Public Defender	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

JACKSON VS. DENNO HEARING...DEFT'S MOTION TO SUPPRESS...TRIAL BY JURY

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Deft. present in custody with assistance from Certified Spanish Court Interpreter, Elsa Marsico. Mr. Feliciano noted for the record parties had a meeting with Court in Chambers, last week on Friday, January 19, 2018, and upon review of medical records, defense believes an expert may be needed; and defense would be requesting a continuance of the Jackson vs. Denno hearing, and trial. Mr. Feliciano further noted discussions in Chambers were made about the STD issue coming into evidence, defense would be seeking to admit such evidence, and State had submitted a written bench brief to the Court, which was not calendared. Court advised defense counsel if he is seeking to admit the STD information, he would have to seek relief before the Court, requesting to admit it. Mr. Sweetin advised State would oppose the trial continuance on the basis defense had stated. Mr. Sweetin argued there is no basis as to Deft's high blood pressure issue, as this is not out of the ordinary, and it could be due to allegations being brought against Deft, and State does not believe Deft. seeking to get tested for the STD and for defense to bring the information in, is relevant. Discussions. Court advised Deft. about his attorney seeking a trial continuance; and advised Deft. should he get tested, the results of such test could be admitted at trial. Deft. asked how long the trial continuance would be. Mr. Feliciano advised parties were looking at a trial date for May 29, 2018. Deft. objected. Court stated it has not released the jury panel for today. Deft. spoke with his attorney in open Court. Court stated it does not need Deft's consent about the request for trial continuance, and Court had told the parties at the conference in Chambers that it would grant a continuance. Upon Court's inquiry, Deft. acknowledged regarding his attorney seeking a continuance and Court being inclined to grant it.

COURT ORDERED, Deft's Motion to continue trial GRANTED; trial date VACATED AND RESET; Jackson vs. Denno hearing OFF CALENDAR.

Mr. Feliciano advised State had made an offer. Mr. Sweetin requested a status check hearing be set; and advised parties have discussed the offer, and there needs to be information given to the Court, as to

whether or not the Jackson vs. Denno hearing would go forward, and what would be presented. Mr. Sweetin provided the offer on the record; and advised the offer would remain open until a scheduled status check hearing. Mr. Feliciano advised he will discuss the offer with Deft. one more time, and he would hope to find a doctor who can get Deft. tested. COURT FURTHER ORDERED, status check hearing also SET.

Awaiting Prospective Jury Panel was DISCHARGED by Court.

CUSTODY

2/08/18 8:30 A.M. STATUS CHECK: NEGOTIATIONS / RESET JACKSON VS. DENNO
HEARING...DEFT'S MOTION TO SUPPRESS

5/22/18 8:30 A.M. CALENDAR CALL

5/29/18 1:30 P.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 08, 2018**

C-16-316382-1 State of Nevada
vs
ARMANDO VASQUEZ-REYES

**February 08, 2018 8:30 AM All Pending Motions
(2/08/2018)**

HEARD BY: Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Susan Botzenhart**RECORDER:** Sandra Pruchnic**REPORTER:****PARTIES**

PRESENT:	Clemons, Jennifer M. Feliciano, Mike Public Defender State of Nevada Sweetin, James R. VASQUEZ-REYES, ARMANDO	Chief Deputy District Attorney Deputy District Attorney Plaintiff Chief Deputy District Attorney Defendant
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JOURNAL ENTRIES**STATUS CHECK: NEGOTIATIONS...DEFT'S MOTION TO SUPPRESS**

Court TRAILED and RECALLED matter for defense counsel to appear. Deft. present in custody with assistance from Certified Spanish Court Interpreter, Alex Andrade. Mr. Feliciano requested the Jackson vs. Denno hearing be set, further noting there is a medical expert he is working with, records need to be provided to the expert, and the turn-around time would take a few days. Additionally, defense has a consultation to do in three weeks, and defense would request the hearing be set out longer. Mr. Feliciano added there was an offer made, and the offer was not discussed until today. Mr. Sweetin provided the offer on the record, which included one Count of sexual assault and another Count of Lewdness with a minor; and noted State would retain right to argue. Deft. laughed in open Court. Court stated it is not sure how funny this is. Discussions as to range of punishment

