

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS JASON BERNAL,  
  
Appellant,

vs.

THE STATE OF NEVADA,  
  
Respondent.

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Docket No. 20-0099 Sep 28 2021 03:33 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
D. Ct. 20-0099

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APPEAL FROM JUDGMENT OF  
THE HONORABLE JOHN P. SCHLEGELMILCH  
  
THIRD JUDICIAL DISTRICT COURT

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APPELLANT'S APPENDIX

VOLUME 2

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1 Mr. Bernal's interview. It's audio actually. We  
2 didn't have video at the time, but we have it now.

3 THE COURT: So, it's the whole four hours of  
4 video?

5 MS. SCHUMANN: Yes, Your Honor.

6 THE COURT: Or audio? Which one was it?

7 MS. SCHUMANN: Audio, Your Honor.

8 (Witness sworn.)

9 THE COURT: Okay. Ma'am, you can come around  
10 here and have a seat right there.

11  
12 PATRICIA BERNAL,  
13 called as a witness herein by the State,  
14 having been first duly sworn, was examined  
15 and testified as follows:

16  
17 DIRECT EXAMINATION

18 BY MR. MERRILL:

19 Q Please state your full name and spell your last  
20 name for the record. You can remove your mask.

21 A Okay. My name is Patricia Bernal.

22 P-A-T-R-I-C-I-A. B-E-R-N-A-L.

23 Q And where do you live?

24 A I live here in Yerington.

1 Q And do you have daughter name HS?

2 A I do.

3 Q And is her last name S?

4 A Yes.

5 Q Okay. How old is HS?

6 A She just turned 16.

7 Q And do you have any other children?

8 A I have a son.

9 Q And what's his name?

10 A OS.

11 Q Are you currently married?

12 A At the moment, yes.

13 Q Okay. And who are you married to?

14 A Thomas Bernal.

15 Q Okay. Is he in this courtroom today?

16 A He is.

17 Q Okay. Can you identify him?

18 A The gentleman over there in the corner with the  
19 mask.

20 Q What's he wearing?

21 A Striped shirt and glasses.

22 Q Thank you.

23 And how long were you and Thomas -- is it

24 Bernal? How long were you two married for?

1 A Almost eight years.

2 Q Okay.

3 A Or like almost four years is about right.

4 Q Almost four years.

5 A We were together almost eight years and married  
6 almost four.

7 Q And you're still married?

8 A Yes.

9 Q Right. Do you have any children together?

10 A No.

11 Q Now, let me take you to July 14th of 2019.

12 Were you working that day?

13 A I was.

14 Q Okay. Where were you working?

15 A At Dini's Lucky Club.

16 Q All right. And did you receive some text  
17 messages from Mr. Bernal?

18 A I did.

19 Q And what did those text messages say?

20 A He told me that I needed to come home, we  
21 needed to talk, it was urgent. So, I did what I needed  
22 to do, and I went straight home.

23 Q Okay.

24 MR. MERRILL: If I can approach, Your Honor?

1 THE COURT: Sure.

2 BY MR. MERRILL:

3 Q I'm showing you what's been marked as  
4 Exhibit 2. Why don't you go ahead and flip through  
5 those? If you can keep them in order.

6 A Sorry.

7 Q There you go.

8 Okay. Do you recognize those?

9 A Yes, I do.

10 Q And there's five pictures in Exhibit A?

11 A Uh-hum.

12 Q What do you recognize those pictures to be?

13 A The text from Mr. Bernal on the day when I was  
14 working when he text me.

15 Q Okay. And Exhibit A appears to be like a  
16 phone?

17 A Yes.

18 Q Who's phone was that?

19 A That's probably my phone I think. My old  
20 phone, yeah.

21 Q Is this your phone or somebody else's phone?

22 A It's my old phone.

23 Q Okay. And how do you know --

24 A And I don't have that anymore.



1 Q How do you know it's your phone?

2 A The style of it.

3 Q Okay. And did you read through the messages on  
4 each page?

5 A Uh-hum.

6 Q Okay. Is that the text messages that you  
7 received as you were leaving Dini's?

8 A Uh-hum.

9 THE COURT: Is that a yes, ma'am?

10 THE WITNESS: Yes.

11 THE COURT: Okay. Thank you.

12 THE WITNESS: Sorry.

13 BY MR. MERRILL:

14 Q And have you received messages before around  
15 this time period prior to this from Mr. Bernal?

16 A Not prior to this, no.

17 Q No?

18 A Well, prior to this, because we're together,  
19 yes. Sorry. But nothing involving anything like this.

20 Q Okay. But just in general, did you receive  
21 text messages before from Mr. Bernal on this phone?

22 A Yes.

23 Q Okay. There's a phone number towards the top  
24 of the cell phone there?

1 A Uh-hum.

2 Q Who's phone number is that?

3 A That's Thomas Bernal's phone number.

4 Q Okay. And that is 775-301-8436?

5 A Yes, sir.

6 Q Okay. And have you received text messages  
7 before this from that phone number?

8 A I don't understand.

9 Q Did you receive text messages from Mr. Bernal  
10 at this 775 --

11 A Yeah.

12 Q -- 301 --

13 A Yes, I have --

14 Q -- 8436?

15 A -- before, yes.

16 Q Okay.

17 A Sorry.

18 Q So, you know that this is Mr. Bernal's phone  
19 that is texting you?

20 A Yes.

21 Q Okay.

22 MR. MERRILL: Your Honor, we move for admission  
23 of Exhibit 2.

24 MS. SCHUMANN: No, objection, Your Honor, for

1 purposes of this hearing.

2 THE COURT: They're admitted.

3 (Whereupon, State's Exhibit 2 was admitted into  
4 evidence.)

5 BY MR. MERRILL:

6 Q So, let's go back to text messages. So, you  
7 received the text message?

8 A Yes.

9 Q And the text message told you to come home; is  
10 that correct?

11 A Yes.

12 Q Okay. And when you received that text message,  
13 where were you?

14 A I was sitting down waiting to sign my paperwork  
15 after I got off the clock at Dini's Lucky Club.

16 Q After you left Dini's, where did you go?

17 A I went straight home.

18 Q And how far was your home from Dini's Lucky  
19 Club in minutes?

20 A Maybe ten minutes. Nine, ten minutes maybe  
21 depends on the traffic.

22 Q Okay. And you didn't make any stops in between  
23 there?

24 A Not that I remember, no.

1           Q     Now, when you got home what did you first  
2 observe when you walked in the house?

3           A     Mr. Bernal standing at the front door all  
4 agitated. And HS crying on the couch. And my son, OS,  
5 playing video games. And I could tell there was  
6 something wrong, really wrong, because the tension and  
7 the way he was looking at and acting and the way she  
8 was looking.

9           Q     How could you tell that the defendant was  
10 agitated?

11          A     Just his demeanor. The way he held himself.  
12 The way he was speaking. The way he looked. His  
13 expressions. The way he held himself.

14          Q     And did you have a conversation with the  
15 defendant?

16          A     We did.

17          Q     And tell me about that.

18          A     Well, we went into the bedroom, and we were  
19 going to talk about it. And he had his bag packed on  
20 the bed already all ready to go. And he had told me  
21 that he had something to tell me, and it probably  
22 wouldn't be a good thing, and we probably wouldn't be  
23 together anymore. So, I said okay, what's going on?  
24 And he said, "Well, apparently I've been touching your

1 daughter for over a year now." And I was like, "What?  
2 Are you serious?" And then I asked him how far it  
3 went. He said it did not go to that far, but still  
4 there was a lot of touching. And then I got mad. I  
5 was screaming and yelling. And he was trying to  
6 apologize and get me to forgive him. And for a moment  
7 I thought I would be able to, but I couldn't do it.  
8 So, I told him he needed to leave the house right now.

9 Q Now, did you ask him questions as far as you  
10 said touching?

11 A Yes.

12 Q Was there additional descriptions that he told  
13 you?

14 A No. Not that I can remember. Sorry.

15 Q Did he ever tell you that he had been  
16 molesting, use that words?

17 A No. He said he had been touching her  
18 inappropriately.

19 Q Okay. So, after he said that, what happened  
20 next?

21 A Well, I asked him how -- why did he do it and  
22 how could he do that. And he just said he was sorry.  
23 And I asked him -- it's really hard for me to talk  
24 about it. I asked him, you know, how far did he go.

1 If he actually fully did something with her, or was it  
2 just touching, and he said it was just touching.

3 Q Did you get the impression that was touching in  
4 a sexual manner --

5 A Yes.

6 Q -- or...

7 Was there any discussion whether or not that  
8 was with use of his fingers?

9 A Yes.

10 Q What did -- what did he say, if anything, about  
11 fingers?

12 A He said that he had used his fingers and  
13 touched her down there.

14 Q Again, down there --

15 A In her private parts.

16 Q Okay. Did Mr. Bernal specifically tell you  
17 that it was private parts or vagina?

18 A Well, he said vagina, but I wasn't sure if I  
19 could say that.

20 THE COURT: I need to tell you, you need to say  
21 exactly what he said as far as you recollect. Okay,  
22 ma'am?

23 THE WITNESS: Okay.

24 THE COURT: It doesn't matter what it is.

1 THE WITNESS: Okay.

2 THE COURT: Okay?

3 THE WITNESS: I'm sorry.

4 THE COURT: All right. Whatever the words he  
5 used is really what you need to testify to, please.  
6 Okay?

7 THE WITNESS: Okay.

8 BY MR. MERRILL:

9 Q So, let me ask you again with that  
10 clarification, what did, if anything, did Mr. Bernal  
11 specifically say that he was doing to HS?

12 A That he was touching her in her vagina with his  
13 fingers only.

14 Q So, after -- so, that discussion happened in  
15 the master bedroom?

16 A Yes.

17 Q Okay. Door closed or open?

18 A Closed.

19 Q And where was HS during that time?

20 A Still in the living room on the couch crying.

21 Q How long did this discussion last for?

22 A I couldn't tell you how long, honestly. I  
23 don't remember. It could have been minutes. I was so  
24 angry that I don't even remember how long it took.

1 Q So, after this happened, what happened next?

2 A I made him leave the house and to not come  
3 back.

4 Q And did you speak to HS?

5 A I did ask HS. I just wanted to confirm if it  
6 was true or not because I was still -- you know, I was  
7 still a little confused. So, I had to make sure that  
8 everything is okay with her, and I had to ask her is  
9 this true. I didn't ask her any details or anything.  
10 I just asked her if it happened, and she told me it  
11 did.

12 Q Do you recall specifically what she told you  
13 had happened?

14 A That he had been touching her in her, she said  
15 private parts, with his fingers for a while.

16 Q Anything else specifically that she told you  
17 about what Mr. Bernal was doing?

18 A No. Not at that conversation that I could  
19 remember.

20 Q Okay. When you had that conversation with HS,  
21 where in time was that from talking to the defendant?

22 A It was just a few minutes after I had told him  
23 to leave the house.

24 Q Okay.



1           A       Or actually it could have been before I asked  
2       him to leave the house. I'm having a hard time  
3       remembering that part.

4           Q       But it was within the same time frame?

5           A       It was within the same time frame because I  
6       made him leave the room, and then I had brought her in  
7       to talk -- to ask her and then -- I'm really not having  
8       a good time remembering.

9           THE COURT: That's okay. Take your time,  
10       ma'am. Okay?

11          THE WITNESS: I'm sorry. I can't remember if I  
12       told him to leave after I talked to her or before.

13       BY MR. MERRILL:

14          Q       Okay. Now, had there been any other  
15       discussions that you've had with HS about these  
16       specific allegations since that day?

17          A       We haven't really had discussions. She has --  
18       we've -- you know, we'll talk about things, and  
19       sometimes she'll tell me, "Oh, yeah, he used to try to  
20       make me drink alcohol." Or, "oh, yeah, he used to make  
21       me -- he used to tell me if I ever told you, Mom, that  
22       he would have you guys -- have us taken away from you  
23       again." And that was the reason why she never told me  
24       in the beginning, was because she didn't want to leave

1 me, and that's what he would tell her.

2 Q With -- on July 14th of 2019, how old was HS?

3 A It was right before her 15th birthday. She was  
4 14 years old.

5 Q She was 14 right then?

6 A Yes.

7 Q Okay. And what is her birthday?

8 A July 20th.

9 Q And prior to July 14th, what was the  
10 relationship like between the defendant and HS?

11 A It was pretty rocky. They were -- every time  
12 I'd come home from work, they were fighting, or I would  
13 get texts saying that HS was in a bad mood and yelling  
14 and screaming again. And, you know, I understand she  
15 was becoming a teenager, and I thought, you know, maybe  
16 she was just having some teenage adjustment issues.  
17 Sorry. But it kept -- it kept happening and happening,  
18 and it's like the fighting between them kept getting  
19 worse and worse.

20 Q Was the relationship always like that?

21 A No. It was not always like that at all.

22 Q Do you recall when it became more tense or  
23 worse?

24 A I'm not -- I'm not sure.

1 Q Okay. You don't know?

2 A No, I don't know.

3 MR. MERRILL: Nothing further for this witness,  
4 Your Honor.

5 THE COURT: Ms. Schumann, do you have any  
6 questions?

7 CROSS-EXAMINATION

8 BY MS. SCHUMANN:

9 Q Good afternoon. I have just a few questions.  
10 So, on July 14th, what time did you get off  
11 work?

12 A At 5:00. 4:45 p.m.

13 Q Okay. Is that day shift?

14 A Yeah.

15 Q And then it looks like according to the text  
16 messages, were you the one who text "Trying my luck.  
17 Okay. Love you. Bye bye."?

18 A Uh-hum.

19 Q That was when you messaged? What do you mean  
20 by "trying my luck"?

21 A Well, I had clocked out, and I was waiting to  
22 sign my paperwork after I clocked out. And I'm allowed  
23 to sit at the machines and gamble after work. So, I  
24 put \$5 in to see if I can get a little bit more.

1 Q Okay. Did you do that often when you got off  
2 work?

3 A I did sometimes, yeah.

4 Q Now, had you consumed alcohol that day while  
5 you were gambling?

6 A I think I had a half a beer.

7 Q Okay. Do you know what kind of beer?

8 A Coors Light.

9 Q And then it looks like you actually headed to  
10 the house, according to the text messages, at about  
11 5:10 p.m.; is that right?

12 A That's about the right time when they get done  
13 doing my paperwork in the cashier's cage.

14 Q How many times have you discussed this case  
15 with HS?

16 A I have never really discussed it with her.  
17 We've just talked, you know, about little things, about  
18 her feelings.

19 Q Okay.

20 A And like the things that -- like, when the  
21 times that I tried to comfort her, and I wasn't able  
22 to, that's -- we have never really went deep into  
23 talking about this.

24 Q Okay. What about the -- what about July 14th

1     when Mr. Bernal had talked to you about this case, did  
2     you talk to HS in specifics about this?

3           A     No. I just asked her if it would -- it had  
4     happened.

5           Q     Okay. Have you discussed this case with your  
6     son, OS?

7           A     No, not really. He knows a little bit only  
8     because of all the Court stuff going on, and HS being  
9     upset, and then TJ being instantly absent from his  
10    life. So, he was curious, so I told him yeah, there  
11    was court going on for him touching her  
12    inappropriately. And that's about all I've told him.

13          Q     So, between you and Mr. Bernal, who was the  
14    primary disciplinarian?

15          A     Well, when we both were working, we both were.  
16    But when I was working, he kind of took over.

17          Q     Okay. And back in July of 2019, was Mr. Bernal  
18    working?

19          A     No.

20          Q     What were him and HS fighting about?

21          A     From all I can tell was HS didn't want it to  
22    happen anymore, and she threatened to tell me.

23          Q     Okay. Were there any other fights between  
24    them -- between them about like her grades or?

1 A Yeah.

2 Q Okay.

3 A Grades and chores and stuff like that.

4 Q Okay. What were those issues?

5 A Well, she wasn't keeping up on doing her  
6 homework or just typical teenage stuff, you know.

7 Q Was she getting in trouble at school?

8 A She was having some troubles at school.

9 Q Okay. What were those?

10 A She was having some issues with a boyfriend.

11 Q Okay.

12 A And some -- there was inappropriate touching or  
13 something going on, and they got caught.

14 Q Okay. And was that at school or somewhere  
15 else?

16 A That was at school.

17 Q And what happened? Well, how did the school  
18 discipline HS after that?

19 A They gave her detention or APEP. I don't  
20 remember a hundred percent what else they did.

21 Q Did you or Mr. Bernal force HS to break up with  
22 the boy?

23 A Yes.

24 Q And was HS happy about that?

1           A       No.

2           Q       Is it fair to say that HS wanted Mr. Bernal out  
3 of the house?

4           A       I don't feel that she wanted him out of the  
5 house. I just feel they were fighting so much that she  
6 was acting out.

7           Q       Okay.

8           A       And maybe saying she didn't want him there.  
9 But I thought it was because they were fighting because  
10 of the grades and stuff.

11          Q       Right.

12               MS. SCHUMANN: I'll pass the witness, Your  
13 Honor.

14               THE COURT: Okay. Anything?

15               MR. MERRILL: No follow up.

16               THE COURT: Okay. Thank you, Ms. Bernal.  
17 Appreciate your testimony. Thank you very much.

18               THE WITNESS: Thank you.

19               MR. MERRILL: Your Honor, we have two more  
20 witnesses. We have an hour left. I don't know if the  
21 Court wants to go past 5:00 or have another day,  
22 perhaps tomorrow?

23               THE COURT: Who are we hearing from?

24               MR. MERRILL: We're hearing from HS, the

1     alleged victim here; and then from Jennifer McCann,  
2     who's of the Child Advocacy Center, for prior  
3     consistent statements. Which would be mostly what her  
4     interview was about. So, I'd rather get out of the way  
5     Jennifer McCann if we're going to have another date,  
6     and then come back for HS. I just don't see getting  
7     through HS and Jennifer McCann in an hour. I mean,  
8     maybe we can, but...

9             THE COURT: Well, we were set for tomorrow.

10            MS. SCHUMANN: I don't know if I can make a  
11     suggestion, but I believe the forensic interview is  
12     actually on this thumb drive. It was already admitted.  
13     I don't know if we need to have Jennifer testify to the  
14     contents. We could just admit it, and the Court could  
15     review it.

16            THE COURT: Well, as long as you stipulate to  
17     it.

18            MS. SCHUMANN: And we've stipulated to it. So,  
19     I don't know if we really need her testimony. But  
20     that's up to Mr. Merrill.

21            MR. MERRILL: I mean, I think that's fine if  
22     it's been stipulated to and the Court can see it.  
23     Obviously, where we're going with argument -- just  
24     briefly so we know where we're going is we'd only bring



1 Jennifer McCann in if her credibility was attacked or  
2 whatever and would come in as prior consistent  
3 statements. But --

4 THE COURT: Well --

5 MR. MERRILL: I don't think we need testimony  
6 if that's been admitted and the Court's inclined to  
7 review it. So...

8 THE COURT: I'm always inclined to review  
9 whatever you present to the Court, Mr. Merrill.

10 MR. MERRILL: Thank you.

11 THE COURT: As part of this. So, that's part  
12 of my job is to review evidence. So --

13 MR. MERRILL: So, with that --

14 THE COURT: -- I mean, if that's the case, did  
15 she testify at prelim too?

16 MR. MERRILL: She did testify at prelim too.

17 THE COURT: So, do you have any -- all right.  
18 Well, first of all -- all right. I can't really look  
19 at the preliminary hearing testimony without request  
20 from the defendant to do so for the purposes of  
21 evidentiary hearing.

22 So, that would be your call, Ms. Schumann, and  
23 then I can review the preliminary hearing transcript.

24 MS. SCHUMANN: We have no objection to that,

1 Your Honor.

2 THE COURT: Okay. All right. So, I can use  
3 the preliminary hearing transcript in relation to that  
4 testimony as well?

5 MS. SCHUMANN: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. MERRILL: And Judge, and then we will call  
8 HS. And if I could just run out for 30 seconds and  
9 tell Jennifer McCann she's free to leave? I will be  
10 right back.

11 THE COURT: Sure.

12 MR. MERRILL: Thank you.

13 THE COURT: Come on up, HS.

14 If you just come a few more steps in, and look  
15 at the clerk, and raise your right hand, she's going to  
16 swear you in. Okay?

17 (Witness sworn.)

18 THE COURT: Okay. Why don't you come on over  
19 here and have a seat there, HS.

20 MR. MERRILL: And just for the record, Your  
21 Honor, there's an individual in the courtroom today.  
22 Her name is Kayla, and she's a family friend. She's  
23 here for support. I do not believe there will be  
24 objection.

1 MR. KALTER: No objection, Your Honor.

2 THE COURT: If she's not a witness, it's fine.

3 MR. MERRILL: Thank you, Your Honor.

4

5 HS,

6 called as a witness herein by the State,

7 having been first duly sworn, was examined

8 and testified as follows:

9

10 DIRECT EXAMINATION

11 BY MR. MERRILL:

12 Q Good afternoon.

13 A Hi.

14 Q I'm going to have you move closer to the  
15 microphone and just make sure you speak in -- speak  
16 into the microphone. Okay?

17 A All right.

18 Q Please state your full name and spell your last  
19 name for the record.

20 A My name is HCS.

21 Q And what's your birth date?

22 A 7-20-2004.

23 Q Okay. So, that makes you 16?

24 A Yes.

1 Q Okay. And tell me about your family.

2 A Well, my brother, he's, of course, a teenage  
3 boy. He's not the greatest sometimes, but he's a good  
4 brother. My mom, she's probably the best mom that I'll  
5 ever have. And that's, like, all the family I have.

6 Q Okay. And what's your brother's name?

7 A My brother's name is OS.

8 Q Okay. How old is he?

9 A He's 13. Or he'll 14 in November.

10 Q Does that make him in ninth grade?

11 A He's in eighth grade right now.

12 Q Eighth grade. Okay.

13 And what school are you going to?

14 A Yerington High School.

15 Q And are you -- now with COVID, are you doing  
16 online only or you're going in person?

17 A I'm doing online and in school. This week I'm  
18 supposed to be going in school.

19 Q So, it's a week on, week off --

20 A Yeah.

21 Q -- sort of thing?

22 Okay. How is school going this year?

23 A It's pretty good. I was not doing so great the  
24 first few weeks because the online just kind of ruined

1 my brain a little bit after everything. And then  
2 like -- like, everything started school again and  
3 COVID, and, like, the online stuff is more confusing  
4 than if it were to be said in class. It gets actually  
5 explained.

6 Q Right. Okay.

7 Is there any -- is there any activities this  
8 year?

9 A Not really. I'm sure that there's, like, HOSA,  
10 which is for nursing association. Which is, like,  
11 going to out of state, like, cooperations and, like,  
12 showing what you know about the different, like,  
13 medical fields and stuff.

14 Q Okay. That's something you might be interested  
15 in?

16 A Probably not. I don't know yet.

17 Q What do you do for activities outside of  
18 school?

19 A I like to play video games and talk to my  
20 friends.

21 Q Okay. And do you -- are you currently living  
22 in Yerington?

23 A Yes.

24 Q Okay. And did you move recently?

1 A Yes.

2 Q Okay. What was your address prior to moving?

3 A 610 Highway 95 East. 95A East.

4 Q And in that home, who resided with you?

5 A My mom, my brother, and at a time our old  
6 roommate. Her name is Adrian. And her ex-husband. My  
7 mom's ex-husband.

8 Q Okay. What's his name?

9 A TJ.

10 Q What's his full name? Is it Thomas Bernal?

11 A Yes.

12 Q Okay. You said TJ. Does Thomas Bernal go by  
13 TJ?

14 A Yes.

15 Q How long did you reside with TJ?

16 A Well, I was about 11 when my mom got half  
17 custody of us. So, we were allowed visits from my  
18 dad's sister up in Gardnerville. And we moved in  
19 around the time I was 13. So, for about four or five  
20 years.

21 Q So, about four or five years you lived --

22 A Yeah.

23 Q -- with -- also with TJ?

24 A Yes.

1 Q And your mom and your brother?

2 A Yes.

3 Q Okay. What grade are you currently in?

4 A I'm a junior in high school.

5 Q Now, I'm going -- I'm going to take you back to  
6 July 14th of 2019.

7 A Okay.

8 Q Do you remember that day?

9 A Yes.

10 Q Why do you remember that day?

11 A Because that day involved a lot of arguing, and  
12 fighting, and crying, and all of that kind of thing.

13 Q And who's arguing?

14 A Me and TJ.

15 Q What were you arguing about?

16 A We were arguing about -- we were arguing about  
17 how I wouldn't let him touch me in anyway. And I told  
18 him no, because I didn't want him to. So, he got mad  
19 at me and yelled at me, and I retreated to my room and  
20 laid in my bed. And every 25 minutes to half hour or  
21 so he would come back in and yell at me more, and I  
22 would cry more.

23 Q What was he yelling at you about?

24 A Because he was angry that I wouldn't let him do

1 anything to me.

2 Q Do you remember what he was saying  
3 specifically?

4 A He was trying to make me feel guilty about the  
5 fact that if I told anybody what he had done, that he  
6 would go to jail, and he'd never see me again, and mom  
7 would never be happy.

8 Q Who's home during that time?

9 A My brother.

10 Q So you, TJ, and your brother?

11 A Uh-hum. My mom was at work.

12 Q Okay. You said touching. What do you mean by  
13 TJ touching you, you wouldn't allow him to touch?

14 A He tried to touch my privates.

15 Q How did -- can you tell me how that happened?

16 A Can you rephrase that?

17 Q Did -- on July 14th, did he touch you in any  
18 inappropriate manner?

19 A Yes.

20 Q How?

21 A He tried to -- I'm not sure how to word it.

22 Q So, we are -- we're in the courtroom here, and  
23 we're all adults. And just go ahead and tell us what  
24 you need to tell us. So, how did -- how did he almost



1 try to touch you inappropriately?

2 A He tried to finger me.

3 Q And where did that happen?

4 A In -- on the couch. Like, five feet away from  
5 my brother playing video games.

6 Q What video game was being played?

7 A He was, I think, playing Tom Clancy's  
8 Rainbow -- no, The Division. Tom Clancy's The  
9 Division.

10 Q Okay. And how did the defendant -- what did he  
11 specifically do to almost try to touch you?

12 A I was laying on the couch watching my brother  
13 play his game like I would usually do, and he came up  
14 to me and tried to. Or he did, but I stopped him.

15 Q Do you remember what he was wearing?

16 A No.

17 Q Do you remember what you were wearing?

18 A I was wearing a tank top and shorts.

19 Q And when he came up to you, were you sitting or  
20 standing?

21 A I was sitting on the couch.

22 Q And where was he when he tried?

23 A He was sitting right next to me.

24 Q Do you remember on the left side or the right

1 side of you?

2 A I'm not sure.

3 Q And how did he -- how did he touch you? Tell  
4 me specifically what he did.

5 A What do you mean?

6 Q Did he put his -- did he put his hands on your  
7 body?

8 A Yes.

9 Q Where did his hands or hand go?

10 A On my legs and, like, my stomach and, like,  
11 below my stomach.

12 Q Okay. And do you remember if that was one or  
13 two hands?

14 A One.

15 Q And his hand went below your stomach?

16 A Yes.

17 Q Okay. Where to below your stomach?

18 A I really don't feel comfortable saying.

19 Q Do you -- do you recall the interview you had  
20 at the Child Advocacy Center in Reno?

21 A Yes.

22 Q Do you remember that?

23 A Uh-hum.

24 Q Do you remember being interviewed?

1           A       Yes.

2           THE COURT:   Okay.   HS, it's okay.   You can tell  
3   the truth.   Okay?   Nobody in here is going to talk  
4   about anything that you say.   All right?   So, all you  
5   need to do is answer the question.   I understand that  
6   it's hard, but you need to answer it, and you need to  
7   answer it as fully as you possibly can.   Okay?   Is that  
8   all right?   Is that a deal?

9           THE WITNESS:   Yeah.   I'm trying to.

10          THE COURT:   Okay.   All right.   And I know you  
11   can get nervous by some things or feel uncomfortable by  
12   some things, but you really need to tell us what  
13   happened.   Okay?

14          THE WITNESS:   (Nods head.)

15          THE COURT:   All right?

16          THE WITNESS:   (Nods head.)

17          THE COURT:   Fair enough?

18          THE WITNESS:   Uh-hum.

19          THE COURT:   Okay.   Go ahead, Mr. Merrill.

20          MR. MERRILL:   Okay.

21   BY MR. MERRILL:

22           Q       So, his hands went below your stomach, correct?  
23   You said that?

24           A       Yes.

1 Q Okay. Did they go further? Did they go  
2 anywhere else?

3 A What do you mean?

4 Q Did they touch your privates?

5 A Yes.

6 Q Okay. What are your privates? What is that  
7 called?

8 MR. MERRILL: Your Honor, can I approach?

9 BY MR. MERRILL:

10 Q HS, I'm showing you what's been marked as  
11 Exhibit 3 here. Do you remember this photograph here?

12 A Yes.

13 Q Or this copy?

14 A (Nods head.)

15 Q Okay. Do you remember discussing that with the  
16 interviewer, Jennifer McCann?

17 A Yes.

18 Q Okay. Did you indicate some body parts on that  
19 drawing?

20 A Yes.

21 Q Okay.

22 MR. MERRILL: Your Honor, the State would move  
23 for admission of Exhibit 3.

24 THE COURT: Okay. Any objection, Mr. Kalter?

1 MR. KALTER: No.

2 THE COURT: Okay. Admitted.

3 (Whereupon, State's Exhibit 3 was admitted into  
4 evidence.)

5 MR. MERRILL: Thank you.

6 BY MR. MERRILL:

7 Q HS, there's a circled part here. Well, let's  
8 start it this way. This -- do you agree this is a  
9 picture of a female?

10 A Yes.

11 Q Okay. And the circled part here on this  
12 photograph, would you agree that that part that's  
13 circled is the private area or the vagina of a female?

