

AARON MEDINA,
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

Case No. 83532

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CERTIFICATE OF SERVICE

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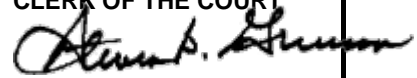
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BY /s/ E. Davis
Employee, District Attorney's Office

KM/Elizabeth Turner/ed



EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.) GJ No. 19BGJ153X
) DC No. C349446
AARON MARIO MEDINA,)
)
Defendant.)

Taken at Las Vegas, Nevada

Wednesday, July 8, 2020

1:59 p.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 1

Reported by: Danette L. Antonacci, C.C.R. No. 222

12:00 1 GRAND JURORS PRESENT ON JULY 8, 2020
2
3 STEVE LURVEY, FOREPERSON
4 NOEL WELLMAN SMITH, Secretary
12:00 5 WALTER ZUKOWSKI, Assistant Secretary
6 JOHN FINKOWSKI
7 PAUL GILLENWATER
8 MARK GOODMAN
9 JEFFREY GRUBER
12:00 10 JEFF HILL
11 CRISTAL HINOJOSH CRUZ
12 PAUL KOSLUCHER
13 TAMMY KRAUS
14 WILLIAM LISTON
12:00 15 GERALD REID
16 DANIEL STACK
17 SUSAN ZEMAN
18
19 Also present at the request of the Grand Jury:
12:00 20 William Rowles, Deputy District Attorney
21
22
23
24
25

12:00

1

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Examined

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JOAQUIN MEDINA

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12:00

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LAS VEGAS, NEVADA, JULY 8, 2020

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* * * * *

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4

DANETTE L. ANTONACCI,

12:00

5

having been first duly sworn to faithfully

6

and accurately transcribe the following

7

proceedings to the best of her ability.

8

9

MR. ROWLES: Good afternoon ladies and

01:59

10

gentlemen of the Grand Jury. My name is William Rowles.

11

I'm a deputy district attorney in the Clark County

12

District Attorney's Office assigned to present the

13

matter of the State of Nevada versus Aaron Medina, Grand

14

Jury case number 19BGJ153X. It is alleged in the

01:59

15

proposed Indictment marked as Exhibit 1 that Aaron

16

Medina, here in Clark County, Nevada, committed the

17

crimes of lewdness with a child under the age of 14 and

18

sexual assault with a minor under 14 years of age. This

19

occurred between October 10, 2017 and January 1, 2020.

01:59

20

By law I'm required to instruct you on the elements of

21

the offenses. I have attached the elements of each

22

offense as Grand Jury Exhibit 2 and I believe I provided

23

courtesy copies to every member of the Grand Jury. Are

24

there any members of the Grand Jury who would like me to

02:00

25

read the elements out loud?

02:00 1 No hands from the panel.

2 Are there any members of the Grand Jury who

3 have questions regarding the elements of the offense?

4 No hands from the panel.

02:00 5 We will not be asking you to deliberate

6 today and the State only anticipates calling one witness

7 this afternoon. With the permission of the Grand Jury,

8 I'd call Joaquin Womack.

9 Joaquin, right here.

02:01 10 THE FOREPERSON: Raise your right hand.

11 You do solemnly swear the testimony you are

12 about to give upon the investigation now pending before

13 this Grand Jury shall be the truth, the whole truth, and

14 nothing but the truth, so help you God?

02:01 15 You've got to say something.

16 Do you want me to read it again?

17 THE WITNESS: Yes.

18 THE FOREPERSON: You're going to have to

19 really yell. Go ahead and sit down.

02:01 20 You are advised that you are here today to

21 give testimony in the investigation pertaining to the

22 offenses of lewdness with a child under the age of 14,

23 sexual assault with a minor under 14 years of age,

24 sexual assault with a minor under 14 years of age,

02:02 25 involving Aaron Medina.

02:02 1 Do you understand this advisement?

2 Say it loud.

3 THE WITNESS: Yes.

4 THE FOREPERSON: Please state your first

02:02 5 and last name, spell both for the record.

6 THE WITNESS: Joaquin Medina.

7 THE FOREPERSON: Spell it.

8 THE WITNESS: J-O-A-Q-U-I-N, M-E-D-I-N-A.

9 THE FOREPERSON: Thank you.

02:02 10 JOAQUIN MEDINA,

11 having been first duly sworn by the Foreperson of the

12 Grand Jury to testify to the truth, the whole truth,

13 and nothing but the truth, testified as follows:

14 EXAMINATION

02:02 15

16 BY MR. ROWLES:

17 Q. Joaquin, you said your last name was

18 Medina. Do you also go by Womack?

19 A. Not really.

02:03 20 Q. Okay. Joaquin, you see how big this room

21 is? We're going to have to speak up really loud and use

22 our outdoor voice like we're on the soccer field yelling

23 at each other. Okay?

24 So you do not go by Womack anymore?

02:03 25 A. Not really.

02:03 1 MR. ROWLES: Can the members of the Grand
2 Jury hear that?

3 A JUROR: Just barely.

4 BY MR. ROWLES:

02:03 5 Q. You have to speak up a little bit more.

6 And I would ask that any time a member of
7 the Grand Jury cannot hear this, flag me down and I'll
8 get him to speak up even louder.

9 So Joaquin, you don't really go by Womack
02:03 10 anymore, right?

11 A. No.

12 Q. Where does the Womack name come from?

13 A. From my dad.

14 Q. What do you go by now? Do you prefer going
02:03 15 by --

16 A. Medina.

17 Q. Medina? Okay. So we'll call you Medina.
18 Do you mind if I call you Joaquin?

19 A. Yes.

02:03 20 Q. Joaquin, how old are you today?

21 A. I'm 12.

22 Q. Twelve. When is your birthday?

23 A. October 10, 2007.

24 Q. So you were born October 10, 2007. Today

02:04 25 where are you currently living?

02:04 1 A. I'm living in Las Vegas/Henderson.

2 Q. Now I know there are Henderson residences

3 and Las Vegas residences. You don't really combine

4 those two. Are you in Las Vegas or Henderson where

02:04 5 you're living?

6 A. (Inaudible response.)

7 Q. You're going to have to speak up really

8 loudly.

9 Where are you currently living today?

02:04 10 A. Las Vegas.

11 Q. And who are you living with?

12 A. With a foster mom.

13 Q. How long have you been living with your

14 foster mom?

02:04 15 A. For two months.

16 Q. Do you have any siblings?

17 A. Yes.

18 Q. How many siblings do you have?

19 A. Two.

02:04 20 Q. Two. Okay. And what are their names?

21 A. I have an older sister and her name is

22 Jesenia, J-E-S-E-N-I-A, but she prefers JoJo, and I have

23 a younger sister and her name is Janiyah, J-A-N-I-Y-A-H.

24 Q. So you have an older sister and a younger

02:05 25 sister. Are they both living with you in foster care?

02:05 1 A. My younger sister is but my older sister
2 isn't.

3 Q. Okay. And you've been living there for two
4 months; is that correct?

02:05 5 A. Yes.

6 Q. How do you like it so far?

7 A. I actually like it.

8 Q. Do you like your foster mom?

9 A. Yes.

02:05 10 Q. Before living in foster care, where did you
11 live?

12 A. I was living with my aunt and that's
13 basically it.

14 Q. Where did your aunt live?

02:05 15 A. In Mesquite.

16 Q. Mesquite?

17 A. Yes.

18 Q. What is your aunt's name?

19 A. I just had it, I just had her name in my
02:06 20 head but I just forgot.

21 Q. Are you a little nervous today?

22 A. Yes.

23 Q. And you said your aunt was living in
24 Mesquite; is that correct?

02:06 25 A. Yes.

02:06 1 Q. Are you currently in contact with your
2 mother?

3 A. Yes.

4 Q. Through what means?

02:06 5 A. Through a phone, FaceTime.

6 Q. And you said that was through a phone,
7 FaceTime?

8 A. Yes.

9 Q. Is CPS involved in your life right now?

02:06 10 A. I don't think so.

11 Q. Was there ever a time when you were living
12 with your mother?

13 A. Yes.

14 Q. Where were you and your mom living?

02:06 15 A. In Overton.

16 Q. Is that here in Clark County, Nevada?

17 A. Yes.

18 Q. When you were living in Overton with your
19 mother, who were you living with?

02:07 20 A. It was my mom and my two sisters, but it
21 used to be my dad but he moved up to Lincoln,
22 California.

23 Q. So you used to live with your mom and your
24 two sisters in Overton Nevada, right?

02:07 25 A. Yes.

02:07 1 Q. And at some point in time your dad also
2 lived with you there?

3 A. Yes.

4 Q. When did your dad move out?

02:07 5 A. He was living with us for a while, then my
6 mom and dad got a divorce and my dad moved up to
7 California.

8 Q. Okay. Do you know a person by the name of
9 Aaron Medina?

02:07 10 A. Yes.

11 Q. How do you know Aaron Medina?

12 A. So my grandparents told my mom that he was
13 coming back from wherever he was and my mom told us
14 three and we went to my grandparents' house and we saw
02:08 15 him and that's how I basically met him.

16 Q. Okay. So you said you were informed at
17 some point in time that Mr. Medina or Aaron was coming
18 back. When you say back, do you mean to the Overton
19 area?

02:08 20 A. To Logandale.

21 Q. Where is Logandale?

22 A. It's, I don't know how to say it, but like
23 it's, it's kind of far from here but not really kind of.

24 Q. Is it far from Overton?

02:08 25 A. It's like a ten minute drive.

02:08 1 Q. Are you familiar with the Moapa valley?

2 A. Yes.

3 Q. Is it in the Moapa valley?

4 A. Yes.

02:08 5 Q. Is that here in Clark County, Nevada?

6 A. Yes.

7 Q. Who lived in Logandale?

8 A. My grandparents.

9 Q. Do you know your grandparents' names?

02:08 10 A. Yes.

11 Q. What are they?

12 A. Maria Romero and Mario Romero.

13 Q. Are those your mom's parents or your dad's

14 parents?

02:08 15 A. My mom's parents.

16 Q. And they lived in Logandale?

17 A. Yes.

18 Q. Do you remember how old you were when Aaron

19 started living in that area?

02:09 20 A. I was ten years old.

21 Q. Showing you what's been marked as Grand

22 Jury Exhibit Number 2. Three. Thank you, ma'am. And

23 there's a screen right there. Do you recognize that

24 person?

02:09 25 A. Yes.

02:09 1 Q. Who is that?

2 A. My uncle.

3 Q. Aaron?

4 A. Yes.

02:09 5 Q. So you're ten years old, you're living in

6 the Moapa valley and your uncle Aaron comes over?

7 A. Yeah.

8 Q. When he came over, where did he live?

9 A. He was living with my grandparents at

02:09 10 first, but my grandparents couldn't take him living at

11 my grandparents anymore so they told him to go live at

12 Las Vegas.

13 Q. When you first met Aaron, could you

14 describe your relationship with him to the Grand Jury?

02:10 15 A. It was pretty good at first but everything

16 started going out of place.

17 Q. What do you mean by out of place?

18 A. Like he started doing everything bad.

19 Q. You said when you first met him it was

02:10 20 good?

21 A. Yeah.

22 Q. How quickly did things turn bad?

23 A. Probably like a week or a month later.

24 Q. So relatively quickly, right?

02:10 25 A. Yeah.

02:10 1 Q. Okay. Now Joaquin, are there places on
2 your body where no one is supposed to touch?

3 A. Yes.

4 Q. What are those places?

02:10 5 A. My private areas.

6 Q. What do you use the private areas for?

7 A. Like to go to the bathroom and whatever.

8 Q. So we have, you said private areas. Are
9 there two private areas?

02:11 10 A. Yes.

11 Q. Is that your penis and your butt?

12 A. Yes.

13 Q. So you said that Joaquin (sic) started
14 doing bad things. Did he do things that made you feel
02:11 15 uncomfortable with your private areas?

16 A. Yes.

17 Q. Do you remember the first time something
18 happened?

19 A. Yes.

02:11 20 Q. Do you remember how old you were?

21 A. I think I was still ten.

22 Q. Do you know where you were living?

23 A. I was living with my mom.

24 Q. In Overton, right?

02:11 25 A. Yes.

02:11 1 Q. So the first time you remember something
2 bad happening here, where were you at?

3 A. I was at my grandparents' house.

4 Q. And you think you were around ten years
02:11 5 old, right?

6 A. Yes.

7 Q. And you were at your grandparents' house
8 and they live in Logandale; correct?

9 A. Yes.

02:12 10 Q. Who all was there that day?

11 A. It was me, my oldest sister and my little
12 sister, it was my grandparents and him, and I don't
13 think my mom was there, she was somewhere else, yeah.

14 Q. So you were at your grandparents' house,
02:12 15 your two sisters are there and Aaron's there; is that
16 correct?

17 A. Yes.

18 Q. Do you remember what time of day it was?

19 A. It was probably like in the afternoon.

02:12 20 Probably.

21 Q. Was it still light outside?

22 A. Yes.

23 Q. What were you doing that day?

24 A. So I asked everybody if they wanted to play
02:12 25 hide and seek and they said sure. So we went outside

02:12 1 and we, I think my oldest sister JoJo, she said you guys
2 count -- no. My oldest sister said let's pick teams.
3 So JoJo picked Janiyaj and JoJo said you and Aaron.

4 Q. So you guys, you suggested to play hide and
02:13 5 seek?

6 A. Yes.

7 Q. And you and Aaron were paired up as
8 teammates; is that correct?

9 A. Yes.

02:13 10 Q. Did you then start playing hide and seek?

11 A. Yes.

12 Q. Where did you go?

13 A. First we went, there was like, there's
14 three garages, we went into the first one and nothing
02:13 15 happened there and they found us and then they hid next.

16 Then like the third round he started kissing me and
17 everything and I told him to stop but he kept doing it.

18 And I heard JoJo's voice and Janiyah and I tried to

19 knock on the door but I think he pulled my arm and

02:14 20 that's when we came into the garage.

21 Q. So on the third round of hide and seek you
22 and Aaron went into a garage; is that correct?

23 A. Yes.

24 Q. Was there anyone else in that garage?

02:14 25 A. No.

02:14 1 Q. And you said that he started kissing you,
2 right?

3 A. Yes.

4 Q. Where did he kiss you?

02:14 5 A. On my lips.

6 Q. Was it a peck or how long did it last?

7 A. Only for a few seconds.

8 Q. Was it a quick kiss and then off or --

9 A. No.

02:14 10 Q. What do you mean by that?

11 A. It wasn't quick. It was like, for like I
12 would say 10 seconds probably and then that's where it
13 ended and my oldest sister and my little sister came in.

14 Q. And you said he kissed you on your lips; is
02:14 15 that correct?

16 A. Yes.

17 Q. What did he use?

18 A. His lips.

19 Q. Did his tongue ever go inside your mouth?

02:15 20 A. No.

21 Q. Did he say anything to you while that was
22 happening?

23 A. He said don't tell anybody and I didn't for
24 like two days and then I told my older sister and she's
02:15 25 like I'm going to tell mom.

02:15 1 Q. I want to back up to the third time you
2 guys were playing hide and seek. You're in the garage
3 with him and Aaron kisses you on the lips. Do you know
4 how he's positioned?

02:15 5 A. He was kneeling down on one knee and, yeah.

6 Q. Were you standing?

7 A. Yes.

8 Q. And I'm sorry, did you say anything to him?

9 A. No.

02:15 10 Q. How did that make you feel?

11 A. It made me uncomfortable.

12 Q. And you said eventually you hear JoJo's
13 voice and you try to reach for the door; is that
14 correct?

02:16 15 A. Yes.

16 Q. And he stops you?

17 A. Yeah.

18 Q. Is that the only thing that happened that
19 day?

02:16 20 A. Yeah.

21 Q. And then you said you told your sister JoJo
22 a couple days later, right?

23 A. Yes.

24 Q. What happened after you told JoJo?

02:16 25 A. She got really, really mad.

02:16 1 Q. At you?

2 A. No, at him.

3 Q. Did you guys ever tell your mother?

4 A. JoJo, she did tell, she was trying to tell

02:16 5 my mom, but my mom was busy with work and everything.

6 So like after that JoJo kept it with her, I mean like

7 she didn't say anything at first, but when my mom was

8 off of work she told my mom.

9 Q. And did your mom do anything about it?

02:17 10 A. She did, but she had like a 30-minute break

11 but like she had to go back to work so she couldn't do

12 anything.

13 Q. At that point did your mom ever call the

14 police?

02:17 15 A. No.

16 Q. Now you said that on this occasion he

17 kissed you.

18 A. Yes.

19 Q. Did he ever do anything else to you?

02:17 20 A. Like in that day?

21 Q. In the future.

22 A. Yes.

23 Q. Now the time he kissed you, you were at

24 your grandparents' house, right?

02:17 25 A. Yes.

02:17 1 Q. Did this ever occur at your house?

2 A. Like some days, but not often.

3 Q. Do you remember a time when it occurred at

4 your place?

02:18 5 A. Yes.

6 Q. Can you talk about the first time you

7 remember at your house in Overton?

8 A. The first time at my house, I was in my

9 living room watching TV but everybody was outside, but

02:18 10 Aaron came inside and he came behind me and he was

11 touching my butt and everything and I told him to get

12 off of me but he wasn't listening.

13 Q. Okay. So let's talk a little bit about

14 that. You said you were at your place, right?

02:18 15 A. Yes.

16 Q. And everyone was outside?

17 A. Yes.

18 Q. Who is everyone?

19 A. My mom, my sisters and my mom's friends.

02:18 20 Q. And you said that Aaron was living with

21 your grandparents, right?

22 A. Yes.

23 Q. Did he ever, obviously he came over to your

24 house sometimes to hang out as well?

02:18 25 A. Yeah.

02:18 1 Q. And so you said you were in the living
2 room; is that correct?

3 A. Yes.

4 Q. What were you doing in the living room?

02:18 5 A. I was watching TV.

6 Q. And how old do you remember being?

7 A. I think the same age.

8 Q. Ten years old?

9 A. Uh-huh.

02:19 10 Q. When everybody was over, was it light
11 outside, dark outside?

12 A. It was light outside.

13 Q. Now you talk about a time when you were at
14 your grandma's house the first time something happened

02:19 15 here. How long after this or how long after that did
16 this happen?

17 A. Like how long ago?

18 Q. What was the time between your grandma's
19 house in the garage and this occasion?

02:19 20 A. I don't get what you're saying.

21 Q. Was it a couple weeks after the garage
22 incident?

23 A. Yeah.

24 Q. You were still ten years old though, right?

02:19 25 A. Yes.

02:19 1 Q. So you're inside watching, in the living
2 room watching TV, and then Aaron comes inside the living
3 room; is that correct?

4 A. Yes.

02:19 5 Q. Where does he go?

6 A. He sat beside me, I mean behind me, and he
7 started touching me.

8 Q. Where were you? Were you on the floor or
9 on the couch?

02:20 10 A. I was on the floor.

11 Q. Were you sitting or laying down?

12 A. I was laying down.

13 Q. So when he gets behind you, does he lay
14 down or does he sit down?

02:20 15 A. He lays down behind me.

16 Q. Does he say anything to you before he comes
17 up?

18 A. No.

19 Q. You said so he lays down behind you. What
02:20 20 does he do?

21 A. He tries to pull down my pants and I, I
22 tried to pull them up, but he pulled them down and I
23 tried to get away and he didn't let me get away.

24 Q. So after he doesn't let you get away, what
02:20 25 does he do?

02:20 1 A. He tries to pull me but I was trying to
2 throw something at the door, but my mom came inside and
3 Aaron, he saw her, my mom, and Aaron got up really quick
4 to take my dish to the kitchen.

02:21 5 Q. So did you have some food you were eating?

6 A. Yes.

7 Q. Now you said that he pulled down your pants
8 but previously you said he touched your butt. Do you
9 remember saying that?

02:21 10 A. Yes.

11 Q. What did he use to touch your butt?

12 A. His mouth.

13 Q. How did he do that?

14 A. Like in what way?

02:21 15 Q. How did he use his mouth? Did he kiss your
16 butt?

17 A. Yes.

18 Q. Did he use his hands at all?

19 A. No.

02:21 20 Q. Now you reference that your pants, he was
21 able to pull your pants down. Was he able to do that
22 before or after he kissed your butt?

23 A. After.

24 Q. So when he kissed your butt were you

02:22 25 wearing anything or were your pants and underwear

02:22 1 completely down?

2 A. I had shorts on and then he started
3 touching me.

4 Q. And how did he touch you again?

02:22 5 A. He was using his mouth to touch me.

6 Q. You said eventually your mom comes in,
7 right?

8 A. Yes.

9 Q. Did anything else happen that day?

02:22 10 A. No.

11 Q. So I want to ask a question. When he's
12 using his mouth to touch you, can you feel anything his
13 mouth is doing?

14 A. He was using his tongue in -- that's
02:23 15 basically all that I remember on that day.

16 Q. Was that the only time something happened
17 at your house?

18 A. No.

19 Q. Can you tell us about another time

02:23 20 something happened when you were at your place in
21 Overton?

22 A. So my mom told Aaron to go get groceries at
23 the store and Aaron asked me if I wanted to go and I was
24 like no and my mom said no too. But Aaron just tried to
02:23 25 convince my mom to make me go and my mom got tired of

02:24 1 him so she said sure, whatever. We went to the store,
2 we did actually go to the store, but after we went to
3 these railroad tracks and, he didn't do nothing to me,
4 he told me to touch his private part.

02:24 5 Q. Okay. So there was a time when you were
6 with your mom and Aaron and he asked to go to the store
7 with you?

8 A. Yes.

02:24 9 Q. Do you remember how old you were during
10 that time?