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Minutes Date: February 08, 2018

on the current charges, and the charges with State's offer. Court noted Deft. is facing multiple life sentences with the current charges. Upon Court's inquiry, Deft. stated of course not he will not accept the offer, and he is rejecting State's offer today. Upon Court's inquiry, Mr. Sweetin confirmed State is withdrawing the offer, and will not be making the offer again. COURT ORDERED, Deft's Motion CONTINUED; hearing SET. Deft. asked why so long. Court stated his attorney is asking for more time. Deft. stated the attorney does not do anything, and this is going around in circles. Court noted when parties met with the Court previously on this case, it was made clear to the Court that Mr. Feliciano did a substantial amount of work on this case, he has been preparing on this case, and there has been a substantial amount of work done, getting this case ready for trial. Mr. Feliciano noted he will do everything he can to get the case ready for the Jackson vs. Denno hearing, and as far as getting Deft. ready to testify, this has been almost impossible, as he would go visit the Deft. at the jail, the previous meetings were quick, and Deft. would end the meetings and go back to his cell immediately during the visits. Mr. Sweetin noted for the record Deft. has been smirking and chuckling during entire proceedings in this case, and it appears Deft. is not being receptive, as he has had a nonchalant demeanor and attitude throughout proceedings.

CUSTODY

3/29/18 10:30 A.M. JACKSON VS. DENNO HEARING...DEFT'S MOTION TO SUPPRESS

5/22/18 8:30 A.M. CALENDAR CALL

5/29/18 1:30 P.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 26, 2018**

C-16-316382-1 State of Nevada
vs
ARMANDO VASQUEZ-REYES

**April 26, 2018 10:30 AM All Pending Motions
(4/26/2018)**

HEARD BY: Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Susan Botzenhart**RECORDER:** Kristine Santi**REPORTER:****PARTIES**

PRESENT:	Hojjat, Nadia Public Defender State of Nevada Sweetin, James R. VASQUEZ-REYES, ARMANDO	Deputy Public Defender Plaintiff Chief Deputy District Attorney Defendant
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JOURNAL ENTRIES**JACKSON VS. DENNO HEARING...DEFT'S MOTION TO SUPPRESS**

Deft. present in custody with assistance from Certified Spanish Court Interpreter, Magdalena Becerra.

Discussions as to witness line up, and defense seeking to introduce Deft's medical records from the jail. Arguments by counsel as to witness from the jail not being available, custodian of records from CCDC having been requested to appear and testify about the medical records and Deft's blood pressure reading, EMT being present in Court from CCDC who is not the custodian of records or original EMT, offer having been made to stipulate to the records, and State not being in agreement. Court advised defense counsel if she wants records in, defense would have to figure out how to get those records in. Ms. Hojjat noted she has an affidavit. Mr. Sweetin made objection as to defense trying to get information in, and there needing to be testimony from medical expert who reviewed

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Minutes Date: April 26, 2018

the medical records. Further arguments as to assessment having been done indicating no problems with Deft. functioning. Mr. Sweetin advised he spoke with the EMT who is present in Court, State is fine with getting records in, as long as other records come in, further noting the records do not appear to be clear. Court noted if defense lays proper foundation, the expert can testify to things made known to them; and if there is a stipulation to admit the entire medical records, Court can order them admitted. Ms. Hojjat provided Deft's medical records to Court; and requested to invoke the Exclusionary Rule. COURT ORDERED, EXCLUSIONARY RULE INVOKED. Discussions as to State's concerns about the medical records having substantial significance, and reasons whether the medical expert is not needed. Mr. Sweetin argued regarding relevance, and State having to explain about the blood pressure issue. Ms. Hojjat argued this is State's burden. Court stated yes; however, the motion was filed, and based on the pleadings, State met the burden. Ms. Hojjat argued defense's concerns and Court not having heard from the Deft. yet on this issue. Court stated defense has to have a legal basis and not just on one statement, further noting State does not have to call a medical witness or EMT. Ms. Hojjat argued the EMT present in Court is not qualified, and defense will submit it, further noting defense argues Deft. was not feeling well at time of interview with police.