14 A Yes.

15 Q Okay. Did -- on that day, on July 14th, did  
16 Thomas Bernal touch your vagina?

17 A Yes.

18 Q And did he use his hand?

19 A Yes.

20 Q And can you describe exactly what happened with  
21 his hand and your vagina?

22 A He tried to put his fingers inside of me.

23 Q Did a finger touch your vagina?

24 A Yes.

1 Q Did a finger enter into your vagina?

2 A Yes.

3 Q And that's on the 14th of July?

4 A Yes.

5 Q How do you know that occurred on the 14th?

6 A Because I remember specifically the argument  
7 that day. And he had texted my mom to come home  
8 immediately so he could tell her something. And that's  
9 the day that he left that house.

10 Q So, do you remember in ninth grade you having  
11 some teachers? Do you remember some of the teacher's  
12 names?

13 A My freshman year of high school, yes.

14 Q Your freshman year in high school.

15 What kind of classes did you have your freshman  
16 year?

17 A I can't remember specifically the first class.  
18 But I had something to do with, like, medical. A  
19 medical class. I just can't remember the name of it.  
20 I had world history, choir, biology one, and that's all  
21 the classes I can remember.

22 Q Okay. Did you -- did you have English class?

23 A Oh, yeah. I had an English class. I had  
24 English honor's one.

1 Q And do you recall who the teacher was?

2 A Ms. Mueller.

3 Q Okay. Did you like her class?

4 A Yeah, it was really cool. I had some of my  
5 friends in that class.

6 Q Did you -- did you do well?

7 A Yeah.

8 Q Okay. Good.

9 Now, was there another one of these times where  
10 Thomas Bernal touched you inappropriately while you  
11 were in ninth grade?

12 A Yes.

13 Q And can you tell us what happened?

14 A I came home from school one day. I was  
15 complaining like I always did about my legs hurting  
16 because I had to walk from one side of the school to  
17 the next multiple times in a day, and my backpack was  
18 really heavy. So, I, like, was complaining about my  
19 legs being hurt. And so, I went to my room and laid  
20 down. And he came into my room and touched me  
21 inappropriately multiple times.

22 Q And when you say touched inappropriately, you  
23 got to tell me specifically what happened.

24 A Fingered the circle part on the picture.

1 Q Okay. And by saying fingered, did he use his  
2 finger?

3 A Yes.

4 Q And placed that on your vagina?

5 A Yes.

6 Q And did he go inside your vagina or --

7 A Yes.

8 Q -- just on the outside?

9 A He went in.

10 Q Do you recall what type of clothing you were  
11 wearing?

12 A My sleepwear, which was a tank top and shorts.

13 Q And do you recall what time of day this was?

14 A No.

15 Q Do you recall what the defendant was wearing?

16 A Huh-uh.

17 Q Do you recall what time of year was it? Was it  
18 summer or fall?

19 A It was when school started up again, so the  
20 fall or winter.

21 Q Do you recall what years you were in freshman  
22 year?

23 A What year I was?

24 Q Yeah, what --



1           A       How old I was?

2           Q       What year was it? Was it like 2000?

3           A       I'm not sure what year it was because I get  
4       messed up sometimes when I think about years.

5           Q       Okay. So, this school year is 2020?

6           A       2021.

7           Q       And then last year, what school year was that?

8           A       2019, 2020. So, 2018, 2019. 2018, 2019.

9           Q       Okay. 2018, 2019?

10          A       Yes.

11          Q       And this incident that you just spoke about  
12       where the defendant placed his fingers in your  
13       vagina --

14          A       Yes.

15          Q       -- that was during the 2018, 2019?

16          A       Yes.

17          Q       When you were in school?

18          A       Yes.

19          Q       Okay. And school starts in August?

20          A       Yes.

21          Q       Okay. So, August 2018, and then school gets  
22       out?

23          A       In June.

24          Q       Of 2019?

1           A     Yeah.

2           Q     Okay. Now, were there -- now, you say your  
3 legs were sore. Were your leg sore on a regular basis?

4           A     Yeah, because -- well, it required me --  
5 because my classes were far away from each other, which  
6 means I had to walk, which meant that I had to walk  
7 from one side of the school to another, like,  
8 repeatedly all day. And my backpack on top of that  
9 with all my school supplies in it was really heavy to  
10 carry around on my shoulders. So, my legs got all the  
11 damage to it.

12          Q     So, your legs got sore?

13          A     Yeah.

14          Q     Okay. And did you ask anyone for help for  
15 that?

16          A     No. I just went to go lay down because usually  
17 that helps.

18          Q     Okay. And did you yourself ever rub your legs  
19 to try to make them feel better?

20          A     No, because I couldn't do it right. I couldn't  
21 rub my legs at all. It's -- my arms are too short.

22          Q     Okay. Did anyone else rub your legs?

23          A     That day?

24          Q     Any time?

1           A     Yeah.

2           Q     Okay. Just on a -- on a normal day, did anyone  
3 else rub your legs?

4           A     Not on a normal day when my legs didn't hurt.

5           Q     Okay. What about when your legs hurt?

6           A     Most of the time, yeah.

7           Q     Who would rub your legs?

8           A     TJ.

9           Q     Okay. And how was -- how was that done?

10          A     He would --

11          Q     How would he -- how would he rub your legs?

12          A     He, like, came into my room and was like what's  
13 wrong. So, I told him that my legs were hurt, and he  
14 like started rubbing my legs and stuff. He started  
15 like rubbing my legs and then kind of like moved up  
16 more every few minutes.

17          Q     Okay. Did that happen on a regular basis?

18          A     Almost every day.

19          Q     And did it ever go further than -- besides the  
20 two times that you were explaining, did it ever go  
21 further than just rubbing the legs?

22          A     Well, it went like the other times that I  
23 explained.

24          Q     Like how?

1           A       Like, he would move up and up and up, and then  
2       finally he would reach the circled part.

3           Q       That was your vagina?

4           A       Yes.

5           Q       And did that happen more than once?

6           A       Yes.

7           Q       Did it happen more than twice?

8           A       Yes.

9           Q       Did it happen more three times?

10          A       Yes.

11          Q       Did it happen more than ten times?

12          A       Yes.

13          Q       Did -- was it always just using his bare hands?

14          A       Yes.

15          Q       Was there ever any oil or lotion or anything of  
16       that nature used?

17          A       No.

18          Q       Would he ever say anything when -- let's go  
19       back to the time in July, July 14th. When he did that,  
20       did he ever say anything to you?

21          A       No, not usually.

22          Q       What about when you were in Ms. Mueller's  
23       class, that time, did he say anything to you as he was  
24       doing that?

1 A No.

2 Q Did you recall him ever rubbing lotion on your  
3 legs and using his fingers on your vagina?

4 A No.

5 Q And what's your date of birth?

6 A July 20th, 2004.

7 Q And again, on July 14th, you said this  
8 happened. Did you want that to happen?

9 A No.

10 Q Did you ever say anything?

11 A That day, and multiple times before I had said  
12 no.

13 Q What about when you were in Ms. Mueller's class  
14 that time?

15 A Yeah.

16 Q Did you tell him no --

17 A Yes.

18 Q -- and resist? Did you resist him?

19 A Uh-hum.

20 MR. MERRILL: Nothing further, Your Honor.

21 THE COURT: Mr. Kalter.

22 MS. KALTER: Thank you.

23 ///

24 CROSS-EXAMINATION

1 BY MS. SCHUMANN:

2 Q Good afternoon, ma'am. My name is  
3 Jesse Kalter. I have a few follow up questions for  
4 you. Okay?

5 A (Nods head.)

6 Q When I ask a question, whether your answer is  
7 yes or no, you have to say one or the other and not  
8 uh-hum because she's taking down what you're saying.

9 A Okay.

10 Q It's hard to spell uh-hum.

11 A Yeah.

12 Q Okay. All right.

13 So, your brother's younger than you?

14 A Yes, by two years.

15 Q Okay. So, he's -- you're 16 now?

16 A Yeah. He'll be 14 in November.

17 Q Got it. Okay.

18 And who is Adrian?

19 A Adrian is one of my mom's former friends and  
20 roommate. She lived with us for about four months  
21 after TJ left.

22 Q Okay. So, she didn't live in the house when  
23 you described --

24 A No.

1 Q -- these things that were going on? Okay.

2 And you said something about your mom got some  
3 custody back?

4 A That was solved in another case in Carson. My  
5 dad and my mom had split custody at the time.

6 Q Okay.

7 A And my dad's sister up in Gardnerville had us  
8 for a long while.

9 Q Okay. And you lived with them?

10 A I lived with them for about two to three years.

11 Q Okay.

12 A Almost.

13 Q Okay. And then when your mom got you back, how  
14 old were you?

15 A I was about 12, almost 13.

16 Q Okay. Was she already with TJ at that --

17 A Yes.

18 Q -- time? Okay. Were they living together?

19 A Yes.

20 Q Okay. So, you moved back at 12 or 13, and  
21 you're 16 now?

22 A (Nods head.)

23 Q Correct?

24 A Yes.

1 Q So, three or four years that you lived with TJ  
2 and your mom?

3 A Yes.

4 Q All right. So, I want to ask you first about  
5 your relationship with TJ. Did you guys get along when  
6 you first moved in?

7 A At first I didn't know who he was. He was a  
8 stranger to me.

9 Q Sure.

10 A And then it took about a year for me to get  
11 used to having somebody like a man in the house.  
12 Because it was -- I was used to just it being me, my  
13 mom, and my brother.

14 Q Sure. Who -- when you and your brother got in  
15 trouble, who would be the disciplinarian?

16 A My mom when she wasn't at work. But her shifts  
17 were very crazy, so she didn't get that much time with  
18 us. But most the time it was TJ.

19 Q Okay. And how did that make you feel when he  
20 disciplined you guys?

21 A It made me a little upset and confused because  
22 he wasn't related to me in any way possible, and I was  
23 used to just my mom disciplining us.

24 Q Did you resent him for that a little bit?



1           A       No, because I knew that it was just him trying  
2       to tell us something that we did was wrong.

3           Q       Okay. Okay. So, on this occasion on  
4       July 14th, 2019, that you just described, your brother,  
5       OS, was home?

6           A       Yes.

7           Q       Okay. And OS was playing video games?

8           A       Yeah. He was in the living room. He was  
9       playing on his PlayStation. He was playing a video  
10      game.

11          Q       Okay. And you were in the same room?

12          A       Yes.

13          Q       Okay. And that is the room in which you  
14      described where Mr. -- where TJ touched you?

15          A       Yes.

16          Q       And Owen was right there?

17          A       Five feet away.

18          Q       Five feet away. Did you have a blanket over  
19      you or anything?

20          A       No. I was just sitting there on the couch  
21      watching him play video games.

22          Q       And there five feet away from OS, TJ came and  
23      went underneath your -- were you wearing pants or  
24      shorts?

1           A       I was wearing shorts.

2           Q       Okay. And that's where he claims -- you say he  
3 entered your vagina with his finger?

4           A       Yes.

5           Q       Okay. And how -- about how long did that last?

6           A       I'm not going to say that long. About two or  
7 three minutes before I stopped him.

8           Q       And how did you stop him?

9           A       I told him straight to his face no.

10          Q       Okay. Did that get OS's attention?

11          A       No. My brother had headphones on.

12          Q       So, was it after this two or three minutes you  
13 told him no?

14          A       Yes.

15          Q       Okay. So, why didn't you tell him no right  
16 away?

17          A       Because when somebody does something, I'm  
18 scared to tell them to stop. It's just something that  
19 is inside. Like, it doesn't -- it's not right away,  
20 doesn't process as quickly. So, it makes me think,  
21 like, what's going on for a few minutes before I  
22 actually get to know what's happening.

23          Q       Okay. Now, this time with the video games was  
24 not the first time you said this happened?

1 A No.

2 Q Okay. And -- but this was the last time that  
3 it happened?

4 A Yes.

5 Q Okay. So, you described this as having had  
6 happened several times before?

7 A It happened almost every day since we moved  
8 into that house.

9 Q Okay. And how old were you when you moved into  
10 that house?

11 A About 14.

12 Q Okay. Okay. You described another incident  
13 when you were in the ninth grade, I think you said,  
14 between 2018 and 2019?

15 A Yes.

16 Q Okay. And you thought it might have been the  
17 beginning of the school year?

18 A Yeah.

19 Q Okay. And your legs hurt because they -- you  
20 were hauling a big backpack to school every day?

21 A Yeah, around -- like, I had to walk from one  
22 side of the school to another to get to choir.

23 Q Okay.

24 A Because choir is in a different building.

1 Q Okay. And so, on that day, you came home and  
2 laid in bed, and you said TJ came in at that point in  
3 time?

4 A Yes.

5 Q Okay. Was anyone home?

6 A My brother.

7 Q Do you have any idea what he was doing at the  
8 time?

9 A I'm not sure. I do believe he was in his room.

10 Q Okay. So, you and your brother each had your  
11 own room in that house?

12 A Yes.

13 Q Now, this time here that you say you came home  
14 and got on the bed in ninth grade, that was not the  
15 first time you say this kind of stuff happened?

16 A No.

17 Q Okay. So, you stated -- and correct me if I'm  
18 wrong -- that he came in and started rubbing your legs  
19 because you complained of them being sore?

20 A Yeah.

21 Q Okay. And did you ask him to rub your legs?

22 A No.

23 Q Okay. Had he rubbed your legs before when you  
24 complained of soreness?

1 A Yeah.

2 Q How many times would you say that was?

3 A I'm not sure.

4 Q More than ten?

5 A Yeah.

6 Q More then than 50?

7 A I'm not sure.

8 Q Okay. And often times he would rub your legs

9 when you complained of soreness but didn't touch you

10 inappropriately, correct?

11 A He did.

12 Q You're saying he did --

13 A Yes.

14 Q -- touch you inappropriately?

15 A Yes.

16 Q So, every time he touched your legs, you say he  
17 also touched your private parts?

18 A Yes.

19 Q Okay. And this was from after you moved into  
20 the home?

21 A Yes.

22 Q I want to ask you a little bit about this  
23 kind -- your schedule and your family's schedule once  
24 you moved into this house. Your mom worked?

1           A       Yeah. She worked late nights four out of the  
2       seven days. Or I should say two out of the seven days.

3           Q       Okay.

4           A       And then the other three she was working swing  
5       shifts from -- she was working night shift and swing  
6       shift.

7           Q       At Dini's?

8           A       Yes.

9           Q       And then so, was TJ working?

10          A       At that time I do believe he was until he was  
11       unemployed.

12          Q       Do you know when he was unemployed?

13          A       I'm not sure.

14          Q       Okay. Well, let's talk about the times in  
15       which he was working after you guys moved into this  
16       house.

17          A       My mom, by the time we got home, she was  
18       getting ready for work because she had to leave 15 to  
19       20 minutes early to get signed in and checked into her  
20       work and everything. So, that left my brother and I  
21       home for about an hour or two.

22          Q       Uh-hum.

23          A       And then TJ came home.

24          Q       Okay. So, all these times that you were alone

1 while your mom was gone at work, your brother --

2 A Yeah, my brother was always home because it was  
3 an after school thing.

4 Q Okay. So, these -- these -- these acts that  
5 you're saying TJ did to you where he touched you  
6 inappropriately, were those always in the afternoon  
7 after school, or what?

8 A Yeah. Unless it was on the weekends, it was  
9 usually like around 11:30 or noon.

10 Q Okay. How often did he do that when your mom  
11 was actually at the house?

12 A Five -- when my mom was at the house?

13 Q Yeah.

14 A He only done it about twice when she was home.

15 Q Tell me about that.

16 A Well, she was home, and she was taking a  
17 shower, and he came to my room and started touching me  
18 inappropriately.

19 Q Okay. Did you tell her about it when she got  
20 out of the shower?

21 A No. And the only reason why I did not tell her  
22 about anything was because every time I would want to  
23 talk to her in private, TJ would walk into my room and  
24 stand over her. Like stand in the background, watching

1 us talk. So, I never really got the chance.

2 Q You never got any alone time with your mom?

3 A No.

4 Q Were you ever alone with your mom while TJ was  
5 at work?

6 A No.

7 Q Now, I wanted to -- and thank you for sharing  
8 that with me.

9 Now, when he was not employed, was he usually  
10 home when you and your brother got home from school?

11 A Yes.

12 Q And you said there was a second time in where  
13 your mom was home?

14 A Yeah. It was another time like the one I had  
15 just explained about her being in the shower.

16 Q Was she in the shower that time too?

17 A Yeah.

18 Q And in what rooms -- where did that, in each of  
19 those incidents, take place in the house?

20 A In -- well, all the incidents took place in my  
21 room and the living room.

22 Q How about those two?

23 A Those took place in my room.

24 MR. KALTER: It's not my phone, Your Honor.



1 THE COURT: I'm sorry?

2 MR. KALTER: The phone. Ms. Schumann's phone  
3 was vibrating.

4 THE COURT: Okay.

5 MR. KALTER: Sorry.

6 THE COURT: I didn't even hear it. So...

7 MR. KALTER: Shouldn't have said anything.

8 THE COURT: Usually I'd catch it, but not this  
9 time.

10 MR. KALTER: Okay.

11 BY MR. KALTER:

12 Q And I want to go back to this July 14th thing  
13 again. July 14th of '19.

14 A Okay.

15 Q So, you stated that this turned into an  
16 argument between you and TJ?

17 A Yes.

18 Q About the touching?

19 A Yes.

20 Q Okay. Correct me if I'm wrong, but your  
21 birthday is July 20th?

22 A Yes.

23 Q Okay. Isn't it true that you guys were arguing  
24 that day about getting the pool reset for something for

1 your birthday party?

2 A We had a conversation about it, but there was  
3 never an argument.

4 Q Tell me about it then.

5 A The conversation?

6 Q Yeah.

7 A I -- because we had just gotten a pool from one  
8 of my mom's bosses, and I really wanted to set it up to  
9 have a few friends over to, like, have some fun for my  
10 birthday. And so, I asked him about it, and he's like  
11 we'll just do it another day, and he kept putting it  
12 off. And that's one of my pet peeves is when people  
13 keep putting things off. And it just, like, makes me  
14 think that they don't want to do it at all.

15 Q So, you're telling me that you were mad at him  
16 for delaying?

17 A No, I wasn't mad. It's just something that  
18 upsets me. So, I dropped the subject.

19 Q Okay. When did that conversation come up in  
20 relation to what you described happening while your  
21 brother was playing video games?

22 A A few hours earlier.

23 Q Now, correct me if I'm wrong, but it's my  
24 understanding that you had a little ongoing feud with

1 your mom and TJ about them not -- you not wanting to  
2 see a boyfriend? Or wanting you to break up with a  
3 boyfriend?

4 A That had happened a year or so earlier.

5 Q Okay. You said they weren't very -- you didn't  
6 agree with what they wanted you to do, right?

7 A No, but eventually I had broken up with this  
8 boy.

9 Q When did you guys break up?

10 A I'm not exactly sure.

11 Q Do you know what grade you were in?

12 A No.

13 Q You don't know what grade you were in when you  
14 broke --

15 A No, I can't remember that far back.

16 Q All right. Okay. Were you living in the house  
17 that we described?

18 A Yeah.

19 Q All right, HS, thanks for talking to me.

20 A No problem.

21 Q Okay.

22 THE COURT: Have anything else, Mr. Merrill?

23 MR. MERRILL: Quick follow ups.

24 REDIRECT EXAMINATION

1 BY MR. MERRILL:

2 Q HS, you described that one time happened while  
3 your mom was in the shower?

4 A Yes.

5 Q What happened at that time?

6 A He touched me inappropriately as I was laying  
7 in my room listening to music and playing on my  
8 PlayStation.

9 Q And what do you mean by touched you  
10 inappropriately?

11 A Touched the circle part on the paper.

12 Q Okay. Put his finger --

13 A Yes.

14 Q -- to your vagina? Okay.

15 A Yes.

16 Q Did his finger go into your vagina at that  
17 time?

18 A Yes.

19 Q Do you remember when that was?

20 A All I can remember is I had a turtle.

21 Q A turtle. Okay.

22 Do you remember if you we're still in  
23 Ms. Mueller's class?

24 A I think so.

1 Q Okay. You're not sure though --

2 A I'm not exactly sure, but I'm a little bit  
3 sure.

4 Q Okay. Were you living at that 610 --

5 A Yes.

6 Q -- U.S. Highway 95A? Okay.

7 And then the second time your mom was in the  
8 shower?

9 A Yes.

10 Q What happened at that time?

11 A The same thing.

12 Q Same thing?

13 A Yes.

14 Q Do you remember when that one was?

15 A No.

16 Q Okay.

17 A I just could remember it was on a Wednesday.

18 Q You remember it was on a Wednesday?

19 A Yeah. My mom only had Wednesdays and Thursdays  
20 off.

21 Q Can you remember what time of day it was?

22 A It was like the -- 4:00 or 5:00 o'clock at  
23 night. The sun had not set yet.

24 Q Do you remember if it was cold out or --

1           A     It was pretty warm still for, I think, the  
2 school year starting. I'm not exactly sure if the  
3 school year started.

4           Q     Again, on this one, do you remember if you were  
5 in ninth grade or?

6           A     I'm not sure.

7           Q     You are not sure on that one.

8                     How did -- how did -- so, you described when  
9 this all started when you moved into the 610 U.S.  
10 Highway --

11          A     Yes.

12          Q     -- house? How did this all first begin?

13          A     I was -- I think, this is how it begins. This  
14 is the first time I ever remember it was I was sitting  
15 behind him at his computer because he was watching a  
16 Twitch streamer, which is a gaming streamer, that post  
17 internet -- post videos online of them playing games.  
18 So, I got interested, and I was watching it in the  
19 back. And, like, I was sitting in a chair, and he  
20 decided while it was playing while I was watching it  
21 that he wanted to touch me inappropriately.

22          Q     Where did that happen, what room?

23          A     In the living room.

24          Q     And that was the first time that you remember?

1           A     Yeah.

2           Q     And touched inappropriately, did he touch other  
3 parts of your body before --

4           A     No.

5           Q     -- touching your privates?   Okay.

6                     Do you remember exactly what he did on that  
7 time?

8           A     Not exactly.   But I just remember that he  
9 touched me inappropriately, and that's the first time I  
10 remember it ever occurring.

11          Q     Okay.   He touched your vagina again --

12          A     Yes.

13          Q     -- on that day?   Okay.

14                    Do you remember what clothing that you were  
15 wearing?

16          A     Shorts and a tank top.

17          Q     Okay.   Do you remember anything he was wearing?

18          A     No.

19          Q     But you were living at the 610?

20          A     Yes.

21          Q     Okay.

22                   MR. MERRILL:   Nothing further, Your Honor.

23                   THE COURT:   Okay.   All right.

24                   Thank you, HS.

1           MR. MERRILL: Your Honor, that's all the  
2 witnesses the State has.

3           THE COURT: Okay. Just as matter for the  
4 record, whenever HS is mentioned, please put her  
5 initials in as HS in the official transcript.

6           MR. MERRILL: Thank you.

7           THE COURT: All right. So, you want to argue?  
8 Which one do you want to argue?

9           MR. MERRILL: Your Honor, we could argue the  
10 motion to suppress or the motion to admit, whichever  
11 you want to call it.

12          THE COURT: Okay. Go ahead.

13          MR. MERRILL: So, Your Honor, I would like to  
14 request before, I know the Court will, review the thumb  
15 drive that's been admitted. It does have a lot of  
16 video on there of the actual interview that the  
17 detectives did in this case.

18          Now, we look at the case law here, the Court  
19 looks at several different factors. It's certainly not  
20 a factor test. Necessarily we call it a factor test,  
21 and certainly the Court should at least look at.

22          Whether the suspect was told the questioning  
23 was voluntarily or he was free to the leave. Two,  
24 whether the suspect was not formally under arrest.



1 Three, whether the suspect could move freely during the  
2 questioning. Four, whether the suspect voluntarily  
3 responded to questions. Five, whether the atmosphere  
4 of questions were police dominated. Six, whether the  
5 police used strong-arm tactics or deception during  
6 questioning. Seven, whether the police arrested the  
7 suspect at termination of questioning.

8 Your Honor, in this case, the testimony was  
9 that Mr. Bernal -- the detectives called Mr. Bernal.  
10 He voluntarily came down. He came down with his father  
11 in a -- in a truck from Reno. He arrives on time, I  
12 suppose, or maybe even a little early. Originally he  
13 wanted -- the detective wanted to do a different date,  
14 and Mr. Bernal wanted a week later. So, they made that  
15 happen. He arrived. He walked back. He was never put  
16 in cuffs during that entire time. Any time he wanted  
17 to use the bathroom, go smoke, I believe, the testimony  
18 was that they allowed that to happen.

19 I would direct the Court to the video that's on  
20 the thumb drive, and those videos are contained within  
21 there. Every time he asked for a bathroom break, they  
22 got up, let him exit the room, and just followed him  
23 out to that first security door. And then  
24 Detective Messmann said that he was out of sight at

1       that point. He went to the bathroom. He could have  
2       left at any point. He was never formally under arrest.  
3       This isn't a case where he was arrested, put in cuffs  
4       out in the field somewhere and brought back to the  
5       station. That's not what -- not what happened here.

6               Freely moved during questioning. He wasn't  
7       forced into a back corner in this room at all. There  
8       were the two detectives that were, I guess, closer to  
9       the door, but that doesn't prevent his movement. He  
10      freely moved back and forth. Detective's statement was  
11      he could have exited any one of the exits at any point.  
12      The detective would have allowed that.

13             Whether the atmosphere of the questions was  
14      police dominated, testimony from the Detective Messmann  
15      was there was more conversational in tone. If the  
16      Court watches the video, there's no screaming, there's  
17      no yelling. It's very conversational. It's the  
18      defendant conversing, asking questions back and forth.  
19      And this is not where they're slamming books down and  
20      the swinging light in a dark room, that sort of tactics  
21      or that sort of atmosphere at all.

22             The strong-arm tactics, again, there's no --  
23      there's no cussing. There's no yelling. There's no  
24      screaming. There's nothing of that nature. I believe

1 Detectives Messmann said there was a couple of times  
2 cuss words could have been used but nothing directed  
3 towards the defendant.

4 The defendant was arrested at termination of  
5 questioning. I asked the Detective Messmann about  
6 that. And he didn't have any intention to make an  
7 arrest until he made the disclosure that he was rubbing  
8 her legs, and he said it was accidentally penetrating  
9 her. I would ask the Court to review, because I have a  
10 full confession, ten minutes on the thumb drive that's  
11 been submitted, but it's very detailed.

12 The defendant even at one point on the video  
13 raises a finger indicating I fingered her one time, and  
14 indicated that was the finger. And of course, he said  
15 it was an accident.

16 Your Honor, based on all these factors, and  
17 when the Court reviews the video there, defendant  
18 simply wasn't in custody for purposes of Miranda. He  
19 could have left any time until the very end. He chose  
20 not to. His father was outside. He could have easily  
21 escaped and did not. So, based on that and based on  
22 the testimony, I ask the Court to admit the defendant's  
23 confession.

24 THE COURT: Okay. Mr. Kalter.

1           MR. KALTER: Thank you, Your Honor. I don't  
2 know how with a straight face an argument could be made  
3 that he was not in custody. There's no doubt that  
4 Miranda was not given in this case. So, then we look  
5 and see if this was in a custodial interrogation. I'll  
6 start with an interrogation, which under the law is  
7 express questioning that police should know --

8           THE COURT: We know it's an interrogation. You  
9 don't even have to go there.

10          MR. KALTER: Thank you.

11          THE COURT: It's an interrogation. The  
12 question is if it's custodial or not.

13          MR. KALTER: Perfect. Would a reasonable  
14 person feel free to leave? He's told to come to the  
15 station. He's not told he doesn't have to. Okay?  
16 That's number one. And this is all needs to be looked  
17 at in its totality. They didn't tell him he could say  
18 no.

19               Now, the place of the interrogation is key.  
20 They did not come to his house to interview him. They  
21 did not pick a neutral location. They picked a police  
22 station. So, that is the setting that this all takes  
23 place. And I think the fact that it takes place in a  
24 police station requires extra scrutiny. And they bring

1 him in into the room. You saw the picture up there.  
2 He's in the corner of the room with two large  
3 detectives, both armed, between him and the door. And  
4 the detective even admitted that. That sets up a  
5 scenario where a person may not feel free to leave.

6 They tell him in the beginning one time, hey,  
7 you're free to leave. And then they act like that's  
8 just it. Now, they can avoid Miranda. But that's not  
9 so because a reasonable person would not feel free to  
10 leave. And we look at this, first the bathroom. He  
11 asked to use the bathroom. If I'm free or a reasonable  
12 person is free, I just go. I just go to the bathroom.  
13 I don't need permission.

14 More importantly -- and I think counsel  
15 misspoke. He asked for a cigarette break two hours in.  
16 It will be 2:02 to 2:03 when the Court reviews the  
17 footage. He asked for an cigarette break and  
18 Detective Messmann says no and goes onto say we're  
19 almost done. If I'm free and I want to go smoke a  
20 cigarette, I go out and I smoke a cigarette. He was  
21 told no.

22 So, even if this Court thinks maybe it's not  
23 custodial in the beginning, once I ask to do  
24 something -- first, I'm asking to smoke a cigarette,

1 and you tell me no, and you're two detectives with guns  
2 on your hip, and I'm in the back corner of a room  
3 inside a police station, a reasonable person doesn't  
4 feel free to leave, and nor did Mr. Bernal. Once they  
5 said no, he's not free to leave.

6 There's an interesting conversation in the  
7 interview between one hour and seven minutes and one  
8 hour and 32 minutes where they try and convince him to  
9 do the CVSA and essentially tell him this is your way  
10 to get your life back by basically proving your  
11 innocence, and they make insinuations to his wife that  
12 this would show his wife. I don't think the officers  
13 were quite -- were quite forthcoming with that. Even  
14 through the CVSA, Mr. Bernal denies, denies, denies,  
15 denies. It's almost five hours in, after the CVSA,  
16 after four hours of interrogation that he finally makes  
17 a confession. And immediately the interview  
18 terminated, and he's placed under arrest.

19 Detective Messmann wants this Court to believe  
20 that this was just a natural conversation. There's  
21 nothing natural about a conversation under these  
22 circumstances where someone is being interrogated by  
23 two officers in the back corner of a police room for  
24 four hours. They're obviously not letting him stand

1 with denying. Then they give him the truth  
2 verification test, and they don't let him leave at  
3 that. And they keep interrogating him. I mean, but  
4 for handcuffs, this is everything custodial.