11 A. I think I was 10 or 11.

12 Q. Okay. And your mom initially said no at
13 first, right?

14 A. Yes.

02:24 15 Q. But you did go to the store with him?

16 A. Yes.

17 Q. And then after the store you went to
18 railroad tracks?

19 A. Yes.

02:24 20 Q. Do you know where those railroad tracks
21 were?

22 A. Yes.

23 Q. Where were they?

24 A. They were kind of by my house but like,

02:25 25 it's like a couple roads down, but like there's

02:25 1 different ways to go to the railroad tracks.

2 Q. Okay.

3 A. And we went like a different way that I
4 never went before and we parked somewhere nobody can see

02:25 5 us. And I was like take me home and he was like hold
6 on.

7 Q. Okay. You said it was by your house,
8 right?

9 A. Yeah.

02:25 10 Q. Still in Clark County, Nevada?

11 A. Yes.

12 Q. Had you been to those railroad tracks
13 before?

14 A. Yes, to go hiking.

02:25 15 Q. You said they were near your house. Were
16 they near anything else?

17 A. It was by a couple houses.

18 Q. Was it near any schools or parks or
19 anything?

02:25 20 A. No.

21 Q. And you said you were 10, 11 years old,
22 right?

23 A. Yes.

24 Q. So obviously you were not driving the car
02:26 25 hopefully?

02:26 1 A. No.

2 Q. So who was driving?

3 A. Aaron.

4 Q. Where were you sitting?

02:26 5 A. In the passenger.

6 Q. And you said you arrived at the railroad

7 tracks. What happens when you arrive at the railroad

8 tracks?

9 A. He, he tries to find somewhere to park like

02:26 10 behind the railroad tracks and he finds a place and he

11 parked and he turned off the car and he went out of his

12 car and came to my side and he pulled down his pants and

13 made me start touching his private part.

14 Q. What did you use to touch his private part?

02:26 15 A. He made my hand touch his private part.

16 Q. You said he made your hand. What did he

17 do?

18 A. He grabbed my hand and put it there.

19 Q. When you say private part, do you mean the

02:26 20 part where you go number 1 or number 2?

21 A. Number 1.

22 Q. His penis?

23 A. Yes.

24 Q. Did your hand touch his penis?

02:27 25 A. I was trying to pull away but like he tried

02:27 1 to keep it there and I kept saying take me home right
2 now.

3 Q. But did your hand touch his penis?

4 A. Yes.

02:27 5 Q. How long did that last for?

6 A. About two minutes I think.

7 Q. Was his penis hard or soft?

8 A. I think it was hard.

9 Q. Did he say anything to you before he made

02:27 10 you do that?

11 A. No.

12 Q. Did you say anything to him?

13 A. No.

14 Q. Was anybody else around?

02:27 15 A. No.

16 Q. While this is happening is he saying
17 anything to you?

18 A. No.

19 Q. When you're touching his penis, are you

02:27 20 still inside the car or did you get out?

21 A. I was still inside the car. I was still in
22 the passenger, but he walked to my side and it just
23 happened there.

24 Q. Do you remember what time of year it was?

02:28 25 A. I think 2018.

02:28 1 Q. Was it before your eleventh birthday or
2 after your eleventh birthday?

3 A. I think before my eleventh birthday.

4 Q. Was it hot outside or cold outside? That's
02:28 5 not fair, it's hot all the time in Nevada. Was it hot
6 outside or cold or kind of cold?

7 A. It was warm but kind of cold.

8 Q. Now we talked about the time it happened
9 during hide and seek and we talked about a time at your
02:28 10 house where your mom walked in and then the time at the
11 railroad tracks.

12 A. Yes.

13 Q. Was there ever another time that happened
14 at your house while you were in the living room that you
02:29 15 remember?

16 A. No.

17 Q. Aaron, do you remember the last time
18 something happened -- not Aaron. Joaquin, do you
19 remember the last time something happened?

02:29 20 A. I think it was Christmas or New Year's.

21 Q. And when we're saying Christmas or New
22 Year's, are we talking about the most recent one?

23 A. Yes.

24 Q. So 2019 turning 2020?

02:29 25 A. Yes.

02:29 1 Q. Where were you?

2 A. We were, I was at my grandparents' house.

3 Q. In Logandale?

4 A. Yes.

02:30 5 Q. Who all was there?

6 A. It was me, my older sister, my little

7 sister, Aaron and my grandparents.

8 Q. Do you remember what you were wearing that

9 day?

02:30 10 A. I think it was my Billie Eilish shirt.

11 Q. Who is Billie Eilish?

12 A. She's a singer.

13 Q. I'm getting too old. So you have a Billie

14 Eilish shirt and you're wearing it?

02:30 15 A. Yes.

16 Q. Do you remember what time of day it was?

17 A. I would say like in the afternoon but it

18 was starting to get in the nighttime.

19 Q. You said that something happened. Can you

02:30 20 walk the members of the Grand Jury through what

21 happened?

22 A. So at first I was in my older sister's room

23 at my grandparents' house, but after that we had to go

24 to bed so I went into my room and then I went to sleep,

02:31 25 and then out of no where I just woke up, I wake up

02:31 1 random.

2 Q. So when you first go to bed in your room --

3 do you share a room with anybody?

4 A. No, it's just me.

02:31 5 Q. Do you know where Aaron was?

6 A. He was in the living room.

7 Q. So you say you fall asleep. When you fall

8 asleep is anybody else in your room?

9 A. No.

02:31 10 Q. And you said at some point you wake up?

11 A. Yes.

12 Q. What wakes you up?

13 A. I don't know. I just wake up randomly. I

14 don't know. I don't know what it is but like I wake up

02:31 15 randomly.

16 Q. When you woke up, was anyone else in your

17 room?

18 A. No.

19 Q. Did anyone come in your room that night?

02:32 20 A. Yes.

21 Q. Was that before you fell asleep or after

22 you fell asleep?

23 A. When I woke up the second time I fell back

24 asleep and that's when he came in.

02:32 25 Q. So you wake up the first time randomly

02:32 1 throughout the night, right?

2 A. Yes.

3 Q. No is in your room?

4 A. Yes.

02:32 5 Q. And then you fall back asleep?

6 A. Yes.

7 Q. And then you wake up again?

8 A. Yes. No.

9 Q. What happens when you fall back asleep?

02:32 10 A. Like whenever I hear footsteps in the hall

11 it kind of wakes me up a little bit but like I fall back

12 asleep. So like it was him, it was Aaron.

13 Q. Okay. So does he enter your room?

14 A. Yes.

02:32 15 Q. What does he do when he enters your room?

16 A. He enters my room and since I, when I walk

17 into my room I kind of shut the door but I don't put

18 much weight on it so I don't shut it because it's loud,

19 so I just barely shut it, and I had a crack in the door

02:33 20 and he tried to open it, and he did, and he came in and

21 that's where it started.

22 Q. Where did he go?

23 A. He kneeled down beside my bed.

24 Q. Were you in your bed?

02:33 25 A. Yes.

02:33 1 Q. Did he say anything to you?

2 A. No.

3 Q. Did you say anything to him?

4 A. No.

02:33 5 Q. So as he's beside your bed, what does he

6 do, if anything?

7 A. Since I was laying down on my back and he

8 pulls down my pants again and that's when I woke up

9 again and I told him to get off, but he was still trying

02:34 10 to do whatever he was doing. And I heard more

11 footsteps, it was my grandma. Sorry if I keep speaking

12 a little weird because I speak Spanish a lot.

13 Q. No, that's fine, you're doing a great job.

14 So he comes, he kneels down by your bed and he pulls

02:34 15 down your pants; is that what you said?

16 A. Yes.

17 Q. When your pants are down, are they

18 completely off?

19 A. No.

02:34 20 Q. Were you wearing underwear at that time?

21 A. Yes.

22 Q. Did he take your underwear off?

23 A. Yes.

24 Q. And you said you were laying on your back?

02:34 25 A. Yes.

02:34 1 Q. Now you said eventually you hear additional
2 footsteps but I think you said he was doing whatever he
3 was doing. What was he doing?

4 A. He put his mouth on my penis and, yeah.
02:35 5 And I heard my grandma's footsteps coming through the
6 hall and my grandma first checks my room and then my
7 older sister's room, that's where my older sister and my
8 little sister sleeps, but my little sister usually
9 sleeps with my grandma.

02:35 10 Q. Okay. So he puts his mouth on your penis?

11 A. Yes.

12 Q. How long did that last for?

13 A. Probably for like three minutes. And then
14 my grandma comes in and Aaron tries to hide and he went
02:35 15 behind the door, my door that I close. And my grandma
16 came in and she saw me awake because Aaron was in there
17 and my grandma was like what are you doing awake and my
18 grandma felt something behind the door.

19 Q. Is Aaron still inside the room when your
02:36 20 grandma is there?

21 A. Yes.

22 Q. Does your grandma see Aaron inside your
23 room?

24 A. Yes. That's when I said that my grandma
02:36 25 feels something behind the door. Aaron was behind the

02:36 1 door.

2 Q. Does she confront him?

3 A. My grandma comes more into my room and my
4 grandma opens the door and she found Aaron.

02:36 5 Q. What does Aaron say when your grandma sees
6 him?

7 A. He had like a scared look on his face.

8 Q. Now I want to back up a little bit here.

9 Prior to him putting his mouth on your penis, did he

02:37 10 touch any other parts of your body that day?

11 A. No.

12 Q. Do you tell your grandma what happened?

13 A. I did. But first I, I tell my older sister
14 everything, me and her are like really close.

02:37 15 Q. So when your grandma catches him you don't
16 tell her what happened that night?

17 A. No. I usually tell my older sister
18 everything.

19 Q. Was that the first time he's ever put his

02:37 20 mouth on your penis?

21 A. Yes.

22 Q. Was there ever a time he put his mouth on
23 your penis when you were at your house?

24 A. No.

02:38 25 Q. I want to back up a little bit here. We

02:38 1 talked about a time at the railroad tracks. Did you
2 ever tell anybody about that time?

3 A. I told my older sister.

4 Q. Did you tell your mother?

02:38 5 A. Me and my older sister kept it for awhile
6 but my, I think can I tell you what like I told -- well,
7 my grandma found out sometime soon and my grandma told
8 my, his, my grandma told --

9 Q. That's fine. We just want to ask questions
02:38 10 about what you did, not what other people said.

11 So at the railroad tracks, you said you
12 told your sister?

13 A. Yes.

14 Q. The incident with your, when your grandma
02:38 15 walks in and he's behind the door, did you tell your
16 grandma what happened that day or the next day?

17 A. Well, my, me and my older sister kept it
18 for a while but like grandma found out.

19 Q. Did you ever tell your mom about what
02:39 20 happened when your grandma walked in?

21 A. I did tell my mom.

22 Q. Did she do anything about that?

23 A. She did. But my mom said if he does it
24 again -- she got really mad once I told her.

02:39 25 Q. I don't want to get into the specifics of

02:39 1 what you mom said. But you did eventually tell your
2 mom, right?

3 A. Yes.

4 Q. Was there ever a time when he touched your
02:39 5 penis with his hands?

6 A. Yes.

7 Q. How old were you at that time? Or can you
8 tell us about that time?

9 A. I think that I was 11 at the time.

02:39 10 Q. Do you remember where you were?

11 A. Since I try to forget everything with him
12 I'm still trying to remember everything.

13 Q. We just want to go off what you remember
14 here. We talked about a few times. Did this happen
02:40 15 more than those few times?

16 A. Yes.

17 Q. Is it difficult to remember every time
18 something happened?

19 A. Yes.

02:40 20 Q. Do you remember how many times this, if you
21 had to guess or estimate, how many times did this
22 happen?

23 A. I would say probably more than five times.

24 Q. You said that there was a time when he
02:40 25 touched your penis. Do you remember that time very

02:40 1 well?

2 A. Not really.

3 Q. Now while this was happening you told a
4 number of people. You told your sister and your mom,
02:41 5 they knew about what was going on?

6 A. Uh-huh.

7 Q. Is that a yes?

8 A. Yes.

9 Q. Did you ever tell anybody at your school?

02:41 10 A. Well, I told my two best friends that I've
11 known for years and they kept it for awhile and those
12 are the people that knew.

13 Q. Did you eventually tell any authorities,
14 police, school people?

02:41 15 A. I told my school. My, the principal.
16 There was like, she was kind of like a therapist but not
17 really.

18 Q. Like a counselor?

19 A. Yeah.

02:42 20 Q. So you told a counselor?

21 A. Yes.

22 Q. Did you then meet with the police?

23 A. Yes.

24 MR. ROWLES: Okay. Ladies and gentlemen of
02:42 25 the Grand Jury, I have no further questions for this

02:42 1 witness. Are there any questions from the members of
2 the Grand Jury?

3 THE FOREPERSON: By law, these proceedings
4 are secret and you are prohibited from disclosing to
02:42 5 anyone anything that has transpired before us, including
6 evidence and statements presented to the Grand Jury, any
7 event occurring or statement made in the presence of the
8 Grand Jury, and information obtained by the Grand Jury.

9 Failure to comply with this admonition is a
02:42 10 gross misdemeanor punishable by up to 364 days in the
11 Clark County Detention Center and a \$2,000 fine. In
12 addition, you may be held in contempt of court
13 punishable by an additional \$500 fine and 25 days in the
14 Clark County Detention Center.

02:42 15 Do you understand this admonition?

16 THE WITNESS: Yes.

17 THE FOREPERSON: Thank you and you are
18 excused.

19 MR. ROWLES: I'll meet you outside.

02:43 20 Ladies and gentlemen of the Grand Jury, we
21 will return at a later date for deliberations and
22 potentially more witnesses. Thank you for your time.

23 (Proceedings adjourned, to reconvene at a

24 Later, undetermined time.)

02:43 25 --oo0oo--

02:43

1

REPORTER'S CERTIFICATE

2

3

STATE OF NEVADA)

: ss

4

COUNTY OF CLARK)

02:43

5

6

I, Danette L. Antonacci, C.C.R. 222, do

7

hereby certify that I took down in Shorthand (Stenotype)

8

all of the proceedings had in the before-entitled matter

9

at the time and place indicated and thereafter said

02:43

10

shorthand notes were transcribed at and under my

11

direction and supervision and that the foregoing

12

transcript constitutes a full, true, and accurate record

13

of the proceedings had.

14

Dated at Las Vegas, Nevada,

02:43

15

July 13, 2020.

16

17

/s/ Danette L. Antonacci

18

19

Danette L. Antonacci, C.C.R. 222

02:43

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02:43

1

AFFIRMATION

2

Pursuant to NRS 239B.030

3

4

The undersigned does hereby affirm that the
preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER
19BGJ153X:

02:43

5

6

7

8

X Does not contain the social security number of any
person,

9

02:43

10

-OR-

11

 Contains the social security number of a person as
required by:

12

13

A. A specific state or federal law, to-
wit: NRS 656.250.

14

-OR-

02:43

15

16

B. For the administration of a public program
or for an application for a federal or
state grant.

17

18

/s/ Danette L. Antonacci

19

Signature

7-13-20

Date

02:43

20

21

Danette L. Antonacci

Print Name

22

23

Official Court Reporter

Title

24

25

	2	35/1 40/13
A JUROR: [1] 8/2	20 [1] 42/18	adjourned [1]
BY MR. ROWLES:	2007 [2] 8/23	40/23
[2] 7/14 8/3	8/24	administration [1]
MR. ROWLES: [4]	2017 [1] 5/19	42/15
5/7 7/25 39/23	2018 [1] 29/25	admonition [2]
40/18	2019 [1] 30/24	40/9 40/15
THE FOREPERSON:	2020 [6] 1/13 2/1	advised [1] 6/20
[7] 6/9 6/17 7/3	5/1 5/19 30/24	advisement [1]
7/6 7/8 40/2	41/15	7/1
40/16	222 [3] 1/25 41/6	affirm [1] 42/4
THE WITNESS: [5]	41/18	AFFIRMATION [1]
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10 [6] 5/19 8/23	ability [1] 5/7	22/7
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	additional [2]	6/6
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<p>A</p> <p>Antonacci... [1] 42/21</p> <p>any [10] 5/24 6/2 8/6 9/16 27/18 36/10 39/13 40/1 40/6 42/8</p> <p>anybody [6] 18/23 29/14 32/3 32/8 37/2 39/9</p> <p>anymore [3] 7/24 8/10 14/11</p> <p>anyone [4] 17/24 32/16 32/19 40/5</p> <p>anything [20]</p> <p>application [1] 42/15</p> <p>are [33]</p> <p>area [2] 12/19 13/19</p> <p>areas [5] 15/5 15/6 15/8 15/9 15/15</p> <p>arm [1] 17/19</p> <p>around [2] 16/4 29/14</p> <p>arrive [1] 28/7</p> <p>arrived [1] 28/6</p> <p>as [8] 5/15 5/22 7/13 13/21 17/7 21/24 34/5 42/11</p> <p>ask [3] 8/6 25/11 37/9</p> <p>asked [3] 16/24 25/23 26/6</p> <p>asking [1] 6/5</p> <p>asleep [8] 32/7 32/8 32/21 32/22 32/24 33/5 33/9 33/12</p> <p>assault [3] 5/18</p>	<p>6/23 6/24</p> <p>assigned [1] 5/12</p> <p>Assistant [1] 2/5</p> <p>attached [1] 5/21</p> <p>attorney [2] 2/20 5/11</p> <p>Attorney's [1] 5/12</p> <p>aunt [3] 10/12 10/14 10/23</p> <p>aunt's [1] 10/18</p> <p>authorities [1] 39/13</p> <p>awake [2] 35/16 35/17</p> <p>away [4] 23/23 23/23 23/24 28/25</p> <p>awhile [2] 37/5 39/11</p> <p>B</p> <p>back [13] 12/13 12/18 12/18 19/1 20/11 32/23 33/5 33/9 33/11 34/7 34/24 36/8 36/25</p> <p>bad [4] 14/18 14/22 15/14 16/2</p> <p>barely [2] 8/3 33/19</p> <p>basically [3] 10/13 12/15 25/15</p> <p>bathroom [1] 15/7</p> <p>be [4] 6/5 6/13 11/21 40/12</p> <p>because [3] 33/18 34/12 35/16</p> <p>bed [6] 31/24 32/2 33/23 33/24 34/5 34/14</p> <p>been [6] 5/5 7/11</p>	<p>9/13 10/3 13/21 27/12</p> <p>before [12] 6/12 10/10 23/16 24/22 27/4 27/13 29/9 30/1 30/3 32/21 40/5 41/8</p> <p>before-entitled [1] 41/8</p> <p>behind [11] 21/10 23/6 23/13 23/15 23/19 28/10 35/15 35/18 35/25 35/25 37/15</p> <p>being [1] 22/6</p> <p>believe [1] 5/22</p> <p>beside [3] 23/6 33/23 34/5</p> <p>best [2] 5/7 39/10</p> <p>between [2] 5/19 22/18</p> <p>big [1] 7/20</p> <p>Billie [3] 31/10 31/11 31/13</p> <p>birthday [4] 8/22 30/1 30/2 30/3</p> <p>bit [5] 8/5 21/13 33/11 36/8 36/25</p> <p>body [2] 15/2 36/10</p> <p>born [1] 8/24</p> <p>both [2] 7/5 9/25</p> <p>break [1] 20/10</p> <p>busy [1] 20/5</p> <p>butt [7] 15/11 21/11 24/8 24/11 24/16 24/22 24/24</p> <p>C</p> <p>C.C.R [3] 1/25</p>
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	counselor [2] 39/18 39/20	Defendant [1] 1/9
	count [1] 17/2	deliberate [1] 6/5
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID

DISTRICT COURT

THE STATE OF NEVADA,

Plaintiff,

VS.

AARON MARIO MEDINA,

Defendant.

GJ Case No. 19BGJ153X
DC Case No. C349446

Taken at Las Vegas, Nevada

Wednesday, July 15, 2020

8:47 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Volume 2

Reported by: Donna J. McCord, C.C.R. No. 337

00:00:59 1 GRAND JURORS PRESENT ON JULY 15, 2020:
2
3 STEVE LURVEY, Foreperson
4 TIARA COSENTINO, Deputy Foreperson
00:00:59 5 NOEL WELLMAN, Secretary
6 WALTER ZUKOWSKI, Assistant Secretary
7 CHRISTAL HINOJOSH CRUZ
8 JOHN FINKOWSKI
9 PAUL GILLENWATER
00:00:00 10 MARK GOODMAN
11 JEFFREY GRUBER
12 DAVID HACKETT
13 JEFF HILL
14 TAMMY KRAUS
00:00:00 15 WILLIAM LISTON
16 GERALD REID
17 DANIEL STACK
18 SUSAN ZEMAN
19
00:00:00 20
21 Also present at the request of the Grand Jury:
22 Sandra DiGiacomo
23 Chief Deputy District Attorney
24
00:00:00 25

00:00:00

1

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3

DENISE HUTH

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00:00:02

1

LAS VEGAS, NEVADA, JULY 15, 2020

2

* * * * *

3

4

DONNA J. McCORD,

00:00:02

5

having been first duly sworn to faithfully

6

and accurately transcribe the following

7

proceedings to the best of her ability.

8

9

MS. DiGIACOMO: All right. Let's go back

08:47:43

10

on the record on State of Nevada versus Aaron Mario

11

Medina. This is a continuation of the Grand Jury

12

presentment that was — bear with me, it's dark in

13

here — from — I don't even see it. Was it July 8th?

14

A JUROR: Yep.

08:48:08

15

MS. DiGIACOMO: July 8th of 2020. I have

16

another proposed Indictment that should be marked as

17

Grand Jury Exhibit 1A. And just to let you know, I'm

18

also going to be asking to amend it. Counts 1 through 4

19

should all have the time frame — no, I'm sorry, Counts

08:48:29

20

2 through 4 should all have the time frame October 10th,

21

2017, to October 9th, 2019.