Testimony and Exhibits presented (See Worksheets.).

Mr. Sweetin argued as to statements having been made by Deft. being voluntary. Further arguments as to acknowledgment of rights having been given and signed by Deft, Deft's interview being short, Deft. having seemed more casual and in a relaxed state during interview, Deft. not having had great deal of anxiety, questions having been answered, clarification having been made, denial having been made by Deft, Deft. having brought up information during interview, Deft. saying he did not remember, Miranda having been given adequately, there being no evidence of coercion, Deft's medical records not saying anything as to issues before this Court, and blood pressure reading having been taken at time Deft. was booked into the detention center. Discussions between Court and the Marshal regarding the witness from CCDC being asked for, by the jail. Court apologized; and ORDERED, the witness to be excused. Further arguments by State as to no assessment sheet from evening, assessment sheet having been done the following day after, clinician's observation, Deft. having been oriented, Deft's perception having been appropriate, and medical records showing there being no way the blood pressure was otherwise consistent. Ms. Hojjat argued the blood pressure reading of Deft. was not normal, expert could not testify on how Deft. was feeling at the time, Deft. had asked for help and had said he needed to take medications, it is undisputed that Deft. was denied help, he was not feeling well, he was trying to get out of the interview room, nobody was disputing he had asked and was denied medical attention, there was no warrant to arrest Deft. at the residence, and Deft. was placed in handcuffs. Court stated the only evidence is Deft. had consented to that, and state of record is Deft. went with police voluntarily. Ms. Hojjat requested to re-open the evidence to talk to Deft. about this further. Court stated these proceedings are going forward, this case is two years old, and defense should know the information by now. Further arguments by counsel. Ms. Hojjat moved to suppress the entire interrogation with the police. Court stated defense can file any written motion deemed appropriate. COURT ORDERED, Deft's motion to suppress

statement DENIED, the jury can hear the statement, and it will be up to the jury to determine if Deft's statement was voluntary.

Discussions regarding current trial date. Ms. Hojjat noted defense may need to file a motion to seek a Franks hearing, however, the goal for defense is to be ready for trial. Discussions as to other medical related issue raised by defense. Ms. Hojjat stated she was not made aware if Mr. Feliciano will be introducing test results, or whether there are test results. Court stated if the issue comes up, the Court would want the issues briefed.

Court's Exhibit No. 1 is ORDERED, SEALED.

CUSTODY

5/22/18 8:30 A.M. CALENDAR CALL

5/29/18 1:30 P.M. TRIAL BY JURY

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ARMANDO VASQUEZ-REYES,) No. 80293
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 Appellant,)
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 v.)
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 THE STATE OF NEVADA,)
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 Respondent.)
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DARIN F. IMLAY Clark County Public Defender 309 South Third Street Las Vegas, Nevada 89155-2610	STEVE WOLFSON Clark County District Attorney 200 Lewis Avenue, 3 rd Floor Las Vegas, Nevada 89155
Attorney for Appellant	AARON FORD Attorney General 100 North Carson Street Carson City, Nevada 89701-4717 (702) 687-3538
	Counsel for Respondent

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 27 day of August, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
ALEXANDER CHEN

AUDREY CONWAY
WILLIAM M. WATERS

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

BY /s/Rachel Howard
Employee, Clark County Public Defender's Office