5 There's no way this man felt free to leave  
6 under those circumstances or any reasonable person.  
7 The fact that he's asking to use the bathroom, the fact  
8 that he asks and is denied to go have a cigarette, he's  
9 not free. He's just not.

10 And Detective Messmann would like you to  
11 believe that this was so -- such a consensual  
12 conversation that after the truth verification it  
13 didn't end. That it just wasn't the right natural  
14 ending for this type of conversation. A natural  
15 conversation, I envision two guys talking at a bar  
16 drinking a beer, and the conversation ends when it  
17 ends. They were hammering him for four hours, then  
18 give him the CVSA, and then go right back to hammering  
19 him without ever again reiterating that you're free to  
20 leave.

21 He should have been read his Miranda rights,  
22 period, and they chose not to. They continued to  
23 pressure him for five hours, and he finally gave them a  
24 confession. This is exactly what the Supreme Court

1        wanted to avoid within custodial interrogation. They  
2        know the laws. He doesn't. They create a scenario in  
3        which he's not free to leave and get at him and get at  
4        him and get at him till they get what they want. They  
5        should have Mirandized him, period. And if the Court  
6        doesn't think they needed to in the beginning, once  
7        they told him he couldn't have a cigarette, it's over.  
8        He is not free to leave.

9                So, Your Honor, you know, the law is very clear  
10       that when it is a custodial interrogation, which it is,  
11       and they didn't Mirandize him, the statements aren't  
12       coming in. We ask that the Court apply that standard  
13       to the facts, and I think there's only one conclusion  
14       that can be made. He was in custody and being  
15       interrogated and wasn't Mirandized. Totally different  
16       than the alleged confession that his wife testified to  
17       on the stand. Obviously, that -- her allegation of  
18       what he said to her comes in at trial, but this is  
19       different, and the officers had a duty to Mirandize  
20       him. Thank you.

21               THE COURT: Okay. Any rebuttal to that?

22               MR. MERRILL: No, Your Honor.

23               THE COURT: All right. So, I'll take a look at  
24       the video. And then I'll let you know what my ruling



1 is in relation to that real quickly, you know. I think  
2 I also have a transcript of the video though, don't we?  
3 Of the confession?

4 MR. MERRILL: We don't.

5 THE COURT: Oh, okay.

6 MR. MERRILL: Wrong case.

7 THE COURT: The wrong case then. I'm confusing  
8 this with -- I'm confusing this with a different case  
9 then. All right. Fair enough.

10 All right. So, got a motion to admit the  
11 victim statements and...

12 MR. MERRILL: So, Your Honor on the --

13 THE COURT: All right. So, I got a motion to  
14 admit the victim statements to the mother. Okay.

15 So, they're conditionally admitted. Do you  
16 want to argue that? Anybody want to argue that?

17 MR. MERRILL: Wait. What are you admitting?  
18 Sorry.

19 THE COURT: The victim statements.

20 MR. MERRILL: The ones made to?

21 THE COURT: To the mother.

22 MR. MERRILL: No. I mean, if you're admitting  
23 them, I don't want to argue.

24 THE COURT: Do you want to be heard on that

1       one? The victim statements to the mother. After  
2       Mr. Bernal made his statements to the mother, she came  
3       in and asked the victim whether it happened. The  
4       victim told her it did.

5               MS. SCHUMANN: Well, under -- I mean, as a  
6       prior consistent statement or?

7               THE COURT: Well --

8               MS. SCHUMANN: I mean, under what hearsay  
9       exception?

10              THE COURT: Well, I was going to say that's the  
11       question.

12              MS. SCHUMANN: Okay.

13              THE COURT: Do you want to argue it?

14              MS. SCHUMANN: We're prepared to submit on the  
15       motion.

16              THE COURT: All right. So, it's conditionally  
17       admitted if her -- if the child's credibility is  
18       attacked.

19              MS. SCHUMANN: Okay.

20              THE COURT: Okay? That sounds pretty easy.  
21       All right.

22              All right. So, then we got also as part of the  
23       motion that the State filed was the statements he made  
24       to the mother. That was part of the -- part of the

1 motion that the State filed in relation to his  
2 confessions. So, Court's going to find that the  
3 statements that Mr. Bernal made to the mother are  
4 admitted. The ones made July 14th, 2019. Okay?

5 And I'm holding off on his statements to the  
6 law -- to law enforcement. Okay. All right.

7 So, then we have the text messages. There's  
8 been a motion to admit the text messages. That was  
9 just filed on -- why was it filed so late?

10 MR. MERRILL: Well --

11 THE COURT: Well? I'm wondering while it was  
12 filed so late.

13 MR. MERRILL: I mean, I understand where the  
14 Court's coming from. I don't think I had to file a  
15 motion on that. Probably could have done it the hard  
16 way just through trial. But I was unsure we had those  
17 text messages. There was talk of text messages were  
18 out there. And so, we had to do some digging around  
19 and apparently --

20 THE COURT: Don't tell me.

21 MR. MERRILL: No, they -- what?

22 THE COURT: All right. Apparently what?

23 MR. MERRILL: No, we have the text messages.  
24 So, after the preliminary hearing, I asked questions.

1 She told me -- Patricia Bernal told me that she turned  
2 the phone over to the detective. And so, that was back  
3 in November. And so, we were trying to track down the  
4 text messages. We got them in our system about an a  
5 month ago. And then those were sent to Mr. Kalter and  
6 Ms. Schumann's office. I'm not sure they received them  
7 a month ago. It might have been a little bit less than  
8 that. I don't know, three weeks ago or so. But text  
9 messages were known about. We just -- I didn't have  
10 visual of them.

11 THE COURT: Okay. Ms. Schumann.

12 MS. SCHUMANN: Well, Your Honor, I mean, we  
13 haven't even had a chance to review the motion.

14 THE COURT: Well, I mean -- okay. I mean, I --  
15 all right. They just filed it.

16 MS. SCHUMANN: All right.

17 THE COURT: So, I'll give you chance to look.

18 MS. SCHUMANN: Thank you, Your Honor.

19 THE COURT: Oppose it. Okay?

20 But we heard testimony on them today. That's  
21 why I figured we can probably go forward on them.

22 All right. So, then there's the motion to  
23 admit the other collateral acts of the defendant, which  
24 was all based on HS's testimony. Okay.

1 Do you want to be heard on that motion?

2 MR. MERRILL: Yes, Your Honor, as soon as I can  
3 find it in here.

4 So, if we look under either NRS 40 -- 48.045 or  
5 res gestae 48.035, I believe it should come in under  
6 either theory. But if those statements come in that  
7 the defendant made to the detectives, in those  
8 statements he's specifically says it was just an  
9 accident, and it was just one time. If that is the way  
10 that that's -- that is going to be attacked, that it  
11 was an accident, then the State would like to prove  
12 that there's been not just one time.

13 We had two other times in the Information, but  
14 also, as HS described here, it happened first time in  
15 the shower -- or one time in the shower, when mom was  
16 in the shower. Second time mom was in the shower  
17 again. It was on a Wednesday between 4:00 and 5:00.

18 I mean, she went on, and on again about  
19 different times this happened. Every time she had sore  
20 legs and Mr. -- or the defendant would come in and rub  
21 her legs, this would happen. It all goes to this is  
22 not an accident. There was preparation. There was  
23 plan. There was knowledge. He knew what he was doing.  
24 He was grooming her, for a lack of a better term, and

1       that's what happened here.

2               And so, the State would ask to -- that those  
3       other incidences, specifically the ones she described  
4       here today, to be admitted. The problem I can  
5       foresee -- and I'm going to try to stay away from those  
6       that weren't specifically described here today, but if  
7       she goes in and says hey, this happens on a very  
8       regular basis --

9               THE COURT: Well, she testified to that today.

10              MR. MERRILL: And then -- and then goes off and  
11       tells me a different -- a different time. Not that  
12       these ones are excluded, but then tells me something  
13       else the jury's already heard it and can't un-hear.

14              THE COURT: Basically, she testified it's been  
15       occurring for about two years.

16              MR. MERRILL: Right.

17              THE COURT: Prior to last time.

18              MR. MERRILL: And we knew that was happening,  
19       and we just weren't able to nail dates down to be able  
20       to charge him in that matter. So, based on the  
21       argument and based on the motion, ask the Court to  
22       consider.

23              THE COURT: Okay. Ms. Schumann.

24              MS. SCHUMANN: Well, Your Honor, it's not

1     admissible under re gestae. Felton V State, it says it  
2     has to be impossible for the witness to describe the  
3     act without reference to the other act. HS was clearly  
4     able to reference just the single incident during her  
5     forensic interview without reference to any of the  
6     other uncharged prior bad acts.

7             There's also the issue of the time that elapsed  
8     between the prior bad act and the charged offenses.  
9     It's not really near time and place. It sounds like  
10    it's unclear whether it was a continuous thing or if it  
11    would stop and start over. It doesn't sound like we  
12    clarified that from the testimony. And it's not  
13    necessary to complete the story in this case.

14            It's also not -- it shouldn't be admissible  
15    under known propensity purposes. Mostly, Your Honor,  
16    the probative value out -- the prejudice far outweighs  
17    the probative value of those prior bad acts. Not only  
18    will it confuse the issues for the jury because they  
19    won't know what's been charged and what hasn't, but  
20    Mr. Bernal will not receive a fair trial in this case  
21    if those come in. And we'll submit with that, Your  
22    Honor.

23            THE COURT: All right. So, they're admissible  
24    under NRS 48.045 subsection 3. Court finds pursuant to

1 Franks that they're related, that they've been proved  
2 by preponderance of the evidence, and that the  
3 prejudicial value -- the probative value is not  
4 outweighed by the undue prejudicial effect. That the  
5 child is entitled to tell the entirety of her story.  
6 And it's a Franks issue. It's not a 48.045 subsection  
7 2 issue. It's a Franks issue.

8 It could be used for all purposes under Franks.  
9 And it will be allowed to be use for all purposes under  
10 Franks. So, and under the purview of Franks, as a  
11 prior sexual act on the same victim in a course of  
12 conduct that occurred over a two-year span. So, it's  
13 in. Her testimony is in. If she testifies a little  
14 bit outside her testimony today, it's still coming in.  
15 She can testify to the course of conduct of the  
16 defendant.

17 So, I don't even have to go into res gestae.  
18 But I believe it's also res gestae under Allen. And it  
19 could probably be used for lack of accident and mistake  
20 too, but it doesn't need to. It's a prior sexual act.  
21 It's specifically allowed under 48.045 subsection 3.  
22 So, they're in. All right.

23 All right. Then I have a motion from defense  
24 counsel to preclude the use of "victim." You want to



1       argue that one again?

2               MS. SCHUMANN:  No, Your Honor.  We'll submit.

3               THE COURT:  It's denied.  Okay.

4               All right.  So, I don't know that some of you  
5       folks never actually use Nevada law.  Okay?  You  
6       can't -- I mean, you can cite outside State law, and  
7       say, hey, I think Nevada needs a change in what the law  
8       should be.  And I don't have a problem with that.  You  
9       need to advocate.  But in James V State, 128 Nevada  
10      908 -- I think I said this before -- 2012, in a  
11      published opinion by the Nevada Supreme Court, they  
12      said the use of the word "victim" does not amount to  
13      reversible error, and they can use it for all purposes.  
14      The use of the word "victim" by State witnesses.  Okay?

15              The term vic -- is the term "victim" to law  
16      enforcement officers is term of art synonymous with  
17      "complaining witness."  Accordingly, we decline to  
18      require law enforcement officers to alter their common  
19      practice terms of art.  Okay?

20              As to prosecutor's use of the word, we rely on  
21      the Ninth Circuit Court of Appeals opinion in United  
22      States V Gibson pertaining to the parties, blah, blah,  
23      blah.  "Victim" as used by the prosecution was a fair  
24      comment on the evidence.  Okay?

1 Nevada law is the term "victim" can be used by  
2 both the witnesses and the prosecution, and it can be  
3 used in this court for both. And the Court is not  
4 going to rely on Mississippi or Alabama law to change  
5 the law of the State of Nevada that's clear. Okay?

6 Not only that, it's been cited to, again, in  
7 the number of unpublished opinions. Okay? So, and in  
8 fact, in James they said that in the jury instruction  
9 it can reference "victim."

10 And then it was -- and it's been referenced in  
11 a number of unpublished opinions too. So, Nevada's law  
12 is clear -- okay? -- in James V State, 128 Nevada 908.  
13 And also Renteria-Novoa, which is docket 61865. So,  
14 Nevada's law is the term "victim" can be used, and it  
15 will be used during jury trial. And the Court -- and  
16 there's no showing that the Nevada's law is anything  
17 but that. Okay.

18 All right. So, in relation to the forensic  
19 interview, so far as the statements made to the  
20 forensic interviewer are consistent and if the  
21 defendant can test the veracity or credibility, or  
22 tries to attack the victim in relation to motive to  
23 fabricate, then those statements can be admissible  
24 conditionally. Okay?

1 MR. MERRILL: Okay.

2 THE COURT: All right. So, all right. And  
3 then the State also filed last minute motion to limit  
4 O'Donohue's testimony, if any. Is O'Donohue  
5 testifying?

6 MS. SCHUMANN: Not today, Your Honor, but at  
7 trial he will.

8 THE COURT: Okay. Well, that was just filed  
9 too.

10 MS. SCHUMANN: We did file an opposition, Your  
11 Honor.

12 THE COURT: You did do that one?

13 MS. SCHUMANN: Yes.

14 THE COURT: Was that today?

15 MS. SCHUMANN: No, it was last week. I think  
16 we mailed it Thursday or Friday I guess.

17 MR. MERRILL: We received a copy. I think it  
18 was e-mailed. We have a filed copy.

19 THE COURT: I don't have it filed yet. So,  
20 check with the clerk.

21 MS. SCHUMANN: Okay. I have my extra copy.  
22 Does the Court want that or?

23 THE COURT: Sure.

24 MR. MERRILL: And we're not -- the State's not

1 going to make an argument on that. We'll just submit  
2 it on the motion. So, if the Court wants to have time  
3 to review.

4 THE COURT: No. All right. So, as long as  
5 O'Donohue stays within the realm of what he's supposed  
6 to do, and doesn't specifically -- doesn't specifically  
7 testify to the veracity of the victim, which is what he  
8 always does anyway, you know, generally his testimony  
9 is admissible. But if he goes beyond the scope and  
10 tries to testify to whether or not something happened,  
11 or whether or not she made it up, or whether or not any  
12 of those things occurred, I'm going to stop him. You  
13 know that? Okay?

14 MR. KALTER: Yes.

15 THE COURT: But he certainly -- as long as he's  
16 not testifying to the ultimate issue, he can certainly  
17 testify to his factors, and to -- well, this is a  
18 factor that you should consider, and this is a factor  
19 that -- because she said this, this, and this. But  
20 it's not for him to determine whether or not that  
21 that -- you know? And certainly -- and he knows. I  
22 mean, how many times has he testified in the courts of  
23 the State of Nevada? I mean, it's pretty clear he's  
24 limited to that.

1 MR. KALTER: Understood.

2 THE COURT: You know? So, he's limited to his  
3 review of the evidence. He can comment on the evidence  
4 as it relates to his factors and those kinds of things  
5 in relation to that, but he can't testify to  
6 truthfulness or untruthfulness of any of the  
7 statements, nor to the ultimate issue whether or not it  
8 happened. Okay? All right.

9 So, in relation to that, I don't even really  
10 need to read your opposition because you're right  
11 because he can testify.

12 MR. KALTER: Thank you.

13 THE COURT: Okay? I means, and -- but he is  
14 limited based upon the law. And you know what the law  
15 is. Okay? So, limit his testimony appropriately.  
16 Okay?

17 And the Court will note that, you know,  
18 Dr. O'Donohue has previously testified, and he clearly  
19 falls within the hallmark standards. And he can talk  
20 to those factors and stuff as long as he doesn't exceed  
21 his, you know, purview. Okay?

22 All right. So, is there any other motions that  
23 I missed? I think that was all of them, right?

24 MR. MERRILL: I think that was all of them.

1 But we do --

2 THE COURT: The only one that I have  
3 outstanding would be the motion for the text messages.  
4 Which, to be honest with you, I don't see much of an  
5 objection to that, but you can certainly review the  
6 motion.

7 MS. SCHUMANN: Right. Thank you, Your Honor.

8 THE COURT: Do what you need. Because it was a  
9 text from him. She authenticated them.

10 MS. SCHUMANN: I'll take a look at the motion  
11 and --

12 THE COURT: Yeah.

13 MS. SCHUMANN: -- we might not file an  
14 opposition.

15 THE COURT: So, well, I mean, just  
16 preliminarily. But I'm going to give you every  
17 opportunity to reply.

18 MS. SCHUMANN: Thank you.

19 THE COURT: To respond to it.

20 MR. MERRILL: So --

21 THE COURT: So, the only thing that's really  
22 outstanding is the confession to the officers, right?

23 MS. SCHUMANN: Right.

24 MR. MERRILL: Right.

1 THE COURT: So --

2 MR. MERRILL: Well, Judge, so, Count II, the  
3 timeline there says the 1st day of July 2019 to the  
4 11th day of July 2019.

5 THE COURT: To the what?

6 MR. MERRILL: To the 11th day of July 2019.

7 THE COURT: Okay.

8 MR. MERRILL: The testimony today from her was  
9 it was the 14th of July. So --

10 THE COURT: Well, she testified that was the  
11 last day it happened.

12 MR. MERRILL: Right.

13 THE COURT: Okay.

14 MR. MERRILL: That's when the text messages  
15 happened and everything on July 14th. So, just based  
16 on that and that testimony there, the State's going to  
17 make a motion to amend the Count II to July 14th.  
18 July 1st, 2019, to July 14th of 2019.

19 THE COURT: Okay. All right.

20 Well, that one you need to file a written  
21 motion on to give them an opportunity to respond.

22 MR. MERRILL: Okay.

23 THE COURT: You know, I mean, if it was always  
24 indicating, even at the time of the preliminary

1 hearing, that this was the last time it happened, then  
2 chances are the amendment will be allowed because  
3 there's plenty of notice.

4 MR. MERRILL: Well, I believe on the criminal  
5 complaint, the original one, the amended, the original  
6 was listed as July -- went through July 14th. And then  
7 that was amended to July 11th in the prelim based off  
8 of we didn't have HS testify in the prelim. I can  
9 double-check the complaint.

10 MS. SCHUMANN: We just admitted the forensic  
11 interview, right?

12 MR. MERRILL: Yeah.

13 MS. SCHUMANN: Okay.

14 MR. MERRILL: Yeah, we went off of  
15 Jennifer McCann. So, HS didn't testify.  
16 Jennifer McCann came in and testified.

17 THE COURT: Right. She said the last time it  
18 happened was the day of the --

19 MR. MERRILL: Which would be July 14th.

20 THE COURT: Right. So, how did you get July  
21 11th?

22 MR. MERRILL: Well, because I think  
23 Jennifer McCann, she must have got it a day off. I  
24 don't know. I remember what the testimony was. We can



1 review the preliminary trans.

2 THE COURT: So, the question I'm going to have  
3 is it -- was it always the last day that this happened,  
4 the day of the disclosure? I mean, and if it was, then  
5 that would be a fair amendment. So, you know, it would  
6 be, and it's an amendment. So, it would likely be a  
7 fair amendment. But I'm going to give you guys an  
8 opportunity to respond. You know?

9 MR. MERRILL: We'll file a motion this week.

10 THE COURT: Since the phone just showed up with  
11 the text on it that had the actual date.

12 MR. KALTER: Miracle.

13 THE COURT: What?

14 MR. KALTER: Miracle.

15 THE COURT: That had the actual date on it.  
16 The text message with the actual date of the  
17 disclosure. Okay. All right.

18 But chances are it's going to be a fair  
19 amendment. So, you know, I mean, especially if her  
20 testimony was the last time it happened was the day I  
21 reported it. You know, that was given to -- that it  
22 was based on. So, and it's just a date. So, to extend  
23 the date it's not going to be an issue.

24 MR. KALTER: Well, we may not even oppose it.

1 We just have to see.

2 THE COURT: Right. So, I think generally --  
3 like I said, under those circumstances it would be a  
4 fair amendment. Especially since now the date of the  
5 disclosure is more clear -- how is that? -- as opposed  
6 to a guess sometime in July. Okay?

7 All right. So, anything else?

8 MR. KALTER: No.

9 MR. MERRILL: Thank you, Judge.

10 THE COURT: All right. Pretrial, are we  
11 confirmed to go trial? I'm going to call a jury.

12 MR. KALTER: So, we are ready to go to trial.  
13 There has been a development. We were set for a  
14 co-defendant murder trial in Washoe County scheduled  
15 for October 12th through --

16 MS. SCHUMANN: Two weeks.

17 MR. KALTER: -- for two weeks. So, then they  
18 came up with this flight thing where they're going  
19 to -- they basically vacated our trial on the 12th, and  
20 moved it to the 19th. Both my client and the  
21 co-defendant have filed a motion to continue. Because  
22 the way they are conducting this trial is basically  
23 you're in a phone booth with Plexiglass between  
24 yourself and your client, and the only way you can

1 communicate with your client is with cell phones. It's  
2 insanity. They're putting Plexiglass between each --

3 THE COURT: I heard a little bit about --

4 MR. KALTER: So, they --

5 THE COURT: -- the COVID court in Washoe  
6 County. So...

7 MR. KALTER: So, they held their first trial  
8 under these protocols last week, and it was a basic  
9 drug possession, one attorney, one defendant, and --  
10 but they are not setup for a two co-defendant, first  
11 degree murder trial with four attorneys. There's not  
12 even room. They don't have enough little phone booths.  
13 And so, I just want to be -- this just happened.

14 So, I have a status with Judge Drakulich  
15 Thursday in which both myself and co-counsel for the  
16 co-defendant are asking the Court to push it out to  
17 next year. Because I just don't know how you can try a  
18 co-defendant murder trial under these conditions. And  
19 so, I assume she's going to grant it. My concern is  
20 that --

21 THE COURT: Well, why don't you tell her I was  
22 set first?

23 MR. KALTER: Because you weren't. Well, you --

24 THE COURT: I was. You were set for October

1 12th, and she just moved it to my date. I was set  
2 first.

3 MR. KALTER: Right. I think it's going to -- I  
4 think it's going to get moved. Because what they're  
5 doing is, they're giving priority to cases set in this  
6 flight. So, it's first goes to in custody who is  
7 invoked, and then out of custody who has invoked. Then  
8 in custody who waived, et cetera.

9 The co-defendant invoked time. This was  
10 originally scheduled to go to trial in April. But he  
11 now, two weeks before -- you know, a month before  
12 trial, he finally has waived. So, now we really don't  
13 take that priority of that top slot. So, they can fill  
14 that trial with some other trial. It's crazy. But  
15 I --

16 THE COURT: All right.

17 MR. KALTER: And I did let Mr. Merrill know  
18 about this last week. I doubt it -- I think it's going  
19 to be a non-issue. I think we're going to get it  
20 pushed to next year.

21 THE COURT: Well, you can tell Judge Drakulich  
22 that this matter has been set for these dates since  
23 June 12.

24 MR. KALTER: Correct.

1 THE COURT: After your initial request to  
2 continue.

3 MR. KALTER: This is all on Washoe. I agree.

4 THE COURT: No, no, no.

5 MR. KALTER: I mean, it's --

6 THE COURT: But you can tell Judge Drakulich  
7 that this case is set there and your client in the  
8 other case, that you can just let her know that this  
9 case was set on -- in June, and my amended trial  
10 scheduling order was issued June 18th.

11 MR. KALTER: I intend to tell her on Thursday  
12 that now that they have changed, they're interfering in  
13 a case that -- a Category A felony case that was  
14 previously set before they made the move to  
15 October 19th.

16 THE COURT: Okay. So, before they made the  
17 move to October 19th. Okay. This trial is scheduled  
18 to go November 3rd.

19 MR. KALTER: Right. So, originally we were set  
20 for October 12th. Then Mr. Bernal hired us, and we  
21 scheduled this for November with you. The date it's  
22 set now.

23 THE COURT: Right.

24 MR. KALTER: And we would have had no issue

1 with calendaring. And then they came out with this new  
2 administrative order last week --

3 THE COURT: Right.

4 MR. KALTER: -- following it to the 19th. And  
5 the way they're trying this case, it's going to be a  
6 month long case. So --

7 THE COURT: So, when is this cattle call in  
8 Washoe County?

9 MR. KALTER: When is what?

10 THE COURT: Your meeting with the judge.

11 MR. KALTER: We have a -- we have a status  
12 hearing Monday -- Thursday of this week.

13 THE COURT: Okay. So, on the 1st you have a  
14 status hearing?

15 MR. KALTER: Correct.

16 THE COURT: Okay. All right. So --

17 MR. KALTER: I think she's going to move it.  
18 The whole issue was this co-defendant not waiving time.  
19 Now that he's waived time, that gives her the ability  
20 to continue it.

21 THE COURT: Okay. So, I'll hold off until  
22 October 5th to call the jury.

23 MR. KALTER: Thank you.

24 THE COURT: Okay? But notify -- if you want to

1 get on a quick phone conference with me you can.

2 MR. KALTER: Yeah. Or we can -- we can let  
3 your clerk know.

4 THE COURT: Yeah. But then you'd have to -- we  
5 can get on a phone conference first.

6 MR. KALTER: Or I can just say it's a non-issue  
7 with the --

8 THE COURT: Right. Yeah, you can e-mail us and  
9 say it's a non-issue.

10 MR. KALTER: Okay.

11 THE COURT: That they continued it.

12 MR. KALTER: Certainly if that's the case,  
13 Thursday we'll let you know right away so you can pull  
14 the jury.

15 THE COURT: All right. So, but otherwise  
16 you're ready to go?

17 MR. KALTER: Yeah, we're ready.

18 THE COURT: Okay. All right. So, that being  
19 said, trial is confirmed pending your discovery of  
20 whatever happens in the phone booth COVID courtroom in  
21 Washoe County as indicated by counsel.

22 MR. KALTER: It's open to the public. You  
23 should click it and watch one in progress and see  
24 what's happening.

1 MS. SCHUMANN: And he breaks at 2:30 every day  
2 for cleaning.

3 THE COURT: All right. So --

4 MR. KALTER: And we're only allowed to talk to  
5 our in custody client with a cell phone provided to us  
6 by the sheriff's department, and they have one. How --  
7 that's insane.

8 THE COURT: Mr. Kalter, you're not going to get  
9 this Court to comment on what they do in Washoe County.

10 MR. KALTER: Understood.

11 THE COURT: Because Washoe County is a  
12 different place than Lyon County.

13 MR. KALTER: That's a comment.

14 THE COURT: That's all I'm saying. It's my  
15 sole comment. We go to trial here. We conduct it as  
16 much as we could regularly as possible with still  
17 continuing to make sure that we follow the protections  
18 that are necessary to guarantee people's health. Okay?

19 MR. KALTER: Uh-hum.

20 THE COURT: All right. So, and if they feel  
21 those protections in Washoe County are necessary, then  
22 they need to take those protection. That's all I can  
23 say.

24 All right. So, all right. So, get to me



1 before the end of the week to let me know what's going  
2 on. If we need to have a quick hearing on Monday, we  
3 will.

4 MR. KALTER: Okay.

5 THE COURT: All right. Because I can always  
6 fit it in on a phone conference or Zoom or something.  
7 All right.

8 MR. KALTER: Thank you.

9 THE COURT: All right. Then otherwise, we're  
10 confirmed to go. Everybody knows to file -- get your  
11 jury instructions as instructed. I'll get my jury  
12 instructions out to you about a week prior to your  
13 required submissions. I forget what date that is. But  
14 about a week before you're required submissions I'll  
15 get you my stock instructions. All right? And then  
16 we'll go from there.

17 Fix any tech issues. I don't know what's going  
18 on. I have no idea what's going on. We've never had  
19 that problem with something fed directly into the JAVS  
20 before. I've never had that problem with something  
21 directly fed into --

22 MR. MERRILL: Well, this is the same computer  
23 we used on that last trial. So...

24 THE COURT: I've never had that issue where I

1 got that stuff. So, all right.

2 MR. MERRILL: Thank you.

3 THE COURT: All right. Thank you.

4 Court's in recess.

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(End of Proceedings.)

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CERTIFICATE

STATE OF NEVADA            )  
                                  ) SS.  
CARSON CITY                )

I, Kathy Terhune, CCR 209, do hereby certify  
that I reported the foregoing proceedings; that the  
same is true and correct as reflected by my original  
machine shorthand notes taken at said time and place  
before the Honorable John P. Schlegelmilch, District  
Judge, presiding.

Dated at Carson City, Nevada, this  
9th day of October, 2020.

*Kathy Terhune*

CCR #209

FILED

2020 OCT -8 PM 1:17

Case No. 20-CR-00099

Dept. No. 1

The undersigned affirms that this document  
does not contain the social security number  
of any individual.

TANYA SCHUBINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Hindsey McCall*  
DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\*\*\*

THE STATE OF NEVADA,

Plaintiff,

vs.

ORDER AFTER HEARING

THOMAS JASON BERNAL,  
Defendant.

This matter came before the Court on September 28, 2020, for a Pre-Trial Hearing. At the hearing, the Defendant was present and represented by LeAnn Schumann, Esq. and Jesse Kalter, Esq. The State was represented by Deputy District Attorney, Matthew Merrill.

On June 1, 2020, the State filed a Motion to Admit Confession and Play Audio to Jury. The Defense filed an Opposition to State's Motion to Admit Confession and Pay Audio to Jury on September 8, 2020. At the hearing on September 28, 2020, the Parties stipulated to allow the Court to review the interview conducted between the Defendant, Thomas Jason Bernal, Detective Michael Messmann, and Detective Marty Dues. The Court took the matter under submission to determine if the interrogation was custodial, and if so, whether a *Miranda* warning needed to be read prior to the Defendant's admission to be admissible at trial.