22

A JUROR: Not December.

23

MS. DiGIACOMO: Yes. So Count 2 is wrong,

24

Count 3 is wrong, Count 4 is correct. And then also

08:48:47

25

with regard to Count 2, at the very end of line 6 and

08:48:54 1 all of line 7, that should have been put on line 5 after
2 J.W. it should say and/or. And then --

3 A JUROR: Which count, sorry?

4 MS. DiGIACOMO: Count 2. Yeah, I'm not
08:49:13 5 sure what this -- it's kind of a typo. It should read
6 starting on line 4, to-wit: By using his hands and/or
7 fingers to touch and/or rub and/or fondle the genital
8 area of J.W. and/or by using his mouth and/or lips to
9 touch and/or kiss the buttocks of J.W. I've combined
08:49:36 10 two counts into that one.

11 Okay. So with that it's my understanding
12 everyone here with the exception of one was present on
13 July 8th or read the transcript; is that all correct?

14 A JUROR: Yes.

08:49:50 15 MS. DiGIACOMO: Okay, great. Then I will
16 bring in my next witness.

17 THE FOREPERSON: So you're saying there's
18 only four now, four counts or five?

19 A JUROR: Five.

08:49:58 20 MS. DiGIACOMO: Five. The fifth count is
21 fine, I didn't make any changes.

22 THE FOREPERSON: No problem.

23 MS. DiGIACOMO: Only Counts 2, 3 and 4 I am
24 orally amending.

08:50:32 25 THE FOREPERSON: Please raise your right

08:50:32 1 hand.

2 You do solemnly swear that the testimony
3 that you're about to give upon the investigation now
4 pending before this Grand Jury shall be the truth, the
08:50:37 5 whole truth, and nothing but the truth, so help you God?

6 THE WITNESS: Yes, I do.

7 THE FOREPERSON: You are advised that
8 you're here today to give testimony in the investigation
9 pertaining to the offenses of lewdness with a child
08:50:58 10 under the age of 14, sexual assault with a minor under
11 14 years of age involving Aaron Medina.

12 Do you understand this advisement?

13 THE WITNESS: Yes.

14 THE FOREPERSON: Please state your first
08:51:10 15 and last name and spell both for the record.

16 THE WITNESS: Denise, D-E-N-I-S-E, Huth,
17 H-U-T-H.

18 THE FOREPERSON: Thank you.

19 **DENISE HUTH,**

08:51:18 20 having been first duly sworn by the Foreperson of the
21 Grand Jury to testify to the truth, the whole truth
22 and nothing but the truth, testified as follows:

23 ///

24 ///

08:51:18 25 ///

08:51:18

1 EXAMINATION

2 BY MS. DiGIACOMO:

3 Q How are you employed?

4 A I'm employed with the Las Vegas

08:51:23

5 Metropolitan Police Department.

6 Q And what do you do for Metro?

7 A I'm a detective.

8 Q Where are you currently assigned?

9 A I'm assigned at the sex assault juvenile.

08:51:33

10 Q And how long have you been there?

11 A Approximately five years.

12 Q In January of 2020, did you get assigned a
13 case with a suspect by the name of Aaron Medina?

14 A Yes.

08:51:45

15 Q And as part of your investigation into
16 that, did you interview a juvenile by the name of
17 Joaquin Womack on January 8th, 2020?

18 A Yes.

19 Q Now, what is the relation of Joaquin to
20 Mr. Medina?

08:52:03

21 A Aaron Medina is the maternal uncle of
22 Joaquin so he's the brother of Joaquin's mother.

23 Q And what is Joaquin's mom's name?

24 A I would have to look.

08:52:22

25 Q Okay.

08:52:23 1 A I can't remember.

2 Q If I was to show you the statement would
3 that refresh your recollection?

4 A Yes.

08:52:45 5 Q Okay. I'm going to show you a transcript
6 of Joaquin's statement, specifically page 9. If you
7 could read that and let me know if that refreshes your
8 recollection.

9 A Yvette.

08:52:57 10 Q Does that refresh your recollection?

11 A Yes.

12 Q Okay. What was the mom's name?

13 A Yvette Medina.

08:53:09 14 Q Okay. And when you interviewed Joaquin his
15 legal last name is Womack?

16 A Correct.

17 Q So when you were speaking with him can you
18 just describe how your interview went and how his
19 demeanor was?

08:53:20 20 A He was -- he would be hesitant on
21 disclosing. He would kind of give an overview like
22 that's what happened and then I'd have to question him
23 further on exactly what the details were.

08:53:38 24 Q Okay. So did he, I guess did he volunteer
25 a lot of information to you?

08:53:41 1 A Well, during the course of the interview he
2 didn't, like he wouldn't volunteer like details
3 immediately.

4 Q Okay.

08:53:51 5 A He would have to be asked.

6 Q Okay. Now, I'm going to ask you
7 specifically about two incidents that you talked to him
8 about. One was the very first incident. Do you
9 remember what he said was the first incident that had
08:54:04 10 happened between him and his uncle Medina?

11 A He reported that he had been -- he was at
12 his grandmother's house in Logandale I believe and they
13 were playing hide and seek. Aaron picked him to be his
14 partner and his sister Yesenia and his younger sister
08:54:28 15 were the ones who counted and then they went -- Aaron
16 brought him into his grandmother's sewing shed to hide
17 from his sisters.

18 Q And what did he tell you happened inside
19 that shed?

08:54:41 20 A He indicated that Aaron wrapped his arms
21 around him and kissed him more than two times and it
22 lasted about two minutes.

23 Q Okay. And so did he tell you specifically
24 what body part of his uncle touched him?

08:54:57 25 A He said his uncle's mouth touched his lips.

08:55:00 1 Q Okay. And do you recall how they were
2 standing, seated?

3 A Aaron was kneeling and Joaquin was
4 standing.

08:55:16 5 Q And it was, I'm sorry, Joaquin said that it
6 was Aaron that had his arms around Joaquin when he was
7 kissing him?

8 A Correct.

9 Q Okay. And then did he describe an incident
08:55:29 10 that happened inside his house while he was watching
11 T.V. in the living room?

12 A Yes, he did.

13 Q Okay. And what did he tell you about that
14 incident?

08:55:37 15 A He reported that the other people were
16 outside and he and Aaron were in the living room. He
17 initially was on his left side and Aaron was also on his
18 left side behind him. And then Aaron had him lay on his
19 back and Aaron was on his stomach and then Aaron put his
08:55:58 20 hands on his penis and then, his hand on his penis, and
21 then he put his mouth on his penis and the mouth went up
22 and down on his penis.

23 Q All right. Did Joaquin tell you whether or
24 not when his uncle touched his, I'm sorry, you said
08:56:15 25 penis with his hand, was it over clothes or under

08:56:21 1 clothes?

2 A It was under clothes.

3 Q All right. And did Joaquin use the term

4 penis or did he use a different term?

08:56:36 5 A I believe he used a different term.

6 Q Okay. Do you remember what that term was?

7 A I don't recall what it was at this time.

8 Q Okay. Would it refresh your recollection

9 to look at the statement, the transcript?

08:57:00 10 A Yes.

11 Q I'm going to show you page 47. Hold on,

12 I'm sorry, it's going to be page 42. If you want to

13 read that to yourself and let me know when you're done.

14 A He used the word private.

08:57:54 15 Q Okay. Did you clarify with him when he

16 used the word private what he was talking about during

17 this interview?

18 A Yes, I did.

19 Q And what was he referring to when he used

08:58:02 20 the term private?

21 A His penis.

22 Q Okay. So he told you that Aaron touched

23 his penis or his private with his hand underneath his

24 clothing?

08:58:16 25 A Correct.

08:58:17 1 Q Did he say how long that lasted for?

2 A No.

3 Q And then you said his uncle then put his

4 mouth on his private?

08:58:26 5 A Correct.

6 Q Did you clarify whether or not his private

7 was actually inside Aaron's mouth?

8 A Yes, I did.

9 Q And what did Joaquin tell you?

08:58:38 10 A He said it was inside and it went up and

11 down.

12 Q The defendant's mouth was going up and down

13 on his private?

14 A Correct.

08:58:45 15 Q Do you recall asking him whether or not

16 anyone had ever done anything to or touched his

17 buttocks?

18 A Yes, I do.

19 Q And what was Joaquin's response to that?

08:58:54 20 A He indicated no one had touched his

21 buttocks or butt.

22 Q Did he tell you about how many times

23 incidents like this with inappropriate touching occurred

24 between him and his uncle?

08:59:06 25 A He indicated about ten times.

08:59:08

1 MS. DiGIACOMO: I don't have any further
2 questions of this witness. Does the Grand Jury have any
3 questions?

08:59:15

4 THE FOREPERSON: By law these proceedings
5 are secret and you are prohibited from disclosing to
6 anyone anything that transpired before us including any
7 evidence presented to the Grand Jury, any event
8 occurring or a statement made in the presence of the
9 Grand Jury or any information obtained by the Grand
10 Jury.

08:59:15

11 Failure to comply with this admonition is a
12 gross misdemeanor punishable up to 364 days in the Clark
13 County Detention Center and a \$2,000 fine. In addition
14 you may be held in contempt of court punishable by an
15 additional \$500 fine and 25 days in the Clark County
16 Detention Center.

08:59:15

17 Do you understand this admonition?

18 THE WITNESS: Yes.

19 THE FOREPERSON: Thank you and you're
20 excused.

08:59:49

21 MS. DiGIACOMO: I don't have any further
22 witnesses at this time.

23 A JUROR: Okay. Count 2, line 7 at the
24 end --

09:00:05

25 MS. DiGIACOMO: Yes.

09:00:05

1 A JUROR: -- just the buttocks, take that
2 off?

09:00:14

3 MS. DiGIACOMO: Actually that's getting
4 moved up at the end of line 5 where it says fondle
5 genital area of J.W., then it should be and/or by using
6 his mouth and/or lips to touch and/or kiss the buttocks
7 of J.W. Then it would be with the intent of arousing or
8 appealing to.

09:00:28

9 A JUROR: All right. Gotcha.

10 MS. DiGIACOMO: Any other questions? I'm
11 going to go ahead and instruct you. The instructions
12 have been marked as Exhibit 2. I'm going to read them
13 into the record.

09:00:52

14 Instruction one. Any person who willfully
15 and lewdly commits any lewd or lascivious act, other
16 than acts constituting the crime of sexual assault, upon
17 or with any part of the body of a child under the age of
18 14 years with the intent of arousing, appealing to or
19 gratifying the lust or passions or sexual desires of
20 that person or of that child commits the offense of
21 lewdness with a child under the age of 14.

09:01:09

22 Consent in fact of a minor child under 14
23 years of age to sexual activity is not a defense to a
24 charge of lewdness with a child under the age of 14.

09:01:28

25 Instruction two. The law does not require

09:01:30 1 that the lust, passions or sexual desires of either of
2 such persons actually be aroused, appealed to or
3 gratified.

09:01:38 4 Instruction three. A lewd or lascivious
5 act does not require physical contact between the
6 perpetrator and the victim.

09:01:54 7 Instruction four. A person who commits a
8 sexual penetration upon a child under the age of 14
9 years or causes a child under the age of 14 years to
10 make a sexual penetration on himself or herself or
11 another, or on a beast, commits the crime of sexual
12 assault of a minor under 14 years of age. Consent in
13 fact of a minor under 14 years of age to sexual activity
14 is not a defense to the charge of sexual assault of a
09:02:09 15 minor under 14 years of age.

16 Sexual penetration means cunnilingus,
17 fellatio or any intrusion, however slight, of any part
18 of a person's body and/or any object, excuse me, or any
19 object manipulated or inserted by a person into the
09:02:25 20 genital or anal opening of the body of another including
21 sexual intercourse in its ordinary meaning. Evidence of
22 ejaculation is not necessary.

23 Digital penetration is the placing of one
24 or more fingers of the perpetrator into the genital or
09:02:39 25 anal opening of another person.

09:02:40

1 Cunnilingus is a touching of the female
2 sexual organ by the mouth or tongue of another person.

3 Fellatio is a touching of the penis by the
4 mouth or tongue of another person.

09:02:50

5 Sexual intercourse is the intrusion,
6 however slight, of the penis into the genital opening of
7 another person.

09:03:02

8 Anal intercourse is the intrusion, however
9 slight, of the penis into the anal opening of another
10 person.

11 Physical force is not necessary in the
12 commission of sexual assault.

09:03:13

13 Does the Grand Jury require any further
14 instructions on the law? And if not I will withdraw and
15 allow you to deliberate.

16 (At this time, all persons, except the
17 members of the Grand Jury, exited the room at 9:03 and
18 returned at 9:05.)

09:05:33

19 THE FOREPERSON: Miss District Attorney, by
20 a vote of 12 or more Grand Jurors a true bill has been
21 returned against the defendant charging all counts in
22 Grand Jury case number 19BGJ153X.

09:05:49

23 We instruct you to prepare an Indictment in
24 conformance with the proposed Indictment previously
25 submitted to us.

09:05:50

1

MS. DiGIACOMO: With the amendments I made

2

orally?

3

THE FOREPERSON: With the amendments.

4

MS. DiGIACOMO: Okay. Thank you.

09:05:53

5

(Proceedings concluded.)

6

--oo0oo--

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09:05:53

1

REPORTER'S CERTIFICATE

2

3

STATE OF NEVADA)

: ss

4

COUNTY OF CLARK)09:05:53

5

6

I, Donna J. McCord, C.C.R. 337, do hereby

7

certify that I took down in Shorthand (Stenotype) all of

8

the proceedings had in the before-entitled matter at the

9

time and place indicated and thereafter said shorthand

09:05:53

10

notes were transcribed at and under my direction and

11

supervision and that the foregoing transcript

12

constitutes a full, true, and accurate record of the

13

proceedings had.

14

Dated at Las Vegas, Nevada,

09:05:53

15

July 25, 2020.

16

17

/S/DONNA J. MCCORD

18

Donna J. McCord, CCR 337

19

09:05:53

20

21

22

23

24

09:05:53

25

1 AFFIRMATION

2 Pursuant to NRS 239B.030

3
4 The undersigned does hereby affirm that the preceding
5 TRANSCRIPT filed in GRAND JURY CASE NUMBER 19BGJ153X:

6
7
8 X Does not contain the social security number of any
9 person,

10 -OR-

11 ____ Contains the social security number of a person as
12 required by:

13 A. A specific state or federal law, to-wit:
14 NRS 656.250.

15 -OR-

16 B. For the administration of a public program
17 or for an application for a federal or
18 state grant.

19 /S/DONNA J. MCCORD
Signature

July 25, 2020
Date

20 Donna J. McCord
Print Name

21
22 Official Court Reporter
Title

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<p>P</p> <p>passions... [1] 16/1 PAUL [1] 2/9 pending [1] 7/4 penetration [4] 16/8 16/10 16/16 16/23 penis [11] 11/20 11/20 11/21 11/22 11/25 12/4 12/21 12/23 17/3 17/6 17/9 people [1] 11/15 perpetrator [2] 16/6 16/24 person [11] 15/14 15/20 16/7 16/19 16/25 17/2 17/4 17/7 17/10 20/9 20/11 person's [1] 16/18 persons [2] 16/2 17/16 pertaining [1] 7/9 physical [2] 16/5 17/11 picked [1] 10/13 place [1] 19/9 placing [1] 16/23 Plaintiff [1] 1/8 playing [1] 10/13 Please [2] 6/25 7/14 Police [1] 8/5 preceding [1] 20/4 prepare [1] 17/23 presence [1] 14/8 present [3] 2/1 2/21 6/12 presented [1] 14/7 presentment [1] 5/12 previously [1] 17/24 Print [1] 20/20 private [7] 12/14 12/16 12/20 12/23 13/4 13/6 13/13 problem [1] 6/22 proceedings [6] 1/20 5/7 14/4 18/5 19/8 19/13 program [1] 20/15 prohibited [1] 14/5 proposed [3] 4/4 5/16 17/24 public [1] 20/15 punishable [2] 14/12 14/14 Pursuant [1] 20/2 put [4] 6/1 11/19 11/21 13/3</p>	<p>record [4] 5/10 7/15 15/13 19/12 referring [1] 12/19 refresh [3] 9/3 9/10 12/8 refreshes [1] 9/7 regard [1] 5/25 REID [1] 2/16 relation [1] 8/19 remember [3] 9/1 10/9 12/6 reported [3] 1/25 10/11 11/15 Reporter [1] 20/22 REPORTER'S [2] 1/20 19/1 request [1] 2/21 require [3] 15/25 16/5 17/13 required [1] 20/12 response [1] 13/19 returned [2] 17/18 17/21 right [5] 5/9 6/25 11/23 12/3 15/9 room [3] 11/11 11/16 17/17 rub [1] 6/7</p>	<p>10/7 10/23 spell [1] 7/15 ss [1] 19/3 STACK [1] 2/17 standing [2] 11/2 11/4 starting [1] 6/6 state [6] 1/7 5/10 7/14 19/3 20/13 20/16 statement [4] 9/2 9/6 12/9 14/8 Stenotype [1] 19/7 STEVE [1] 2/3 stomach [1] 11/19 submitted [1] 17/25 supervision [1] 19/11 sure [1] 6/5 SUSAN [1] 2/18 suspect [1] 8/13 swear [1] 7/2 sworn [2] 5/5 7/20</p>	<p>transcribe [1] 5/6 transcribed [1] 19/10 transcript [6] 1/20 6/13 9/5 12/9 19/11 20/5 transpired [1] 14/6 true [2] 17/20 19/12 truth [6] 7/4 7/5 7/5 7/21 7/21 7/22 two [5] 6/10 10/7 10/21 10/22 15/25 typo [1] 6/5</p>	<p>16/7 whole [2] 7/5 7/21 will [2] 6/15 17/14 willfully [1] 15/14 WILLIAM [1] 2/15 wit [2] 6/6 20/13 withdraw [1] 17/14 witness [2] 6/16 14/2 witnesses [2] 3/1 14/22 Womack [2] 8/17 9/15 word [2] 12/14 12/16 wrapped [1] 10/20 wrong [2] 5/23 5/24</p>
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Felony/Gross Misdemeanor

COURT MINUTES

July 30, 2020

C-20-349446-1 State of Nevada
 vs
 Aaron Medina

July 30, 2020 01:45 PM Arraignment Continued

HEARD BY: Hardy, Joe COURTROOM: RJC Courtroom 11D

COURT CLERK: Duncan, Kristin

RECORDER: Yarbrough, Matt

REPORTER:

PARTIES PRESENT:

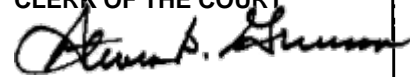
Aaron Mario Medina	Defendant
Samuel Martinez	Attorney for Plaintiff
State of Nevada	Plaintiff
Violet R Radosta	Attorney for Defendant

JOURNAL ENTRIES

Violet Radosta, DPD and Defendant present via Blue Jeans.

DEFT. MEDINA ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. Due to the back-log of criminal trials, COURT ORDERED, matter REFERRED to the Central Trial Readiness Calendar, in order to have a trial date set; Central Trial Readiness hearing date to be determined. At the request of Ms. Radosta, COURT ORDERED, counsel has 21 days from the date of filing the Grand Jury Transcript to file a Writ. The State requested that Sandra DiGiacomo, DDA, be notified of any upcoming dates.

CUSTODY



MOT
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Clark County District Attorney
Nevada Bar #001565
SANDRA K. DIGIACOMO
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200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

AARON MARIO MEDINA,
#2596004

Defendant.

Case No. **C-20-349446-1**
Dept No. **XV**

**STATE'S NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF
OTHER CRIMES, WRONGS OR ACTS**

DATE OF HEARING: September 15, 2020
TIME OF HEARING: 1:45 PM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,
through SANDRA K. DIGIACOMO, Chief Deputy District Attorney, and files this Notice of
Motion and Motion to Admit Evidence of Other Crimes, Wrongs, or Acts.

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

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DATED this 8th day of September, 2020.

BY

STATEMENT OF THE CASE

On March 25, 2020, Defendant was arraigned in the lower court and a preliminary hearing scheduled for April 27, 2020. After multiple preliminary hearing settings, the State proceeded by way of Grand Jury and an Indictment was returned on July 17, 2020 for three (3) counts of Lewdness with a Child Under the Age of 14 and two (2) counts of Sexual Assault with a Minor Under Fourteen Years of Age. On July 30, 2020, Defendant was arraigned in in this Court; Defendant pleaded not guilty and invoked his speedy trial right. A trial is currently scheduled for September 28, 2020 on the Central Trial Readiness Calendar.

RA 082

1 With this motion, the State seeks to admit evidence of the underlying facts from
2 Defendant's prior conviction for Attempt Sexual Assault of a Minor Under Fourteen Years
3 of Age.

4 **STATEMENT OF FACTS**

5 **The Grand Jury Testimony of J.W. Relevant to this Motion**

6 J.W. testified that he was 12 years of age and his birthday is October 10, 2007. (Grand
7 Jury Transcript, "GJT", Vol. I, p. 8). J.W. testified that he lived in Las Vegas, with a foster
8 mom. (GJT, Vol. I, p. 9). J.W. had been living with a foster mom for two months. (Id.). J.W.
9 has two siblings, an older sister Je. and a younger sister, Ja. (Id.). J.W. testified that his younger
10 sister lives with him in foster care. (Id., at p. 9, p. 10). Before living in foster care, J.W. was
11 living with aunt in Mesquite. (Id., at p. 10).