1 After reviewing the pleadings and papers on file, the motions, and the Audio of the Interview  
2 between law enforcement and the Defendant, Thomas Jason Bernal, the Court finds as follows:

3 A custodial interrogation requires the Defendant to be in custody. "Custody" for the purposes of  
4 the Fifth Amendment and *Miranda* "means a formal arrest or restraint on freedom of movement of the  
5 degree associated with a formal arrest." *Rosky v. State*, 111 P.3d 690 (2005), 121 Nev. 184 at 191. "To  
6 determine if a custodial interrogation has taken place, a court must consider the totality of the  
7 circumstances, including the site of the interrogation, whether the objective indicia of an arrest are  
8 present, and the length and form of questions." *State v. Taylor*, 968 P.2d 315, 323 (1998), 114 Nev.  
9 1071, 1081-82. In Nevada, to determine whether a person is under arrest, the Court is asked to consider  
10 whether the suspect was told that the questioning was voluntary or that he was free to leave; whether  
11 the suspect was not formally under arrest; whether the suspect could move about freely during  
12 questioning; whether the suspect voluntarily responded to questions; whether the atmosphere of  
13 questioning was police-dominated; whether the police used strong-arm tactics or deception during  
14 questions; and whether the police arrested the suspect at the termination of questioning. *Id.*

15 Here, the Defense argued that the law enforcement officers outrightly denied the Defendant the  
16 opportunity to smoke a cigarette two hour into the interview. After reviewing the interview audio and  
17 video clips provided by the State, stipulated into admission for the purposes of this Order on September  
18 28, 2020 (Plaintiff's Exhibit 1), this Court finds that the law enforcement officers told the Defendant at  
19 the onset of the interview that it was voluntary, and that he was free to leave at any time. That the  
20 Defendant was not under arrest at the time of the interview and was able to freely move around during  
21 questioning, as evidenced by the multiple bathroom breaks the Defendant took. That the atmosphere of  
22 questions was conversational and not dominated by police, that no strong-arm tactic or deception during  
23 questions was conversational and not dominated by police, that no strong-arm tactic or deception during  
24 questions was conversational and not dominated by police, that no strong-arm tactic or deception during  
25 questions was conversational and not dominated by police, that no strong-arm tactic or deception during  
26 questions was conversational and not dominated by police, that no strong-arm tactic or deception during  
27 questions was conversational and not dominated by police, that no strong-arm tactic or deception during  
28 questions was conversational and not dominated by police, that no strong-arm tactic or deception during

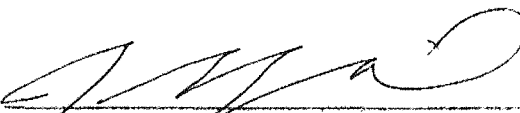
1 questioning was used; and that though there was an arrest made at the end of the interview, that was  
2 after Defendant's voluntary confession.

3 Further, the specific exchange at issue consisted of a conversation between law enforcement  
4 officers and the Defendant in which the Defendant stated that, "I really need a cigarette, I've been in  
5 here a while," to which one of the detectives replied, "Well it's not going to take very long, so."  
6 (Plaintiff's Exhibit 1, 19LYO32331, Thomas Jason Bernal Interview at 2:02:36). The Defendant further  
7 replied with, "I know." The detectives then resumed their questioning and the Parties discussed  
8 speeding. Given that this scenario does not indicate that the officers had indicated that the Defendant  
9 could not explicitly leave the interview and did not tell the Defendant "no", this Court finds that the  
10 interview was not a custodial interrogation for the purposes of *Miranda*. As such, this Court finds that  
11 the interview in which the Defendant made admissions to law enforcement are admissible at trial.  
12

13  
14 Therefore, good cause appearing;

15 **IT IS HEREBY ORDERED** that the Motion to Admit Confession and Play Audio to Jury is  
16 granted.  
17

18 DATED this 8th day of October, 2020.

19  
20   
21 Hon. John P. Schlegelmilch,  
22 DISTRICT JUDGE  
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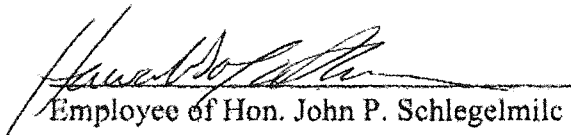
CERTIFICATE OF SERVICE

I hereby certify that I, Hawah Ahmad, am an employee of the Honorable John P. Schlegelmilch, District Judge, and that on this date pursuant to NRCP 5(b), I mailed at Yerington, Nevada, a true copy of the foregoing document addressed to:

LeAnn Schumann, Esq.  
Jesse Kalter, Esq.  
1150 Selmi Dr, #505  
Reno, NV 89512

Matthew Merrill  
Lyon County District Attorney's Office  
*Deposited in TJDC mailbox.*

DATED: This 8th day of October, 2020.

  
Employee of Hon. John P. Schlegelmilch

FILED

2020 OCT 26 AM 8:41

JANYA SCIRONE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Janya Scirone*

1 Case No. 20-CR-00099  
2 Dept No. I  
3 TCN: NVLYSO2004688C  
4  
5

6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF LYON  
8

9 THE STATE OF NEVADA,  
10 Plaintiff,  
11 vs.  
12 THOMAS JASON BERNAL,  
13 Defendant.  
14

AMENDED INFORMATION

15 STEPHEN B. RYE, District Attorney within and for the County of Lyon, State of  
16 Nevada, in the name and by the authority of the State of Nevada, informs the above-entitled  
17 Court that THOMAS JASON BERNAL, the Defendant above named, has committed the  
18 offense of

19 COUNT I

20 SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 16 YEARS, NOT CAUSING  
21 SUBSTANTIAL BODILY HARM, a CATEGORY A FELONY, in violation of NRS  
22 200.366(3)(b), in the following manner:

23 That the said Defendant on or between the 1<sup>st</sup> day of August, 2018 to the 30<sup>th</sup> day of  
24 June, 2019, at and within the County of Lyon, State of Nevada, did willfully and unlawfully  
25 subject another person who is under the age of sixteen (16) years to sexual intercourse  
26 and/or fellatio and/or other sexual penetration against her will or under conditions in which the  
27 perpetrator knew or should have known that the victim is mentally or physically incapable of  
28



1 resisting or understanding the nature of the conduct, to-wit: Defendant digitally penetrated  
2 the vagina of a known but unnamed juvenile H.S. (dob: 07/20/2004), all of which occurred at  
3 or near 610 US Highway 95 Alternate, Yerington, Nevada.

4 **COUNT II**

5 **SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 16 YEARS, NOT CAUSING**  
6 **SUBSTANTIAL BODILY HARM, a CATEGORY A FELONY, in violation of NRS**  
7 **200.366(3)(b), in the following manner:**

8 That the said Defendant on or between the 1<sup>st</sup> day of July, 2019 to the 14<sup>th</sup> day of July,  
9 2019, at and within the County of Lyon, State of Nevada, did willfully and unlawfully subject  
10 another person who is under the age of sixteen (16) years to sexual intercourse and/or fellatio  
11 and/or other sexual penetration against her will or under conditions in which the perpetrator  
12 knew or should have known that the victim is mentally or physically incapable of resisting or  
13 understanding the nature of the conduct, to-wit: Defendant digitally penetrated the vagina of  
14 a known but unnamed juvenile H.S. (dob: 07/20/2004), all of which occurred at or near 610  
15 US Highway 95 Alternate, Yerington, Nevada.

16 **COUNT III**

17 **SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 16 YEARS, NOT CAUSING**  
18 **SUBSTANTIAL BODILY HARM, a CATEGORY A FELONY, in violation of NRS**  
19 **200.366(3)(b), in the following manner:**

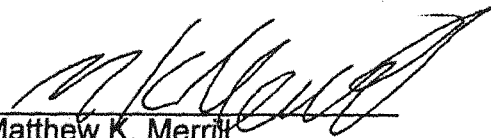
20 That the said Defendant on or between the 1<sup>st</sup> day of December, 2018 to the 28<sup>th</sup> day  
21 of February, 2019, at and within the County of Lyon, State of Nevada, did willfully and  
22 unlawfully subject another person who is under the age of sixteen (16) years to sexual  
23 intercourse and/or fellatio and/or other sexual penetration against her will or under conditions  
24 in which the perpetrator knew or should have known that the victim is mentally or physically  
25 incapable of resisting or understanding the nature of the conduct, to-wit: Defendant digitally  
26 penetrated the vagina of a known but unnamed juvenile H.S. (dob: 07/20/2004) while rubbing  
27 her legs, all of which occurred at or near 610 US Highway 95 Alternate, Yerington, Nevada.

1 All of which is contrary to the form, force and effect of the statute in such cases made  
2 and provided and against the peace and dignity of the State of Nevada.

3 Pursuant to NRS 239B.030, the undersigned hereby affirms that this document does  
4 not contain social security numbers.

5 DATED this 26 day of October, 2020.

6  
7 STEPHEN B. RYE  
Lyon County District Attorney

8  
9  
10 By:   
11 Matthew K. Merrill  
Deputy District Attorney

12 The witnesses known to the State at the time of the filing of this Information are as  
13 follows:

14  
15 Detective Marty Dues 911 Harvey Way  
Yerington, NV 89447

16  
17 Detective Michael Messman 911 Harvey Way  
Yerington, NV 89447

18  
19 Deputy Nicholas Greenhut 911 Harvey  
Yerington, NV 89447

20  
21 Dr. Melissa Piasecki 401 West 2nd Street #215  
Reno, NV 89503

22  
23 Katie Sabado 40 Sunny Grove Drive  
Yerington, NV 89447

24  
25 Charles Sabado 40 Sunny Grove Dr  
Yerington, NV 89447

26  
27 Jennifer Mccann Washoe County Child Advocacy Center, 2097 Longley  
Lane  
28 Reno, NV 89502

Office of the District Attorney

Lyon County - Nevada

801 Overland Loop, Suite 308, Dayton, Nevada 89403 • 31 South Main Street, Yerington, Nevada 89447 • 565 East Main Street, Fernley, Nevada 89408

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Owen Smith

504 Fairview Street  
Yerington, NV 89447

H.S.

504 Fairview Street  
Yerington, NV 89447

Patricia Bernal

504 Fairview Street  
Yerington, NV 89447

1 Case No. 20-CR-00099

2 Department I

3

4

5

IN THE THIRD JUDICIAL DISTRICT COURT

6

IN AND FOR THE COUNTY OF LYON, STATE OF NEVADA

7

BEFORE THE HONORABLE LEON ABERASTURI

8

DISTRICT JUDGE, PRESIDING

9

10 THE STATE OF NEVADA, )

11 Plaintiff, )

12 vs. )

13 THOMAS JASON BERNAL, )

14 Defendant. )

15 \_\_\_\_\_ )

16

TRANSCRIPT OF PROCEEDINGS

17

MOTIONS HEARING

18

THURSDAY, OCTOBER 22, 2020

19

YERINGTON, NEVADA

20

21

22

23

24

Reported by:

Shellie Loomis, RPR  
Nevada CCR #228

1 APPEARANCES:

2

3 For the State: Matthew Merrill  
4 Deputy District Attorney  
Yerington, Nevada

5 For the Defendant: Jesse Kalter Law  
6 By: LeAnn Schumann, Esq.  
Reno, Nevada

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1 YERINGTON, NEVADA, THURSDAY, OCTOBER 22, 2020, A.M. SESSION

2 -oOo-

3  
4 THE COURT: All right. Everybody there?

5 MS. SCHUMANN: Yes, Judge.

6 MR. MERRILL: Yes, Judge.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Just as long as can you  
9 hear me, okay. So this the time set in 20-CR-00099, State of  
10 Nevada, versus Bernal.

11 It's the time set -- or I set this time for  
12 motions' hearing because of the amount of motions that were  
13 actually filed in this particular matter. And some of them  
14 which needed to be dealt with on a timely basis.

15 Okay. So first we have the motion to leave the  
16 file of Amended Information. Okay. The Court received a  
17 motion and there was a reply or a part opposition to the  
18 motion in relation to dates on Count II of the Information.

19 Okay. So, anything you want to add, Mr. Merrill?

20 MR. MERRILL: Your Honor, just briefly. It's a  
21 notice requirement. When we spoke to Haley last -- I'll put  
22 on of the last hearing, she said it was the 14th.

23 However, there were -- there was a prior, I  
24 believe the interview she had with the child advocacy center,

1 she said it was the day before was the last time.

2 And so I believe we're all talking about the same  
3 incident, however I would like to expand it just how I have it  
4 and how it's proposed. Beyond any other argument, Judge, I'll  
5 leave it to the motion there.

6 THE COURT: Okay. Miss Schumann?

7 MS. SCHUMANN: Yes, Your Honor. Well, we just  
8 want to limit it to what she testified under oath at the  
9 motion hearing which was July 14th.

10 THE COURT: Okay. Well, the Court finds that  
11 it's not a material element of the offense, that the case law  
12 supports that, that it's not a material element of the  
13 offense.

14 The purpose is to provide notice to the other  
15 parties, so whether it says on or about July 14th, or on or  
16 between July 1st and July 14th has no material effect on the  
17 charge itself.

18 It's the last time she claims it happened,  
19 therefore, there's sufficient notice under the Amended  
20 Information to the Defendant and the Amended Information is  
21 approved.

22 So, you're granted leave to file the Amended  
23 Information.

24 MR. MERRILL: Thanks, Judge. Do you want us to

1 submit a new copy, or does the Court just want to file what we  
2 attached as an Exhibit, I believe?

3 THE COURT: Well, was it signed?

4 MR. MERRILL: No, good point. Thanks. I will  
5 file a signed copy.

6 THE COURT: I would think you would have to.

7 MR. MERRILL: I agree.

8 THE COURT: You just asked this Court for  
9 permission to file.

10 MR. MERRILL: Yeah.

11 THE COURT: So, yes, you can file.

12 MR. MERRILL: Okay. Thank you.

13 THE COURT: All right. So, we have the motion to  
14 admit text messages, okay. So, I guess I don't even  
15 understand quite why this was even filed.

16 So, go ahead, Mr. Merrill.

17 MR. MERRILL: Well, Judge, we heard evidence  
18 last -- at the last hearing, and I was hoping just to avoid,  
19 you know, having to do it at trial.

20 However, I certainly understand you know the what  
21 the court's position is or what defense position is, so I'll  
22 attempt to authenticate it at the trial in the same manner  
23 that I did during the motions's hearing. So --

24 THE COURT: Well, I think you authenticated that



1 sufficiently, but the text messages were between him and her.  
2 I mean, I don't think that that's a problem.

3 I guess I'm not quite sure -- I mean, the  
4 evidence just is he asked her to come home by text message and  
5 then she had a conversation with him about the allegations.

6 MR. MERRILL: Right.

7 THE COURT: And the he made some admissions to  
8 her in relation to those allegations.

9 So, I mean, it does put a time context on it, so  
10 it's relevant to what happened. So, I mean, but I guess I  
11 just don't -- it's just ordinary evidence. It's just ordinary  
12 evidence of what transpired up to the time that Mr. Bernal  
13 made his admissions or partial admissions, whatever you want  
14 to call them, the conversation with her.

15 So, be that as it may, I don't think there's much  
16 an objection.

17 Miss Schumann, go ahead.

18 MS. SCHUMANN: Well, Your Honor, we just thought  
19 that it was premature. If he offers it and authenticates it  
20 during trial, then it might be an objection.

21 THE COURT: Well, I mean, the thing is, you know,  
22 I'm not going to -- all right, so this is the thing. If it's  
23 likely admissible in trial, then he can use it in opening  
24 statement.

1           So it seems to me that it's likely to be  
2       admissible at trial so he can use it in opening statement.

3           MS. SCHUMANN: I understand.

4           THE COURT: That detects the prior, but you know,  
5       whether or not it actually gets admitted, you have to do what  
6       you have to do. You can have her testify yes, it's her  
7       number. Yes, I always got text messages from that number from  
8       him. Yes, he did ask me to come home to have a discussion  
9       with him and that was on July 14th or whatever.

10          MR. MERRILL: Right.

11          THE COURT: -- or whatever day it was, you know,  
12       and so I mean, you went through that with me at the hearing,  
13       all right. He asked her to come home, I have to talk to you  
14       about something.

15          MR. MERRILL: Right.

16          THE COURT: It's just ordinary evidence. So if  
17       you're --

18          MR. MERRILL: -- right.

19          THE COURT: -- to be able to use -- if you're  
20       asking to be able to use it during opening statement, you can  
21       use it because it's likely admissible. Likely.

22          MR. MERRILL: Yeah, I, you know, looking back it  
23       was probably premature, I appreciate it and we'll go through  
24       the normal steps at trial.

1 THE COURT: I mean, but that's all can you ask me  
2 if whether you can use it during opening statement, otherwise  
3 you're still bound to authenticate it and do everything you  
4 need to do during trial.

5 MR. MERRILL: Understand.

6 THE COURT: Okay. All right. The motion to  
7 exclude or limit the expert Dr. O'Donohue. Okay.

8 MR. MERRILL: Your Honor, I think we discussed at  
9 the hearing, the motions' hearing already --

10 THE COURT: We did discuss it, but they filed an  
11 opposition. So, I think Miss Schumann needs to have an  
12 opportunity to fully be able to respond to your motion, so go  
13 ahead.

14 MS. SCHUMANN: Your Honor, we're prepared to  
15 submit the issue based upon our opposition.

16 THE COURT: Okay. So, you know, the fact of the  
17 matter is Dr. O'Donohue can testify as long as he doesn't go  
18 into truthfulness and credibility and those issues.

19 But he could talk about perceived inconsistencies  
20 and statements made. He can talk about the forensics  
21 interview itself and other things within his purview.

22 The problem that I may see with some of his  
23 testimony is he bases, or it seems to me bases a lot of his  
24 stuff on interviews with small children. And he has nothing

1 in his report that indicates really when you're dealing with  
2 teenagers.

3 So, I'm just going to point that out, but I do  
4 believe it's admissible and maybe he can -- and I'm sure he'll  
5 be able to explain that during the trial.

6 So, his testimony is admissible with the limits  
7 that are required, you know, required of expert testimony and  
8 the fact of the matter is if he says make the objectionable,  
9 make he objection, Mr. Merrill, and you know, we'll go from  
10 there and I'll make a ruling on it.

11 But he certainly fits hallmark. He has the  
12 credentials. He's done this for a long time, you know, I mean  
13 he's -- this is not the first time he's testified in district  
14 courts throughout the state, including my court.

15 So, you know, he has what's necessary in order to  
16 testify, especially in relation to how to conduct a forensic  
17 interview. But, you know, many things he talks about, you  
18 know, I'm sure he'll go through some of that, the differences,  
19 et cetera. Okay.

20 All right. So, he can testify. Now, let's talk  
21 about whether or not he can testify by Zoom.

22 THE COURT: So you filed a motion for him to  
23 appear by communications equipment, Miss Schumann?

24 MS. SCHUMANN: Yes, Your Honor.

1 THE COURT: Okay. So, okay. So, why?

2 MS. SCHUMANN: Your Honor, as with a party motion  
3 this virus to catch COVID-19 when he does have preexisting  
4 condition. So, based upon that, he's --

5 THE COURT: So, say that again. You came in  
6 garbled.

7 MS. SCHUMANN: Sorry, Your Honor. So, Your  
8 Honor, as we put in our motion, Dr. O'Donohue has preexisting  
9 condition that make him high risk to contract COVID-19.

10 So because of that, he is only testimony via  
11 Zoom. He's not in appearing in person in any courtrooms on  
12 any cases. So based on that, that's why we filed a motion.

13 THE COURT: Okay. So, but what you didn't tell  
14 me is what that was?

15 MS. SCHUMANN: What the preexisting condition  
16 was?

17 THE COURT: Yeah. What is it?

18 MS. SCHUMANN: I mean, I guess I can ask him to  
19 disclose that.

20 THE COURT: I mean -- all right, so I'm supposed  
21 to make a determination that it's in the public's interest,  
22 okay. So, you know, especially, you know, in a criminal jury  
23 trial, all though, you know, I mean, I think the general  
24 policy is to, is to lean on the side of allowing witnesses to

1 appear by simultaneous audio-visual transmission, but I have  
2 to make a case specific finding that the denial of physical  
3 confrontation is necessary to further an important public  
4 policy.

5 So, now, I think it's an important public policy  
6 in and of itself to limit exposure to COVID, but that's why we  
7 have the things in the courtroom that we previously discussed  
8 about, to try to limit that as best as possible.

9 So, I mean, are you contesting the fact --  
10 because your opposition just said, "I just oppose it". I  
11 mean, that didn't help me either, Mr. Merrill.

12 MR. MERRILL: I mean, Your Honor, my opposition  
13 is not -- I don't have a strong opposition. I believe the  
14 jury deserves to have witnesses in person where they can judge  
15 them face to face.

16 But really, I'm submitting it to the Court. My  
17 opposition is not a strong one. I think you'll make the best  
18 decision as far as that goes.

19 I realize that COVID is, there's some people that  
20 have problems, perhaps Dr. O'Donohue has previous conditions.  
21 I certainly understand that. I don't want to bounce this  
22 before the jury --

23 THE COURT: Yeah, all right. So I don't know  
24 whether he does or not because he didn't file an affidavit

1 saying he did.

2 So, but -- but this is, you know, regardless of  
3 what that is, all right, but I do understand that he is  
4 relatively elderly. And so being elderly, you're at a greater  
5 risk to start with.

6 So, in light of what I'm hearing, I'm going to  
7 allow it. Okay. He can testify by Zoom and just make sure  
8 it's all set up and when you're ready to call him as a  
9 witness, we can get right to him, okay, Miss Schumann?

10 MS. SCHUMANN: Yes, Your Honor.

11 THE COURT: Because I don't want these big delays  
12 in, you know, getting him to testify.

13 So, and I'll also make a finding, all right, so  
14 I'll make a finding in this particular -- for this witness  
15 that in relation to this matter, that his testimony is  
16 important to the defense, that the denial of actual physical  
17 confrontation in this particular matter furthers an important  
18 public policy because the testimony relates to expert opinions  
19 on the forensic interview, but also because of the potential  
20 spread of COVID-19. We don't want elderly folks getting sick  
21 because they're at a higher risk of death as a result of  
22 catching COVID.

23 It's been indicated that there -- that there is  
24 some kind of prior or existing medical condition, preexisting

1 medical condition where he may be at even greater risk than  
2 just a regular individual.

3 It seems to me that the reliability would be  
4 assured. We'll swear him in over the Zoom. He will be  
5 present on the Zoom so people can see his demeanor and  
6 everything else.

7 So, the Court is going to allow his appearance,  
8 his personal appearance by way of audio-visual transmission.  
9 But just make sure it's set up and he's ready to go when you  
10 call him.

11 MS. SCHUMANN: Understood, Your Honor.

12 THE COURT: Okay. All right. So, criminal  
13 histories. Okay, go ahead, Miss Schumann.

14 MS. SCHUMANN: Your Honor, we're prepared to  
15 submit it based upon the motion and our reply.

16 THE COURT: Mr. Merrill, then anything you want  
17 to tell me?

18 MR. MERRILL: Your Honor, in this case, I checked  
19 with Detective Messmann, they never ran a criminal history on  
20 the defendant. Our office never ran any criminal history on  
21 the defendants. They never ran any criminal histories on any  
22 of the witnesses at this point.

23 I have no evidence or even talked to any  
24 witnesses that have some sort of criminal history that could



1 be beneficial to the defendant at all. And so we don't -- we  
2 don't have any of that information.

3 I can understand perhaps if the court requests us  
4 to run the criminal of the history of the defendant, we can  
5 certainly do that and turn it over if the Court wishes, on the  
6 defendant or on the other witnesses, I don't believe there's  
7 any reason for to us run it.

8 THE COURT: Okay. So, as it relates to the  
9 Defendant himself, okay, I believe that that's a legitimate  
10 request, because the attorneys by way of the statute itself  
11 are allowed to request his criminal his history because they  
12 represent him directly.

13 So, you know, I believe that that's discoverable  
14 information, because he would have the ability to request his  
15 own.

16 MR. MERRILL: We will --

17 THE COURT: Okay.

18 MR. MERRILL: We will run it and turn it over to  
19 defense.

20 THE COURT: So, but as to relation to just  
21 running everybody's criminal history, it's denied. The State  
22 has no affirmative duty to run anybody's criminal history for  
23 the defense on a fishing expedition just to see if maybe  
24 somebody has some kind of history in their background. So,

1 that's denied.

2 And I would indicate that every piece of case law  
3 that I've ever seen in relation to criminal histories and the  
4 like, the State has to have possession of the evidence, and  
5 there's no affirmative duty to investigate in relation to a  
6 request like that.

7 So, given the Defendant's criminal history,  
8 they're entitled to it the way I read the statute.

9 MR. MERRILL: We'll run it this week and send it  
10 to LeAnn, or Miss Schumann.

11 MS. SCHUMANN: Sounds good.

12 THE COURT: Okay. So, then we have the two other  
13 witnesses that is requesting to be present by Zoom. Two lay  
14 witnesses. Okay. So we have Miss Nish and Mr. Leland.

15 So what's your position on those two other than I  
16 oppose it, Mr. Merrill?

17 MR. MERRILL: Your Honor, my opposition to these  
18 two are a little stronger than with Dr. O'Donohue. I didn't  
19 see any other allegations or anything that shows that they  
20 were a higher risk for COVID.

21 I believe one and maybe the other one, if I  
22 remember, just live out of state and that was the reason for  
23 the request via Zoom. Again, I think the jury deserves to see  
24 these people in person for confrontation purposes.

1 THE COURT: Okay, so --

2 MS. SCHUMANN: Your Honor, if I can add, I mean  
3 obviously we would want these witnesses to be here in person  
4 as well, I mean, if we had a choice. That would be the case,  
5 but one lives in New York and due to airline travel, it's  
6 difficult for him to get here.

7 The other one is in Las Vegas working full time  
8 and so it was nearly impossible for her to get the time off  
9 work. So based upon that, Your Honor, we assume the jurors  
10 can still see the facial expressions, they would still be  
11 subject to cross-examination so we did provide notice. The  
12 State hasn't really provided a valid opposition, so it should  
13 be granted.

14 THE COURT: All right. So this is the problem I  
15 have. So I looked at your witness list and you said you don't  
16 know where these people are located on your witness list.

17 MS. SCHUMANN: That's correct. We just actually  
18 -- the week that we filed our motion to appear via Zoom is  
19 when we received their contact information and I did provide  
20 phone numbers. That's all I had at the time.

21 THE COURT: All right. Well, aren't you under a  
22 continuing duty to notice? So in addition --

23 MS. SCHUMANN: -- yeah, I can update the list. I  
24 did provide their interviews to Mr. Merrill, and all that

1 information was on there, so --

2 THE COURT: Including their addresses?

3 MS. SCHUMANN: Yes. I believe, yes. But I will  
4 update my witness list.

5 MR. MERRILL: Your Honor, that is correct, we do  
6 -- Miss Schumann did send us the interviews and things and I  
7 believe we have their phone numbers.

8 THE COURT: Well --

9 MR. MERRILL: We may have their addresses too,  
10 Miss Schumann, I don't recall off hand.

11 MS. SCHUMANN: I'll update the witness list.

12 THE COURT: The phone numbers were on the witness  
13 list, so --

14 All right. So the Court will allow them to  
15 testify by Zoom too, but I'm telling you, Miss Schumann,  
16 especially for lay witnesses, you better have them in a place  
17 where they can come through without stalling, without, you  
18 know, because then I'm going to say they're going to be live,  
19 because I can stop it at any time and say they have to be  
20 here. Okay. Because --

21 MS. SCHUMANN: Understood, Your Honor.

22 THE COURT: All right. So, none of this I'm on  
23 my iPhone stuff testifying from a casino. Don't do it. You  
24 have to have it set up where they're in a good place, a

1 legitimate place to have them testify without any noise,  
2 without anybody in the background, without any of that.

3 I mean, it's one thing with Dr. O'Donohue from  
4 his office, okay. It's another thing -- I'm not going take  
5 iPhone testimony on the off chance that it will come in okay.

6 So, you need to set it up where they're in a  
7 place where they can testify appropriately over Zoom. Okay.

8 MS. SCHUMANN: Okay.

9 THE COURT: All right. So, we still -- there was  
10 a couple of things sent out on jury instructions. I mean, I  
11 usually deal with those at the pretrial.

12 So apparently, the Defendant filed today some  
13 oppositions to objections to the state's, but the State never  
14 filed their proposed instructions with the Court. So --

15 MR. MERRILL: Your Honor, I sent those over to  
16 your law clerk last week.

17 THE COURT: Okay. You may have.

18 MS. SCHUMANN: And I received a copy of those.

19 THE COURT: Oh, no, I saw it, I saw that one.  
20 Was that the only one?

21 MR. MERRILL: That was the only one we had, yes.

22 THE COURT: There's two.

23 MR. MERRILL: That was the Cunningham v. State,  
24 the timeliness of the material.

1 THE COURT: Okay. So there's -- the defense  
2 filed a couple to the court's stock instructions too, and  
3 so -- all right, or the defense has, rather. And the State  
4 filed an option to -- all right, so do you want me to deal  
5 with the ones that you have right now, your objections, and  
6 then we'll deal with the stock instructions at the time of --  
7 at the time of trial, or -- or at the time of the pretrial,  
8 rather?

9 MS. SCHUMANN: Has the Court received our reply  
10 in support of our proposed instruction?

11 THE COURT: Yep.

12 MS. SCHUMANN: Okay. Well, it's up to the Court.  
13 We're ready to go either way.

14 THE COURT: Oh, the reply in support of -- yeah,  
15 your instructions child victims of sexual assault are required  
16 to testify?

17 MS. SCHUMANN: Yes.

18 THE COURT: Yeah. Okay. So, in relation to  
19 that, that relates to upholding a conviction. So --

20 MS. SCHUMANN: Which one are you on, Your Honor?  
21 Are you on our proposed instructions?

22 THE COURT: Yeah, you proposed -- all right,  
23 so your --

24 MS. SCHUMANN: -- or --

1 THE COURT: -- the objection to your proposed  
2 instruction. I have your reply to the State's objection,  
3 that's what we were talking about; right?

4 MS. SCHUMANN: Right.

5 THE COURT: So the jury doesn't determine whether  
6 or not to uphold a conviction. The jury determines whether  
7 each count is proven beyond a reasonable doubt. One's an  
8 appellate standard. The other is an evidentiary standard.