12 J.W. testified that he has contact with his mom through Facetime and prior to living
13 with his aunt, he lived with his mom and two sisters, in Overton, Clark County, Nevada. (GJT,
14 Vol. I, p. 11). J.W. testified that he knew Defendant and that he met Defendant at his
15 grandparent's house, in Logandale. (GJT, Vol. I, p. 12). J.W. testified that he was ten years
16 of age when Defendant began living in Logandale. (GJT, Vol. I, p. 13). J.W. identified a
17 photograph of Defendant, who is also J.W.'s uncle. (GJT, Vol. I, p. 14). J.W. testified that
18 when he first met Defendant everything was good, but Defendant started doing everything bad
19 within weeks or a month. (Id.). J.W. testified that there are places on his body that nobody is
20 supposed to touch and he identified those places as his penis and his butt. (GJT, Vol. I, p. 15).

21 J.W. testified that Defendant began touching him in private areas. (Id., at p. 15). J.W.
22 was ten years old the first time something happened, and he was living with his mom in
23 Overton. (Id.). J.W. had been at his grandmother's house in Logandale, along with his two
24 sisters, his grandparents, and Defendant. (GJT, Vol. I, p. 16). J.W. and the others went outside
25 to play hide and seek. (Id.). J.W. testified that while they were playing hide and seek
26 Defendant began kissing him in a garage, they were hiding in. (Id.). J.W. testified that
27 Defendant was kissing J.W. on the lips until J.W.'s sisters came in and Defendant stopped.
28 (GJT, Vol. I, p. 18). Defendant told J.W. not to tell anybody and J.W. didn't at first, but two

1 days later he told his older sister, who said she was going to tell their mom. (Id.). J.W. testified
2 that his sister Je. did tell their mother, but their mother never called the police. (GJT, Vol. I,
3 p. 20).

4 J.W. recalled an incident that occurred at his house, while he was in the living room
5 watching T.V., and everyone else was outside. (GJT, Vol. I, p. 21). Defendant came inside
6 and began touching J.W.'s butt. (Id.). J.W. was ten years old at the time and the incident
7 occurred a couple weeks after the garage incident. (GJT, Vol. I, p. 22). J.W. testified that
8 during the incident in the living room, he had been laying on the floor and Defendant came in
9 and got behind him and tried to pull down J.W.'s pants. (GJT, Vol. I, p. 23). J.W. tried to pull
10 his pants back up and get away, but Defendant would not let J.W. leave. (Id.). While J.W. was
11 struggling with Defendant J.W.'s mom came inside causing Defendant to get up really quick
12 and take a dish to the kitchen. (GJT, Vol. I, p. 24). J.W. testified that when Defendant touched
13 his butt that day, he kissed it with his mouth. (Id.). J.W. testified that Defendant kissed his
14 butt before pulling down J.W.'s pants. (Id.).

15 J.W. testified that there was another incident that occurred when J.W.'s mother told
16 Defendant to go to the store for some groceries. (GJT, Vol. I, p. 25). Defendant asked J.W. if
17 he wanted to go and J.W. said no, as did J.W.'s mother. (Id.). Defendant kept trying to
18 convince J.W.'s mom to let him come along and she finally agreed. (Id., at p. 25, p. 26). J.W.
19 and Defendant went to the store and afterwards, they went to some railroad tracks and
20 Defendant told J.W. to touch Defendant's part. (Id., at p. 26). J.W. was 10 or 11 years old
21 when the incident occurred. (Id.). J.W. testified that he was sitting in the passenger seat of the
22 car when they were at the railroad tracks, near his house. (GJT, Vol. I, pp. 27-28). Defendant
23 pulled his pants down and made J.W. touch Defendant's penis with his hand. (Id., at p. 28).
24 J.W. believed the incident occurred in 2018. (GJT, Vol. I, p. 29). J.W. believed the incident
25 happened before his eleventh birthday. (GJT, p. 30).

26 J.W. testified that the last time something happened with Defendant was during
27 Christmas or New Year's, 2019 turning 2020. (Id., at p. 30). J.W. was at his grandparent's
28 house in Logandale, along with his sisters, Defendant, and grandparents. (GJT, Vol. I, p. 31).

1 J.W. testified that he was wearing a Billy Eilish shirt that day. (Id.). At bedtime, after J.W.
2 fell asleep, he woke to Defendant coming into his room. (GJT, Vol. I, p. 32). Defendant knelt
3 beside J.W.'s bed and pulled down J.W.'s pants and underwear. (GJT, Vol. I, pp. 33-34).
4 Defendant put his mouth on J.W.'s penis. (GJT, Vol. I, p. 35). J.W. heard his grandmother
5 coming down the hall and Defendant hid behind J.W.'s door. J.W.'s grandmother opened the
6 bedroom door and noticed that J.W. was awake and she also caught Defendant behind J.W.'s
7 door. (Id., at p. 35, p. 36). J.W. testified that there was a time that Defendant used his hand to
8 touch J.W.'s penis, but he couldn't remember it all that well. (GJT, Vol. I, pp. 38-39). J.W.
9 testified that he eventually told a counselor at school and the police were called.

10 **The Grand Jury Testimony of Detective D. Huth Relevant to this Opposition**

11 Detective D. Huth testified that she was employed with the Las Vegas Metropolitan
12 Police Department, assigned to the juvenile sexual assault division, for approximately five
13 years. (GJT, Vol. II, p. 8). In January 2020, Detective Huth was assigned to investigate this
14 case. (Id.). Detective Huth testified that she interviewed J.W., and he was hesitant to disclose.
15 (GJT, Vol. II, p. 9). J.W. told Detective Huth that the first incident that occurred with
16 Defendant happened at his grandmother's house in Logandale. (GJT, Vol. II, p. 10). J.W.
17 stated that they had been playing hide and seek with his sister and he and Defendant went to
18 hide in a shed, at which time Defendant wrapped his arms around J.W. and kissed him more
19 than two times. (Id.). J.W. told Detective Huth that Defendant's mouth touched his lips. (Id.).

20 J.W. also described an incident that happened in the living room of his house while he
21 was watching T.V. (GJT, Vol. II, p. 11). J.W. described that he had been laying on his left side
22 and Defendant laid down on his left side behind J.W. (Id.). Defendant had J.W. lie on his back
23 and put his hand on J.W.'s penis, before placing his mouth on J.W. penis and moving it up and
24 down. (Id.). Detective Huth testified that she asked J.W. if anyone had ever touched his butt
25 and J.W. told her that no one had touched his butt or buttocks. (GJT, Vol. II, p. 13). Detective
26 Huth testified that J.W. told her that Defendant had had inappropriately touched him on ten
27 occasions. (Id.).

28 ///

Statement of Facts Relevant to Defendant's 2008 Conviction
For Attempt Sexual Assault with A Minor Under Fourteen Years of Age
In District Court Case C249562

On September 28, 2008, Defendant was visiting the apartment of Ashley Sumner, an acquaintance living in the same apartment complex that Defendant was living in at the time. Defendant was essentially a stranger to E.S., Ashley's four (4) year old son and had no other association with Ashley, other than being a neighbor in the complex. Defendant had been watching T.V. inside Ashley's apartment when Ashley went into the bathroom in a sickly state from consuming too much alcohol. While Ashley was in the bathroom, E.S. came back into the apartment from playing outside; Defendant unzipped E.S.'s pants and sucked on the four (4) year old child's penis. E.S. described the incident as "Aaron licked my peanuts." Defendant gave a statement to law enforcement, at first denying touching E.S.'s penis in any way. Eventually Defendant admitted to unzipping E.S.'s pants, holding E.S.'s penis in his hand and then put E.S.'s penis in his mouth for a short time. *See Arrest Report Attached Hereto as Exhibit 1.*

E.S. testified before a Grand Jury describing how Defendant called him over to the bed in the apartment, undid E.S.'s pants and began sucking on his penis. E.S. describing backing away from Defendant when this occurred, trying to get away from him. E.S. also described Defendant touching his penis with his hand. E.S. made hand motions of milking a cow while describing how Defendant touched his penis. E.S. immediately told Defendant that he was going to tell his mother, which is what he did. *See Grand Jury Transcript Attached Hereto as Exhibit 2.*

On February 23, 2010, Defendant pled guilty to Attempt Sexual Assault with a Minor Under Fourteen Years of Age. The terms of the plea agreement were that the State retained the right to argue at the rendition of sentence, but both parties agreed to make a recommendation to the court for a maximum sentence of fifteen (15) years in NDOC. On May 25, 2010, Defendant was sentenced to a maximum of One Hundred Eighty (180) Months with a Minimum parole eligibility of Fifty-Four (54) Months in the NDOC, with six hundred four

1 (604) days credit for time served. The Court further ordered a special sentence of Lifetime
2 Supervision and Registration as a Sex Offender. On August 31, 2010, an Amended Judgment
3 of Conviction was filed with the Court. *See* Amended Judgment of Conviction Attached
4 Hereto as Exhibit 3.

5 LEGAL ARGUMENT

6 7 **I. PURSUANT TO NRS 48.045(3), EVIDENCE OF THE DEFENDANT'S** 8 **OTHER SEXUAL OFFENSE UPON E.S. IS ADMISSIBLE TO SHOW THE** 9 **DEFENDANT'S PROPENSITY FOR SEXUAL ABUSE**

10 NRS 48.045, as amended and effective October 1, 2015, provides in relevant portion:

11 "1. Evidence of a person's character or a trait of his or her
12 character is not admissible for the purpose of proving that the
13 person acted in conformity therewith on a particular occasion . . .

14
15 **3. Nothing in this section shall be construed to prohibit the**
16 **admission of evidence in a criminal prosecution for a sexual**
17 **offense that a person committed another crime, wrong or act**
18 **that constitutes a separate sexual offense.** As used in this
19 subsection, "sexual offense" has the meaning ascribed to it in
20 NRS 179D.097."

21 (Emphasis added).

22 Further, NRS 179D.097 defines "sexual offense" as follows:

23 (a) Murder of the first degree committed in the perpetration or
24 attempted perpetration of sexual assault or of sexual abuse or
25 sexual molestation of a child less than 14 years of age pursuant to
26 paragraph (b) of subsection 1 of NRS 200.030.

27 **(b) Sexual assault pursuant to NRS 200.366.**

28 (c) Statutory sexual seduction pursuant to NRS 200.368.

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

(e) An offense involving the administration of a drug to another
person with the intent to enable or assist the commission of a
felony pursuant to NRS 200.405, if the felony is an offense listed
in this subsection.

(f) An offense involving the administration of a controlled
substance to another person with the intent to enable or assist the

1 commission of a crime of violence pursuant to NRS 200.408, if
2 the crime of violence is an offense listed in this section.

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

5 (h) An offense involving pornography and a minor pursuant to
6 NRS 200.710 to 200.730, inclusive.

7 (i) Incest pursuant to NRS 201.180.

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

9 (k) Indecent or obscene exposure pursuant to NRS 201.220.

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

11 (m) Sexual penetration of a dead human body pursuant to NRS
12 201.450.

13 (n) Sexual conduct between certain employees of a school or
14 volunteers at a school and a pupil pursuant to NRS 201.540.

15 (o) Sexual conduct between certain employees of a college or
16 university and a student pursuant to NRS 201.550.

17 (p) Luring a child or a person with mental illness pursuant to NRS
18 201.560, if punished as a felony.

19 (q) Sex trafficking pursuant to NRS 201.300.

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

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

24 (t) An offense that is determined to be sexually motivated pursuant
25 to NRS 175.547 or 207.193.

26 The recent amendments to NRS 48.045 are similar to statutes drafted in a number of
27 other states including: Cal. Evid. Code Sec. 1108; Ariz. R. Evid. 404; Alaska R. Evid. 404;
28 Fla. Stat. Sec. 90.404; Official Code of Georgia Sec. 24-4-413; Illinois Compiled Statutes Sec.
5/115-7.3; Louisiana Statutes, Art. 412.2; and Utah Rule of Evidence 404; Kansas Statutes,
Sec. 21.5502. As currently amended, NRS 48.045 is almost identical to amendments made to
the California Evidence Code in the mid 1990's and subsequently upheld by the California
Courts. Additionally, the reasoning of the Nevada Legislature in enacting such amendments
was similar to the reasoning of the California legislature.

California Evidence Code, section 1108 was added effective January 1, 1996. The
statute has since been determined to be valid and constitutional. People v. Fitch 55 Cal. App.
4th 172, 177-86 (1997). Specifically, the California Supreme Court, in upholding section 1108,

1 emphasized the legislative history behind section 1108: “the Legislature’s principal
2 justification for adopting section 1108 was a practical one: By their very nature, sex crimes
3 are usually committed in seclusion without third party witnesses or substantial corroborating
4 evidence. The ensuing trial often presents conflicting versions of the event and requires the
5 trier of fact to make difficult credibility determinations. Section 1108 provides the trier of fact
6 in a sex offense case the opportunity to learn of the defendant’s possible disposition to commit
7 sex crimes.” People v. Falsetta 21 Cal. 4th 903, 915 (1999). Indeed, the Court explained that
8 the “‘Legislature has determined the need for this evidence is ‘critical’ given the serious and
9 secretive nature of sex crimes and the often-resulting credibility contest at trial.’” Id. at 911
10 (citation omitted).

11 Similar to the effect of the subject amendment on NRS 48.045, California’s Section
12 1108 explicitly supersedes Evidence Code, section 1101’s prohibition of evidence of character
13 or disposition. People v. Soto 64 Cal. App. 4th 966, 984 (1998). The purpose of Section 1108
14 is to permit trial courts to admit prior sexual assault evidence on a common sense basis,
15 without a precondition of finding a “non-character” purpose for which it is relevant, so that
16 juries are able to rationally assess such evidence. Id. at 983-84. This rational assessment
17 “includes consideration of other sexual offenses as evidence of the defendant’s disposition to
18 commit such crimes, and for its bearing on the probability or improbability that the defendant
19 has been falsely or mistakenly accused.” Id. at 984 (citation omitted). Evidence of prior sexual
20 conduct is highly probative and is admissible as propensity evidence. As has been indicated in
21 the analogous federal rules, the “presumption is in favor of admission.” Id. at 989 (quoting
22 United States v. Sumner 119 F. 3d 658, 662 (8th Cir. 1997)). The California Supreme Court
23 further held that Section 1108 “implicitly abrogates prior decision of this court indicating that
24 ‘propensity’ evidence is per se unduly prejudicial to the defense.” People v. Villatoro, 281
25 P.3d 390 (Cal. 2012); See also; Falsetta, 21 Cal.4th at 911.

26 California courts have held that evidence of prior sexual offenses, charged or
27 uncharged, are “indisputably relevant in a prosecution for another sexual offense.” People v.
28 Fitch, 55 Cal.App.4th 172, 179 63 Cal.Rptr.2d 753, 757 (1997). Obviously, the evidence

1 cannot be used to directly prove a defendant's guilt in the instant sexual offense, but it can be
2 used to show that the defendant is disposed to committing sexual offenses and acted in
3 conformity with that disposition. People v. Yovanov, 69 Cal.App.4th 392, 406, 81 Cal.Rptr.2d
4 586, 594 (1999). The State must still prove a defendant's guilt for the sexual offense charged
5 beyond a reasonable doubt. Fitch at 183. However, such evidence of prior sexual offenses can
6 be used as corroborating evidence of the victim's testimony for the instant sexual offense.
7 Yovanov at 406.

8 When a prior sexual offense contains facts and circumstances similar to the sexual
9 offense charged, the probative value of admitting that prior sexual offense outweighs the
10 prejudicial effect, thus making admission of the offense admissible. People v. Vichroy, 76
11 Cal.App.4th 92, 98, 90 Cal.Rptr.2d 105, 109 (1999); Yovanov at 406. For example, the Court
12 of Appeals in California held that evidence that the defendant had attempted to touch or see
13 another young girl's genitals was admissible to show a disposition to commit lewd acts on his
14 minor stepdaughter when he asked to see her genitals. Id. In holding that such evidence was
15 admissible, the court focused on the factual similarities of the conduct and behavior of the
16 defendant. Id.

17 The admission of such evidence is, of course, subject to other provisions of the rules of
18 evidence including NRS 48.025 which provides:

19 "1. All relevant evidence is admissible "

20 And NRS 48.035 which provides in relevant part:

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

23 Pursuant to NRS 48.045 and NRS 48.035, similar to Cal. Evid. Code Section 1108, as
24 long as the current offenses and the prior offenses are ones defined as qualifying "sexual
25 offenses," the prior offenses are admissible unless the trial court finds them to be inadmissible
26 pursuant to NRS 48.035. See People v. Branch 91 Cal. App. 4th 274, 281 (2001).

27 In California, prior offenses are admissible when they occurred years, even decades
28 prior, or even after the charged sexual offense occurred. People v. Wapels, 79 Cal.App.4th

1 1389, 95 Cal.Rptr.2d 45 (2000); People v. Medina, 114 Cal.App.4th 897, 8 Cal.Rptr.3d 158
2 (2003). The court in Waples admitted evidence of prior, uncharged sexual offenses from 18 to
3 25 years before the charged event occurred. Wapels, 79 Cal.App.4th at 1395, 95 Cal.Rptr.2d
4 at 49. Moreover, the Court in Medina admitted other sexual offenses that occurred after sexual
5 offense charged occurred. Medina, 119 Cal.App.4th at 903, 8 Cal.Rptr.2d at 162. Regardless
6 of when the offenses occur, they are relevant and admissible.

7 Here, evidence of Defendant's prior sexual offense committed on E.S. should be
8 admitted to establish his disposition to commit the charged sexual offenses. Defendant's prior
9 conduct constitutes relevant character evidence that the jury should and must take into
10 consideration when determining whether Defendant committed the instant charged offenses.
11 Defendant's prior offenses contain behavioral and factual similarities, thus making them
12 "indisputably relevant" to the offenses alleged here.

13 Also, it should be noted that NRS 48.045 does not require that a defendant be convicted
14 of such offense: it explicitly allows "evidence in a criminal prosecution for a sexual offense
15 that a person committed another crime, wrong or act that constitutes a separate sexual offense."
16 (Emphasis added). However, in this case, not only did Defendant confess to the sexual assault,
17 he pleaded guilty to it as well.

18 The probative weight of the breadth and scope of this Defendant's prior sexual abuse
19 of E.S. is enormous to show Defendant's sexual attraction to minor children, specifically boys,
20 and his propensity to act out sexually against them. For crimes like these which occur in secret,
21 pursuant to NRS 48.045(3), a jury is entitled to know that Defendant's sexual abuse of J.W.
22 are not isolated events. It should also be noted that NRS 48.045(3) *explicitly* permits the
23 admission of prior sexual offenses. Thus, evidence of these other sexual offenses should be
24 admitted for propensity purposes.

25 **II. PURSUANT TO NRS 48.045(3), EVIDENCE OF OTHER SEXUAL OFFENSES**
26 **IS ADMISSIBLE TO SHOW DEFENDANT'S PROPENSITY TO COMMIT**
27 **SEXUAL OFFENSES WHICH DOES NOT REQUIRE A PETROCELLI**
HEARING

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

1 held:

2 We conclude that NRS 48.045(3) unambiguously permits the
3 district court to admit prior sexual bad acts for propensity purposes
4 in a criminal prosecution for a sexual offense.

5 Id., 432 P.3d 752 at 755.

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

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

16 Id.

17 **1. Relevant to the crime charged.**

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

20 First, similar to the Petrocelli framework, we conclude that the
21 State must request the district court's permission to introduce the
22 evidence of the prior sexual offense for propensity purposes
23 outside the presence of the jury. See Bigpond, 128 Nev. at 117,
24 270 P.3d at 1250. The State must then proffer its explanation of
25 how the prior sexual offense is relevant to the charged offense, i.e.,
26 tends to make it more probable that the defendant engaged in the
27 charged conduct. See NRS 48.015.

28 Id., 432 P.3d 752 at 756.

Evidence that Defendant has been previously engaged in performing fellatio on and
fondling the genitals of another small male child is certainly relevant as it shows Defendant's
attraction to young boys and thereby his propensity to sexually assault the victim in this case.

1 In 2008, Defendant went to prison for sexually assaulting E.S. After Defendant is released
2 from prison, he commits the same acts with another boy, his nephew, when he first gets to
3 know J.W.¹ The fact that Defendant has now been accused by multiple victims establishes his
4 propensity to commit sexual assaults.

5 **2. Proven by a preponderance of the evidence.**

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

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

14 The Court found that the victim's testimony alone in Franks was sufficient to meet this
15 burden, citing Keeney v. State, 109 Nev. 220, 229 (1993) (holding that even a higher burden,
16 clear and convincing evidence, can be provided by a victim's testimony alone). Here, the State
17 has Defendant's confession and his plea of guilty to the crime to E.S. This far surpasses the
18 preponderance of the evidence standard required by our Supreme Court.

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

21 Finally, the Supreme Court noted that the district court must conduct a weighing
22 analysis to determine whether the evidence's probative value is *substantially* outweighed by
23 the risk of unfair prejudice. In conducting this analysis, the Court requires that the factors set
24 forth in United States v. LeMay, 260 F.3d 1018, 1027-28 (9th Cir. 2001) be addressed: (1) the
25 similarity of the prior acts to the acts charged, (2) the closeness in time of the prior acts to the
26 acts charged, (3) the frequency of the prior acts, (4) the presence or lack of intervening

27 ///

28 ¹ J.W. was less than one (1) year old when Defendant was arrested for the sexual assault of E.S. and J.W. testified he was
ten (10) years old when he "met" Defendant.

1 circumstances, and (5) the necessity of the evidence beyond the testimonies already offered at
2 trial.

3 **a. The Similarity of the Prior Acts Charged**

4 In Franks, the court noted that the prior acts and the act for which Franks was charged
5 were identical, thus weighing in favor of the probative value of the evidence. Likewise, in this
6 case, Defendant's prior acts involving E.S. are deviant and involve Defendant engaging in
7 fellatio with a small boy, as well as lewdness with E.S. just as he did with J.W. Thus, the
8 probative value of the evidence is extremely high.