9 So, I'm not asking a jury to uphold a conviction,  
10 there's no way.

11 MS. SCHUMANN: Well, we can say, to convict. I  
12 mean, we can change it and put to convict Mr. Bernal.

13 THE COURT: Well, I'm already instructing them  
14 each and every element has to be proven beyond a reasonable  
15 doubt.

16 MS. SCHUMANN: Right, but I mean, I feel the case  
17 law is clear that the victim does have to testify with some  
18 particularity.

19 I mean, so if you want to just limit it to that,  
20 and --

21 THE COURT: Well, all right. So, what do you  
22 mean by some particularity?

23 MS. SCHUMANN: Regarding -- it says some  
24 particularity regarding the incident.

1 THE COURT: Okay.

2 MS. SCHUMANN: That's in LaPierre at 531. So if  
3 you want to take out the end, we could say, some particularity  
4 regarding the incident.

5 THE COURT: No, but the victim has got to testify  
6 -- I'll say it right now. The victim has got to testify that  
7 she did you digitally penetrated between a certain -- in or  
8 about a certain amount of time by the Defendant.

9 MS. SCHUMANN: Right.

10 THE COURT: So, what is -- I don't -- that is  
11 beyond a reasonable doubt, not some particularity. So what  
12 you are saying is --

13 MS. SCHUMANN: No.

14 THE COURT: I should change the evidentiary basis  
15 for the evidence and say, you can just find it on some  
16 particularity versus beyond a reasonable doubt? I can't do  
17 that.

18 The State has to establish it beyond a reasonable  
19 doubt. She hasn't testified to it beyond a reasonable doubt.  
20 She has to affirmatively -- some particularity is not a legal  
21 standard.

22 MS. SCHUMANN: I'm looking through the case.

23 THE COURT: I mean, basically what they're saying  
24 is that in upholding the conviction, they're saying they have



1 to have -- they have to testify to it. And in that particular  
2 case, she never testified to one of the acts.

3 MS. SCHUMANN: Your Honor, we'll submit it. I  
4 mean, you've obviously made up your mind, so --

5 THE COURT: All right. Well, I think it changes  
6 the evidentiary burden of proof on the State and actually it  
7 decreases the burden of proof that would be placed on your  
8 client.

9 So some particularity is insufficient as a matter  
10 of law. The State has to prove it beyond a reasonable doubt.  
11 If they don't prove it beyond a reasonable doubt, it's subject  
12 to a motion to dismiss that count in front of this court. You  
13 know, it never gets to the jury, if they don't -- if she  
14 doesn't testify to it.

15 So, you know, it's my -- it's my -- I'm not  
16 changing the evidentiary burden. The State has to prove each  
17 and every element beyond a reasonable doubt, not to some  
18 particularity.

19 So -- so, I'm not going to let you have that one.  
20 Your whatchamacallit instruction seemed fine to me, but  
21 there's no objection to that, your --

22 MR. MERRILL: Theory of the case.

23 THE COURT: Theory of the case instruction. I  
24 think that opens the door to a lot of other evidence for the

1 State, but -- all right.

2 MS. SCHUMANN: Well, Your Honor, obviously that  
3 would be subject to change depending on the evidence.

4 THE COURT: Yeah. No, I mean, and that's fine.

5 MS. SCHUMANN: Well, I mean, as long we have  
6 leave to amend it to match the evidence.

7 THE COURT: No, no, like I said, on a theory  
8 instruction, Miss Schumann, you can present that when we're  
9 settling instructions for all I care.

10 MS. SCHUMANN: Sounds good.

11 THE COURT: You know, I mean the fact of the  
12 matter is, is that anything can occur in trial in any  
13 particular case, and you're entitled to a theory instruction  
14 of as long as there's evidence, even slight.

15 MS. SCHUMANN: Understood.

16 THE COURT: Okay. So, whether that's going to be  
17 your theory at the end of the day or not, that's going to be  
18 up to you. Okay.

19 All right. So the Court already found that the  
20 Amended Information provides sufficient notice, but I do agree  
21 that any of the time prior to the filing of the Information is  
22 not appropriate.

23 MR. MERRILL: On the State's proposed  
24 instruction, Your Honor?

1 THE COURT: Yeah. Now, if this was a single  
2 count, on a single instance, I would say, okay. But that's  
3 like saying, all right, so if it happened in 2012, then we're  
4 okay. No, I'm -- no, there needs to be notice provided.

5 So, but what I will say is that the first part of  
6 the instruction is appropriate is proper.

7 MR. MERRILL: Where the comma is; correct?

8 THE WITNESS: Right.

9 MR. MERRILL: Okay. That's fine.

10 THE COURT: So, I mean, like I said, that's a  
11 correct statement, you know. It's not a material element of  
12 the offense, but it needs to be provided for notice purposes  
13 to show, you know -- to give some notice to the Defendant  
14 where it is. And to give notice to the jury what offense  
15 you're talking about.

16 So, you know, but any time prior to filing the  
17 Information, I agree with Miss Schumann on that, that's not an  
18 appropriate standard.

19 So, as it goes to your objection, it looks to me  
20 that's the part you're --

21 MS. SCHUMANN: That's correct, Your Honor.

22 THE COURT: -- objecting to.

23 MS. SCHUMANN: Up until the comma is the  
24 correct --

1 THE COURT: Right.

2 MS. SCHUMANN: -- summary of the law, so we're  
3 not opposed to that.

4 THE COURT: So your objection is granted.

5 MS. SCHUMANN: Thank you, Your Honor.

6 THE COURT: So the first part is fine. All  
7 right. So in relation to the court stocks, I'm going to hold  
8 off on those until the pretrial.

9 You know, if you don't want the limiting  
10 instruction, I mean, I would put the limiting instruction in  
11 every -- if you call it a limiting instruction, I put it in  
12 every --

13 MS. SCHUMANN: Right. But I mean, just to  
14 clarify, you've allowed it in for all purposes; correct?

15 THE COURT: Well, for propensity purposes.

16 MS. SCHUMANN: So, we would like to strike that  
17 instruction then.

18 THE COURT: And that will be up to you. That one  
19 you could just ask for -- request it not be given at the time  
20 of settlement.

21 MS. SCHUMANN: Okay.

22 THE COURT: That is your -- that is your, you  
23 know --

24 MS. SCHUMANN: Right.

1 THE COURT: Option. But I want a clear record on  
2 it. So -- and you provided your objections to it, that's  
3 fine. If you don't want it at the end of the trial, it won't  
4 be given.

5 MS. SCHUMANN: Okay. Thank you, Your Honor.

6 THE COURT: So do you want any limiting  
7 instructions during the course of the trial?

8 MS. SCHUMANN: No.

9 THE COURT: Okay.

10 MS. SCHUMANN: Because you've allowed it in for  
11 all purposes; correct?

12 THE COURT: Yep. Well --

13 MS. SCHUMANN: So there's no point in having a  
14 limiting -- there's no point in having that. We would request  
15 that not be given.

16 THE COURT: All right. But when you say, "for  
17 all purposes", okay, it could be used for propensity. It  
18 could be used for the State to establish timing or motive or  
19 those kind of things, but it can't be used to say he actually  
20 committed the offense. So -- this particular offense.  
21 Because the particular offense still needs to be prove beyond  
22 a reasonable doubt.

23 Do you understand me, Miss Schumann? So, when I  
24 say all purposes --

1 MS. SCHUMANN: Right. Right.

2 THE COURT: I don't know mean that it could be  
3 used to establish, a prior act not be used to establish that  
4 the current act happened. There still needs to be proof  
5 beyond a reasonable doubt, but it could be used to establish  
6 that, to help establish that proof.

7 MS. SCHUMANN: Okay. We still don't want to hear  
8 it.

9 THE COURT: All right. So, but that's going to  
10 be -- like I said, that's going to be up to you, okay.

11 MS. SCHUMANN: Thank you, Your Honor.

12 THE COURT: And then the other two objections  
13 we'll just deal with at the time of the -- at the time of the  
14 pretrial. So -- and I'll take a quick look at the.

15 MS. SCHUMANN: Your Honor, I did have one  
16 question to bring up with the Court to clarify before we're in  
17 front of the jury.

18 THE COURT: Sure.

19 MS. SCHUMANN: So as far as Mr. Bernal's video  
20 interview with law enforcement, are you going to allow that to  
21 be played in front of the jurors, or are you just allowing the  
22 detectives to testify what the admission was?

23 THE COURT: Well, that depends. That's up to the  
24 State. This is -- this is what I'm going to say in relation

1 to that, okay.

2 So, you better not talk about the CVSA period.

3 Okay. That's reversible error. Don't do it. Don't have

4 Detective Dues do it. Don't have anybody even say it.

5 MR. MERRILL: So, we were, just so the Court's  
6 aware, I'm intending to play parts of the interview, but we  
7 specifically eliminating any talk about CVSA or anything else.

8 THE COURT: Okay.

9 MR. MERRILL: We're going to focus specifically  
10 on the admissions towards the end of the interview.

11 THE COURT: Now, if the Defendant -- if the  
12 Defendant wants, if Miss Schumann and Mr. Kalter open it up  
13 and cross-examine on it, that's different.

14 MS. SCHUMANN: We have no intention of bringing  
15 that up, Your Honor.

16 THE COURT: Okay, but --

17 MS. SCHUMANN: And as far as the portions being  
18 played by the State, Mr. Merrill, can you provide us those  
19 portions, just so we have those in advance.

20 THE COURT: I think he submitted them at the time  
21 of the hearing. Don't you have the ones he submitted at the  
22 time of the hearing.

23 MS. SCHUMANN: Well, the entire -- I have the  
24 entire video, but not the portions.

1 THE COURT: Okay. You never gave her the -- your  
2 exhibits at the time of the hearing, Mr. Merrill?

3 MR. MERRILL: I don't recall if I gave her  
4 specific ones or it was just the entire audio, but, yes, I  
5 will send over the specific --

6 MS. SCHUMANN: Okay, that would be great.

7 THE COURT: Okay. So if you do you have any, if  
8 you do have any objections to any of the specific ones, Miss  
9 Schumann, notify the Court at the time of the of the pretrial;  
10 okay?

11 MS. SCHUMANN: Okay. Well, Your Honor, we've  
12 already put our objections on the record during the motion  
13 hearing, so --

14 THE COURT: Well, you know, that was the  
15 suppression, but the Court --

16 MS. SCHUMANN: Right.

17 THE COURT: -- found that it was voluntary and  
18 that it was --

19 MS. SCHUMANN: Right. So you've already  
20 overruled our objection, but I'll put it on the record.

21 THE COURT: Well, but like I said, if there's  
22 anything objectionable obtained within the actual --

23 MS. SCHUMANN: I'll go through it and put it on  
24 the record.



1 THE COURT: Because like I said, the CVSA I'm not  
2 letting in, okay. Don't try to put it in and tell Dues if  
3 he's going to testify that it doesn't come in.

4 MR. MERRILL: Right.

5 THE COURT: And I'll have some of the other  
6 detective, that I don't want to hear anything about it,  
7 period. Okay.

8 MR. MERRILL: No, I understand. I have warned  
9 them. We will make sure as they come in, I told them it's --  
10 the case is over right then when they say that. So, they've  
11 been informed and I will inform them again.

12 THE COURT: Well, you better make sure of it.  
13 They're not to talk about it, no truth stuff.

14 MR. MERRILL: I understand.

15 THE COURT: So -- so if, you know, if there is  
16 anything on any of those clips, you can certainly let me know,  
17 Miss Schumann; okay?

18 MS. SCHUMANN: Okay, Your Honor.

19 THE COURT: All right. All right. So, did I  
20 clarify it for you?

21 MS. SCHUMANN: Yes, Your Honor.

22 THE COURT: Do you need anything else from me?

23 MS. SCHUMANN: No, Your Honor.

24 THE COURT: Mr. Merrill?

1 MR. MERRILL: Your Honor, my -- just so the Court  
2 is aware, my tests came back negative.

3 THE COURT: So why aren't you here?

4 MR. MERRILL: Well, because I just found out. I  
5 just found out a couple hours ago, so -- but any ways, I had  
6 to quarantine until the last couple days and we should be good  
7 to go.

8 THE COURT: Okay. All right. Very good. All  
9 right. So at the pretrial, we'll also talk about some of the  
10 rules for the trial, and Miss Schumann, you haven't used the  
11 trial selection room, so to speak.

12 So we can go through that at the time of the  
13 pretrial, you know, and go over what you need to do in front  
14 of the jury, when you approach witnesses, all that stuff, to  
15 keep the COVID protocols in, you know, in effect. Okay. For  
16 jury trials.

17 MR. MERRILL: And, Judge, I had just one concern  
18 with picking a jury. I think that Tuesday is election day.

19 THE COURT: It is.

20 MR. MERRILL: And so I don't know if the Court  
21 wishes to just inquire whether there's issues with the  
22 election or if want the attorneys to get into it.

23 THE COURT: No, because I'm going to let them out  
24 early to go vote if they need to.

1 MR. MERRILL: Okay.

2 THE COURT: So, you know, it is what it is. I  
3 may just, depending on how quick it takes to select a jury or  
4 not, I'm going to let them go. I'm.

5 Going to tell you, I am not going to take a  
6 million years on the selection of a jury, you know, I mean the  
7 fact of the matter is we all know the purposes of selecting a  
8 jury, whether there's any bias or whether or not there's --  
9 they're able to follow the law.

10 Those are what it is. You know, the fact of the  
11 matter is, I am going to limit my voir dire. I'm going to  
12 allow you folks to inquire, but to do it legitimately, you  
13 know, but I don't want the folks sitting in there, their time  
14 being wasted. Okay.

15 Especially, you know, everybody's got a little  
16 trepidation from going into a public place any way. You know,  
17 just because the governor said 250 people doesn't mean  
18 necessarily we have to have them there for four hours, or  
19 eight hours.

20 But if it's necessary, I am going to let them out  
21 early, if they, you know, just because it's election day. You  
22 know, this way there's no -- there's no problem.

23 MR. MERRILL: All right.

24 THE COURT: You know, I mean, for those people in

1 Fernley that have to vote in Fernley that haven't done the  
2 mail-in voting, you know, it's an hour back to Fernley, you  
3 know, we might break as early as 2 o'clock so that they have  
4 ample opportunity to go and cast their vote.

5 MR. MERRILL: Okay.

6 THE COURT: Okay. But we'll play that one by ear  
7 too. All right. Because if everybody says they did mail-in  
8 voting or early voting, then we wouldn't have to take a break.

9 But I don't intend on really breaching the  
10 subject other than to say, if you need to vote, we're going to  
11 break early during the voir dire process.

12 And then once we select a jury, I can ask the  
13 jurors whether or not they've already voted or if they need to  
14 go vote, and then we'll decide when to take a break based on  
15 that.

16 MR. MERRILL: Okay. That works.

17 THE COURT: Okay.

18 MS. SCHUMANN: Um-hum.

19 THE COURT: So I don't anticipate a huge amount  
20 of time to select this jury, so it's up to you guys. But we  
21 don't want to waste anybody's time, especially with all the  
22 COVID stuff going on. And that's all I'm going to say. Okay.

23 MR. MERRILL: All right.

24 THE COURT: All right. So, anything else you

1 want to talk about before we break from this?

2 MS. SCHUMANN: No, Your Honor.

3 MR. MERRILL: No, Your Honor.

4 THE COURT: Okay. All right. So that's that,  
5 and we'll see you at the pretrial which is what, the second?  
6 Yeah. I think it's the second. Yep.

7 MS. SCHUMANN: That's right, in the afternoon.

8 THE COURT: In the afternoon. Okay. Then we'll  
9 go over --

10 MR. MERRILL: All right.

11 THE COURT: And then you know, if you need to  
12 test somebody's Zoom from Las Vegas or New York, have it  
13 tested.

14 MS. SCHUMANN: Yes, I will.

15 THE COURT: Okay. Now, I'm pretty sure Dr.  
16 O'Donohue, because he's been providing Zoom for a while, has  
17 got a pretty good wifi connection, but you know, I don't want  
18 it freezing, breaking up and doing all that other stuff,  
19 please. Okay.

20 MS. SCHUMANN: Okay.

21 THE COURT: All right. Thank you. Have a good  
22 day, folks.

23 MR. MERRILL: All right, thank you, Judge, thank  
24 you.

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THE COURT: All right. Court's in recess.  
(Proceedings concluded.)

1 STATE OF NEVADA )  
2 )  
3 COUNTY OF LYON )  
4

5 I, Michel Loomis, Certified Shorthand Reporter of  
6 the Third Judicial District Court of the State of Nevada, in  
7 and for Lyon County, do hereby certify:

8 That I was present in Department II of the  
9 above-entitled Court and took stenotype notes of the  
10 proceedings entitled herein, and thereafter transcribed the  
11 same into typewriting as herein appears;

12 That the foregoing transcript is a full, true and  
13 correct transcription of my stenotype notes of said  
14 proceedings.

15 DATED: At Carson City, Nevada, this 26th day of  
16 October, 2020.

17 //SHELLIE LOOMIS//  
18 Shellie Loomis, RPR  
19 Nevada CCR No. 228  
20  
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Case No. 20-CR-00099

Dept. No. I

FILED

2020 OCT 28 PM 3:37

TANYA SCURINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Tanya Scurine*

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

STATE OF NEVADA,

Plaintiff,

vs.

THOMAS JASON BERNAL,

Defendant.

**STATE'S PROPOSED JURY  
INSTRUCTIONS**

COMES NOW, the State of Nevada, by and through Stephen B. Rye, District Attorney of Lyon County, and Matthew K. Merrill, Deputy District Attorney, and hereby submits this STATE'S PROPOSED JURY INSTRUCTIONS which are attached as Exhibit A.

Pursuant to NRS 239B.030, the undersigned affirms that this document does not contain any social security numbers.

DATED this 28 day of October, 2020.

Stephen B. Rye  
Lyon County District Attorney

By:

*Matthew K. Merrill*  
Matthew K. Merrill  
Deputy District Attorney



Office of the District Attorney

Lyon County • Nevada

601 Overland Loop, Suite 308, Dayton, Nevada 89403 • 31 South Main Street, Yerington, Nevada 89447 • 565 East Main Street, Fernley, Nevada 89408

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EXHIBIT A

PROPOSED INSTRUCTION NO. \_\_\_\_

There is no requirement that the testimony of a victim of sexual offenses be corroborated, and her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.

*Gaxiola v. State*, 121 Nev. 638, 647, 119 P.3d 1225, 1231–32 (2005)

**CERTIFICATE OF SERVICE**

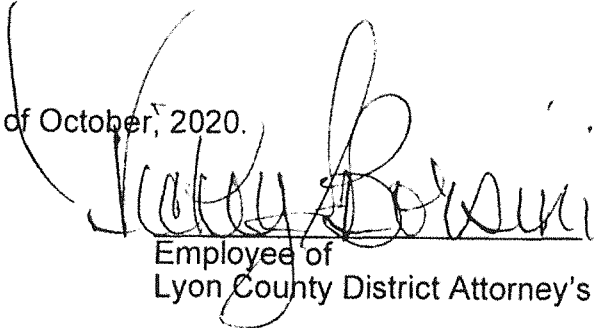
I certify that I am an employee of the Lyon County District Attorney's Office, and that on the date below I served a true and correct copy of the **STATE'S PROPOSED JURY INSTRUCTIONS**, by the following:

- ☒ **MAIL:** By placing an original or true copy in a sealed envelope, postage fully prepaid, in a U.S. Postal Service mailbox addressed to the individual(s) and/or address(es) listed below
- ☐ **CERTIFIED MAIL:** By placing an original or true copy in a sealed envelope, postage fully prepaid, by certified mail with tracking numbers \_\_\_\_\_ in a U.S. Postal Service mailbox addressed to the individual(s) and/or address(es) listed below
- ☐ **PERSONAL DELIVERY:** By hand delivering an original or true copy to the individual(s) and/or address(es) listed below
- ☐ **E-FILE:** By electronically filing the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the individual(s) listed below
- ☐ **FACSIMILE:** By faxing an original or true copy to the individual(s) and/or address(es) and fax number(s) listed below
- ☐ **FEDERAL EXPRESS/UPS OR OTHER OVERNIGHT DELIVERY:** By placing an original or true copy in a sealed envelope, postage fully prepaid, with an overnight delivery carrier, addressed to the individual(s) and/or address(es) listed below (Tracking Number: \_\_\_\_\_)
- ☐ **EMAIL:** By attaching a true copy attached to an email addressed to the individual(s) and/or email address(es) listed below

Addressed as follows:

Leann Schumann Esq.  
1150 Selmi Drive, Ste. 505  
Reno, NV 89512

DATED this 28th day of October, 2020.

  
Employee of  
Lyon County District Attorney's Office

Case No. 20-CR-00099

Dept No. I

FILED

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TANYA SCHEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Tanya Scheirine*

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

THE STATE OF NEVADA,

Plaintiff,

vs.

THOMAS JASON BERNAL,

Defendant.

**DEFENDANT'S OBJECTION TO THE STATE'S PROPOSED JURY INSTRUCTION**

COMES NOW, THOMAS JASON BERNAL (hereinafter "Mr. Bernal"), by and through his attorneys, JESSE KALTER LAW, P.C., and hereby submits his objection to the State's Proposed Jury Instruction filed October 28, 2020 attached hereto as **Exhibit "1."**

DATED this 28 day of October, 2020.

JESSE KALTER LAW, P.C.

*Leann E. Schumann*

LEANN E. SCHUMANN, ESQ.

Nevada Bar No. 12862

1150 Selmi Dr. Ste. 505

Reno, NV 89512

(775) 331-3888(phone)

Attorney for THOMAS JASON BERNAL

JESSE KALTER LAW, P.C. | 1150 SELMI DRIVE, STE 505 | RENO, NV 89512

(775) 331.3888 (PHONE) | (775) 331.3891 (FAX)

[www.jessekalterlaw.com](http://www.jessekalterlaw.com)

# EXHIBIT 1

# EXHIBIT 1

## STATE'S PROPOSED INSTRUCTION

There is no requirement that the testimony of a victim of sexual offenses be corroborated, and her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.

**Objection:** The instruction should be changed to read:


There is no requirement that the testimony of a victim of sexual offenses be corroborated, and if she testifies with some particularity regarding the incident, her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.

The following "and if she testifies with some particularity regarding the incident" was included in the instruction at the end in Brisbane v. State, 2016 Nev. Unpub. LEXIS 608, \*4-5 citing LaPierre v. State, 108 Nev. 528, 531 (2005). We just included it within the proposed one sentence instruction rather than at the end of the proposed instruction as a new sentence.

[illegible]

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 25 day of October 2020.

  
LEANN E. SCHUMANN, ESQ.  
ATTORNEY FOR THOMAS BERNAL

Pursuant to NRCP 5(b), I certify that I am an employee of JESSE KALTER LAW, P.C., and that on this date I sent via first class mail, a true copy of the foregoing document addressed to:

Lyon County District Attorney's Office  
ATTN: Matthew Merrill, Esq.  
31 South Main Street  
Yerington, NV 89447

DATED this 28 day of October, 2020.

*Sam Humann*

FILED

Case No. 20-CR-00099

2020 OCT 19 AM 10:39

Dept No. I

TANYA SEE-BIN  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Andrea Andersen*

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

THE STATE OF NEVADA,

Plaintiff,

vs.

THOMAS JASON BERNAL,

Defendant.

**DEFENDANT'S PROPOSED JURY INSTRUCTIONS**

COMES NOW, Defendant, THOMAS JASON BERNAL (hereinafter "Mr. Bernal"), by and through his attorneys, JESSE KALTER LAW, P.C., and hereby submits his proposed jury instructions with cite which are attached hereto as **Exhibit "1"** and incorporated herein by this reference.

DATED this 16 day of October, 2020.

JESSE KALTER LAW, P.C.

*Leanne E. Schumann*  
LEANNE E. SCHUMANN, ESQ.

Nevada Bar No. 12862

1150 Selmi Dr. Ste. 505

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(775) 331-3888(phone)

Attorney for THOMAS JASON BERNAL

JESSE KALTER LAW, P.C. | 1150 SELMI DRIVE, STE 505 | RENO, NV 89512


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The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

  
LEANN E. SCHUMANN, ESQ.  
(ATTORNEY FOR THOMAS BERNAL)

Pursuant to NRCP 5(b), I certify that I am an employee of JESSE KALTER LAW, P.C., and that on this date I sent via first class mail, a true copy of the foregoing document addressed to:

DATED this 14 day of October, 2020.

Alfred Thurnau

# EXHIBIT 1

# EXHIBIT 1

DEFENSE PROPOSED INSTRUCTION NO. \_\_\_\_\_

Child victims of sexual assault are required to testify with at least some particularity regarding the assault in order to uphold a conviction.

Bradley v. State, 109 Nev. 1090 (Nev. 1993).

DEFENSE PROPOSED INSTRUCTION NO. \_\_\_\_\_

Mr. Bernal's theory of the defense is that Haylee Smith falsified the allegations in this case to remove him from her life because he was the primary disciplinarian in the home.

Davis v. State, 321 P.3d 867 (Nev. 2014) (defendant has right to have jury instructed on his theory of the case)

Case No. 20-CR-00099

Dept No. 1

FILED

2020 OCT 22 AM 11:22

TANYA STEVENS  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Andrea Andersen*  
IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

THE STATE OF NEVADA,

Plaintiff,

vs.

THOMAS JASON BERNAL,

Defendant.

**DEFENDANT'S OBJECTIONS TO THE STATE'S PROPOSED JURY INSTRUCTION  
AND THE COURT'S STOCK INSTRUCTIONS**

COMES NOW, THOMAS JASON BERNAL (hereinafter "Mr. Bernal"), by and through  
his attorneys, JESSE KALTER LAW, P.C., and hereby submits his objections to the State's  
Proposed Jury Instructions and the Court's Stock Instructions attached hereto as **Exhibit "1."**

DATED this 20 day of October, 2020.

JESSE KALTER LAW, P.C.



LEANN E. SCHUMANN, ESQ.

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1150 Selmi Dr. Ste. 505

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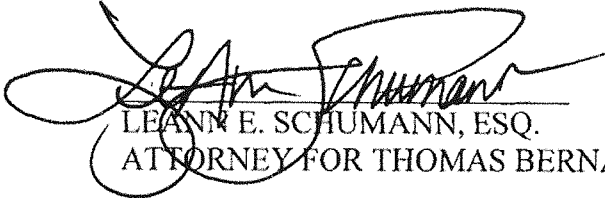
[www.jessekalterlaw.com](http://www.jessekalterlaw.com)

**AFFIRMATION**

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 20 day of October 2020.

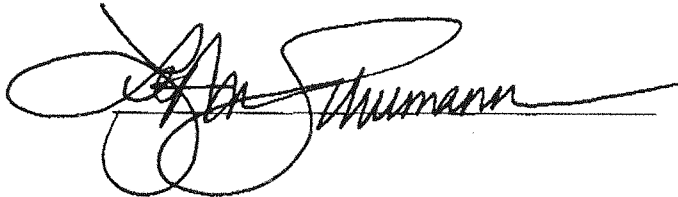
  
LEANN E. SCHUMANN, ESQ.  
ATTORNEY FOR THOMAS BERNAL

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of JESSE KALTER LAW, P.C., and that on this date I sent via first class mail, a true copy of the foregoing document addressed to

Lyon County District Attorney's Office  
ATTN: Matthew Merrill, Esq.  
31 South Main Street  
Yerington, NV 89447

DATED this 20 day of October, 2020.



STATE'S PROPOSED INSTRUCTION

Time is neither a material nor an essential element of the offense of sexual assault with a minor child and need not be proved precisely as alleged, so long as the commission of the offense occurred on any day prior to filing of the information.

**Objection:** "so long as the commission of the offense occurred on any day prior to filing of the information" is not a correct summary of the law and should be removed from the instruction. Cunningham v. State, 100 Nev. 396, 400 (Nev. 1984) states the State should allege the timeframe with specificity to the extent possible.

## COURT'S STOCK INSTRUCTION

In order for a sexual assault to be against the will of the victim, the victim is not required to do more than her age, strength, surrounding facts and attending circumstances make it reasonable for her to do to manifest opposition.

**Objection:** The following sentence be added at the end of the instruction: "In other words, whether the victim manifested opposition or did in fact consent, depends on the facts of the particular case."

Said sentence is verbatim from McNair v. State, 108 Nev. 53, 57 (Nev. 1992) where this instruction stems from. It provides clarification for the jurors. Adding the sentence makes the instruction more clear.



COURT'S STOCK INSTRUCTION

Physical force is not a necessary ingredient in the commission of the crime of sexual assault. The crucial question is not whether the victim was penetrated by physical force, but whether the act was committed without her consent or ability to consent.

**Objection:** "or ability to consent" be removed from the instruction. That was not specifically indicated in Dinkens v. State, 92 Nev. 74, 77 (Nev. 197) where we believe the remainder of the instruction is based.

## COURT'S STOCK INSTRUCTION

During the course of this trial you heard evidence of other alleged misconduct constituting a sexual offense not charged in this case, but closely related to the charged offenses. You may consider the evidence in conjunction with all the other evidence presented during the course of the trial in determining the guilt or innocence of the Defendant and as proof of the character of the Defendant for the purpose of showing that Defendant acted in conformity with that type of character in relation to the crimes charged.

**Objection:** This instruction should be removed pursuant to McLellan v. State, 124 Nev. 263 (2008) (Defense has the right to waive any limiting instruction).

Also, if this Court says this is not a "limiting instruction" as the prior bad acts were admitted for all purposes, then there is no reason why this instruction should be included. It just brings additional, unnecessary attention to the prior bad acts when the Court has already ruled the jury can consider it for any purpose.

1 CASE NO. 20-CR-00099

2 DEPT. I

3  
4 THE THIRD JUDICIAL DISTRICT COURT - THE STATE OF NEVADA

5 IN AND FOR THE COUNTY OF LYON

6 THE HONORABLE JOHN P. SCHLEGELMILCH, DISTRICT JUDGE,

7 PRESIDING

8  
9  
10 THE STATE OF NEVADA,

11 PLAINTIFF,

12 v.