9 **b. The Closeness in Time of the Prior Acts to the Acts Charged**

10 In Franks, the victim could not testify as to the exact dates when the prior sexual offense
11 acts occurred. The Court did not take issue with this fact, citing LeMay (reasoning that the
12 lapse of *12 years* between trial and the prior sexual offenses did not render admission of
13 relevant evidence of the similar prior acts an abuse of discretion). Here, Defendant engaged in
14 sexually abusing E.S. on September 28, 2008 and was immediately arrested. Defendant went
15 to prison for years and then when he is released and meets his nephew, Defendant begins to
16 sexually abuse J.W. for a period of over two (2) years. The acts are not close in time because
17 Defendant's incarceration prevented him from abusing J.W. earlier.

18 **c. The Frequency of the Prior Acts**

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

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

27 LeMay at 1029. Here, the "frequency of events" factor appears to weigh in favor of the
28 probative value of the evidence. Defendant has been committing the same types of crimes

1 upon different victims for twelve (12) years, other than when he was incarcerated. His crimes
2 have continued despite the fact he was sent to prison, is a convicted sex offender and is
3 currently subject to lifetime supervision.

4 **d. The Presence or Lack of Intervening Circumstances**

5 The Franks Court noted that there were no “intervening circumstances that would alter
6 the balance of the acts probative value and risk of unfair prejudice.” Here, the only intervening
7 circumstance is that Defendant was incarcerated without access to small boys for years due to
8 his prior conviction. Such only establishes his propensity to commit such crimes and his
9 inability to be rehabilitated.

10 **e. The Necessity of the Evidence beyond the Testimonies Already Offered at Trial**

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

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

16 This analysis also applies to the instant case. While the evidence of Defendant's prior
17 conduct may or may not be absolutely necessary, it is certainly helpful to the State's case.
18 Additionally, it is “practically necessary” in the sense that the State must prove to 12 people
19 beyond a reasonable doubt that Defendant is capable of committing the acts to a child as
20 alleged in this case. The probative value of the fact Defendant previously engaged in sexual
21 misconduct with another young boy, completely unrelated to J.W., is enormous and cannot be
22 said to be *substantially* outweighed by the risk of unfair prejudice. Further, Defendant
23 referenced the prior conviction in two (2) voicemails he left for J.W.'s mother encouraging
24 her not to go forward, tying the events together even more. See Transcription of Interview
25 with Yvette Medina-Womack Attached Hereto as Exhibit 4, pp. 15-16, 18.

26 Our Supreme Court has now made it abundantly clear that NRS 48.045(3)
27 unequivocally indicates the legislature's intent to allow admission of the type of evidence the
28 State seeks to admit in this case *for propensity purposes*.

1 As the 9th Circuit stated in United States v. Mahler, “evidence relevant to a defendant's
2 motive is not rendered inadmissible because it is of a highly prejudicial nature.... The best
3 evidence often is.” 452 F.2d 547 (9th Cir. 1971), cert. denied, 405 U.S. 1069, 92 S. Ct. 1517,
4 31 L. Ed. 2d 801 (1972). Thus, evidence of Defendant’s prior sexual offenses involving E.S.
5 should be admitted in this case for propensity purposes.

6 **III. EVIDENCE OF DEFENDANT’S PRIOR SEXUAL MISCONDUCT WOULD**
7 **ALSO BE ADMISSIBLE AS EVIDENCE CONCERNING THE DEFENDANT’S**
8 **INTENT AND ABSENCE OF MISTAKE.**

9 Even prior to the above referenced acts being specifically determined not to be
10 character evidence per NRS 48.045(3), it would have been admissible pursuant to NRS
11 48.045(2). NRS 48.045(2) provides:

12 Evidence of other crimes, wrongs or acts is not admissible to prove
13 the character of a person in order to show that he acted in
14 conformity therewith. It may, however, be admissible for other
15 purposes, such as proof of motive, opportunity, intent, preparation,
16 plan, knowledge, identity, or absence of mistake or accident.

17 Prior to admitting such evidence, the State must establish that (1) the prior act is relevant to
18 the crime charged; (2) the act is proven by clear and convincing evidence; and (3) the evidence
19 is more probative than prejudicial. Cipriano v. State, 111 Nev. 534, 541, 894 P.2d 347, 352
20 (1995), overruled on other grounds by State v. Sixth Judicial District Court, 114 Nev. 739, 964
21 P.2d 48 (1998). With regard to a determination of prejudice:

22 “prejudicial” is not synonymous with “damaging.” Rather, evidence is unduly
23 prejudicial...only if it “uniquely tends to evoke an emotional bias against the
24 defendant as an individual and...has very little effect on the issues” or if it invites
25 the jury to prejudge “a person or cause on the basis of extraneous factors.”
26 Painting a person faithfully is not, of itself, unfair.

27 In the instant case, the State must prove the defendant’s intent was a sexual intent and
28 not accidental or a mistake. By showing that he engaged in similar behavior with E.S., the
State will prove that Defendant is not the victim of misunderstanding, but is a deliberate and
intentional sexual predator.

The State of the law used to be, in regard to acts as defined in this motion, that to be

1 deemed an admissible bad act, the trial court must determine, outside the presence of the jury,
2 that: (1) the incident is relevant to the crime charged; (2) the act is proven by clear and
3 convincing evidence; and (3) the probative value of the evidence is not substantially
4 outweighed by the danger of unfair prejudice. Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d
5 1061, 1064-65 (1997). NRS 48.045(2) is identical to Federal Rule of Evidence 404(3)(b).

6 After a court finds that evidence of other crimes does not violate NRS 48.045(2), the
7 court must then review the evidence in regard to NRS 48.035. This statute requires a weighing
8 of probative value against prejudicial effect. Tucker v. State, 82 Nev. 127 (1966).

9 In Tucker the Nevada Supreme Court stated how the balancing of "probative vs.
10 prejudicial" is to occur, 8 Nev. at 130:

11 The reception of such evidence is justified by necessity and, if
12 other evidence has substantially established the element of the
13 crime involved (motive, intent, identity, absence of mistake, etc.),
14 the probative value of showing another offense is diminished, and
the trial court should rule it inadmissible even though relevant and
within an exception to the rule of exclusion.

15 In other words, the stronger the proof of the elements of the charged offense toward
16 which the secondary acts would provide proof, the less probative the secondary acts become.
17 Ultimately, the decision to admit or exclude evidence lies within the discretion of the court.
18 And such a decision will not be reversed absent manifest error. Kazalyn v. State, 108 Nev.
19 67, 825 P.2d 578 (1992); Halbower v. State, 93 Nev. 212, 562 P.2d 485 (1977). The decision
20 to admit or exclude evidence of separate and independent offenses rests within the sound
21 discretion of the trial court, and it will not be disturbed unless it is manifestly wrong. Daly v.
22 State, 99 Nev. 564, 567, 665 P.2d 798, 801 (1983).

23 The Nevada Courts have recognized the value of evidence of other crimes and have
24 upheld its admissibility in sex cases. In McMichael v. State, 94 Nev. 184, 577 P.2d 398 (1978),
25 the defendant was appealing his conviction for the crime of Infamous Crime Against Nature.
26 The trial court allowed the State, in its case in chief, to present evidence that the defendant and
27 his thirteen-year-old victim had engaged in oral copulation both prior and subsequent to the
28 incident leading to the defendant's arrest. The Supreme Court upheld the trial court's admission

1 of the testimony to prove intent or the absence of mistake or accident.

2 While in McMichael, *supra*, only the named victim testified, in Findley v. State, 94
3 Nev. 212, 577 P.2d 867 (1978)(*overruled on other grounds by Braunstein v. State*, 40 P.3d
4 413 (2000)), the Supreme Court of Nevada affirmed the introduction of evidence that the
5 defendant had committed similar acts of lewdness with a child nine years earlier in order to
6 prove the defendant's lewd intent in touching a five year old girl's "private parts" in the case
7 for which he was on trial. The Court stated: "Intent, by reason of the words of the [lewdness
8 with a minor] statute, is an element of the crime and directly placed in issue by the not guilty
9 plea of the accused." *Id.* at Nev. 214, P.2d 868, *citing Overton v. State*, 78 Nev. 198 (1962).

10 In Williams v. State, 95 Nev. 830, 603 P.2d 694 (1979), the complaining victim testified
11 that she met the defendant while discussing a possible job as his secretary. The defendant
12 remained even though asked to leave by the victim. The defendant offered \$5,000.00 for a
13 "one-night stand." After the victim refused, the defendant stated that he had a black belt in
14 karate and demonstrated what he could do to her. The sexual assault then occurred. The
15 defendant testified that sexual intercourse occurred, but it was consensual. The State offered
16 two prior victims (from crimes occurring nineteen months before the crime charged) who
17 testified that they met the defendant through a job interview and were coerced into having
18 sexual intercourse after the defendant demonstrated his ability with karate.

19 In allowing the evidence of the prior sexual assaults, the Nevada Supreme Court stated:

20 In the instant case, evidence of Williams' sexual misconduct with
21 other persons was admitted as being relevant to prove his intent to
22 have intercourse with the victim without her consent. This
23 evidence was introduced after Williams admitted to committing
24 the act but claimed to have done so with the victim's consent. By
25 acknowledging the commission of the act but asserting his
26 innocent intent by claiming consent as a defense, Williams himself
placed in issue a necessary element of the offense and it was,
therefore, proper for the prosecution to present the challenged
evidence, which was relevant on the issue of intent, in order to
rebut Williams' testimony on a point material to the establishment
of his guilty.

27 *Id.*, 95 Nev. at 833.

28 In Colley v. State, 98 Nev. 14 (1982), the defendant was convicted of attempted murder

1 and battery with intent to commit sexual assault resulting in substantial bodily harm. During
2 the trial, the State offered the testimony of a witness who had been strangled and raped by the
3 defendant eight days before the victim in the case was attacked. *Id.*, at 14. The defendant
4 argued on appeal that the evidence should have been excluded. The Nevada Supreme Court
5 affirmed the lower court ruling, finding in part that the evidence was properly admitted as
6 relevant to the defendant's state of mind. *Id.* (citing *Findley v. State*, 94 Nev. 212 (1978),
7 *overruled on other grounds* by *Braunstein v. State*, 40 P.3d 413 (2000)).

8 In discussing motive, the *Ledbetter* Court stated:

9 In recent years this court has discussed at some length the motive
10 exception of NRS 48.045(2) as a basis to admit evidence of
11 uncharged prior acts in child abuse prosecutions. In 2002, this
12 court's en banc decision in *Braunstein v. State* rejected a line of
13 cases that stood for the proposition that evidence of other acts
14 offered to prove "a specific emotional propensity for sexual
15 aberration" is always relevant to a defendant's intent and
16 outweighs the danger of unfair prejudice as a matter of law. 118
Nev. at 75, 40 P.3d at 418 (*abrogating* *McMichael v. State*, 94
Nev. 184, 577 P.2d 398 (1978), and *overruling* *Findley v. State*,
94 Nev. 212, 577 P.2d 867 (1978)). This court returned in
Braunstein to the principle of analyzing the admissibility of prior
act evidence "according to the parameters of NRS 48.045(2)," which involved satisfying the three factors for admissibility.

17 *Id.*, 122 Nev. 252 at 261, 129 P.3d 671 at 678.

18 In so ruling, the Court did not say "a specific, emotional propensity for sexual
19 aberration" is not relevant or that it is unfairly prejudicial. It was clearly the "always" relevant
20 and "always outweighs" danger of unfair prejudice as a matter of law aspect with which the
21 Braunstein Court took issue.

22 The Court went on to state:

23 Later that year, this court en banc attempted to apply Braunstein
24 in the case *Richmond v. State* and divided on when the motive
25 exception of NRS 48.045(2) may be relied upon to admit prior act
26 evidence in child abuse prosecutions. *Richmond*, 118 Nev. 924,
59 P.3d 1249. Three opinions resulted, but a four-justice majority
27 of this court agreed that motive could be a valid basis for
admission of prior act evidence in child abuse prosecutions to
show a defendant's attraction to or obsession with his victims. *Id.*
at 937, 59 P.3d at 1257-58 (Maupin, J., concurring in part and
dissenting in part); *id.* at 942, 59 P.3d at 1261 (Shearing, J.,
28 concurring in part and dissenting in part, with whom Young, C.J.,

1 and Agosti, J., agreed). But *cf. id.* at 932–34, 59 P.3d at 1254–56
2 (plurality opinion by Rose, J., with whom Becker and Leavitt, JJ.,
3 agreed). It was explained:

4 Evidence of separate acts of pedophilia or other
5 forms of sexual aberration are not character
6 evidence, but are admissible for the “other purpose”
7 [under NRS 48.045(2)] of explaining why a crime
8 of sexual deviance was committed. The mental
9 aberration that leads a person to commit a sexual
10 assault upon a minor child, while not providing a
11 legal excuse to criminal liability, does explain why
12 the event was perpetrated. *Id.* at 939 n. 14, 59 P.3d
13 at 1259 n. 14 (Maupin, J., concurring in part and
14 dissenting in part).

15 *Id.* at 261–62, 678 (emphasis added).

16 Finally, the Ledbetter Court found that, “The probative value of explaining to the jury
17 what motivated Ledbetter, an adult man who was in a position to care for and protect his young
18 stepdaughter L.R. from harm, to instead repeatedly sexually abuse her for so many years was
19 **very high.**” *Id.* at 262–63, 679 (emphasis added).

20 In the instant case, aside from proving the sexual assault charges, the State must also
21 prove Defendant’s specific intent “of arousing, appealing to, or gratifying the lust, passions,
22 or sexual desires of Defendant, or J.W.” for the charge of Lewdness With a Child Under the
23 Age of 14. The fact that Defendant has previously engaged in prior acts of sexual misconduct
24 with E.S. certainly constitutes a serious ongoing sexual aberration. Also, the evidence of
25 Defendant’s sexual misconduct with E.S., sheds light on both his intent and lack of mistake in
26 engaging in sexual act with J.W., as charged in this case, for the purposes of his own sexual
27 gratification.

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1 **CONCLUSION**

2 Based upon the above and foregoing, the State respectfully requests this Court grant its
3 Motion to Admit Evidence of Other Crimes, Wrongs, or Acts

4 DATED this 8th day of September, 2020.

5 STEVEN B. WOLFSON
6 DISTRICT ATTORNEY
Nevada Bar #001565

7
8
9 BY

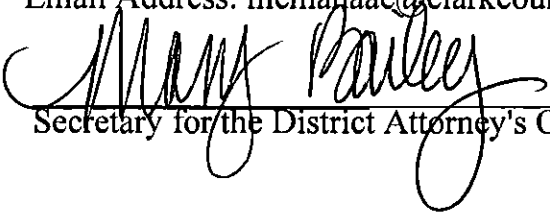

10 SANDRA K. DIGIACOMO
11 Chief Deputy District Attorney
12 Nevada Bar #006204

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that service of State's Notice of Motion and Motion to Admit Evidence
15 of Other Crimes, Wrongs or Acts was made this 8th day of August, 2020, to:

16 VIOLET RADOSTA, Deputy Public Defender
Email Address: radostvr@clarkcountynv.gov

17 ANNE MCMAHON, Legal Secretary
Email Address: mcmahaae@clarkcountynv.gov

18 
19 Secretary for the District Attorney's Office
20
21
22
23
24
25
26
27

28 20FM0005X/SD/mlb/SVU

ARREST REPORT

080928-3528

☐ City☒ County☒ Adult☐ Juvenile

Sector/Beat 87

ID/EVENT# 2596004	ARRESTEE'S NAME (Last, First, Middle) Medina, Aaron		S.S.# 530-45-8440	
ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code) 381 Bonelli Overton Nevada 89040				
CHARGES: Sexual Assault Victim Under 14 / Lewdness With Minor Under 14				
OCURRED:	DATE 09/28/08	DAY OF WEEK Sunday	TIME 2300	LOCATION OF ARREST (Number, Street, City, State, Zip Code) 320 N Moapa Valley Blvd, Overton NV 89040
RACE W	SEX M	D.O.B. 04/21/88	HT 5'10	WT 155
HAIR BLK		EYES BRO		PLACE OF BIRTH

CIRCUMSTANCES OF ARREST

On September 28th, 2008 at approximately 2300 hours, Ashley Sumner contacted the Las Vegas Metropolitan Police Department to report the sexual abuse of her four year old son [REDACTED]. Ashley said [REDACTED] disclosed that a male friend identified as Aaron Medina had touched his penis.

LVMPD Resident Officer S. Kelly P#6836 responded and made contact with Ashley. Officer Kelly conducted a preliminary investigation and spoke with [REDACTED] and Ashley. [REDACTED] told Officer Kelly that Aaron had put his penis in his mouth and had also touched his penis. Officer Kelly made contact with the suspect Aaron Medina. Medina denied the allegations. Officer Kelly contacted the LVMPD Sexual Assault Section for additional assistance.

I Detective Raymond Spencer P#7598, spoke with Officer Kelly. Due to the fact it was 0100 hours in the morning I advised Officer Kelly that I wasn't going to interview the victim until the following day. I arranged to have [REDACTED] transported to Sunrise Hospital for a sexual assault examination.

On Monday, September 29th, 2008 at 1700 hours, Detective T. Katowich #6360 and I, went to Overton, Nevada and conducted an interview with Ashley. The following is a brief synopsis of our interview with Ashley and not verbatim. Ashley said she lives at the Overton Motel at 135 N. Moapa Valley Boulevard with her 4 year old son [REDACTED]. Ashley said her next door neighbor Aaron was visiting. Ashley said she and Aaron were in the room drinking alcohol.

Ashley said [REDACTED] was coming in and out of the room because he was playing with a friend outside. Ashley said she became sick because of the amount of alcohol she had been consuming. Ashley said she went into the bathroom. While she was in the Bathroom she said she heard [REDACTED] come inside the hotel room. A few minutes latter she then heard [REDACTED] say that, "he was going to tell his mommy." [REDACTED] then came to the bathroom and told Ashley that Aaron had touched his penis. Ashley said she stayed in the bathroom and called the front desk. Ashley said Aaron then left the room. Ashley then called the police.

Detective Katowich and I then conducted a forensic interview with [REDACTED]. The following is a synopsis of our interview with [REDACTED]. [REDACTED] said he came into the room and noticed his mother was in the bathroom. He said Aaron told him to sit down on the bed next to him. [REDACTED] then said that Aaron undid his pants and touched his penis. [REDACTED] said Aaron then put his mouth on his penis. [REDACTED] said he then went and told his mother.

ARRESTING OFFICER(S)	P#	APPROVED BY	CONNECTING RPTS. (Type or Event Number)
R. Spencer	7598		

EXHIBIT "1"

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

080928-3528

Report Number: 2596004

Page 2 of 2

After speaking with [REDACTED], Detective Katowich and I made contact with Aaron Medina at Carley's Restaurant where he is employed. Aaron agreed to go with Detective Katowich and I to the LVMPD Overton Substation to discuss the incident. On September 29th, 2008 at 1800 hours Detective Katowich and I conducted a tape recorded interview with Aaron Medina. The following is a synopsis of the interview and not verbatim. Aaron was read his Miranda rights and said he understood.

Originally, Aaron said he was over visiting Ashley. Aaron said that Ashley had been drinking and [REDACTED] had been going in and out of the room. He said [REDACTED] came in and sat on the bed next to him while Ashley was in the bathroom sick. Aaron said [REDACTED] then just walked away and went to the bathroom with his mother. Aaron said he had no idea why [REDACTED] would make allegations alleging that he had done something inappropriate. Aaron said he never touched [REDACTED] penis.

Aaron then said he may have touched his penis when he was looking at an injury that [REDACTED] had on his stomach. Aaron then said he had in fact unzipped [REDACTED] pants and held [REDACTED] penis. Aaron said afterwards he put his mouth on [REDACTED] penis for a short amount of time. Aaron said he was ashamed of what he had done and felt better now that he had told the truth. Aaron said he doesn't know why he did it.

Aaron was placed under arrest for Sexual Assault Victim Under 14 and Lewdness with a Minor. He was transported to the Clark County Detention Center and booked without incident.

RA 103

1 GRAND JURORS PRESENT ON NOVEMBER 13, 2008:

2
3 GEORGE WILSON, Foreperson

4 SHIRLEE GAGLIARDI, Secretary

5 CHERYL VILLALBA, Assistant Secretary

6 IAN ADAMS

7 RONALD AINSWORTH

8 JUDY S. BANKS

9 EUGENE CHRISTENSEN

10 DONNA HURLEY

11 JAMES JEROUSEK

12 CHARLES MARSH

13 RICHARD ODELL

14 LAUREL ROSSI

15 BRENDA UPTON

16 REYNALDO VILLAPANDO

17 MARTHA VIRAMONTES

18
19
20 Also present at the request of the Grand Jury:
21 Taleen Pandukht,
22 Richard Scow,
23 Deputy District Attorneys

24 Mary Jenkins,
25 Secretary, District Attorney's Office

1

1

INDEX OF WITNESSES

2

3

Examined

4

[REDACTED]

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RAYMOND SPENCER

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1 LAS VEGAS, NEVADA, THURSDAY, NOVEMBER 13, 2008

2 * * * * *

3
4 DANETTE L. ANTONACCI,

5 having been first duly sworn to faithfully
6 and accurately transcribe the following
7 proceedings to the best of her ability.
8

9 THE FOREMAN: Let the record reflect that I
10 have canvassed the waiting area and no one has appeared in
11 response to Notice of Intent to Seek Indictment.

12 MS. PANDUKHT: Good afternoon. My name is
13 Talen Pandukht from the District Attorney's Office and I
14 will be presenting this case along with Richard Scow of the
15 District Attorney's Office. I would ask for permission for
16 Mary Jenkins from the District Attorney's Office to be
17 present during this proceeding.

18 THE FOREPERSON: Yes.

19 MS. PANDUKHT: Thank you.

20 And the first thing I would like to do
21 is to read the instructions that I have marked as proposed
22 Grand Jury Exhibit Number 3 and these are the instructions
23 relevant to these charges.

24 Any person who subjects another person
25 under fourteen years of age to sexual penetration against

1 the victim's will or under conditions in which the
2 perpetrator knows or should have known that the victim is
3 mentally or physically incapable of resisting or
4 understanding the nature of the defendant's conduct has
5 committed sexual assault with a minor.

6 Sexual penetration means cunnilingus,
7 fellatio, or any intrusion, including digital penetration,
8 however slight, of any part of a person's body, or any
9 object manipulated or inserted by a person into the genital
10 openings of the body of another including sexual
11 intercourse in its ordinary meaning.

12 Fellatio is defined as the act of
13 placing the male organ or penis into the mouth of another
14 or by the victim's tongue being on the defendant's penis.
15 Any penetration, no matter how slight, is sufficient to
16 complete the act.

17 Any person who willfully commits any
18 lewd or lascivious act, other than acts constituting the
19 crime of sexual assault, upon or with the body or any part
20 or member thereof of a child under the age of fourteen
21 years, with the intent of arousing, appealing to or
22 gratifying the lust or passions or sexual desires of that
23 person or of that child is guilty of lewdness with a minor.

24 To constitute a lewd or lascivious act
25 it is not necessary that the bare skin be touched. The

touching may be through the clothing of the child..

Although an essential element of the offense charged is an intent to arouse, appeal to or gratify the lust, passions or sexual desires of either the person committing the act or the child, the law does not require as an essential element of the crime that the lust, passions or sexual desires of either of such persons actually be aroused, appealed to or gratified.

The State will be calling two witnesses.
The first witness is [REDACTED]

MR. [REDACTED]: What is this?

MS. PANDUKHT: That's the microphone.

MR. [REDACTED]: Can I try it?

MS. PANDUKHT: You just have to -- actually it's going to pickup everything that you say so just sit up here. Can you get up?

MR. [REDACTED]: I'm already up here.

MS. PANDUKHT: Okay.

THE FOREPERSON: Are you ready?

MS. PANDUKHT: Yes.

THE FOREPERSON: Please raise your right hand.

MS. PANDUKHT: Can you raise your right hand?

MR. [REDACTED]: Uh-huh.

MS. PANDUKHT: Put it up in the air.

THE FOREPERSON: You do solemnly swear the

2 1 testimony you are about to give upon the investigation now
2 pending before this Grand Jury shall be the truth, the
3 whole truth, and nothing but the truth, so help you God?

4 [REDACTED]: What's his name?

5 MS. PANDUKHT: Can you listen to this man?
6 He's going to read this again. Can you listen to him and
7 answer him?

8 [REDACTED]: What? Can I try this?

9 MS. PANDUKHT: It's picking up everything
10 you're saying. Okay?.

11 [REDACTED]: Okay.

12 MS. PANDUKHT: But don't play with it.

13 [REDACTED]: Okay.

14 MS. PANDUKHT: Listen one more time. Keep
15 your hand up. Just your right hand.

16 Could you read that one more time?

17 THE FOREPERSON: You do solemnly swear the
18 testimony you are to give upon the investigation now
19 pending before this Grand Jury shall be the truth, the
20 whole truth, and nothing but the truth, so help you God?

21 MS. PANDUKHT: Do you promise to tell the
22 truth? Can you say yes or no?

23 [REDACTED]: Yes.

24 MS. PANDUKHT: Okay. Now I am going to ask
25 you some more questions about that.

2 1 [REDACTED] Okay.

2

3 [REDACTED]

4 having been first duly sworn by the Foreperson of the Grand
5 Jury to tell the truth, the whole truth, and nothing but
6 the truth, testified as follows:

7

8

EXAMINATION

9

10 BY MS. PANDUKHT:

11 Q Okay. First of all I want you to say your
12 name.

13 A [REDACTED].

14 Q [REDACTED]. What's your last name?

15 A [REDACTED].

16 Q Okay. Don't get too close to that. Remember
17 what I told you, to put your hands down, don't put them in
18 front of your mouth. So just put them down. Okay?

19 How old are you?

20 You have to answer out loud.

21 A Four.

22 Q And when is your birthday?

23 A Next month.

24 Q So what month is your birthday?

25 A Ir. --

2 1 Q I'm sorry, I didn't understand that.

2 A I don't know.

3 Q Okay. Why don't you do this. Here. Do this

4 for me. Keep your chair like this. I think you talk loud

5 enough. Okay, [REDACTED]

6 A Okay.

7 Q I want you to just focus on me, okay, just

8 look at me and tell me -- just look at me and listen to my

9 questions. Okay?

10 A Okay.

11 Q Okay. Tell me who you live with right now.

12 A With my grandma.

13 Q What's your grandma's name?

14 A (Inaudible) [REDACTED] (Inaudible) [REDACTED]

15 Q Could you make sure, don't talk right up into

16 it, just kind of sit back here. It will hear you.

17 What's her first name?

18 A It's a name that's [REDACTED]

19 Q I'm still not understanding. Don't put your

20 hands in front of your mouth.

21 Okay. Do you live with your mom too?

22 What's your mom's name?

23 A Mommy.

24 Q Okay. And did you use to live a different

25 place than where you live now?

2 1 A Just with my grandma.

2 Q So right now you live with your grandma?

3 A Uh-huh.

4 Q Where did you use to live before?

5 A At the motel.

6 Q A motel?

7 A Uh-huh.

8 Q Do you know where the motel was, [REDACTED]

9 A Uh-huh.

10 Q Where was it?

11 A On the second street.

12 Q Do you know what room of the motel you were

13 living in?

14 A Number 9.

15 Q Could you say that louder for me?

16 A Number 9.

17 Q Okay. Very good.

18 Now remember --

19 So you were living in room number 9, is

20 that what you said?

21 A Uh-huh.

22 Q Okay. And when you were living in room number

23 9 at the motel who were you living with?

24 A My mommy.

25 Q Okay. And do you have any brothers or

3

1 sisters?

2 A I don't have no brothers and no sisters.

3 Q And I wanted to show you some pens that I had.
4 Okay?

5 A Again?

6 Q Uh-huh. Yes. I have to show you these again.
7 I know we did this before. I want you to pick a pen for
8 me.

9 A Green.

10 Q What color is that?

11 A Green.

12 Q May the record reflect he correctly identified
13 the color green.

14 Pick a new pen. Just one.

15 What color is the new pen you just
16 picked?

17 A Yellow.

18 Q May the record reflect he correctly identified
19 the color yellow.

20 Pick another pen.

21 A Whoa.

22 Q Hold the new pen out.

23 What color is that?

24 A Blue.

25 Q May the record reflect he correctly identified

3 1 the color blue.

2 Q What color is this, the last pen I have?

3 A Red.

4 Q May the record reflect he correctly identified
5 the color red.

6 Can you give me back my pens.

7 A One, two, three, four.

8 Q Thank you.

9 A You're welcome.

10 Q Can you count for me up to ten?

11 A Uh-huh.

12 Q Is that a yes?

13 A Yeah.

14 One, two, three, four, five, six, seven,
15 eight, nine, ten.

16 Q Very good.

17 I'm going to move you closer here.

18 A By the microphone?

19 Q Yep. You're doing good. Don't worry.

20 A Do I have to talk on it?

21 Q You're doing fine.

22 Now remember the man was asking you if
23 you promised to tell the truth, right?

24 A Right.

25 Q Okay. I want to ask you some more about that.

3 1 Okay? Do you know the difference between a truth and a
2 lie?

3 A Truth is lie.

4 Q Well, let me ask you this: Is telling the
5 truth a good or a bad thing?

6 A Good.

7 Q Is telling a lie a good or a bad thing?

8 A Bad thing.

9 Q If I told you that my hair is green, is that
10 the truth or a lie?

11 A A lie.

12 Q Why is that a lie?

13 A Because it is.

14 Q It is a lie. What color is my hair?

15 A Black.

16 Q Okay. So do you promise to only tell the
17 truth today?

18 A Uh-huh.

19 Q You have to say yes or no instead of uh-huh.

20 A No.

21 Q Well, let me ask you again. Do you promise to
22 tell only the truth today?

23 A Yes.

24 Q Okay. Remember keep your hands down.

25 Very good.

3 1 So when you were living at the motel
2 with your mom did anything happen?

3 A Yes.

4 Q What happened?

5 A Aaron.

6 Q Aaron?

7 A Uh-huh.

8 Q What does Aaron look like?

9 A Like a ponytail guy.

10 Q He has a ponytail?

11 A Uh-huh.

12 Q How else, what else do you think he looks
13 like?

14 A He looks like a shirt, a shirt all the way,
15 shirt on him.

16 Q Okay. And how do you know Aaron?

17 A I don't really know him.

18 Q You don't know him. Okay.

19 A With the ponytail.

20 Q Was Aaron over at your house?

21 A Uh-huh. I didn't want him to come over to our
22 house so I try to not come out.

23 Q Tell me this. I'm going to show you Grand
24 Jury Exhibit Number 2.

25 A These are the pictures about him?

3 1 Q Well, who is that?

2 A Aaron.

3 Q Okay. This is the Aaron that you're talking

4 about?

5 A Yeah. See, that's the ponytail.

6 Q Okay. Thank you.

7 A That's Aaron.

8 Q I never showed you that picture before, did I?

9 A Huh-uh.

10 Q Instead of huh-uh, what's the answer? You

11 have to say yes or no.

12 A Yes.

13 Q Did I ever show you that picture before?

14 A No.

15 Q Okay. I'm going to show you another picture.

16 This is Grand Jury Exhibit Number 1.

17 A How come we're not going to do that one?

18 Q Now it's Number 4. Okay.

19 Now this one right here, Number 4, what

20 is this a picture of?

21 A Me.

22 Q Well --

23 A I didn't have my hair like that.

24 Q Is this a drawing of a little boy?

25 A Huh-uh. No. He's not supposed to touch my

3 1 peanuts.

2 Q Could you take this pen and circle where that
3 is?

4 A Uh-huh. We have to do that like this.

5 Q Is there only one place on the front of this
6 drawing that you're not supposed to be touched?

7 A Right here. My leg and here. Can I write it
8 down?

4 9 Q Okay. So this circle that you drew up here,
10 what do you call that?

11 A Peanuts. And my feet.

12 Q Okay. So the top circle you call your
13 peanuts?

14 A Yep, that's my peanuts.

15 Q How about on the back?

16 A What? He touch that on the back.

17 Q Okay. So tell me -- I don't know if you know
18 how to write peanuts. Do you know how to spell peanuts?

19 A Huh-uh.

20 Q Is that a yes or a no?

21 A No.

22 Q So do you know how to spell peanuts?

23 A Huh-uh. No.

24 Q All right. So tell me what happened. Did
25 anybody ever touch your peanuts?

4 1 A Uh-huh. Aaron.

 2 Q Aaron. Could you tell me what happened that

 3 day?

 4 A Yes.

 5 Q Tell me what happened.

 6 A What's the sound in here?

 7 Q It's the table moving.

 8 A How did the table move?

 9 Q Why don't you go ahead and have a seat. Just

 10 sit down in there.

 11 Tell me what happened with Aaron.

 12 A Aaron, he was by me.

 13 Q Where were you?

 14 A On the bed.

 15 Q What room?

 16 A That moves back and forth.

 17 Q Okay. Don't put your arm there. I know it

 18 moves but try and forget that right now. Okay?

 19 A Okay.

 20 Q So when Aaron touched you what room were you

 21 in?

 22 A Number 9. I already told you, number 9.

 23 Q I just want to make sure. And go ahead and

 24 have a seat. Sit down.

 25 Where was your mom?

4 1 A There with me.

2 Q When Aaron touched you where was your mom?

3 A In the bathroom.

4 Q What was she doing?

5 A Throwing up.

6 Q Do you know why she was throwing up?

7 A Yep.

8 Q Why?

9 A Because they was drinking vodka so they can

10 get drunk.

11 Q Now when she goes to throw up what room is she

12 in?

13 A Number 9.

14 Q Is she in the room with you and Aaron or is

15 she somewhere else?

16 A Room number 9 with Aaron.

17 Q Where does she go to throw up?

18 A In the bathroom.

19 Q Okay. And when your mom is in the bathroom

20 where are you?

21 A I have to walk away and go in the bathroom and

22 tell my mom on him.

23 Q What did Aaron do? Tell me what Aaron did.

24 A He was, tried to walk by me. He was trying to

25 lick my peanuts again.

4 1 Q So tell me what he did when your mom went into
2 the bathroom. Start from the beginning. Okay?

3 A I was by the wall and two times he licked my
4 peanuts. Two times.

5 Q Okay. Where were you when he licked your
6 peanuts?

7 A By the wall.

8 Q And where were you; standing or sitting?

9 A Standing up.

10 Q And where was Aaron?

11 A Right by me.

12 Q Was he standing or sitting?

13 A Standing.

14 Q And when he licked your peanuts where was he?

15 A By me.

16 Q Okay. How did he lick your peanuts?

17 A When I was on the bed.

18 Q Okay. So when he licked your peanuts were you
19 on the bed or were you standing?

20 A I was sitting on the bed and so I stand up to
21 get away from him. So I try to run away from him.

22 Q What did he say?

23 A He said come back here. So I'm trying to run
24 away out the door.

25 Q And what did Aaron do when you didn't come

4 1 back?

2 A I didn't want to see him no more because I
3 didn't -- I just hate him. I just hate him. I just --

4 Q So let me ask you this. What were you
5 wearing?

6 A Clothes.

7 Q What clothes?

8 A This clothes, these pants and these.

9 Q What kind of pants were you wearing? What
10 color were they?

11 Could you say it out loud? I know you
12 pointed but can you say out loud what the color is?

13 A Yeah. Blue.

14 Q And what color was your shirt?

15 A Probably green or red or yellow.

16 Q Do you remember -- look at me.

17 A It was yellow.

18 Q Do you remember what color your shirt was?

19 A Yellow.

20 Q What kind of sleeves did your shirt have?

21 A Black. Black, the yellow color, white, and
22 the other color, green.

23 Q Let me ask you what you were wearing that
24 night. I want to know when Aaron touched you, what were
25 you wearing?

4 1 A Clothes. He had to unbutton my pants.

2 Q So when Aaron touched you what color were your

3 pants?

4 A Blue.

5 Q Okay. And when Aaron touched you what color

6 shirt were you wearing?

7 A Yellow.

8 Q Okay. I'm sorry. I want to make sure I

9 understand. Okay?

10 A Okay.

11 Q Okay. So now tell me when Aaron, the night

12 Aaron touched you --

13 A Okay.

14 Q -- what color was Aaron's shirt?

15 A Black.

16 Q And what color were Aaron's pants?

5 17 A Blue.

18 Q Was he wearing pants or shorts?

19 A Shorts.

20 Q Okay.

21 A What time is it?

22 Q Two o'clock.

23 A How come it goes to three o'clock?

24 Q I have more questions. Wait.

25 A few more questions. Okay?

5 1 A Okay.

 2 Q So --

 3 A What is this?

 4 Q Hold on. Just listen to my questions. Okay?

 5 So when, before Aaron licked your

 6 peanuts --

 7 A I look at that picture now.

 8 Q I need you to listen to my questions. Okay?

 9 A Okay.

 10 Q We'll be done in just a little bit.

 11 A Okay.

 12 Q Did Aaron do anything to your pants before he

 13 licked your peanuts?

 14 A He unbuttoned my pants, unzipped them and

 15 licked them.

 16 Q And then did he do anything else after that?

 17 A No.

 18 Q Well, afterwards, before you told your mommy,

 19 did he touch you anywhere with his hands?

 20 You nodded.

 21 A When I was on the bed, so he licked them, so I

 22 walked away from him, so he licked them again.

 23 Q Did he touch you with his hands anywhere?

 24 A By the wall.

 25 Q Where did he touch you?

5 1 A By the wall.

2 Q I m sorry, where on your body did he touch

3 you?

4 A Right here by my peanuts.

5 Q And could you put an X where he touched you

6 with this pen?

7 A Uh-huh. I don't know how to draw an X. Like

8 this? Don't dc it right.

9 Q Actually that's pretty good.

10 Okay. And what was he doing when he was

11 touching your peanuts? What was he doing with his hand?

12 A He tried to move it to my peanuts.

13 Q And did his hand touch your peanuts?

14 A Yeah. He tried to zip them up, my peanuts up.

15 Q What did he try and zip up?

16 A This.

17 Q May the record reflect he's pointing to his

18 zipper.

19 A He --

20 Q And what happened when he tried to zip them

21 up?

22 A He zipped them so I had my peanuts up so he

23 zipped them up.

24 Q How did that feel?

25 A Hurt.

5 1 Q And did he say anything else?

 2 A Huh-uh.

 3 Q Can you say yes or no?

 4 A No.

 5 Q Did you say anything?

 6 A No.

 7 Q What did you do then?

 8 A Nothing.

 9 Q Well, did you stay in the room with Aaron or
10 did you go somewhere?

 11 A I, I go somewhere, in the bathroom to see my
12 mommy and told on him.

 13 Q What did you tell your mommy?

 14 A That. I told on Aaron. I told my mom Aaron
15 touched my peanuts.

 16 Q Okay. Wait one minute.

 17 A You was telling him something.

 18 Q I was. But guess what?

 19 A Huh?

 20 Q That's it. I don't have anymore questions.
21 Okay?

 22 Do any of the Grand Jurors have any
23 questions?

 24 Okay. You're all done. Thank you.

 25 Thank you, Ethan.

5 1 THE FOREPERSON: You'll get in trouble if you
2 tell anybody what happened here today. You'll be in
3 trouble so --

4 THE WITNESS: Okay.

5 THE FOREPERSON: -- don't do that.

6 THE WITNESS: Okay.

7 THE FOREPERSON: Don't tell anybody.

8 THE WITNESS: I won't.

9 MS. PANDUKHT: Thank you, [REDACTED]

10 THE WITNESS: You're welcome.

11 THE FOREPERSON: Raise your right hand.

12 You do solemnly swear the testimony you
13 are about to give upon the investigation now pending before
14 this Grand Jury shall be the truth, the whole truth, and
15 nothing but the truth, so help you God?

16 MR. SPENCER: Yes, sir, I do.

17 THE FOREPERSON: Please be seated.

18 You are advised that you are here today
19 to give testimony in the investigation pertaining to the
20 offense of sexual assault with a minor under fourteen years
21 of age, lewdness with a child under the age of fourteen.

22 Do you understand this admonition?

23 MR. SPENCER: Yes, sir, I do.

24 THE FOREPERSON: Please state your first and
25 last name and spell both for the record.

5 1 MR. SPENCER: Raymond Spencer. R-a-y-m-o-n-d,
2 Spencer, S-p-e-n-c-e-r.

3
4 RAYMOND SPENCER,
5 having been first duly sworn by the Foreperson of the Grand
6 Jury to tell the truth, the whole truth, and nothing but
7 the truth, testified as follows:

8
9 EXAMINATION

10
11 BY MR. SCOW:

12 Q What's your occupation?

13 A I'm currently a sergeant with the Las Vegas
14 Metropolitan Police Department.

15 Q Direct your attention to September 29, 2008,
16 were you working with Las Vegas Metropolitan Police
17 Department at that time?

18 A Yes, sir, I was.

19 Q What was your assignment within Metro?

20 A At that time I was a detective with the sexual
21 assault section.

22 Q At that time were you investigating a case
23 involving Aaron Medina?

24 A Yes, sir, I was.

25 Q Did you come into contact with that individual

5 1 on September 29th?

2 A Yes, sir, I did.

3 Q Showing you Grand Jury Exhibit Number 2, do
4 you recognize what is depicted in that exhibit?

5 A Yes, sir, it's a photo of Aaron Medina.

6 Q What was the purpose of you coming into
7 contact with Aaron Medina on that day?

8 A We were conducting a follow-up investigation
9 regarding a sexual abuse of a four-year old child. The
10 original phone call had came into us the night before from
11 a patrol officer out in Overton when he responded to a
12 motel in regards to the incident.

13 Q So there was an officer who responded the day
14 before or the night before?

15 A Yes, sir.

16 Q To a motel in Overton?

17 A Yes, sir.

18 Q And that's here in Clark County, Nevada?

19 A Yes, sir, it is.

20 Q The four-year old boy, do you remember his
21 name?

22 A Yes, his name was [REDACTED] I believe.

23 Q Have you seen him coming in and out of this
24 room this afternoon?

25 A Yes, sir, I did.

6 1 Q He's the boy that just walked out of here?

2 A Yes.

3 Q Did you also have an opportunity to speak with
4 the boy [REDACTED] around September 29, 2008?

5 A Yes. I spoke with [REDACTED] originally when we
6 drove out to Overton, myself and Detective Katowich.

7 Q So you had gone to Overton. Was that on the
8 29th as well?

9 A Yes, sir, it was.

10 Q You spoke with the boy. Did you see the motel
11 as well where they were living?

12 A We saw it briefly as we drove by it.

13 Q You drove by that area?

14 A Yes.

15 Q What were the circumstances that led up to you
16 speaking with Aaron Medina?

17 A We went to his place of employment which was
18 on Moapa Valley Boulevard and asked him if he would speak
19 with us regarding the incident.