13 THOMAS J. BERNAL,

14 DEFENDANT.  
15 ----- /

16  
17 TRANSCRIPT OF PROCEEDINGS

18 STATUS HEARING

19 NOVEMBER 2, 2020

20 COURTHOUSE

21 YERINGTON, NEVADA

22  
23 Reported by:

24 KATHY TERHUNE, CCR 209

1 APPEARANCES:

2 FOR THE STATE:

MATT MERRILL  
Deputy District Attorney  
Courthouse  
Yerington, NV. 89447

4 DEFENDANT PRESENT IN COURT.

5 FOR THE DEFENDANT:

LeANN SCHUMANN, ESQ.  
Jesse Kalter Law  
1150 Selmi Drive, #505  
Reno, NV 89512

8 NO OTHER APPEARANCES.

10 \* \* \* \* \*

12 TRANSCRIPT OF PROCEEDINGS

14 THE COURT: So, we're here for a pretrial  
15 status. Everybody ready to go tomorrow?

16 MS. SCHUMANN: Yes, Your Honor.

17 MR. MERRILL: Yes, Your Honor.

18 THE COURT: Okay. Any question -- do we have  
19 everything set up in relation to appearance remotely?

20 MS. SCHUMANN: Yes. I just need the Zoom link,  
21 and then I was going to practice that this afternoon  
22 with our two witnesses appearing via Zoom.

23 THE COURT: Okay.

24 MS. SCHUMANN: Or --

1 THE COURT: So, I have to establish a different  
2 link to test today.

3 MS. SCHUMANN: Okay.

4 THE COURT: Okay? So, we can set up a link --  
5 okay -- so that --

6 MS. SCHUMANN: To practice? Okay.

7 THE COURT: That you can practice.

8 MS. SCHUMANN: Thank you, Your Honor. I  
9 appreciate that.

10 THE COURT: Okay?

11 And then we're going to need some heads-up in  
12 relation to when the testimony is going be.

13 MS. SCHUMANN: We're thinking Thursday morning.

14 THE COURT: Okay. So, how long do you think to  
15 get your case done, Mr. Merrill?

16 MR. MERRILL: One day.

17 THE COURT: One day?

18 MR. MERRILL: One day.

19 THE COURT: Okay. All right. So, this is what  
20 I'm going to do, all right? Tomorrow's election day.  
21 All right? So, we're going to get the jury selected,  
22 but we're not going to go beyond 2:30 on day one  
23 because I'm going to release them so that they can go  
24 vote. Okay?

1 MS. SCHUMANN: Sounds good.

2 THE COURT: For anybody that needs to vote that  
3 hasn't yet.

4 MS. SCHUMANN: Right.

5 THE COURT: I don't want to ask them directly  
6 if they voted or not. Okay? I don't think that that's  
7 appropriate.

8 MS. SCHUMANN: Right.

9 THE COURT: Okay? So, you know, whether they  
10 voted by mail or voted early or going to vote tomorrow,  
11 I'm going to release them early for the purpose of them  
12 to go vote.

13 MS. SCHUMANN: Sounds good.

14 THE COURT: All right. And like I said, 2:30  
15 should be about the cutoff. So, I mean, I --

16 MR. MERRILL: So --

17 THE COURT: -- but I would anticipate -- all  
18 right, so this is what I would anticipate. I would  
19 anticipate that you probably can get through your  
20 opening statement. We'll see how long it takes to get  
21 the jury. Maybe a witness depending on how quick jury  
22 selection is. But like I said, I do intend on  
23 releasing, whether that's 2:30, 3:00 o'clock, but  
24 somewhere right within there so they have a -- because

1 polls close at 7:00. But this way they can get home in  
2 the daylight. They know where they need to go to vote,  
3 and they --

4 MS. SCHUMANN: Sounds good, Your Honor.

5 THE COURT: -- can go home. All right?

6 And that will give you guys a chance to vote  
7 too, if you haven't already. Okay?

8 All right. And then -- so, you have enough  
9 witnesses to fill up all of Wednesday?

10 MR. MERRILL: Your Honor, it really depends on  
11 how it goes. I was planning on just breaking after  
12 jury selection, and then doing opening on Wednesday.  
13 But whatever works.

14 THE COURT: Yeah, no.

15 MR. MERRILL: Okay. Whatever the Court's  
16 schedule is, it's fine. And so, if my first -- my  
17 first witness could take longer than 2:30 or  
18 3:00 o'clock.

19 THE COURT: Well, we'll see. We'll see where  
20 we're at --

21 MR. MERRILL: Right.

22 THE COURT: -- once the jury is selected.

23 MR. MERRILL: And the remaining witnesses,  
24 depending on if there's -- what defense does with

1 cross-examination of the victim, I may put on some  
2 additional evidence. So, probably Wednesday by  
3 2:00 o'clock, 3:00 o'clock I'd probably be done.

4 THE COURT: All right. Can you have witnesses  
5 available following the State's case around that time,  
6 if necessary?

7 MS. SCHUMANN: Yes, Your Honor.

8 THE COURT: All right. So, have a couple of  
9 witnesses prepared to go that afternoon.

10 MS. SCHUMANN: Sounds good.

11 THE COURT: Okay? So that we can just continue  
12 the ball rolling of witnesses. Okay? And if that's  
13 going to be one of the Zoom witnesses or whatever, just  
14 make sure that we have the links all set up, and we're  
15 ready to go with them. All right?

16 So, and we'll establish a test link this  
17 afternoon so you can test it.

18 MS. SCHUMANN: Thank you, Your Honor.

19 THE COURT: Okay?

20 We've changed the Zoom system a little bit in  
21 here. All right? So, it's going to actually feed  
22 directly through the JAVS. All right. We used to feed  
23 it through the cart. We're not doing that anymore. It  
24 feeds directly through the JAVS. So, what's happening



1 is whoever's talking, the camera goes on. Okay? It's  
2 better for witnesses as well. That's why we're doing  
3 it that way so there isn't multiple screens up there.  
4 The witness will be up through, and that's it. Okay?

5 So, and basically, what the witness sees is one  
6 picture of whoever's talking to them. Okay? Just so  
7 you know, we just modified that a little bit to make it  
8 run better. Okay? Not that we can't put multiple  
9 things up there, but we'll just have the witness up  
10 there during their testimony. Nobody else's picture.

11 MS. SCHUMANN: Sounds good.

12 THE COURT: Okay?

13 There was an outstanding objection to one of  
14 the Court's proposed instructions, wasn't there?

15 MS. SCHUMANN: Yes, Your Honor. There were a  
16 couple. Let's see here.

17 The State also filed another proposed  
18 instruction that we filed an objection to last week.

19 THE COURT: The State filed a new instruction?

20 MR. MERRILL: That was on the 28th.

21 MS. SCHUMANN: And we did have time to oppose  
22 that, and then file an opposition.

23 THE COURT: This is just a no requirement that  
24 testimony be corroborated?

1 MR. MERRILL: Correct.

2 THE COURT: Okay. So, that's true.

3 So, what's your objection?

4 MS. SCHUMANN: We just added a portion. Does  
5 the Court have a copy of our objection? We just kind  
6 of changed the order, and we added "and if she  
7 testifies with some particularity regarding the  
8 incident." And that was in Brisbane v State citing  
9 LaPierre v State.

10 THE COURT: Okay. So, what's wrong with that?

11 MS. SCHUMANN: Well, we just wanted to add,  
12 Your Honor --

13 THE COURT: No, no. I see what you want to  
14 add.

15 MS. SCHUMANN: Oh, okay.

16 THE COURT: I'm asking the State, what's wrong  
17 with your -- what's wrong with your proposal if that's  
18 verbatim to the instruction that was approved by the  
19 Court?

20 MR. MERRILL: What's wrong with her proposed?

21 THE COURT: Yeah.

22 MR. MERRILL: I didn't file an objection, Your  
23 Honor.

24 THE COURT: No, no, no. The -- what they want

1 to do is amend your instruction.

2 MR. MERRILL: Okay. And if she testifies with  
3 some particularity regarding the incident?

4 THE COURT: Right.

5 MR. MERRILL: If that's what the case law  
6 states, Judge, then I don't have any objection.

7 THE COURT: Okay. So, Brisbane is an  
8 unpublished opinion. But that was the actual  
9 instruction in Brisbane?

10 MS. SCHUMANN: I've got the case right here,  
11 Your Honor. Let me grab it.

12 So, they added it at the end.

13 THE COURT: So, let me take a look at --

14 MS. SCHUMANN: Okay. Your Honor, if I can  
15 approach?

16 THE COURT: Yeah. Let me take a look at the  
17 instruction they gave.

18 MS. SCHUMANN: They actually added it as a  
19 sentence at the end.

20 THE COURT: Okay. So, this is the same issue  
21 that I have, and it's the same thing that I had when  
22 you wanted that standing alone. I agree with you that  
23 the child has to testify regarding the incident with  
24 particularity. I agree with that. I don't disagree

1 with that. Not one bit. Okay?

2 But that standard relates to the view of the  
3 evidence on appeal. So, in other words, the State's  
4 burden during trial is beyond a reasonable doubt. If  
5 they -- if the child doesn't testify with some  
6 particularity, it would be subject to motion to  
7 dismiss. Because it would be subject to a motion to  
8 dismiss the count. Or for a directed -- you know,  
9 either a jury instruction requesting -- you know, a  
10 court instruction requesting that -- what's the name of  
11 the instruction again? -- that I say that they didn't  
12 prove that count or whatever.

13 You can do that. You could also do a motion to  
14 dismiss because they haven't proved it. You could do  
15 all kinds of things. So, that's not actually the --  
16 this isn't actually an instruction. It's true it's in  
17 this case. I'm just concerned that if you say all you  
18 have to do is testify with some particularity, that  
19 you're changing the burden of proof. The burden of  
20 proof is beyond a reasonable doubt. Which means they  
21 have to show each and every element of the offense,  
22 including that it occurred. And, of course, in order  
23 to show that it occurred, you have to testify with some  
24 particularity in relation to that offense.

1           So, now, because the standard on review -- and  
2       they even go into it here in this case. Which I agree.  
3       The standard on review is after viewing all the  
4       evidence in light most favorable to the prosecution any  
5       rational trier could have found it, any rational trier  
6       of fact. Okay? Which requires just that the child  
7       testify with some particularity. But the retirement at  
8       trial is beyond a reasonable doubt.

9           MS. SCHUMANN: Your Honor, we will withdraw our  
10      objection.

11          THE COURT: So, I really think that her --  
12      that, you know, I mean...

13          MS. SCHUMANN: And we tried to phrase it in a  
14      way where it's still beyond reasonable doubt, but I  
15      understand what the Court's saying.

16          THE COURT: Yeah, I just don't want to change  
17      burdens. You know? Because all somebody has to say  
18      one time in closing, oh, all he has to do is just  
19      testify with some particularity, not beyond a  
20      reasonable doubt. You know what I mean?

21          MS. SCHUMANN: Yes, Your Honor.

22          THE COURT: All right. So, I'm not going to  
23      allow -- the State's instruction is common, but I'm not  
24      going to allow the other one, the addition to it.

1 All right. So, all right. And then your  
2 theory that's subject to proof. You can always change  
3 it.

4 MS. SCHUMANN: Right.

5 THE COURT: I'm certainly not going to, you  
6 know, do anything that would significantly limit you on  
7 your jury instruction as long as there's some quantum  
8 of evidence. Okay? Now, if there's no evidence,  
9 maybe. But...

10 All right. So, you want to add to the stock,  
11 in other words, whether the victim manifested  
12 opposition or did in fact consent depends on the facts  
13 of the additional -- of the particular case?

14 MS. SCHUMANN: Yes, Your Honor. We just  
15 thought it clarified. The first sentence is confusing.  
16 So, we feel like adding the second sentence to clarify  
17 the instruction.

18 THE COURT: Well, I mean, I think that that's a  
19 proper -- I mean, I believe that that's a proper  
20 statement of the law. I mean, it -- so, I mean, I  
21 don't have any real problem with adding it. I just  
22 don't like the way it ends, "depends on the facts of  
23 the particular case." In other words, whether the  
24 victim manifested opposition, or did in fact consent,

1 depends upon all the facts as you find them relating to  
2 this case.

3 MS. SCHUMANN: We would be fine with that, Your  
4 Honor.

5 THE COURT: All the facts as you find them  
6 relating to this case?

7 Okay. Was this charged before or after the  
8 statutory change?

9 MR. MERRILL: Before. Well, what exactly do  
10 you mean?

11 THE COURT: Well, there's just a brand new case  
12 out on this issue in particular whether or not consent  
13 can be proved on a child under 14.

14 How old is the child here?

15 MR. MERRILL: Well, this is charged under 16.

16 THE COURT: It's under 16?

17 MR. MERRILL: Yeah.

18 THE COURT: All right. So, but I would guess  
19 that that would -- all right. So --

20 MR. MERRILL: So, my thought is she actually  
21 has to --

22 THE COURT: It's between the 14 and 16 there's  
23 still a consent element. I don't think -- all right.  
24 So, I just wanted to make sure. All right.

1           So, you're fine.

2           So, I think that that's fine. In other words,  
3 whether the victim manifest or did in fact or did  
4 consent. All right. So, I don't ever like to say in  
5 fact. All right. So, whether the victim manifested  
6 opposition or did consent, because that's both sides.  
7 Okay? Depends on all the facts as you find them  
8 relating to this case. I think that that's clearer.  
9 How's that?

10           MS. SCHUMANN: That sounds good, Your Honor.

11           THE COURT: All right. All right. Okay.

12           So, ability to consent was an added element to  
13 the statute. So, it's not only consent, but it's also  
14 under circumstances where the child is unable or  
15 doesn't have the ability to consent. That's why that  
16 that's added.

17           So, I understand that that wasn't specifically  
18 in Dinkins.

19           MS. SCHUMANN: We'll defer to the court, Your  
20 Honor.

21           THE COURT: Mr. Merrill?

22           MR. MERRILL: Your Honor, I believe the ability  
23 to consent should remain in there. It's part of the  
24 statute. So...



1 THE COURT: Yeah, I think it should remain in  
2 there too. So, because it's not just consent. It's  
3 also under circumstances where they don't have the  
4 ability to. All right. So, all right.

5 Then -- all right. So, then we have the prior  
6 bad act instruction, and then at the time we settle  
7 instructions you can say I want it, I don't want it.

8 On the record saying you don't want it during  
9 anybody's testimony; is that correct?

10 MS. SCHUMANN: That's correct, Your Honor.

11 THE COURT: Okay. So, I just want to make that  
12 clear on the record. You do not want me to give a  
13 limiting instruction during any of the testimony on  
14 other acts in relation -- other sexual acts in relation  
15 to the child?

16 MS. SCHUMANN: That's correct, Your Honor.

17 THE COURT: Okay.

18 MR. MERRILL: And, Your Honor, just so the  
19 record's clear. The State does want that. I don't  
20 know where the law falls on whether the defendant has  
21 the ultimate ability to --

22 THE COURT: Okay. Because it's -- because it's  
23 propensity evidence --

24 MR. MERRILL: Okay.

1 THE COURT: -- it's up to them.

2 MR. MERRILL: Okay.

3 THE COURT: Whether they want it.

4 MS. SCHUMANN: And, Your Honor, I do have the  
5 case on that, McLaughlin v State.

6 THE COURT: Okay. No, you're right. I'm  
7 agreeing with you, Ms. Schumann.

8 MS. SCHUMANN: I just wanted to make a clear  
9 record, Your Honor.

10 THE COURT: Okay. Very good.

11 So, it's up to the State, when they're -- when  
12 you're bring in character evidence whether or not they  
13 want a limiting instruction. Here it's pure character  
14 evidence. It's partial propensity can be used for all  
15 purposes. So, he has propensity to do it, so therefore  
16 -- all right. So he did it. All right.

17 Okay. So, whether or not anybody wants to at  
18 the end of the trial, we'll deal with it at that point.  
19 But okay. All right. So, I think that's what I said  
20 last time on that one too. The other ones I don't  
21 previously. So, okay.

22 Okay. So, I intend on starting right at  
23 9:00 o'clock or soon thereafter as possible. Once we  
24 have the jurors checked in, this is how it works. Did

1 anybody give you a copy of the actual juror protocol?

2 All right. We'll have a bailiff downstairs

3 outside. They will be handing the jurors a packet.

4 That packet will contain a hand sanitizer, a mask and a

5 letter from the Court. Okay? Basically saying stay

6 six foot apart. If you have COVID, you're to notify

7 somebody immediately, et cetera. Just a few things in

8 the letter. It's just all procedural stuff.

9 The bailiff downstairs will instruct them to

10 take the stairway upstairs unless they're unable, then

11 they can use the elevator. They will use the elevator,

12 but no more than two people in the elevator at any

13 given time. Okay? When they get upstairs they'll be

14 distanced to check in with the clerk, and then brought

15 back to the jury selection room, which is distanced,

16 and I think you've seen it. But we did some slight

17 modifications on Friday because of the light jury. So,

18 we'll go back in there again.

19 And then I understand you made a request to

20 have some people with you additional at counsel table

21 during jury selection?

22 MR. KALTER: May have one, Your Honor.

23 THE COURT: Okay. So, we'll go back there at

24 the end of the status to check it out. Okay? So, we

1 can all check it out.

2 It was cleaned. Have they returned the mic  
3 system yet?

4 I don't know. They were supposed to do it  
5 tonight or tomorrow morning, return the microphones,  
6 because they needed it at a senior center thing. But  
7 we should be all miked up and ready to go.

8 Like I said, on jury selection, I have, due to  
9 the COVID, reduced my voir dire somewhat. I will tell  
10 people if they don't want to divulge something --  
11 because this is a case of a sexual nature, if they  
12 don't want to divulge something in front of everybody,  
13 that they raise their hand, they say they have  
14 something private they want to bring up with the Court.  
15 At some point we'll recess. We'll probably reconvene  
16 in here with the single person. Okay? That seems like  
17 the best way to do it.

18 I usually go into the jury room, but since  
19 we're going to be selecting the jury back there, we can  
20 bring that individual juror right here into the  
21 courtroom and do it here in the courtroom. All right?  
22 If there needs to be some individual voir dire on any  
23 of the witnesses if there's something that they don't  
24 want to bring up personally. Okay?

1           So, just ask appropriate questions. You know,  
2   we have all these people. They're all going to be face  
3   masked. They're all going to be there. You know? So,  
4   they'll be a little bit more uncomfortable than usual.  
5   You know, the courtroom even feels a little bit warm  
6   this afternoon. So, but it feels like the air  
7   conditioner just kicked on. So, I don't know. I don't  
8   know the answer to that. So...

9           Are there any other procedural issues that we  
10   need to get taken care of before trial?

11           MR. MERRILL: No. We came in and tested out  
12   the cart or system last week. We've given the  
13   exhibits, at least the ones we intend to use at this  
14   point, to the defense.

15           THE COURT: Okay. They'll all be exchanged by  
16   today, right? Whatever you intend to use?

17           MS. SCHUMANN: Yes, Your Honor.

18           THE COURT: So, have them marked.

19           MR. MERRILL: Oh, they're already marked except  
20   the one I have here to get marked.

21           THE COURT: Okay. All right. So, is there --  
22   all right. So, is there any preliminary objections to  
23   any of the exhibits that I should know about?

24           MS. SCHUMANN: Yes, Your Honor. The State does

1 intend to introduce two audio recordings of  
2 Mr. Bernal's interview. You wanted us to place any  
3 objections to those on the record today. I believe  
4 it's Exhibit 1, which is the first recording, which is  
5 approximately three minutes. Mr. Bernal does reference  
6 HS not having a hymen. We're objecting to that comment  
7 being introduced. The other contents of those  
8 interviews, we have no objection to.

9 THE COURT: Okay. So, what's the purpose of  
10 that?

11 MR. MERRILL: Your Honor, it's super relevant  
12 that he indicates that he was rubbing her legs, and  
13 then he slipped with the CBD cream, and he accidentally  
14 penetrated her because she doesn't have a hymen. So,  
15 if he's saying it's an accident --

16 THE COURT: Oh.

17 MR. MERRILL: -- and she doesn't have a hymen,  
18 first how does he know she doesn't have a hymen? First  
19 question. Second question, what does a hymen have to  
20 do with what's going on there? I think it's super  
21 relevant to the case, so, based on all those factors.

22 THE COURT: Okay. Objection noted, but it's  
23 in. Okay? What he knows at the time is relevant.

24 MS. SCHUMANN: Well, Your Honor, if we can just

1 add -- I mean, the hymen comment was separate from the  
2 actual admission. It wasn't like oh, I slipped and I  
3 inserted it because the hymen was broken. It was like  
4 she doesn't have a hymen, and then after that --

5 THE COURT: But -- I understand that. What  
6 he's arguing is that it's relevant because it goes to  
7 show some proof that he could get away with it for some  
8 reason because she didn't have a hymen to start with.  
9 All right. I think it's relevant. So...

10 MS. SCHUMANN: Yeah, I guess the hymen was  
11 broken because she fell off a fence and not because  
12 of --

13 THE COURT: No, I agree. It could have been  
14 broken from a variety of reason.

15 MS. SCHUMANN: Right.

16 THE COURT: But his knowledge of it I think is  
17 relevant. I'm not saying that he broke her hymen.  
18 That's not what I said. And I understand that.

19 Okay. So, there are two segments. Now, are  
20 you going to want to introduce any of the audio?

21 MS. SCHUMANN: No, Your Honor.

22 THE COURT: Yourself?

23 MS. SCHUMANN: No, Your Honor.

24 THE COURT: Okay. Remember what I told you

1 guys last time. I don't want to hear any comments  
2 relating to the CVSA. None, zero, zip, nothing.

3 MS. SCHUMANN: And, Your Honor, we actually  
4 wanted to address that with the Court.

5 THE COURT: Now, if you bring it up -- all  
6 right. So, if defense counsel -- I'm not going to  
7 limit you, but you if you bring it up --

8 MS. SCHUMANN: Right, we open the door.

9 THE COURT: -- and it can open up to all kinds  
10 of junk.

11 MS. SCHUMANN: Right. We're choosing to  
12 introduce it. We've weighed the pros and cons, and we  
13 would like to have it be admissible at trial.

14 THE COURT: And if you are going to use it,  
15 then just -- oh, man.

16 Well, if you're going to use it for the purpose  
17 of showing somehow he was coerced in his interrogation,  
18 I mean, the jury can consider that. But that would  
19 open the door to allow the State to submit evidence on  
20 how it works, what the purpose of it is, but then we  
21 get into probabilities of deception.

22 All right. So, they bring it up, and they're  
23 indicating they will, you going to bring it up in  
24 opening statement?



1 MS. SCHUMANN: No, Your Honor.

2 THE COURT: They bring it up during the  
3 testimony, then the State can rebut it if they're  
4 trying to show it was some kind of coerced attack. But  
5 you better not ever say the word "lie." Okay? Okay?  
6 No lie detector, that he can go as far as saying that  
7 it judges the stress in a persons's voice to see if  
8 they're deceptive or not. He can talk about the  
9 results of this particular test. But he's not to say  
10 in any way an affirmative he's lying or he lied to the  
11 question or whatever. Okay? So, it's got to be very  
12 direct.

13 MR. MERRILL: So, we have video of it. I mean,  
14 if we're going to get into it, we spend some time  
15 redacting that. But I'll probably ask Detective Dues  
16 the process, how it works, the results of the CVSA, how  
17 that indicates. I may play portions of the CVSA. I  
18 guess we'll just --

19 THE COURT: Well, you could. I mean, you could  
20 do all those things, but he's not going to make the  
21 computer say he lied.

22 MR. MERRILL: I understand.

23 THE COURT: You can talk about how the test  
24 works, probabilities. I don't want that it showed

1       deceptive, whatever. But -- or slightly deceptive or  
2       whatever it is he testified to previously.

3               MR. MERRILL: So, you don't -- no word  
4       deceptive or?

5               THE COURT: No. He can use the technical  
6       language for the test.

7               MR. MERRILL: I understand.

8               THE COURT: But he's not going to say that he  
9       lied, and he's not going to say that it's a determiner  
10      as to whether or not he's telling the truth or not.

11              MR. MERRILL: Understand. It's a jury  
12      question. I understand.

13              THE COURT: He can testify it's one of the  
14      things that they take into account during the  
15      investigation, and it's a tool. But he's not going to  
16      say that there's any definitiveness to it, and that it  
17      shows that he lied. Okay?

18              MR. MERRILL: Understand.

19              THE COURT: There's that line and that line is  
20      not to be crossed. Okay?

21              MR. MERRILL: I understand.

22              THE COURT: All right. So, if you bring it up,  
23      they'll be able to do that.

24              MS. SCHUMANN: Understood, Your Honor.

1 THE COURT: Okay?

2 But, like I said, I'm not going to get a  
3 computer telling people people are telling the truth or  
4 not. I'm just not. It's just not going to happen.  
5 Okay? Especially, you know, when we have maybe one  
6 study on the damn thing. And it was done in-house.  
7 That was the last testimony I heard. So, they might  
8 have done more testing on it since that time but...

9 All right. Okay. So, we're clear on that.  
10 All right. Okay. So, you know -- so, that's a  
11 strategy your client clearly is aware of what that  
12 strategy is.

13 MR. MERRILL: We're going to need a jury  
14 instruction on -- I haven't looked into it already. A  
15 jury instruction on CVSA.

16 THE COURT: Why?

17 MR. MERRILL: I don't know. I'm just bringing  
18 it up. I -- first time I've heard of it. So...

19 THE COURT: All right. So, this is what I --  
20 all right. This is what I'm making assumptions. Okay?  
21 I'm making assumptions. I'm assuming that they're  
22 going to say because he answered the question  
23 subsequent to the question relating to the sexual  
24 assault negative, that they're using that to show that

1 he failed somehow the test, that they used that to  
2 coerce the confession, et cetera, et cetera. Okay?  
3 And that he only confessed after that, and that  
4 confession was equivocal "Oh, it was an accident, yeah  
5 it happened, but it was an accident" type thing. Okay?  
6 All right.

7 So, in relation to that, you can say, well, it  
8 wasn't coercive, this is the way they conducted the  
9 test. You can show them that it was done, how it was  
10 done, how he was approached with it. You can show them  
11 all that stuff. You can -- like I said, you can go  
12 into how the test works, et cetera, et cetera. But  
13 there's going to be no definitive statements in  
14 relation to credibility. Okay?

15 There's a jury instruction in there already  
16 that says the jury is to determine credibility alone.  
17 Okay? So, I don't know what another instruction would  
18 do other than it's the jury's determiner of who's  
19 credible and who's not.

20 MR. MERRILL: Okay.

21 THE COURT: So, okay. All right.

22 Any other evidence that I should know about  
23 that might -- all right. So, if you -- if you do have  
24 some snippets that you're going to use of the CVSA,

1 provide those to defense counsel as well, Mr. Merrill.

2 MR. MERRILL: Yeah, there's probably going to  
3 be a few more now. So...

4 THE COURT: Okay.

5 MR. MERRILL: But we'll send them over.

6 THE COURT: Okay. All right. All right.

7 So, but you can only go into it if they do.

8 MR. MERRILL: I understand.

9 THE COURT: And if they decide later on not to,  
10 it's still their decision.

11 Okay. All right. Anything else?

12 MR. KALTER: Not by the defense, Your Honor.

13 MR. MERRILL: No, Your Honor.

14 THE COURT: All right. Well, you know, I mean,  
15 you both tried these cases before. So, I don't think  
16 it'll be anything really particularly unusual. We  
17 don't necessarily modify the courtroom. COVID  
18 precaution, anybody sitting in the gallery has to wear  
19 a mask. You folks are not required, but you can at any  
20 time during the trial. If you approach the bench,  
21 mask. Okay? Approach a witness, mask. Okay?  
22 Approach the jury, mask. Okay? And always ask  
23 permission first. All right?

24 So, chances are I won't let you actually

1 approach the jury, but certainly when you're talking,  
2 arguing, asking questions, you're not required to have  
3 the mask on. Okay? And I'll explain all that to the  
4 jurors. Okay? So, the attorneys trying the case are  
5 not required. And I'll explain that to the jury  
6 because they need to be heard. They need to be, you  
7 know, those types of things. Okay? Witnesses can  
8 remove their mask while testifying. So, but they need  
9 to have them. Okay?

10 So, all court staff will have masks on, except  
11 the clerk. I will enter and leave with a mask on. But  
12 I will likely instruct the jurors the reason why I  
13 don't have it on is I'm socially distanced from  
14 everybody anyway. All right? And then -- and I have  
15 to be heard as well. Okay?

16 But they'll be masked up. They'll be in every  
17 other seat. I plan on doing two alternates because  
18 it's only going to be a three day trial it sounds like.  
19 Okay? You never know what happens in this type of  
20 case. So, but we'll two alternates. Okay?

21 So, I don't do it like Judge Aberasturi. I  
22 select my alternates after the main jury's selected.  
23 So, you've both tried cases with me, so you should  
24 know. You know? So, we do things a little different

1 in my department. Okay?

2 We have a reduced jury pool because of the  
3 COVID thing. So, like I said, I'm going to be looking  
4 at, you know, bias and ability to follow the law.  
5 That's what jury selections about. So, I have to go to  
6 work next week, probably -- you know, probably not  
7 going to get very far.

8 MR. KALTER: How many were polled, Your Honor?

9 THE COURT: Sorry?

10 MR. KALTER: How many were polled?

11 THE COURT: Well, we started with 80. And  
12 because of preplanned vacations, medical conditions, I  
13 think we're down to 62, 63.

14 THE CLERK: 60.

15 THE COURT: 60?

16 THE CLERK: Uh-hum.

17 THE COURT: Should be more than enough. So,  
18 all right? So, yeah, make sure everything is kind of  
19 prepped up and ready to go. Test out the Zoom link,  
20 make sure that's all ready to go. We'll break at this  
21 point. Or we'll recess at this point. But we'll take  
22 you back there, and we'll go through that. And if you  
23 need something significantly changed, we'll figure that  
24 out. Okay?

1           So, if you have a staffer with you guys, that's  
2   fine for jury selection. Not during the trial. They  
3   can sit right behind you.

4           MR. KALTER: You know, we weren't even asking  
5   that they be allowed to sit with us. Just that they  
6   could come back there with us.

7           THE COURT: Oh, yeah, that's fine.

8           MR. KALTER: Yeah.

9           THE COURT: Oh, that's always fine. All right.  
10   So, we're still open to the public, but we only have  
11   limited seating. Okay? So, but yeah, they can  
12   certainly sit back there to keep notes or do whatever.  
13   Yeah, absolutely.