20 Q What did he say?

21 A He said he had no problem as long as his
22 manager was okay with that.

23 Q Were you able to get approval from the
24 manager?

25 A Yes, the manager gave approval and Mr. Medina

6 1 accompanied us to the substation which was basically across
2 the street from where he worked.

3 Q So you went from his place of employment to a
4 substation in Overton?

5 A Yes, sir.

6 Q And at that point in time what was his, was he
7 under arrest? What was your relationship or the position,
8 you and him, at that point in time?

9 A He was a suspect in the incident. He was not
10 under arrest. We asked him if he would voluntarily come
11 with us which he did.

12 Q Was this after you had spoken with [REDACTED]

13 A Yes.

14 Q When you were talking with [REDACTED] and you're
15 talking with Aaron, this is all happening on the 29th of
16 September?

17 A That's correct.

18 Q And then this was from a report of something
19 that occurred the day before on the 28th of September?

20 A That's correct.

21 Q When you got with Aaron and you took him to
22 the substation, what occurred when you got there? Go ahead
23 and explain what you do when you get there.

24 A Because I'm not familiar with that area, it's
25 our resident officers who work out there, I had to have

6 1 them let us into the substation and they showed us an
2 2 interview room that we could speak with Mr. Medina. We
3 3 went to the interview room and because of the surroundings I
4 4 read him his rights and asked him if he understood those
5 5 and he did understand those.

6 Q Specifically the rights you're talking about,
7 7 what were those rights that you advised him of?

8 A His Miranda rights.

9 Q Okay. And did you read those from a card,
10 10 from your memory?

11 A I read them from a card, correct.

12 Q Okay. And the rights, do you remember what it
13 13 is that you advised him of, the Miranda rights
14 14 specifically, what you advised him?

15 A To paraphrase, that he had the right to remain
16 16 silent, anything he said could be used against him in a
17 17 court of law, he had the right to speak to an attorney and
18 18 if he understood those rights.

19 Q And if he couldn't afford an attorney?

20 A And if he couldn't afford an attorney one
21 21 would be appointed to him.

22 Q This interview you conducted with Aaron
23 23 Medina, was it tape recorded?

24 A Yes, sir, it was.

25 Q Now when you went and you're meeting with

6 1 Aaron Medina, you said that a patrol officer had gone the
2 day before to do a preliminary investigation?

3 A That's correct. When patrol, the policy is
4 patrol will actually go out to the scene and conduct the
5 preliminary investigation and then call the sexual assault
6 section. When I actually got the phone call the night
7 before it was roughly eleven p.m. on the 28th. The patrol
8 officer advised me that he had already spoken with the
9 suspect who had denied the allegations and at that point I
10 made arrangements for the victim [REDACTED] to be transported to
11 Sunrise Hospital for a sexual abuse examination.

7 12 Q You arranged to have [REDACTED] transported to the
13 hospital for a sexual abuse examination?

14 A Yes, sir, I did.

15 Q And that occurred either September 28th very
16 late or early morning of the 29th?

17 A Correct. The call came in on the 28th. I
18 don't believe they made it to the hospital until the early
19 morning hours of the 29th.

20 Q Is that a standard procedure in these types of
21 cases that you would have a reported victim go to a
22 hospital or someplace for an examination?

23 A Yes, sir, it is.

24 Q I'm going to show you Grand Jury Exhibit
25 Number 5 and ask if you recognize what's in this exhibit

7 1 generally speaking.

2 A Generally this is the result of the suspected
3 child abuse and neglect examination that is conducted at
4 Sunrise Hospital.

5 Q And so these would be the records that the
6 hospital produces as a result of that examination?

7 A Yes, sir.

8 Q And on here it depicts that it's examination
9 of an Ethan Sumner, Sunrise Hospital, and it also gives the
10 date of September 29, 2008?

11 A Correct.

12 Q And are you familiar with the results of the
13 examination at Sunrise Hospital?

14 A I believe it was a normal examination.

15 Q Normal exam meaning?

16 A Nothing abnormal was found during the
17 examination.

18 Q Okay. So like no physical evidence of sexual
19 abuse found on the boy?

20 A No physical findings of sexual abuse from that
21 examination.

22 Q No physical findings meaning like no injuries?

23 A Correct.

24 Q Okay. Now turning your attention back to the
25 interview that you had with Aaron Medina, we were to the

7 1 point where you stated for us you've advised him of his
2 Miranda rights. How did he respond after you read him his
3 Miranda rights?

4 A He advised me that he understood his rights.

5 Q And did he agree to speak with you?

6 A Yes, sir, he did.

7 Q How did the interview with Aaron Medina go?
8 Tell us about your conversation with him.

9 A I explained to him what we were investigating
10 and asked him for his side of the story in regards to what
11 occurred last night and also I knew he had spoken with the
12 patrol officer last night and had denied those allegations.
13 He told me that he was in the motel room with [REDACTED]
14 however he denied ever having any kind of sexual contact
15 with [REDACTED], being touching his penis or putting his mouth
16 on his penis.

17 Q After Aaron denies having touched [REDACTED]
18 penis with his hands or having put his mouth on [REDACTED]
19 penis, what did you do? What approach did you take after
20 that?

21 A I explained to him that [REDACTED] did go to the
22 hospital and that evidence was recovered such as DNA
23 evidence and the results of those, or that the results of
24 those had been processed and that's why I was out there
25 speaking with him.

7 1 Q So you had told him because of DNA results
2 that's a reason you were speaking with him?

3 A That's correct.

4 Q Now when you're going through this with Aaron
5 Medina as far as telling him that DNA was processed, when
6 ██████ is taken to the hospital is evidence collected from
7 him as far as looking for DNA type evidence?

8 A Yes, sir, it is.

9 Q So when you're speaking with him at the time
10 that you're saying DNA evidence is being processed, can you
11 explain this approach or what you're doing when you're
12 talking with Aaron and bringing up DNA results?

13 A I'm just explaining to him that ██████ did go
14 down to the hospital and also explained that DNA can be
15 recovered, I forget the specific amount of time that I told
16 him, regarding what happened.

17 Q After speaking with him about the possibility
18 of DNA evidence, how did the conversation, where did it go
19 after that?

20 A We spoke about DNA for probably five, roughly
21 five minutes, and after that he did make an admission that
22 he had in fact -- actually, let me backup.

23 First he said that there might have been
24 an injury to ██████ while he was outside playing with a
25 friend and that he might have touched his stomach and then

7 1 he went onto say that he in fact had touched his penis and
2 put his mouth on [REDACTED] penis as well.

3 Q Okay. So the interview was kind of in phases;
4 is that correct?

5 A Correct, it was a rather short interview but
6 in phases.

7 Q The first thing you described was he denied
8 any type of sexual touching?

9 A Yes, sir.

10 Q And then you described him admitting to
11 touching Ethan's stomach?

12 A Correct.

13 Q Because of an injury he may have had outside
14 previously?

8 15 A Correct. There was something that he had said
16 that [REDACTED] might have had an injury so he looked at his
17 stomach and then it evolved into he touched his penis and
18 then put his mouth on [REDACTED] penis.

19 Q When you said that it evolved from touching
20 his stomach to touching his penis, what did he say he
21 touched [REDACTED] penis with?

22 A With his hand.

23 Q And then you said he also admitted to touching
24 [REDACTED] penis with --

25 A His mouth.

8 1 Q -- his mouth as well?

2 Did he say whether or not [REDACTED] penis
3 had gone inside of his mouth?

4 A I would have to review the transcripts. I
5 remember he did say he did touch his penis with his mouth.

6 Q Would it help you to remember what he said if
7 I referred you to the transcribed statement that he gave to
8 you?

9 A Yes, sir.

10 Q You have previously reviewed this
11 transcription of your interview?

12 A Yes, sir, I have.

13 Q It's an accurate transcription of the
14 interview that you had?

15 A Yes, sir, it is.

16 Q I refer you to page 29 and then 30.

17 A My response -- I'll actually go up.

18 "Did you ever put your mouth on his
19 penis?" And he responded, "A little bit."

20 Q Without reading it into the record, just read
21 there and the next page and see if that helps you remember
22 what he told you in that interview.

23 A Yes, it does.

24 Q What was it that he told you?

25 A That he had put his penis in his mouth just

8 1 barely.

2 Q Did he say anything to you about how he felt
3 about what he had done to [REDACTED]

4 A He felt ashamed about what he did.

5 Q Is that what he told you?

6 A Correct.

7 MR. SCOW: I have no more questions for this
8 witness. Are there any by the ladies and gentlemen of the
9 Grand Jury?

10 BY A JUROR:

11 Q Did Aaron know that he was being recorded in
12 the room?

13 A There was a tape recorder. He was actually
14 audio and videoc recorded. I don't know if he knew he was
15 being audio and video, but there was a tape recorder right
16 in front of him when we were speaking, but I don't know if
17 he knew he was being video recorded as well.

18 BY A JUROR:

19 Q Was there in fact an injury to [REDACTED]
20 stomach?

21 A Not that I know of.

22 BY A JUROR:

23 Q What was the relationship between Mr. Medina
24 and Aaron's -- and the child's mother?

25 A They both lived in the motel and became

1 acquaintances from living in the motel together is from
2 what we gathered.

3 THE FOREPERSON: By law these proceedings are
4 secret and you are prohibited from disclosing to anyone
5 anything that has transpired before us, including evidence
6 and statements presented to the Grand Jury, any event
7 occurring or statement made in the presence of the Grand
8 Jury, and information obtained by the Grand Jury.

9 Failure to comply with this admonition
10 is a gross misdemeanor punishable by a year in the Clark
11 County Detention Center and a \$2,000 fine. In addition,
12 you may be held in contempt of court punishable by an
13 additional \$500 fine and 25 days in the Clark County
14 Detention Center.

15 Do you understand this admonition?

16 THE WITNESS: Yes, sir.

17 THE FOREPERSON: Thank you for your testimony.
18 You are excused.

19 THE WITNESS: Thank you.

20 MR. SCOW: That will conclude our presentation
21 of witnesses. We now leave it for the ladies and gentlemen
22 of the Grand Jury to deliberate.

23 (At this time, all persons, other than
24 members of the Grand Jury, exit the room at 2:21 p.m. and
25 return at 2:23 p.m.)

8 1 THE FOREPERSON: Mr. District Attorney, by a
2 vote of twelve or more Grand Jurors a true bill has been
3 returned against Defendant Aaron Medina charging the crimes
4 of sexual assault with a minor under fourteen years of age,
5 lewdness with a child under the age of fourteen, in Grand
6 Jury case number 08BGJ005X. We instruct you to prepare an
7 Indictment in conformance with the proposed Indictment
8 previously submitted to us. Make a record of any changes,
9 alterations, deletions or additions to the proposed
10 Indictment.

11 MS. PANDUKHT: We will.

12 MR. SCOW: Thank you.

13 MS. PANDUKHT: Thank you.

14 (Proceedings concluded.)
15

16 --ooOoo--
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24
25

REPORTER'S CERTIFICATE

STATE OF NEVADA)
 : SS
COUNTY OF CLARK)

I, Danette L. Antonacci, C.C.R. 222, do hereby
certify that I took down in Shorthand (Stenotype) all of
the proceedings had in the before-entitled matter at the
time and place indicated and thereafter said shorthand
notes were transcribed at and under my direction and
supervision and that the foregoing transcript constitutes a
full, true and accurate record of the proceedings had.

Dated at Las Vegas, Nevada, November 25, 2008.



Danette L. Antonacci, C.C.R. No. 222

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER
08BGJ005X:

/ Does not contain the social security number of any
person,

-OR-

 Contains the social security number of a person as
required by:

A. A specific state or federal law, to-
wit: NRS 656.250

-or-

B. For the administration of a public program or
for an application for a federal or state grant.



Signature

11/25/08

Date

Danette L. Antonacci
Print Name

Official Court Reporter
Title

1 AJOCP

2010 AUG 31 A 8:54

Robert D. Lamm
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

08C249562
AJOC
Amended Judgment of Conviction
814710



8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO. C249562

11 -VS-

DEPT. NO. XV

12 AARON MEDINA
13 #2596004

14 Defendant.

15 AMENDED JUDGMENT OF CONVICTION
16 (PLEA OF GUILTY)

18 The Defendant previously appeared before the Court with counsel and entered
19 a plea of guilty to the crime of ATTEMPT SEXUAL ASSAULT WITH A MINOR
20 UNDER FOURTEEN YEARS OF AGE (Category B Felony), in violation of NRS
21 200.364, 200.366, 193.330; thereafter, on the 25TH day of May, 2010, the Defendant
22 was present in court for sentencing with his counsel, ABEL YANEZ,
23 Deputy Public Defender, and good cause appearing,
24

25 THE DEFENDANT WAS ADJUDGED guilty of said offense and, in addition to
26 the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee including
27 testing to determine genetic markers, and Indigent Defense Civil Assessment Fee of
28

EXHIBIT "3"

AUG 23 2010

BA 146

1 \$250.00, the Defendant was sentenced as follows: TO A MAXIMUM of ONE
2 HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of FIFTY-
3 FOUR (54) MONTHS in the Nevada Department of Corrections (NDC); with SIX
4 HUNDRED FOUR (604) days Credit for Time Served.
5

6 THEREAFTER, on the 19th day of August, 2010, due to clerical error, the
7 Defendant's Judgment of Conviction is amended to include a SPECIAL SENTENCE of
8 LIFETIME SUPERVISION is imposed to commence upon release from any term of
9 imprisonment, probation or parole. Additionally, the Defendant is ORDERED to
10 submit to a blood or saliva test and register as a Sex Offender within FORTY-EIGHT
11 (48) HOURS from any release.
12

13
14 DATED this 30th day of August, 2010
15

16
17 
18 ABBI SILVER
19 DISTRICT JUDGE
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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 1

EVENT #: LLV200100031536

SPECIFIC CRIME: SEX ASSAULT AGAINST CHILD UNDER 14 YEARS

DATE OCCURRED:

TIME OCCURRED:

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: YVETTE MARIE WOMACK

DOB: 07/04/1983

SOCIAL SECURITY #:

RACE:

SEX:

HEIGHT:

WEIGHT:

HAIR:

EYES:

HOME ADDRESS: 381 BONELLI AVE
OVERTON, NV 89040

PHONE 1: 702-840-8512

WORK ADDRESS:

PHONE 2:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE R. CALDERON, P#8547, LVMPD SEXUAL ASSAULT JUVENILE SECTION, on January 8, 2020 at 1631 hours.

Q: All right, operator, this is Detective R. Calderon P# 8547. Today's date is January 8, 2020, the time is 4:31 pm. We're here at 701 North Pecos, um, the Event# is Lincoln, Lincoln, Victor 200100031536. I'm here with Yvette Marie Womack. Her date of birth is 07-04-83, she resides at 381, um, Bommelly?

A: Bonelli.

Q: Bonelli Avenue and that's in Overton, Nevada 89040. Ah, a good contact phone number for her, 702-840-8512. Or at her best friend's, um, phone number, which

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 2

EVENT #: LLV200100031536
STATEMENT OF: YVETTE MARIE WOMACK

is Rachel Pitchford, and her number is 702-286-9376. And she also has an email address that we can contact her at, which is Yvettemedina333@gmail.com.

Um, did I get that right, Yevette?

A: Mm-hm, yes.

Q: Okay, all right. Do you go by Yvette, just Yvette, not Marie?

A: No, just Yvette.

Q: Okay, all right. Get this closer to you. Okay, so, um, Yvette, um, you reside at the 381, ah...

A: Bonelli.

Q: Bonelli, sorry...

A: Yes.

Q: ...I'm like, I'm gonna. Um, so, um, from my understanding police, ah, contacted you, or - or police were contacted reference an incident with [REDACTED]. Which is your son.

A: Correct.

Q: Um, can you just walk me through what happened, how police got, you know, contacted and - and that way I can...

A: Um.

Q: ...we can kind a go from there.

A: The police got contacted while he was at school.

Q: Okay.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 3

EVENT #: LLV200100031536

STATEMENT OF: YVETTE MARIE WOMACK

A: Um, we talked to, um, one of the ladies there, I - I guess she's a - a - a counselor I think there.

Q: Okay.

A: And we also talked to, um, oh what - what is she the - the dean or the principal there at the school also.

Q: Okay. Okay.

A: And, they - the two ladies, um, contacted the police.

Q: Okay. So, um, were you at the school when this happened?

A: Yes. I was - I was there and sitting next to my son while - well, before he didn't want me and my best friend and the two ladies to be in there with him while he talked to the - the police. So, we just waited outside the room.

Q: Okay. Let me ask you this, just so I can better understand the flow of what happened. Um, did your son tell somebody and then you got contacted to go to the school? Or did you already know and then went to the school?

A: Um, wait, um, you mean did the school contact me, that - that [REDACTED] told them or?

Q: Yes.

A: No, um, I already - we already had talked about it and, um, and that's, ah, that's how I was there. I had gone there like, a little bit after he went to school. And he had called me and asked me, "Okay, mom, the - the, um, counselor is here."

Q: Mm-hm.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 4

EVENT #: LLV200100031536
STATEMENT OF: YVETTE MARIE WOMACK

A: So, I walked over there. To the school.

Q: Okay. Okay.

A: 'Cause we live like, one street behind it.

Q: Oh, okay. That's right.

A: Yeah.

Q: Um, so tell me, um, what - what did you and your son discuss to- prior to him going to school and then talking to the counselor?

A: Um, we discussed, well, I asked him how did he want to go about this, if he wanted to talk to - go like, go - go direct to the police, or did he wanna talk to the counselors there at school?

Q: Mm-hm.

A: And he said that he wanted to, um, talk to the counselors there at school.

Q: Okay.

A: And I said, okay. And that's what we'll do.

Q: Okay. How - how so how did your son, um, come forward with the allegations? How - how did that happen? Was that that same day, or another day, how did that all kind a...

A: What - what do you mean?

Q: With what - what happened? What - what's been going on with him, how did that come forward?

A: Um.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

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EVENT #: LLV200100031536

STATEMENT OF: YVETTE MARIE WOMACK

Q: Initially?

A: Well, he, ah, [REDACTED] had told his sister Jesenia.

Q: Okay.

A: Um, but this recent time, ah, recently he, ah, 'cause I didn't have my cell service on my phone.

Q: Okay.

A: So, my daughter Jesenia, Jo-Jo she had called my best friend Rachel. And Rachel had gone to go look for me to - to let me know.

Q: So, the daught- your daughter called you, or cont- or tried...

A: My - my...

Q: ...to contact you?

A: She tried to contact me, yes.

Q: Through your - through your friend.

A: And she couldn't get it, through to me, because I didn't have service. So, she called my best friend Rachel and that's how I found out. And now we're, ah, so he...

Q: Okay, so when was that when your daughter was trying to contact you to tell you?

A: Um, it was New Year's Eve, I think - I believe. Was it New - New Year's? No, it was eith- um, it was on the 1st.

Q: Okay. And then did you talk to her on that same day?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 6

EVENT #: LLV200100031536
STATEMENT OF: YVETTE MARIE WOMACK

A: No, um, I didn't talk to her until the 2nd, like, in the morning. I have to go down the street...

Q: Okay.

A: ...to connect to Wi-Fi to...

Q: Okay.

A: ...call my daughter, yeah.

Q: Okay. So, now, um, just so I better understand.

A: Mm-hm.

Q: Where were your kids during that time?

A: At my parents' house.

Q: Okay. And then where do you, um, and your parents, what are their names?

A: Maria and Mario Medina. I forgot to put my phone on silence, sorry.

Q: That's okay. How long were they there for?

A: Um, ah, they were there like, a couple - maybe a day after Christmas, I believe.

Q: Okay.

A: I could be wrong, but...

Q: Till when?

A: Till like, early Thurs- ah, on the 3rd. Or in the afternoon of the 3rd.

Q: Okay. So, when you finally spoke to your daughter, was this in person, or on the phone?

A: Um, it was in person.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT #: LLV200100031536
STATEMENT OF: YVETTE MARIE WOMACK

Q: In person.

A: At - at our home.

Q: At your home?

A: Mm-hm.

Q: Okay and what did, um, what did she tell you?

A: Ah, that, um, that it happened to [REDACTED] again. And so, she - Jesenia, Jo-Jo, she had told me that, ah - ah, I try not to think about it, you know.

Q: And when she said that it happened to Joaquin again, what is she saying? Like what - what's it again? 'Cause I can't fill...

A: Um, the...

Q: ...in the - the blanks or anything like that.

A: ...that - um, that he got that he got touched. That [REDACTED] got touched.

Q: Now, I know you're saying, again. When was the last time that something like this had happened?

A: The, ah, another time that I - that they told - my daughter told me, was, um, oh, I'm trying to remember when she told me, um, oh, my God, I wish I would have wrote it down.

Q: Was that in 2019, in?

A: Yes, it was in 2019.

Q: Was it, were the kids in school, not in school?

A: No, it was over the weekend.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT #: LLV200100031536
STATEMENT OF: YVETTE MARIE WOMACK

Q: On the weekend, was this like, the summer?

A: Um.

Q: Winter?

A: Oh, when was it, um, I wanna say, um, Jo-Jo, ah, would know. I think it was, ah, like, ah, starting to get, um, like in the beginning of when it would get cold. So, it was like towards the end of summer, I guess. I - I believe.

Q: And what did your daughter tell you then?

A: That, um, that [REDACTED] - that [REDACTED] told her that, um, Aaron did that to him. Touched him. Ah. And then that's all that I know.

Q: And then, um, so, on the - the so the last time - sometime last year, what did you do when you found that out?

A: Ah, I didn't do anything.

Q: Okay. Did you confront Aaron? Okay.

A: No.

Q: Did you tell anybody else? Did you talk...

A: No.

Q: ...to [REDACTED]

A: I did talk to [REDACTED] and, um...

Q: What - did he tell you specially what happened?

A: He, I think he did. Ah.