14          MR. KALTER: Thank you.

15          THE COURT: Yeah. Yeah. Not a problem at all.  
16   But just make sure that they have the COVID precautions  
17   that I'm instructing the jury to use.

18          All right. So, okay. We're in recess. We'll  
19   meet back there and take a look, and I'll walk through  
20   it. If we need to make some modifications, we will.

21  
22                           (End of Proceedings.)

23  
24                           \* \* \* \* \*



CERTIFICATE

STATE OF NEVADA )

) SS.

CARSON CITY )

I, Kathy Terhune, CCR 209, do hereby certify that I reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken at said time and place before the Honorable John P. Schlegelmilch, District Judge, presiding.

Dated at Carson City, Nevada, this  
2nd day of January, 2021.



CCR #209

2021 MAY 24 PM 3:15

CASE NO. 20-CR-00099

DEPT. I

TANYA SCOTT  
CLERK OF COURT  
THIRD JUDICIAL DISTRICT*Andrea Andersen*

THE THIRD JUDICIAL DISTRICT COURT - THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

THE HONORABLE JOHN P. SCHLEGELMILCH DISTRICT JUDGE,

PRESIDING

[REDACTED]

THE STATE OF NEVADA,

PLAINTIFF,

v.

VOLUME I

THOMAS JASON BERNAL,

DEFENDANT.  
----- /

TRANSCRIPT OF PROCEEDINGS

JURY SELECTION - DAY ONE

NOVEMBER 3, 2020

COURTHOUSE

YERINGTON, NEVADA

Reported by:

KATHY TERHUNE, CCR 209

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APPEARANCES:

FOR THE STATE:

MATT MERRILL  
Deputy District Attorney  
Courthouse  
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DEFENDANT PRESENT IN COURT.

FOR THE DEFENDANT:

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LEANN SCHUMANN, ESQ.  
Jesse Kalter Law  
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Reno, NV 89512

NO OTHER APPEARANCES.

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS

THE COURT: All right. So, this is the trial -- the time set for trial in Case 20-CR-00099, State of Nevada versus Thomas Bernal.

All right. So, let the record reflect that the defendant's present in court with his counsel, Jesse Kalter and LeAnn Schumann. State of Nevada is present and represent by Mr. Merrill.

Are the parties ready to proceed?

MR. MERRILL: Yes, Your Honor.

MR. KALTER: Yes, Your Honor.

THE COURT: All right. So, counsel, you received a list of the prospective jurors?

MR. MERRILL: Yes, Your Honor.

MR. KALTER: Yes, Your Honor.

THE COURT: Stipulate that we may proceed in the absence of those that failed to appear today?

MR. MERRILL: Yes.

MR. KALTER: Yes.

THE COURT: All right. The defendant's advised that challenges to individual jurors must be made before the jury is sworn.

Okay. So, ladies and gentlemen, the district

1 attorney's now going to explain to you real briefly the  
2 nature of the case. So, please, pay close attention as  
3 all of you will be part of this selection process.

4 MR. MERRILL: Good morning, ladies and  
5 gentlemen. The State alleges three counts of sexual  
6 assault. The defendant committed sexual assault on his  
7 stepdaughter, HS, between the dates of August 1st of  
8 2018 and the 14th day of July, 2019. Thank you.

9 THE COURT: Okay. Ladies and gentlemen, we'll  
10 be selecting 28 of you to be seated in this area over  
11 here to be qualified for cause to start with. So, any  
12 juror excused may leave the courtroom if the Court  
13 excuses you. Once the 28 jurors have been passed for  
14 cause, we'll select four alternates in the same manner.

15 Once all the prospective jurors have been  
16 qualified, we'll recess -- the Court will recess so  
17 that counsel may exercise their peremptory challenges  
18 to reduce the number of trial jurors to 12 and a number  
19 of alternates to two who will actually try this case.  
20 In the event the peremptory challenges are waived, an  
21 equal number jurors will be stricken in reverse order  
22 from which they were selected.

23 The clerk will now swear in all prospective  
24 jurors. So, ladies and gentlemen, please, rise, raise

1 your right hand, and be sworn.

2 (Prospective jury sworn.)

3 THE COURT: Thank you. You can be seated.

4 Okay. So, the following comments are directed  
5 at all the prospective jurors. It's important that all  
6 of you pay close attention on what's going to happen  
7 now.

8 The purpose of what now follows is to ascertain  
9 if you're qualified under the law to serve as a jury in  
10 this particular case. That is, are you so unrelated to  
11 the parties, their attorneys, and the facts of the  
12 case, that you would be able to be a fair and impartial  
13 juror in this matter. To make that determination, I'll  
14 first ask you a number of questions.

15 The attorneys then will be permitted to ask  
16 questions on matters not covered by the Court. You are  
17 obligated by the oath you just took to answer all  
18 questions fully and truthfully. If any of your answers  
19 appear to reveal a legal basis for you to be excused as  
20 juror, one the attorneys may challenge you. That is  
21 they may request that you be excused.

22 If the Court agrees with the reasons stated for  
23 the challenge, you'll be excused from further service  
24 in this case. These challenges are called challenges

1 for cause.

2 Once we have 28 jurors who have been qualified  
3 for cause, the attorneys may then exercise another type  
4 of challenge which is called a peremptory challenge.

5 Each side is allowed eight peremptory challenges. If  
6 either side for any reason, or for no reason at all,  
7 makes this type of challenge against you, the Court has  
8 no alternative but to excuse you. If that happens,  
9 don't feel anything's wrong with you. It simply means  
10 that the attorney who so challenges believes, rightly  
11 or wrongly, that you would not be as receptive to his  
12 or her case as another prospective juror might be.

13 You'll know if such a challenge has been  
14 exercised against you when the Court calls the role of  
15 those who will serve as trial jurors in this case.  
16 During this questioning I ask all of you to bear in  
17 mind that neither I nor the attorneys want to embarrass  
18 you or match wits with you. We're only seeking  
19 relevant information upon which to decide your  
20 qualifications as a possible juror.

21 As indicated by the district attorney, this  
22 case is a sexual assault case. If any juror would  
23 answer any of the following questions that I give you  
24 affirmatively, I would ask that you would please raise



1 your hand. If any of juror indicates an affirmative  
2 answer, I will explore that matter further with you. I  
3 encourage you not to hesitate to raise your hand should  
4 you feel it appropriate.

5 The integrity of our entire judicial system  
6 depends on obtaining jurors who are disinterested and  
7 unbiased and unprejudiced, and the only way we can do  
8 this is through the question and answer process that  
9 we're about to begin.

10 And ladies and gentlemen, I understand that  
11 these are trying times for a lot of us. You will  
12 occasionally see court staff without a mask on,  
13 including myself. We will maintain social distancing  
14 throughout the jury selection process and throughout  
15 the trial.

16 There's a balance that we're required to uphold  
17 in the judiciary. And that's a balance between  
18 multiple constitutional rights. So, we thank you all  
19 for coming today to be part of this process. Because  
20 like I said, this is perhaps one of the most important  
21 processes that we have.

22 I would indicate that I know it's Election Day.  
23 So, we will stop a little early today so that anybody  
24 who needs to go out and vote can do so with plenty of

1 time left over. So, okay.

2 So, at this point, we're going to call the  
3 jurors up into the box, those numbered -- those boxes  
4 are -- the seats are numbered. The bailiff will help  
5 you find your seat as you're called.

6 Madame Bailiff. I mean Madame Clerk.

7 BY THE CLERK:

8 Q Deborah Porter. Angela Miller.

9 THE COURT: Yeah, find number one. All right  
10 so, number two.

11 BY THE CLERK:

12 Q Chad Hughes. Kathleen Riede. Jennifer Smith.  
13 Barbara Ustica. Aaron Taylor. Keith McDaniel.  
14 Christopher McKibbins. Jason Evans. Jonathan Staab.  
15 Virginia Jones. Julio Garcia-Rojas. Hillary Cole.  
16 Laura Ward. Thomas Williams. Misty Rogers.  
17 Loretta Wilson. Peggy Jamison. Joshua Gray.  
18 Katja Ziegenfuss. Rebecca Parsons. Eldawna Koch.  
19 Wendy Baptist. Connal Berry. Miki Jones.  
20 Alida Vanderdoes. Joseph Jarding.

21 THE COURT: Okay. So, folks, just a couple of  
22 things. I understand that sometimes emotions come into  
23 play in these types of cases. If there is anyone who  
24 is reticent about making a public disclosure about any

1 issue in relation to a question that's asked, please  
2 raise your hand, let us know that. We'll take a recess  
3 at some point and be able to inquire further in the  
4 actual courtroom individually. Okay? So, if you don't  
5 feel like making a public disclosure on any particular  
6 issue. And if you feel uncomfortable answering a  
7 question, you can just tell the Court that, and we'll  
8 take it from there. Okay?

9 So, how we're going to start, we're going to  
10 start with to the district attorney introducing himself  
11 to the Court, and also advise the jurors of the names  
12 of the other attorneys in his office and his office  
13 staff.

14 Mr. Merrill.

15 MR. MERRILL: Good morning, ladies and  
16 gentlemen. My name is Matthew Merrill, and I'm with  
17 the District Attorney's Office. And it's my job today  
18 to prosecute this case. Let me introduce my office  
19 staff and the attorneys here. We have Steven B. Rye  
20 who's the district attorney. You have Brian Haslem  
21 who's the chief deputy. And then we have myself,  
22 again, Matthew Merrill.

23 Next we have Austin Lucia, Damian Sinnott,  
24 Carmela Reed, Nathaniel Smith, Samantha Edmondo. And

1 those are the attorneys, ladies and gentlemen.

2 Next we have the office staff. Vickey Borsini,  
3 who is sitting back here with me at the table next to  
4 me. Denise Johnson, Nikki Kusmerz, Marcia Filipas,  
5 Bridgette Hill, Jenny Reviglio, Annabelle Rodrigues,  
6 Rebecca Armendariz, Krista Brenthouser, Jenny Morgan  
7 and Rachel Nicewonger. Thank you.

8 THE COURT: Mr. Kalter, could you please  
9 introduce yourself and your client and also advise the  
10 prospective jurors of the names of any other attorneys  
11 in your office and your office staff?

12 MR. KALTER: Thank you, Your Honor. Good  
13 morning, ladies and gentlemen. A little sensitive.

14 My name is Jesse Kalter. Myself and my  
15 co-counsel, LeAnn Schumann are representing Mr. Bernal.  
16 I own Jesse Kalter Law. My staff consists of  
17 Ms. Schumann, Jessica Combs, and Sherry Jones. Thank  
18 you.

19 THE COURT: Okay. So, for the 28 that were  
20 originally called, the questions are going to be  
21 basically directed at you to start. If we need to call  
22 somebody that's actually there, listen up to the  
23 questions because we'll be going through them again  
24 with the folks, if we have to call one of you folks

1 from out of the gallery for a lack of a better word.

2 So, all right. So, first of all, are any of  
3 you acquainted with any member of the District  
4 Attorney's Office?

5 Okay. And is that Ms. Porter back there?

6 PROSPECTIVE JUROR: Smith.

7 THE COURT: Ms. Smith. Okay. And who is it  
8 you know, ma'am?

9 PROSPECTIVE JUROR: Mr. Merrill was the  
10 attorney for my sister's guardianship case when we were  
11 declaring legal guardianship for her with Alzheimer's  
12 back in 2016, 2017, and I believe into 2018.

13 THE COURT: Okay. Is there anything in  
14 particular about that relationship -- well, first of  
15 all, he wasn't your attorney, it was your sister's  
16 attorney, right?

17 PROSPECTIVE JUROR: No, he was representing my  
18 sister, Karen Wolfe, and myself.

19 THE COURT: Okay. So, in relation to that, is  
20 there any particular bias that you have in favor of  
21 Mr. Merrill that would prevent you from listening to  
22 the evidence that he would present in this case as a  
23 deputy district attorney?

24 PROSPECTIVE JUROR: No, sir.

1 THE COURT: Anybody else familiar with anybody  
2 from the DA's Office?

3 I'm going to guess that you're Ms. Johnson?  
4 I'm sorry. You raised your hand, right?

5 PROSPECTIVE JUROR: My name's Koch, Eldawna.

6 THE COURT: Okay. Ms. Koch.

7 PROSPECTIVE JUROR: I believe --  
8 Marcia Filipas, I think I taught her son many, many,  
9 many years ago.

10 THE COURT: Okay. Is there anything about that  
11 relationship that would cause you not to listen to the  
12 evidence in this case?

13 PROSPECTIVE JUROR: No. Name just sounded  
14 familiar. I could not place her.

15 THE COURT: Okay. Thank you.

16 Anyone else? Okay.

17 Oh, I'm sorry. Ms. Baptist?

18 PROSPECTIVE JUROR: Know several.

19 THE COURT: Several people?

20 PROSPECTIVE JUROR: Yeah.

21 THE COURT: Okay. Anything about any of those  
22 relationships and knowing those people? Any personal  
23 relationships where you hangout with them or anything  
24 like that?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Okay. Is there anything that would  
3 prevent you from listening to all the evidence in this  
4 case?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Okay. Thank you.

7 Other than -- we understand Mr. Merrill. Does  
8 anybody know any of the actual attorneys involved in  
9 this case?

10 Okay. Mr. Vanderdoes?

11 PROSPECTIVE JUROR: Jarding. Jarding.  
12 Jarding.

13 THE COURT: Jarding, sorry. I apologize.

14 PROSPECTIVE JUROR: I know Mr. Kalter here.

15 THE COURT: Okay. And is -- what kind of --  
16 without getting into too much detail --

17 PROSPECTIVE JUROR: We're neighbors.

18 THE COURT: Neighbors?

19 PROSPECTIVE JUROR: Uh-hum.

20 THE COURT: Okay. Is there anything about that  
21 relationship that would prohibit you from listening to  
22 the evidence in this case?

23 PROSPECTIVE JUROR: No, I don't think so.

24 THE COURT: Okay. You can -- you can stop

1 talking to him for a week or so, right?

2 PROSPECTIVE JUROR: Yeah.

3 THE COURT: All right. Does anybody know the  
4 defendant? All right.

5 So, does anybody know any --

6 PROSPECTIVE JUROR: I apologize. I know --

7 I --

8 THE COURT: I'm sorry, ma'am. Your name again?

9 PROSPECTIVE JUROR: Misty Rogers.

10 THE COURT: Ms. Rogers.

11 PROSPECTIVE JUROR: I had a consultation with  
12 Jesse Kalter Law Firm.

13 THE COURT: A confrontation?

14 PROSPECTIVE JUROR: No, a consultation.

15 THE COURT: Oh, a consultation. Okay. I'm  
16 sorry. It's hard to hear sometimes. So, is there  
17 anything in particular about that that would prohibit  
18 you from listening to the evidence that was presented  
19 in this case?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Okay. Thank you.

22 All right. So, does anyone know any law  
23 enforcement personnel, that being a police officer,  
24 sheriff, deputy sheriff, highway patrolman, corrections



1 officer, military policeman or anybody else that you  
2 have a personal type relationship with, other than just  
3 a fly-by, you see them around town type relationship?

4 Okay. So, we're going to start in the back,  
5 and I believe is that Ms. Porter?

6 PROSPECTIVE JUROR: Yeah.

7 THE COURT: Okay. Ms. Porter.

8 PROSPECTIVE JUROR: My best friend's an  
9 investigator for Carson City Sheriff's Office.

10 THE COURT: For Carson City?

11 PROSPECTIVE JUROR: (Nods head.)

12 THE COURT: So, not involved with Lyon County?

13 PROSPECTIVE JUROR: Correct.

14 THE COURT: Okay. Is there anything about that  
15 relationship with the Carson City investigator that  
16 would prohibit you from listening to the evidence in  
17 this case?

18 PROSPECTIVE JUROR: No, Your Honor.

19 THE COURT: Okay. All right.

20 So, anybody else in the back? We're going to  
21 go to the back first.

22 And am I right, Mr. Hughes?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Okay.

1 PROSPECTIVE JUROR: My father's a retired  
2 Oakland police officer. He also works for the District  
3 Attorney's Office in Alameda County. I have a  
4 ex-brother-in-law that's military police, and a cousin  
5 that's also a sheriff.

6 THE COURT: Okay. So, is there anything about  
7 those relationships that you would feel incumbent on  
8 leaning one way or another in this particular case?

9 PROSPECTIVE JUROR: Currently, no.

10 THE COURT: Okay. So, you'd be willing to  
11 listen to all the evidence as it's presented to you,  
12 come to your own determination of what that evidence  
13 is, and then make your own decision; is that right?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Okay. Thank you.

16 All right. So, anybody else starting from the  
17 back?

18 Okay. I'm sorry, ma'am. In the --

19 PROSPECTIVE JUROR: Virginia Jones.

20 THE COURT: Ms. Jones.

21 PROSPECTIVE JUROR: Yes, I work for Nevada  
22 Department of Corrections. I've been there 20 years.  
23 15 and a half years I was a correctional officer. Now  
24 I'm a correctional case worker. I know just about

1 everybody in Northern Nevada Corrections, so.

2 THE COURT: Okay. So, do you feel that your  
3 position in corrections would prevent you from  
4 listening to the evidence that are -- that's presented  
5 in this case?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Can you listen to it in a fair,  
8 unbiased way and make your own determinations in  
9 relation to this matter?

10 PROSPECTIVE JUROR: Yes, Your Honor.

11 THE COURT: Okay. Thank you, ma'am.

12 All right. So, is that Ms. Cole?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: All right. I got it right.

15 PROSPECTIVE JUROR: Same thing. Friend in  
16 California is a sheriff out there.

17 THE COURT: Sheriff's officer?

18 PROSPECTIVE JUROR: Uh-hum.

19 THE COURT: Okay. Is there anything in  
20 particular about that relationship that would prevent  
21 you from listening to the evidence in this case?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: Okay. All right. Who else?

24 Okay. Ms. -- I'm sorry -- Ziegenfuss? Is that

1 correct?

2 PROSPECTIVE JUROR: That's correct.

3 THE COURT: Okay. All right. So,  
4 Ms. Ziegenfuss, yes.

5 PROSPECTIVE JUROR: My husband is a deputy.

6 THE COURT: Is a deputy with Lyon County?

7 PROSPECTIVE JUROR: (Nods head.)

8 THE COURT: Okay. And how long?

9 PROSPECTIVE JUROR: Three years.

10 THE COURT: Three years. Okay.

11 So, do you feel that that relationship, could  
12 you stop talking to your husband for a week?

13 PROSPECTIVE JUROR: Probably not.

14 THE COURT: Probably not. Can you stop talking  
15 to your husband about anything relating to this  
16 investigation or this case?

17 PROSPECTIVE JUROR: Probably.

18 THE COURT: All right. Do you know anything  
19 about this case?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Have you spoken to your husband  
22 about this case at all?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Do you feel that your relationship

1 with your husband would prohibit you from finding the  
2 evidence on -- as you find it after listening to all  
3 the testimony that's presented in this case?

4 PROSPECTIVE JUROR: Maybe. So, maybe because  
5 when I was a teenager, I was a witness in a murder and  
6 sexual assault case. So, I should --

7 THE COURT: So, that combined with your  
8 relationship with your husband would probably do it,  
9 huh?

10 PROSPECTIVE JUROR: Probably.

11 THE COURT: Okay. So, Mr. Kalter, do you have  
12 any questions or would you like?

13 MR. KALTER: Your Honor, I would move for cause  
14 at this time.

15 THE COURT: Okay. Mr. Merrill?

16 MR. MERRILL: No objection.

17 THE COURT: Okay. So, Ms. Ziegenfuss, thank  
18 you. I'm going to excuse you from further duty in  
19 relation to this case.

20 PROSPECTIVE JUROR: Thank you.

21 THE COURT: Okay. Thank you.

22 Could we please call the next juror?

23 THE CLERK: Shirley Forbes.

24 THE COURT: All right. Ms. Forbes, you heard

1 the original questions, know anybody from the DA's  
2 Office, anybody from the defense's office?

3 PROSPECTIVE JUROR: (Shakes head.)

4 THE COURT: Do you know the defendant himself?

5 PROSPECTIVE JUROR: (Shakes head.)

6 THE COURT: Any law enforcement?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Okay. Thank you.

9 Okay. And then we had Mr. Gray, I think.

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Okay. Mr. Gray, you indicated you  
12 knew someone in law enforcement?

13 PROSPECTIVE JUROR: My brother's a Washoe  
14 County Sheriff's Deputy, and one of the guys went to  
15 college with is a peace officer in --

16 THE COURT REPORTER: Did you say you say a guy  
17 I went to college with?

18 PROSPECTIVE JUROR: Yeah, a good friend of  
19 mine.

20 THE COURT: Okay. So, nobody in Lyon County,  
21 right?

22 PROSPECTIVE JUROR: No.

23 THE COURT: All right. Is there anybody -- is  
24 there anything specific about that relationship that

1 would prevent you from listening to the evidence in  
2 this case and coming to your own independent  
3 determination as to the facts in relation to this case?

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: Okay. All right. Anybody else up  
6 in front?

7 Okay. That would be Miss?

8 PROSPECTIVE JUROR: Parsons.

9 THE COURT: I'm sorry?

10 PROSPECTIVE JUROR: Rebecca Parsons.

11 THE COURT: I can't hear you, ma'am.

12 PROSPECTIVE JUROR: Rebecca Parsons.

13 THE COURT: Oh, Ms. Parson. Okay.

14 PROSPECTIVE JUROR: Parsons.

15 THE COURT: Parsons.

16 PROSPECTIVE JUROR: Yes. My husband is a  
17 retired Lyon County Deputy.

18 THE COURT: Okay. Ryan?

19 PROSPECTIVE JUROR: (Nods head.)

20 THE COURT: Okay.

21 PROSPECTIVE JUROR: And I'm also a 911  
22 operator.

23 THE COURT REPORTER: You're also a what?

24 THE COURT: 911 operator.

1 PROSPECTIVE JUROR: So, I know a lot of  
2 deputies.

3 THE COURT: So, you know a lot of deputies?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: All right. So, if you were to hear  
6 the testimony from some deputies in relation to this  
7 case, would you be able to independently determine  
8 whether or not they were credible or not credible in  
9 relation to what they were doing in this matter?

10 PROSPECTIVE JUROR: I think so.

11 THE COURT: So, can you listen to all the  
12 evidence in a fair way and then come to your own  
13 independent determination?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Okay. And I'm sure somebody's  
16 going to have some more questions for you Ms. Parsons.

17 PROSPECTIVE JUROR: That's fine.

18 THE COURT: Okay. All right. So, anybody else  
19 in the front? Okay.

20 Does any juror have any bias or prejudice for  
21 or against the State of Nevada?

22 How about for or against the defendant in this  
23 particular case?

24 The district attorney will give you now a list



1 of prospective witnesses that may testify in this  
2 matter. So, he'll go through them with you real  
3 briefly.

4 MR. MERRILL: Ladies and gentlemen, our  
5 prospective witness list is as follows:

6 Detective Michael Messman,  
7 Deputy Nicholas Greenhut, Detective Marty Dues,  
8 Jennifer McCann, OS, HS, Patricia Bernal, and  
9 Melissa Piasecki.

10 THE COURT: So, is anybody familiar with the  
11 names of any of those witnesses?

12 Okay. So, that's?

13 PROSPECTIVE JUROR: Jennifer Smith.

14 THE COURT: I'm sorry, I missed that.

15 PROSPECTIVE JUROR: Jennifer Smith.

16 THE COURT: Oh, Ms. Smith, yes.

17 PROSPECTIVE JUROR: I believe that HS is one of  
18 my students.

19 THE COURT: Okay. So, currently?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Okay.

22 Mr. Kalter?

23 MR. KALTER: Your Honor, I think another trial  
24 would be more appropriate for Ms. Smith. But I thank

1 her for being here today.

2 THE COURT: Mr. Merrill?

3 MR. MERRILL: Your Honor, I agree. Thank you  
4 for being here.

5 THE COURT: Okay. Thank you, Ms. Smith.  
6 You're excused.

7 Please call the next prospective juror.

8 THE CLERK: Nancy Campbell.

9 THE COURT: Ms. Campbell, you heard my original  
10 questions?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Okay. So, you acquainted with  
13 anybody that's been presented yet?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Any -- know any law enforcement?

16 PROSPECTIVE JUROR: Frank Honeywell.

17 THE COURT: Okay. So, you know the sheriff?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Is that a personal relationship?

20 PROSPECTIVE JUROR: He's a family member, a  
21 cousin. My brother-in-law's cousin.

22 THE COURT: Okay. So, is there anything in  
23 relation to that relationship in and of itself that you  
24 couldn't make a fair and independent determination in

1 relation to the evidence in this case?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: Okay. Thank you.

4 Do you know any of the prospective witnesses?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Okay. Does anybody else know any  
7 of the prospective witnesses? Okay.

8 Have any of you ever served on a jury before,  
9 whether that's criminal, civil, or a grand jury? Okay.  
10 We'll start in the back.

11 And I'm sorry, ma'am. What's your name?

12 PROSPECTIVE JUROR: Riede.

13 THE COURT: Riede? All right.

14 Ms. Riede, you were on a jury before?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Okay. Was that civil or criminal?

17 PROSPECTIVE JUROR: Civil.

18 THE COURT: Civil? All right.

19 Is there anything about that experience that  
20 would prevent you from listening to the evidence in  
21 this case in a fair and unbiased way?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Okay. I'm sorry, sir?

24 PROSPECTIVE JUROR: Jason Evans.

1 THE COURT: Mr. Evans.

2 PROSPECTIVE JUROR: It was a criminal.

3 THE COURT: Criminal case?

4 PROSPECTIVE JUROR: Yeah.

5 THE COURT: Without telling me what the verdict  
6 was, did your jury reach a verdict?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Okay. And is there anything in  
9 relation to that experience that would prevent you from  
10 listening to the evidence in this case?

11 PROSPECTIVE JUROR: I had -- that was a very  
12 emotional trial for me. I don't know that I can do  
13 that again.

14 THE COURT: Okay. So, you're afraid that you  
15 wouldn't be able to listen to the evidence in this case  
16 and deliberate after I instruct you on the law in  
17 relation to guilt or innocence?

18 PROSPECTIVE JUROR: If I had to, I would. But  
19 I have some...

20 THE COURT: You have some concerns?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Okay. So, what I'm going to do is,  
23 I'm going to let counsel inquire a little bit further  
24 with you, Mr. Evans.

1 PROSPECTIVE JUROR: Okay.

2 THE COURT: And in relation to those concerns,  
3 maybe we'll take a little break a little later and go  
4 into the main courtroom real quick and kind of explore  
5 that a little bit more if you're uncomfortable. Okay?

6 PROSPECTIVE JUROR: I appreciate it.

7 THE COURT: How's that?

8 PROSPECTIVE JUROR: Thank you.

9 THE COURT: Fair enough.

10 Okay. Anybody else?

11 Oh, I'm sorry. Mr. Jarding again.

12 PROSPECTIVE JUROR: It was criminal. It was  
13 also a sexual assault case.

14 THE COURT: Were you able to reach a verdict  
15 without telling me what it was?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Okay. And is there anything in  
18 particular about that case that would prevent you from  
19 listening to the evidence in this matter?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Okay. Thank you.

22 All right. This is somewhat of an antiquated  
23 question, but I ask it anyway just in case. Okay?

24 Sometimes harsh and foul words are used by counsel

1 quoting witnesses and by witnesses testifying as to the  
2 facts exactly as they recall them. This can be  
3 embarrassing to some of us who don't hear that or use  
4 those words in ordinary life. Will that cause any of  
5 you to be so embarrassed as to prevent you from paying  
6 full attention to the evidence and serving as a fair  
7 and impartial juror?

8 Does anyone have any specific health reason  
9 that would prevent him or her from serving as an  
10 unbiased and impartial juror in this case?

11 PROSPECTIVE JUROR: Health reason as in -- or  
12 against the case?

13 THE COURT: Well, health reason in relation to  
14 your ability to sit and listen to the evidence.

15 PROSPECTIVE JUROR: I have an issue with the  
16 just driving here. I don't drive the freeway. My  
17 husband has to take me, and he's sitting, waiting for  
18 me.

19 THE COURT: Okay. This trial will last, we're  
20 anticipating through Thursday. So, three days.

21 PROSPECTIVE JUROR: Okay.

22 THE COURT: So, I'll let counsel inquire a  
23 little bit further in relation to that. Okay?

24 All right. Anybody else have any health

1 reason?

2 At the conclusion of the evidence I'll state to  
3 you the law applicable to this case. I'll instruct you  
4 that it is your duty to apply the law to the facts as  
5 you find them. Would any juror be reluctant to apply  
6 the general principals of law which will be stated by  
7 the Court?

8 In this case the defendant's charged with  
9 sexual assault. Does any juror have a quarrel with the  
10 principle that sexual assault is declared a criminal  
11 offense in the State of Nevada?

12 If the Court were to instruct you at the  
13 conclusion of this case that a defendant in a criminal  
14 action is presumed to be innocent until the contrary is  
15 proven beyond a reasonable doubt. In case of a  
16 reasonable doubt as to whether the defendant's guilt is  
17 satisfactorily shown, he is entitled to be acquitted.  
18 Would each of you accept and follow that instruction?  
19 And I would indicated that that was affirmative.

20 If the Court were to instruct you that a  
21 reasonable doubt is one based on reason, it is not  
22 possible doubt but is such a doubt as would govern or  
23 control a person in the weighty affairs of life, if in  
24 the minds of the jurors after the entire comparison and

1 consideration of all the evidence are in such a  
2 condition that they can say they feel an abiding  
3 conviction of the truth of the charge, there is not a  
4 reasonable doubt. Doubt to be reasonable must be  
5 actual, not mere possibility or speculation.

6 Would each of you accept and follow that  
7 instruction?

8 I would indicate agreement for the record.

9 Does anybody have any personal knowledge about  
10 the facts of this case?

11 Has anybody read anything in a newspaper or saw  
12 anything social media or anything else in relation to  
13 this case?

14 Okay. Now, this is the biggie. Or one of the  
15 biggies. Because I understand that we all have  
16 personal things that we would rather be doing, and also  
17 business things that we'd rather be doing during this.

18 But I -- as I explained earlier, this is one  
19 of -- probably one of the most significant issues --  
20 things that you could do as a citizen of the United  
21 States. Except perhaps vote, which is also today. Our  
22 country, unlike 95 percent of the world, relies on  
23 individuals like you who. Not judges, but individuals  
24 like you to make determinations as to whether or not



1        somebody is -- that is accused of a crime is guilty or  
2        not guilty of that. That is not up to me. That is  
3        100 percent up to the citizens of this country.

4                So, with that in mind, do any of you have any  
5        business or personal reason which you would feel would  
6        interfere with your impartiality to serve as a juror in  
7        this case?

8                Yes, ma'am.

9                PROSPECTIVE JUROR: My niece, I'm a caregiver  
10       for my niece. She needs 24 hour care. She can't be  
11       left alone at all from childbirth. Administered wrong.  
12       And my sister works to keep her insurance. So, I take  
13       care of her. My sister had to take a vacation day for  
14       me to be able to come here this morning to be able to  
15       come here because I wanted to, you know, come. And I'm  
16       wondering if because I'm her caregiver and my sister  
17       works, no one else has taken care of her since this  
18       happened.

19               That's kind of an issue for me because I -- and  
20       I take care of her child too. I wonder if that's going  
21       to cause a problem for me to be able to.

22               THE COURT: Well, is there really anybody else  
23       that can be able to?

24               PROSPECTIVE JUROR: No one. Her dad works

1 full-time. Her sister's a nurse and works full-time.  
2 Her mom works full-time. And there's no one else --  
3 and no one else can understand her like me because she  
4 nonverbal also. I mean, you have to do everything.

5 THE COURT: Okay. And that would be weighing  
6 your mind --

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: -- during the course --

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: -- trial a lot? And it might --

11 PROSPECTIVE JUROR: A lot.

12 THE COURT: -- and it might interfere with your  
13 ability to actually listen to the evidence?

14 PROSPECTIVE JUROR: Correct. Because it  
15 stresses me out right now.

16 THE COURT: And you're Ms. Vanderdoes, right?

17 PROSPECTIVE JUROR: Yes. Yes.

18 THE COURT: Okay. Mr. Kalter?

19 MR. KALTER: Thank you for coming today. I  
20 think it would be appropriate based on how few arms  
21 went up, that she be released.

22 THE COURT: Mr. Merrill?

23 MR. MERRILL: No objection. Thank you.

24 THE COURT: Okay. Thank you. Ms. Vanderdoes.

1 PROSPECTIVE JUROR: Thank you so much. I  
2 appreciate it.

3 THE COURT: No, thank you.

4 Please call the next prospective juror,  
5 Madame Clerk.

6 THE CLERK: Brandi Lett.

7 THE COURT: Okay. Ms. Lett, you heard the  
8 questions that I asked?

9 PROSPECTIVE JUROR: Uh-hum.

10 THE COURT: Do you know anyone?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Know any law enforcement?

13 PROSPECTIVE JUROR: My cousin is a sheriff in  
14 Placer County, but it's not an issue.

15 THE COURT: It wouldn't interfere with your  
16 ability to listen to the evidence in this case?

17 PROSPECTIVE JUROR: No.

18 THE COURT: So, do you entertain any biases  
19 against the State or the defendant?

20 PROSPECTIVE JUROR: Huh-uh.

21 THE COURT: Ever serve on a jury before?

22 PROSPECTIVE JUROR: Uh-hum.

23 THE COURT: And what kind, civil or criminal?

24 PROSPECTIVE JUROR: A criminal.

1 THE COURT: Okay. Without telling me what the  
2 verdict is, were you able to reach a verdict?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Was there anything about that  
5 experience serving on a trial, jury trial, that would  
6 interfere with your ability to listen to the evidence  
7 in this case?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Do you have any health reason that  
10 would prevent you from being a juror in this case? Do  
11 you know anything about the facts of this case?

12 PROSPECTIVE JUROR: (Shakes head.)

13 THE COURT: Do you have any business or  
14 personal reason which you feel would interfere with  
15 your impartiality to serve as a juror?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Okay. All right.

18 So, ladies and gentlemen, now I'm going to let  
19 the attorneys proceed with supplemental examination of  
20 the jurors on matters that either were not covered by  
21 the Court, or matters -- or more questioning based upon  
22 your answer in this particular matter.

23 I am going to ask you a couple more questions,  
24 though, that I forgot to ask you.

1 Does anybody -- has anybody been either a  
2 victim or know a victim or have been a witness, except  
3 the one person that indicated previously, to a sexual  
4 assault?

5 So, Ms. Porter, you indicated you have been?

6 PROSPECTIVE JUROR: I know my co-worker was  
7 charged with sexual assault on his daughters.

8 THE COURT: I'm sorry, your what?

9 PROSPECTIVE JUROR: I had a co-worker who was  
10 charged with sexual assault against his two young  
11 daughters. It was about seven years ago.

12 THE COURT: Okay. So, it was a long time ago.  
13 You were not -- were you personally involved with that  
14 situation?

15 PROSPECTIVE JUROR: No, Your Honor.

16 THE COURT: All right. So, is there anything  
17 about that that would prevent you from listening to the  
18 evidence in this case and coming to a fair and  
19 independent determination in relation to this matter?

20 PROSPECTIVE JUROR: No, Your Honor.

21 THE COURT: Okay.

22 So, I somebody else in the back there.

23 Yes. I'm sorry, sir. What's your name?

24 PROSPECTIVE JUROR: Aaron Taylor.

1 THE COURT: Aaron?

2 PROSPECTIVE JUROR: Taylor.

3 THE COURT: Taylor. All right.

4 Mr. Taylor, yes?

5 PROSPECTIVE JUROR: To make a long story short,  
6 ex-family member sexual assaulted his brother and  
7 sister.

8 THE COURT: Okay. So, were you personally  
9 involved with that?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: Is there anything in relation to  
12 that that would prevent you from sitting as a fair and  
13 unbiased juror in this case?

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: Okay.

16 And I think right next to you Ms. Ustica.

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: What?

19 PROSPECTIVE JUROR: I didn't raise my hand.

20 THE COURT: Oh, you didn't raise your hand?

21 PROSPECTIVE JUROR: I did.

22 THE COURT: I'm sorry.

23 PROSPECTIVE JUROR: (Inaudible.)

24 THE COURT: Okay. And I'm sorry, is that

1 Ms. Jones?

2 PROSPECTIVE JUROR: Campbell.

3 THE COURT: Campbell. Ms. Campbell, sorry. Go  
4 ahead.

5 PROSPECTIVE JUROR: As a child I was sexually  
6 assaulted, and it kind of invokes an immediate  
7 response.

8 THE COURT REPORTER: I can't hear.

9 THE COURT: It invokes an immediate response.

10 THE COURT REPORTER: Okay. Thank you.

11 THE COURT: Okay. So, Ms. Campbell, would you  
12 able to -- be able to put.

13 That aside, listen to the evidence in this  
14 case, and come to your own independent determination as  
15 to the facts of this case after listening to all the  
16 evidence.

17 PROSPECTIVE JUROR: I'm not sure. I'm not sure  
18 if I could do that. It's emotional.

19 THE COURT: It's very emotional for you?

20 PROSPECTIVE JUROR: Yeah. And I think I would  
21 just probably air on the side of the child.

22 THE COURT: Okay. Would either counsel like to  
23 inquire?

24 MR. KALTER: I would move for cause.

1 MR. MERRILL: Your Honor, if I could inquire?

2 THE COURT: Yes.

3 MR. MERRILL: Thank you, Ms. Campbell. Is this  
4 forum here, is this okay to discuss the incident that  
5 happened when you were a child?

6 PROSPECTIVE JUROR: Not really.

7 THE COURT: You would like something more  
8 private?

9 PROSPECTIVE JUROR: Yes.

10 MR. MERRILL: Okay. Your Honor, if we could  
11 maybe have something more private at a later time?

12 THE COURT: Yeah. We'll break here in a  
13 minute.

14 MR. MERRILL: Thank you.

15 THE COURT: For that purpose. Because we have  
16 a couple of people we need ask some questions at this  
17 point.

18 So, all right. So, there was a couple other  
19 people that raised their hand. Okay.

20 All right. Sorry, ma'am, your name is? I'm  
21 sorry.

22 PROSPECTIVE JUROR: Jamison.

23 THE COURT: Jamison?

24 PROSPECTIVE JUROR: Uh-hum.



1 THE COURT: Okay. Ms. Jamison.

2 PROSPECTIVE JUROR: I was molested as a child  
3 also. And I have you brother-in-law who's currently --  
4 ex-brother-in-law currently in prison in Oregon for  
5 molesting his children, which are my niece and nephew.

6 THE COURT REPORTER: Which what?

7 THE COURT: I missed.

8 PROSPECTIVE JUROR: My niece and nephew.

9 THE COURT: Okay. All right. So, is there  
10 anything about those experiences that would prevent you  
11 from listening to the evidence in this case?

12 PROSPECTIVE JUROR: No, I can listen.

13 THE COURT: You can listen?

14 PROSPECTIVE JUROR: Yeah.

15 THE COURT: You can independently determine the  
16 truth of what happened and what didn't happen?

17 PROSPECTIVE JUROR: I believe I could.

18 THE COURT: And you could set aside your  
19 personal feelings and --

20 PROSPECTIVE JUROR: I can work at it.

21 THE COURT: Okay. Thank you.

22 All right. So, and I'm sorry.

23 PROSPECTIVE JUROR: Shirley Forbes.

24 THE COURT: Ms. Forbes, sorry.

1 PROSPECTIVE JUROR: I was sexual assaulted as a  
2 teen.

3 THE COURT: When?

4 PROSPECTIVE JUROR: As a teen.

5 THE COURT: As a teen?

6 PROSPECTIVE JUROR: Uh-hum.

7 THE COURT: Okay. So, is there anything about  
8 that situation that would prohibit you from listening  
9 to the evidence in this case?

10 PROSPECTIVE JUROR: I honestly would be biased.

11 THE COURT: Okay. So, anybody want to inquire  
12 to Ms. Forbes?

13 MR. KALTER: She stated she would be biased,  
14 Your Honor. Another case would probably be more  
15 appropriate. So, I move for cause.

16 MR. MERRILL: I agree, Judge. Thank you,  
17 Ms. Forbes.

18 THE COURT: All right. Thank you, Ms. Forbes.  
19 You're excused.

20 Please call the next prospective juror.

21 THE CLERK: Victoria Gould.

22 THE COURT: Ms. Gould, how are you today?

23 PROSPECTIVE JUROR: Good.

24 THE COURT: So, did you hear most of the

1 questions I asked?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: All right. So, do you know anyone?

4 PROSPECTIVE JUROR: No. No to all of it.

5 THE COURT: No to all of it?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Okay. Would you follow the  
8 reasonable doubt instruction I gave?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Okay. Would you listen to all the  
11 evidence?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Okay. So, was there anyone else  
14 that I missed?

15 All right. So, Mr. Jarding.

16 PROSPECTIVE JUROR: My daughter was sexually  
17 assaulted at 12.

18 THE COURT: Was?

19 PROSPECTIVE JUROR: Sexually assaulted at 12.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR: He's in jail.

22 THE COURT: I'm sorry, I missed the last part  
23 of that.

24 PROSPECTIVE JUROR: The guy's in jail.

1 THE COURT: Okay. So, is there anything in  
2 particular about that that would prevent you from  
3 listening to the evidence in this case and coming to  
4 your own independent determination?

5 PROSPECTIVE JUROR: Not sure.

6 THE COURT: Well, I know that that's a rough  
7 one.

8 PROSPECTIVE JUROR: Yeah.

9 THE COURT: So, any questions for Mr. Jarding?

10 MR. KALTER: What was his response?

11 THE COURT: He --

12 PROSPECTIVE JUROR: My daughter was sexually  
13 assaulted at 12.

14 THE COURT: Yeah. He's afraid he can't  
15 separate that from this.

16 MR. KALTER: Your Honor, I believe it would be  
17 appropriate for Mr. Jarding to potentially sit on a  
18 different type of trial than this one here \*\*\* as it  
19 weighed on his mind. I think it would be appropriate  
20 to excuse him.

21 THE COURT: Mr. Merrill?

22 MR. MERRILL: No objection. Thank you.

23 THE COURT: Okay. You're excused, Mr. Jarding.  
24 Please call the next prospective juror.

1 THE CLERK: Heather Pauly.

2 THE COURT: Good morning, Ms. Pauly. How are  
3 you today?

4 PROSPECTIVE JUROR: I'm good.

5 THE COURT: Good. You know anyone?

6 PROSPECTIVE JUROR: I do not know any of the  
7 attorneys or witnesses involved. I do have three  
8 family members who are officers.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR: One is in Arkansas. And  
11 then I have two, one is retired NHP out of Fallon, and  
12 one is still working as a NHP in Fallon.

13 THE COURT: Okay. So, is there anything in  
14 particular about those relationships where you couldn't  
15 listen to the evidence in this case?

16 PROSPECTIVE JUROR: No.

17 THE COURT: All right.

18 PROSPECTIVE JUROR: I do know two victims of  
19 sexual assault.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR: I do not feel that their  
22 case would effect me with this case.

23 THE COURT: Okay. So, you'd be willing to come  
24 to your own independent determination of the facts

1 after listening to all the evidence presented to you?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Okay. And you're also willing to  
4 follow the law as I would instruct it?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: And you're willing to follow the  
7 reasonable doubt instruction?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Would you have answered any of  
10 the -- any of the other questions in the affirmative?

11 PROSPECTIVE JUROR: I don't think so.

12 THE COURT: Ever serve on a jury before? I  
13 mean, we can go through them real quick.

14 PROSPECTIVE JUROR: No.

15 THE COURT: No?

16 PROSPECTIVE JUROR: No, I have not.

17 THE COURT: All right. So, any health  
18 issues --

19 PROSPECTIVE JUROR: No.

20 THE COURT: -- that we should know about?  
21 Okay.

22 Okay. So, was there anybody else that I  
23 missed?

24 Oh, I'm sorry, ma'am. I didn't see you back

1       there.   Is that?

2               PROSPECTIVE JUROR:   Riede.

3               THE COURT:   Riede.   Ms. Riede.   Yes?

4               PROSPECTIVE JUROR:   I was, I'll say when I was  
5       15, by a cousin.

6               THE COURT:   15 by a cousin?

7               PROSPECTIVE JUROR:   Uh-hum.

8               THE COURT:   Okay.   So, is there anything in  
9       that -- can you set that aside and listen to the  
10      evidence in this case?

11              PROSPECTIVE JUROR:   No.

12              THE COURT:   That's an absolute no, right?

13              PROSPECTIVE JUROR:   No.

14              THE COURT:   Okay.   I'm going to excuse you  
15      ma'am.   Thank you.

16              PROSPECTIVE JUROR:   Thank you.

17              THE COURT:   Please call the next juror.

18              THE CLERK:   Jacklyn Rew.

19              THE COURT:   Ms. Rew, did you hear the -- well,  
20      first of all, good morning, ma'am.   How are you?

21              PROSPECTIVE JUROR:   I'm fine.   How are you?

22              THE COURT:   Good, thank you.   Did you listen to  
23      the questions that I previously asked?

24              PROSPECTIVE JUROR:   Yes, sir.

1 THE COURT: Okay. Do you know anybody involved  
2 with this case?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: You know any law enforcement?

5 PROSPECTIVE JUROR: A lot of them, but it  
6 wouldn't change my opinion.

7 THE COURT: Okay. So, nothing so personal as  
8 that would effect your ability to listen to the  
9 evidence in this case?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: Did you know any of the witnesses?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Ever serve on a jury before?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Do you have any biases to the State  
16 or the defendant?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Would you follow the Court's  
19 reasonable doubt instruction?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: And the presumption of innocence  
22 instruction?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Is there any business or personal



1 reason that would affect your impartiality in this  
2 matter?

3 PROSPECTIVE JUROR: Not at this time.

4 THE COURT: Okay. Is there any history of any  
5 sexual assault or anything like that that you're aware  
6 of?

7 PROSPECTIVE JUROR: I was assaulted as a  
8 teenager, but it wouldn't effect my judgment.

9 THE COURT: Okay. Thank you. I'm sure there  
10 might be some further inquiry on that. Would you  
11 prefer that inquiry to be in private?

12 PROSPECTIVE JUROR: Yes, please.

13 THE COURT: Okay. So, at this point ladies and  
14 gentlemen, what I'm going to do is for those people  
15 that indicated -- does anybody have another personal  
16 reason that they'd like to express to the Court  
17 separately?

18 Yes. I'm sorry, Ms. Jones?

19 PROSPECTIVE JUROR: Yes, I was also assaulted  
20 as a teen, and I have cousins that were sexually  
21 assaulted when they were younger.

22 THE COURT: Okay.

23 THE COURT REPORTER: I missed part of that.

24 THE COURT: Cousins that were sexually

1 assaulted.

2 PROSPECTIVE JUROR: When they were young.

3 THE COURT: When they were young.

4 Okay. So, would you be able to set that aside  
5 and come to your own independent determination in  
6 relation to this matter?

7 PROSPECTIVE JUROR: It might. I --

8 THE COURT: It conjures up a lot of feelings,  
9 I'm guessing.

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Okay. So, and those are the  
12 feelings that are difficult to ever set aside. And I  
13 appreciate that as well. Okay? So, some people are  
14 built for different types of cases.

15 So, does anybody have any inquiry?

16 MR. KALTER: No, Your Honor. I would move for  
17 cause, and thank her for showing up today.

18 MR. MERRILL: Your Honor, if I can ask some  
19 questions?

20 THE COURT: Okay. Mr. Merrill, go ahead.

21 MR. MERRILL: Thank you for being here. Would  
22 any further discussion, would that be better in private  
23 then in open setting?

24 PROSPECTIVE JUROR: (Nods head.)

1 MR. MERRILL: Okay. Thank you.

2 Judge, if we could do that?

3 THE COURT: No. I'm going to let Ms. Evans --  
4 I mean, Ms. Jones go. She's clearly conflicted.

5 So, you're excused, ma'am. Thank you.

6 PROSPECTIVE JUROR: Thank you.

7 THE COURT: Please call the next prospective  
8 juror.

9 THE CLERK: Scott Cantacessi.

10 THE COURT: Good morning, Mr. Cantacessi. How  
11 are you today?

12 PROSPECTIVE JUROR: Doing well, sir.

13 THE COURT: Okay. So, do you know anyone?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Do you know any law enforcement?

16 PROSPECTIVE JUROR: I occasionally play poker  
17 with (inaudible.)

18 THE COURT: I'm sorry. I'm having a problem  
19 hearing you, sir.

20 PROSPECTIVE JUROR: I occasionally play poker  
21 with the ex-chief of police of Albany County,  
22 California.

23 THE COURT: Okay.

24 THE COURT REPORTER: What was the end of it?

1 THE COURT: Albany County, California.

2 Okay. So, anything about that relationship  
3 that would prevent you from listening to the evidence  
4 in this particular matter?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Okay. Did you hear the Court's  
7 reasonable doubt instruction?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Would you be willing to follow  
10 that?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Have you ever served on a jury  
13 before?

14 PROSPECTIVE JUROR: Three or four times  
15 (inaudible.)

16 THE COURT: I missed that, sir.

17 PROSPECTIVE JUROR: I've been through four or  
18 five. Never selected.

19 THE COURT: You've never been selected? Okay.  
20 Do you have any prejudice against anybody in  
21 this particular matter?

22 PROSPECTIVE JUROR: No. (Inaudible.)

23 THE COURT REPORTER: Say what? Can you repeat  
24 that, please?

1 PROSPECTIVE JUROR: I don't know anybody here.

2 THE COURT: Okay. So, there's no prejudice for  
3 the State or against the State or for --

4 PROSPECTIVE JUROR: No, not that I'm aware of.

5 THE COURT: Okay. That helps. Thank you.

6 Okay. Mr. Cantacessi's very quiet.

7 All right. So, have you ever been -- do you  
8 have any health reasons I should be aware of?

9 PROSPECTIVE JUROR: Well, I'm diabetic. I like  
10 to use the restroom a lot, but I'm not concerned about  
11 falling out of the chair.

12 THE COURT: Okay. So, if we break every hour,  
13 hour and a half that you would be -- you'd be all  
14 right?

15 PROSPECTIVE JUROR: Yeah, that's good.

16 THE COURT: Okay. All right. Do you have any  
17 business or other personal reason that you feel would  
18 interfere with your impartiality in this matter?

19 PROSPECTIVE JUROR: Well, my wife broke her  
20 foot Sunday night, and she has no way of getting to the  
21 doctor without me driving her. I don't know that would  
22 effect my impartiality or sway me one way or another.  
23 It might not -- it might keep me from my full attention  
24 to the facts.

1 THE COURT: Okay. So, you don't -- all right.  
2 So, is there an appointment set?

3 PROSPECTIVE JUROR: Well, she broke -- we got  
4 the diagnosis yesterday, and they want to get her in  
5 for a CAT scan tomorrow. So, it -- I'd either have to  
6 change -- I guess I'd have to change it or find her  
7 another way into Reno.

8 THE COURT: Okay. So, you feel that that would  
9 be weighing on your mind instead of listening to the  
10 evidence?

11 PROSPECTIVE JUROR: Well, she can't walk.  
12 She's without the use of a walker. They think she may  
13 need surgery. I mean, if she needs surgery, I'd like  
14 to find that out sooner than later.

15 THE COURT: Sure.

16 Okay. Anybody have any inquiry?

17 MR. KALTER: No, Your Honor.

18 MR. MERRILL: No, Judge.

19 THE COURT: Okay. So, I'm going to allow you  
20 to be excused, Mr. Cantacessi. Thank you.

21 Please call the next prospective juror.

22 THE CLERK: Acacia -- excuse me. Acacia Rizzo.

23 THE COURT: Good morning, Ms. Rizzo. How are  
24 you today?

1 PROSPECTIVE JUROR: Good, thank you.

2 THE COURT: All right. So, do you know anyone?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Heard all the questions I asked?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Any that you would answer in the  
7 affirmative?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Would you be able to follow the  
10 reasonable doubt instruction as prepared by the Court?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Would you follow the rules of law  
13 as indicated by the Court?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Do you have any business or  
16 personal reason that would prevent you from being an  
17 impartial juror?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Do you have any history of sexual  
20 assault or anything like that, that you know anybody?

21 PROSPECTIVE JUROR: No.

22 THE COURT: All right. So, okay.

23 So, at this point we are going to take a little  
24 break, ladies and gentlemen.

1 Ms. Campbell -- I'm going to request that  
2 Ms. Campbell, Ms. Rew, Mr. Evans, and I thought there  
3 was someone else.

4 Is there somebody else that we indicated --  
5 that indicated they wanted to speak privately? Okay.

6 So, that being the case, if they could wait  
7 outside -- well, first of all I'm going to let  
8 everybody break. For those 28 that are here, please  
9 remember where you're sitting. Okay? There's a number  
10 on the back of your chair. Please make sure that you  
11 get back into that number. All right?

12 We're going to take -- because individual  
13 questioning might go a little while, we're going to  
14 take about 15 minute break. And if you could be back  
15 here 15 -- in about 15 minutes, then you can sit back  
16 in the chairs that you originally seated in. And then  
17 I'll let counsel individually inquire after we  
18 individually inquire to those folks that felt that they  
19 had some personal reason that they would like to  
20 express to the Court. Okay?

21 So, we're in recess.

22 The three individuals, just remain outside the  
23 actual courtroom, and we'll call you in one at a time.  
24 Okay? Thank you.



1

(Recess.)

2

(Out of the presence of the prospective jury.)

3

4

\*\*\*

5

6

7

THE COURT: We're back in session. The break was for the jurors not counsel. We have three jurors waiting outside. I don't like to have the jurors wait.

8

So, we going to wait for Ms. Schumann?

9

10

THE BAILIFF: She went to get the defendant, sir.

11

THE COURT: So, where did he go?

12

13

THE COURT REPORTER: Downstairs to go to the bathroom.

14

15

THE COURT: Okay. Let's start with Mr. Evans. He was the first one to indicate he had an issue.

16

17

THE COURT: Mr. Evans, please, come up in front.

18

19

Just put him right in that chair in the middle right there.

20

PROSPECTIVE JUROR: Right in there?

21

THE COURT: Yeah, just right there is fine.

22

23

24

Okay. So, Mr. Evans, there was some things that you indicated that you didn't want to disclose in relation to your feelings on this case. So, please, go

1 right ahead.

2 PROSPECTIVE JUROR: So, really what it boils  
3 down to is I spent a long time in this exact courtroom  
4 like four years ago going through a murder case  
5 involving five victims. I feel like this is going to  
6 be another very emotional --

7 THE COURT: You were on the Jeremiah Bean case?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: That was my case.

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: So, and that was a difficult case.

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: There is no doubt. Still carrying  
14 some of that with you?

15 PROSPECTIVE JUROR: It messed me up. You can  
16 ask my wife and my daughters. It -- long lasting  
17 affects from that.

18 THE COURT: Is there anything that this Court  
19 can do for you?

20 PROSPECTIVE JUROR: I mean, I can -- obviously,  
21 I can do what I have to do. But I'm --

22 THE COURT: No, I think I'm -- I think what  
23 you're saying is, is that you've gone through this, and  
24 it has traumatized you so much that you're afraid that

1     you're just not going to be able to do your job; is  
2     that right?

3             PROSPECTIVE JUROR:   Yes.

4             THE COURT:   Okay.  What I'm asking you right  
5     now though is there anything that this Court, any  
6     services that this Court could provide to you to help  
7     you out?

8             PROSPECTIVE JUROR:   No.

9             THE COURT:   As a person?

10            PROSPECTIVE JUROR:   I understand that.  Thank  
11     you for offering.  But, no, I think I'm fine as long as  
12     I don't...

13            THE COURT:   Relive it?

14            PROSPECTIVE JUROR:   Yeah.

15            THE COURT:   Another trial?

16            PROSPECTIVE JUROR:   Like that.  You know, I  
17     mean...

18            THE COURT:   Well, this is different.

19            PROSPECTIVE JUROR:   It is different.  I  
20     understand that.

21            THE COURT:   But that trial had a much larger  
22     implications than this, that you guys -- that you as a  
23     juror in that trial did what I consider an admirable,  
24     admirable job.

1 So, does anybody have any actual inquiry?

2 MR. KALTER: No, Your Honor.

3 MR. MERRILL: No, Your Honor.

4 THE COURT: Mr. Evans, I'm going to excuse you,  
5 and thank you. And if there's anything that we can do  
6 for you, please contact my department, and I will try  
7 to find whatever it is that you need. Okay?

8 PROSPECTIVE JUROR: Thank you, Your Honor.

9 THE COURT: All right. So, I'm going to excuse  
10 you. You can go.

11 PROSPECTIVE JUROR: Thank you.

12 THE COURT: All right. Please, ask Ms. Rew in.  
13 Come on in, Ms. Rew.

14 PROSPECTIVE JUROR: Hello.

15 THE COURT: You can come up through here. And  
16 if you just want to sit in that chair right there.  
17 Yeah, just the middle one.

18 PROSPECTIVE JUROR: Okay.

19 THE COURT: That's good.

20 Seems like a lot of people broke their foot  
21 today. Are you okay?

22 PROSPECTIVE JUROR: Mine was a week ago.

23 THE COURT: Are you okay?

24 PROSPECTIVE JUROR: Yes, I'm fine. Thank you.

1 THE COURT: Okay. So, there was something that  
2 you wanted to express or there was some questions, some  
3 inquiry in relation to the matters that counsel would  
4 like to inquire.

5 So, who would like to -- Mr. Merrill, you said  
6 you had some questions.

7 MR. MERRILL: Yes, Your Honor.

8 Thank you for being here, Ms. Rew.

9 PROSPECTIVE JUROR: Of course.

10 MR. MERRILL: You indicated that you had been  
11 sexually assaulted; is that?

12 PROSPECTIVE JUROR: That's correct.

13 MR. MERRILL: Correct. Okay.

14 How long ago was that?

15 PROSPECTIVE JUROR: I was 20 years old.

16 MR. MERRILL: You were 20?

17 PROSPECTIVE JUROR: So, ten years ago.

18 MR. MERRILL: Ten years ago. Okay.

19 I'm sorry to hear that. Is -- are you able to  
20 put those feelings away and listen to this case and be  
21 a fair and impartial juror?

22 PROSPECTIVE JUROR: Yes, sir.

23 MR. MERRILL: Okay. And you're willing to  
24 listen to all the evidence and not make your mind up

1       until the judge asks you to; is that correct?

2               PROSPECTIVE JUROR:   Correct.

3               MR. MERRILL:   Okay.

4               Nothing further, judge.

5               THE COURT:   Okay.   Mr. Kalter?

6               MR. KALTER:   Good morning, ma'am.

7               PROSPECTIVE JUROR:   Good morning.

8               MR. KALTER:   Thank you for sharing with us what  
9       you unfortunately experienced.

10              Was that case handled here in Lyon County?

11              PROSPECTIVE JUROR:   It never went anywhere.   It  
12       was a college issue.

13              MR. KALTER:   Okay.   Where did you go to school?

14              PROSPECTIVE JUROR:   UNR.

15              MR. KALTER:   Okay.

16              THE COURT REPORTER:   Say that again.

17              PROSPECTIVE JUROR:   UNR.

18              MR. KALTER:   So, law enforcement never got  
19       involved?

20              PROSPECTIVE JUROR:   No, sir.

21              MR. KALTER:   Did you request that law  
22       enforcement get involved?

23              PROSPECTIVE JUROR:   No, sir.

24              MR. KALTER:   You understand the allegations in

CERTIFICATE OF SERVICE

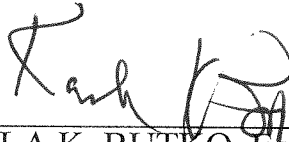
Pursuant to NRAP 25, I certify that I am an employee of Karla K. Butko, Ltd.,  
P. O. Box 1249, Verdi, NV 89439, and that on this date I caused the foregoing  
document to be delivered to all parties to this action by



E-flex delivery of the Nevada Supreme Court

Stephen Rye  
Lyon County District Attorney

DATED this 23rd day of September, 2021.



KARLA K. BUTKO, Esq.