Q: Do you remember what he told you?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

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EVENT #: LLV200100031536

STATEMENT OF: YVETTE MARIE WOMACK

A: I remember him telling me that Aaron touched him, but, ah, he didn't tell me, um, ah...

Q: Like, he didn't tell you specifics?

A: I, well I asked him and he just said, that he - that he touched him down there.

Q: I'm sorry.

A: That he touched him down there.

Q: That he touched him down there, okay. Was anybody else there when he told you?

A: No.

Q: Did you talk to any of your other kids, I know you mentioned, um, your younger daughter, did you talk to her, to see if anything's ever happened with her?

A: Yeah, and she - she said, no.

Q: Okay.

A: And I told her, I said, "Don't be afraid to tell me."

Q: Okay. Um, what about Jo-Jo? Anything's ever happened with her?

A: No, and she would...

Q: Okay.

A: ...if anything, she would put the smack down, she wouldn't let anything like that...

Q: Okay.

A: ...happen to her.

Q: Okay. So this time, when he told you, um, you know, when - when - so when Jo-

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Jo told you on the - on the 2nd, um, ah, so she tells you what happened - what happened with that, did you ask, um, did you talk to [REDACTED] after that?

A: Yes, I did.

Q: Okay and then what would - what did [REDACTED] say?

A: Same thing that he told his sister.

Q: Which was what?

A: That he touched him and, um, that he put his mouth on it.

Q: Okay, that he touched him and put his mouth on it?

A: Uh-huh.

Q: Okay.

A: And I haven't said nothing to my brother, yet. But believe me, I'm going to.

Q: Okay and then what happened after that?

A: This is where I left it.

Q: Okay. Um, so I know you had mentioned, um, that you had asked your son if he wanted to go to like the police, or go to talk to the counselor, when did that conversation happen?

A: Um, just the other day.

Q: Okay and how did that conversation go?

A: I just - I pulled him into my room and I - I asked him. And, um, he chose to talk to the school.

Q: Okay.

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VOLUNTARY STATEMENT

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STATEMENT OF: YVETTE MARIE WOMACK

A: And then that was it.

Q: Okay. Um.

A: And I gave my son a big hug. And.

Q: Now I know you had made, um, you made a comment about, um, things like this happening to you, is it something that happened with Aaron? Or was, or are you just talking about somebody else? Like.

A: Somebody else.

Q: Okay. Okay. Um, I know Aaron has a past, 'cause that's how, well he was your - you know, his past history. Um, that you know of a side other than your son, has he done this to anybody else that we don't know about?

A: Has my son done this to any?

Q: No - no - no, Aaron, has Aaron done something like this to anybody else?

A: Besides my son?

Q: Mm-hm.

A: Yes.

Q: To who?

A: His name was, um, [REDACTED]

Q: And who's [REDACTED]

A: Um, my daughter went to school with him. They were, this was like, a while back, that's why he was locked up.

Q: Okay, so that's the reason why, so, anybody else other than [REDACTED]

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A: Nu-uh, not that I know of.

Q: Okay. Um, and [REDACTED] like, the same age as your daughter?

A: Mm-hm.

Q: Okay. How old is your daughter again?

A: She's 15.

Q: 15. Okay. Um, so when - so when [REDACTED] tells you what happened, how was his demeanor when he was talking to you about it and telling you what happened? How - how was he?

A: He was talking to me like, how we're talking right now.

Q: Okay. Was he crying, sad?

A: No.

Q: No? Okay. Um.

A: That boy's tough.

Q: Okay. Um, that - that you know of did [REDACTED] tell anybody else other than the people at school, and you and...

A: No, just - just, um, his sister and the ladies at school, me and Rachel. Yeah, but that's about it.

Q: Okay. Did he tell you how long it's been going on for, or anything like that?

A: Mm-mm, no.

Q: Okay. Um, ah, does Ar- is does Aaron usually spend time around your kids and

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your family?

A: Um, no, not really. 'Cause he's always working.

Q: Okay.

A: But this last time that he was here, I didn't even know he was here.

Q: Okay.

A: He - I didn't even know he came out to my mom's house.

Q: Okay, so, um, I know you have your home, um, so when the kids at your home, does Aaron go over to the house?

A: No.

Q: Okay. Is he allowed to go over to the house?

A: He is, but I've - he - he doesn't stay there for very long if he does show, ah, stop by.

Q: Okay. And then, um, you said that you didn't know that he was over at your moms.

A: Correct.

Q: How did you find out that he was at your moms?

A: My daughter.

Q: Okay. Okay. Um, that you know of, did your, did anybody witness this, see this?

A: Ah, I think Jo-Jo was awake.

Q: Okay. Okay. Um, is there anything that you think is important for me to know, that I haven't asked you?

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EVENT #: LLV200100031536
STATEMENT OF: YVETTE MARIE WOMACK

A: No, I just - I just want it all to stop, you know?

Q: Okay. Did, um, you said that you haven't confronted Aaron, right?

A: No.

Q: Okay, um, do you know...

A: But - but - but I'm going to, he, ah...

Q: ...do you know if anybody's talked to him or told him anything?

A: Just what - I guess what my dad had mentioned to him.

Q: Which was what?

A: That, um, that [REDACTED] had, um, said something to the - the ladies at school.

Q: Okay.

A: And that the police were contacted. Um, and that's about it. And he left me two voice clips on Messenger.

Q: Who?

A: Um, Aaron did.

Q: Okay.

A: To me.

Q: Do you mind playing those, I can - like, what is it that he...

A: No. I...

Q: ...um, said?

A: He also left a voice clip on Rachel's phone.

Q: Okay.

VOLUNTARY STATEMENT

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STATEMENT OF: YVETTE MARIE WOMACK

A: On Messenger. Like, oh, um, just saying, "Hey Rachel, it's Aaron if - if Yvette's around you, can you please have her just..." Just like that. You know. "Can you have her call me please?" You know. And, but the one - when he left one on mine. A whole different tone of voice.

Q: Okay.

A: I don't know if it'll play, 'cause there's no.

Q: We have Wi-Fi here, but I don't know if it's working right now. But you can try connecting.

A: Ah.

Q: I think it's under - let me see. It should be under Clark guest.

A: Let's see if it'll play first, but.

Q: Okay.

A: I don't know, not right there.

((RECORDING))

?: Good morning, Yvette. So, dad just called me and told me what the fuck is going on. If you wanna believe it, fine. If you wanna do me wrong like that, even after all the shit that I helped your ass out, then do it. Put me outta my misery and put me back. Your kids, I'm not even gonna talk shit about your kids, because that's not my place. They're not mine, I ain't gonna say shit. But it's up to you. I hate to send this message to you, I don't wanna talk to you like this, 'cause I know all the fucking bullshit that you're going through. But it is what it is. All right. I love

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you. if you wanna talk to me, you know how to call me. You know how to get a hold of me.

((END RECORDING))

Q: When - when did he send that?

A: Ah, June 2nd.

Q: June 2nd?

A: Or I mean, um...

Q: January?

A: Yes, I'm sorry.

Q: That's okay. Um, so then, ah, and that - is that through - when you say Messenger, is that through like Facebook Messenger?

A: Facebook yeah, Facebook Messenger.

Q: Okay.

A: And this, wait.

((RECORDING))

?: Good morning Yvette.

A: Oh my God, stop. Stop.

((END RECORDING))

A: I'm trying to see.

Q: And what's his Facebook, um, name?

A: On here, um, it's AngelGumletta.

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Q: Can I see it, that way I can make sure I get it right.

A: It's this one right here.

Q: Is that like, a middle name for him or something?

A: I - I don't know he just makes up names, I guess.

Q: And then it's, ah, let me see the picture. Okay. All right, and that was at 9:30 am, when he sent it?

A: The - the second one.

Q: Oh, the second one.

A: The fir- ah, the one - the one that you just listened to, um, that's what I was trying to see what time, ah.

Q: I know, sometimes it's hard to figure out how.

A: Yeah. 'Cause that was December.

Q: Did he send you anything else?

A: No.

Q: That's it?

A: Well, this is - this is the - this was this morning.

Q: This morning?

A: This one that I'm about to play.

Q: That. Oh, okay - okay.

A: This was, um, on the 2nd.

Q: Okay. And then this one was from this morning?

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STATEMENT OF: YVETTE MARIE WOMACK

A: Yeah.

Q: Okay.

((RECORDING))

?: Good morning, Yvette. I'm just calling to let you know that, I just got informed that there's gonna be a Detective to speak with you. If that is true, I hope you reconsider and I don't want to do anything that is gonna jeopardize your situation either.

A: How?

?: I'm trying to live my life and do what I have to do. As much as it's difficult right now, but I'm trying to make it. I can only hope and ask you, not to go through with this. But just like the last situation, nothing ever happened. So, let me know if you have any questions or if you wanna talk about it. Love you.

((END RECORDING))

A: Right. Reconsider.

Q: So.

A: Hm. Why, so you can continue to mess with my son and fuck him up more. Right. No, I'm not gonna reconsider. Hum.

Q: Um.

A: This is bullshit.

Q: Has your son ever made allegations about anybody else?

A: No.

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VOLUNTARY STATEMENT

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EVENT #: LLV200100031536

STATEMENT OF: YVETTE MARIE WOMACK

Q: Okay.

A: My son, he's - he's very outgoing. He likes to hang out with friends.

Q: Mm-hm.

A: His sister especially.

Q: Okay. All right, um, is there anything else, aside from that, that - on how he may have contacted you or said anything? No?

A: Ah, he has, I haven't even called him back or nothing.

Q: No, and I would suggest not. Okay.

A: No, because it's gonna get ugly if I do.

Q: Okay. All right, I'm gonna end the interview - the same persons are present.

The time is 4:57 pm.

THIS VOLUNTARY STATEMENT WAS COMPLETED AT 701 N PECOS RD, LAS VEGAS, NV ON THE 8TH DAY OF JANUARY, 2020 AT 1657 HOURS.

RC:nettranscripts
RC013

Felony/Gross Misdemeanor

COURT MINUTES

September 22, 2020

C-20-349446-1 State of Nevada
 vs
 Aaron Medina

September 22, 2020 01:45 PM All Pending Motions

HEARD BY: Hardy, Joe COURTROOM: RJC Courtroom 11D

COURT CLERK: Duncan, Kristin

RECORDER: Yarbrough, Matt

REPORTER:

PARTIES PRESENT:

Aaron Mario Medina	Defendant
Sandra K. Digiacomio	Attorney for Plaintiff
State of Nevada	Plaintiff
Violet R Radosta	Attorney for Defendant

JOURNAL ENTRIES

All parties (including the Defendant) present via Blue Jeans.

The Court noted that the parties were set to appear on the Central Trial Readiness calendar on September 23, 2020. Ms. Radosta noted that the Court received an e-mail from the Clark County School District, related to subpoenas she issued. The Court affirmed that it received said e-mail, noting that it would address it during the instant hearing.

STATE'S NOTICE OF MOTION AND MOTION FOR DISCOVERY

There being no Opposition, COURT ORDERED the instant Motion was hereby GRANTED. The State to prepare the written Order.

STATE'S MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS

The Court noted that it reviewed the instant Motion, along with the Defendant's Opposition. The State argued in support of the Motion, stating that evidence that the Defendant had a propensity for committing sexual crimes against children was more probative, than prejudicial. Ms. Radosta argued in opposition, stating that the details of the two incidents were not similar, and the information was more prejudicial than probative. COURT ORDERED the instant Motion was hereby GRANTED for all of the reasons set forth in the State's Motion, with the exception of the alleged prison calls, as those did not play any part in the Court's decision, FINDING the following: (1) the Court followed NRS 48.045(3), the Franks vs. State, and the United States vs. LeMay case, in reaching its decision; (2) the prior bad acts were relevant to the crimes charged in the instant case; (3) the prior acts were proven by a preponderance of the evidence, as set forth in great detail in the Motion; (4) the Court weighed the prior bad act, and its probative value was not outweighed by unfair prejudice; and (5) the factors in the LeMay case supported the granting of the Motion, as the acts were very similar, the acts were close enough in time, and the Defendant was placed in custody soon after the first act, and committed the acts alleged in the instant case soon after being released from custody. The

Court to prepare the written Order, and forward it to Ms. Radosta for approval as to form and content.

Mr. Radosta noted that she did not have a copy of Yvette Womack's statement, and had only recently received a copy of it attached to the instant Motion. The State noted that the statement was provided to Ms. Radosta on September 10, 2020. Ms. Radosta confirmed that she did have an audio version of the statement. The State noted that it would e-mail another copy of the statement to Ms. Radosta

The Court noted that it received a small set of documents from the Clark County School District, and received a large set of records from CPS, and inquired as to what the parties wished for the Court to do. The State requested that the Court review the CPS records in camera, and determine which records needed to be turned over to either side. Regarding the CCSD records, the State noted that there needed to be a proffer of evidence as to why those records would be relevant. Ms. Radosta stated that the CCSD records were relevant because the alleged acts were first disclosed to a social worker at school. Additionally, Ms. Radosta advised that the CCSD records were relevant as they related to the alleged victim's performance in school. The Court advised that it had not been able to review any of the records as of the instant hearing, noting that it would address the records at the September 24, 2020, Calendar Call hearing.

CUSTODY

Felony/Gross Misdemeanor

COURT MINUTES

September 24, 2020

C-20-349446-1 State of Nevada
 vs
 Aaron Medina

September 24, 2020 01:45 PM Calendar Call

HEARD BY: Hardy, Joe COURTROOM: RJC Courtroom 11D

COURT CLERK: Duncan, Kristin

RECORDER: Yarbrough, Matt

REPORTER:

PARTIES PRESENT:

Aaron Mario Medina	Defendant
Sandra K. Digiacomio	Attorney for Plaintiff
State of Nevada	Plaintiff
Violet R Radosta	Attorney for Defendant

JOURNAL ENTRIES

All parties (including the Defendant) present via Blue Jeans.

In light of the fact that the instant case was recently heard on the Central Trial Readiness (CTR) calendar, as well as the fact that the Court had documents to review, Ms. Radosta announced that she was not ready to proceed to trial on September 28, 2020. The State affirmed Ms. Radosta's representations. Ms. Radosta advised that the CTR calendar set a settlement conference in the instant case on October 6, 2020, and referred them back to this department for a trial date.

Regarding the school records sent over by the Clark County School District (CCSD), Ms. Radosta argued that they were relevant because the accusation began at school, and it would be helpful to see the school performance of the alleged victim. The State argued that the school records belonging to the alleged victim's younger sibling, were in no way relevant to the instant case. The Court opined that the younger sibling's records were irrelevant, and it saw nothing in the alleged victim's school records that seemed relevant; however, the matter could be discussed further, at a later date, when the Court had also been able to review the CPS records.

Regarding the trial date, the State deferred to defense counsel, as the Defendant remained in invoked status. Colloquy regarding scheduling. COURT ORDERED a status check regarding the records review was hereby SET. COURT FURTHER ORDERED a trial date was hereby SET.

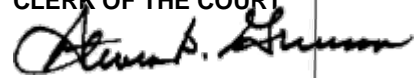
CUSTODY

10/13/20 8:30 AM STATUS CHECK: RECORDS REVIEW

10/27/20 8:30 AM STATUS CHECK: TRIAL READINESS

11/24/20 8:30 AM CALENDAR CALL

11/30/20 10:30 AM JURY TRIAL



ACKN

Attorney Violet Radosta

Bar # 5747

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Las, Vegas, NV 89101

Telephone 702-455-4685

Fax 702-366-9370

Email radostvr@clarkcountynv.gov

Attorneys for Defendant Aaron Medina

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

Aaron Medina,

Defendant.

CASE NO. C-20-349446-1

DEPT NO. XV

SETTLEMENT CONFERENCE ACKNOWLEDGMENT

Defendant Aaron Medina, following discussion with his (or her) counsel
Violet Radosta, agrees to participate in the settlement conference program, which is
described in the attached Exhibit. Defendant understands that program is voluntary, that he (or
she) may

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decline to participate, and that he (or she) may stop participating while the settlement conference is underway.

Dated this 6 day of October, 2020.

Signature affixed
by Violet Radosta.
@ direction of client
Aaron Medina

Aaron Medina
Defendant

Violet Radosta
Defendant's Counsel

EXHIBIT
SUPREME COURT RULE 252

Rule 252(2).

Settlement conferences in criminal cases. The purpose of a settlement conference is to facilitate good faith discussions to resolve any criminal case before the district court in a manner that serves the interest of justice.

(a) In any criminal case before the district court, either party may request a settlement conference, or the trial judge may, on its own, recommend that counsel with settlement authority participate in a settlement conference. A case will not be referred to a settlement conference if any party objects. The defendant must consent on the record or in writing before a case is referred to a settlement conference. In all cases, the settlement conference must not be before the trial judge. If settlement discussions do not result in an agreement, the case must be returned to the trial judge.

(b) Beyond all else, participation in a settlement conference is voluntary by the parties, and no party has any right to an offer, or may raise any claim from any fact or circumstance that occurs during the settlement conference, including but not limited to the bad faith of the parties in participating in the conference. Decision-making authority remains with the parties and not the settlement judge. The trial judge, the settlement judge, or any party may unilaterally terminate the settlement conference at any time.

(c) Settlement conferences must, in all respects, be confidential and not reported or recorded.

(d) Communications between the settlement judge and the trial judge. The settlement judge and the trial judge must have no contact or

communication, except that the settlement judge may, without comment or observation, report to the trial judge that:

- (1) The parties cannot reach an agreement:
- (2) The parties have reached an agreement, and the agreement reached may be reduced to writing, signed by the prosecuting attorney, the defendant, and defense counsel and submitted to the court for approval;
- (3) Meaningful attempt to settle is ongoing; or
- (4) The settlement Judge withdraws from further participation in potential settlements.

(e) Should the settlement conference result in a settlement agreement, the terms of the agreement must be reduced to a guilty plea agreement in accordance with NRS 174.063 and signed by the defendant, defense counsel (if any), and the prosecutor. The parties must file the guilty plea agreement with the trial judge. Any party may withdraw from an agreement before the trial judge accepts the plea.

(f) If the parties reach a guilty plea agreement that involves any stipulations, the trial judge agrees that such a settlement shall be conditioned on the trial judge's acceptance of and agreement to follow the stipulations. If the trial judge is unwilling to abide by the stipulations, then either side may withdraw from the guilty plea agreement.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

December 08, 2020

C-20-349446-1 State of Nevada
 vs
 Aaron Medina

December 08, 2020 01:45 PM Status Check: Confirmation of Counsel (Office of Appointed Counsel)

HEARD BY: Hardy, Joe

COURTROOM: RJC Courtroom 11D

COURT CLERK: Duncan, Kristin

RECORDER: Yarbrough, Matt

REPORTER:

PARTIES PRESENT:

Aaron Mario Medina

Defendant

Michael W. Sanft

Attorney for Defendant

Sandra K. Digiacomo

Attorney for Plaintiff

State of Nevada

Plaintiff

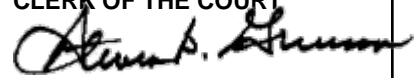
JOURNAL ENTRIES

All parties (including the Defendant) present via Blue Jeans.

Michael Sanft, Esq. CONFIRMED as counsel of record for the Defendant, and requested a status check be set in approximately two weeks, to allow him to review the Defendant's file, and determine whether a Motion to Withdraw Plea should be filed. There being no opposition, COURT ORDERED a status check regarding the Motion to Withdraw, was hereby SET. Mr. Sanft advised that he anticipated filing a Motion to Withdraw pursuant to the Stevenson case.

CUSTODY

1/7/21 8:30 AM STATUS CHECK: MOTION TO WITHDRAW PLEA



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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,
Plaintiff,

-vs-

**AARON MARIO MEDINA,
#2596004**

Defendant.

Case No. **C-20-349446-1**

Dept No. **XVIII**

OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA

DATE OF HEARING: **JULY 8, 2021**
TIME OF HEARING: **11:00 A.M.**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney, through SANDRA K. DIGIACOMO, Chief Deputy District Attorney, and files this State's Opposition to Defendant's Motion to Withdraw Guilty Plea.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 Defendant, AARON MEDINA, was initially charged by way of Criminal Indictment
4 with two (2) counts of Lewdness With a Child Under the Age of 14 and one (1) count of Sexual
5 Assault With a Minor Under 14 Years of Age. The victim is J.W. (aka J.M.). The crimes
6 occurred on or between October 10, 2017 and January 7, 2020.

7 On September 8, 2020, the State filed a Notice of Motion and Motion to Admit
8 Evidence of Other Crimes, Wrongs or Acts. Thereafter, on September 21, 2020, Defendant
9 filed an Opposition to State's Motion. On September 22, 2020, the Court granted the State's
10 Motion to Admit Evidence of Other Crimes, Wrongs or Acts. A trial date was subsequently
11 set to commence on November 30, 2020.

12 On October 6, 2020, the parties participated in a settlement conference with Judge
13 Barker wherein a settlement was reached and the guilty plea was to be entered with Judge
14 Hardy. Thereafter, also on October 6, 2020, Judge Hardy conducted an entry of plea. The
15 Court Minutes reflect the following:

16 All parties (including the Defendant) present via Blue Jeans.
17 NEGOTIATIONS are as contained in the Guilty Plea Agreement
18 FILED ELECTRONICALLY on October 6, 2020. Amended
19 Indictment FILED ELECTRONICALLY on October 6, 2020. The
20 State affirmed Ms. Radosta's recitation of the negotiations, noting
21 that, since the negotiations were reached during a settlement
22 conference, the Defendant's plea was conditional. Upon Court's
23 inquiry, the Defendant stated that he agreed with the negotiations.
24 DEFT. MEDINA ARRAIGNED AND PLED GUILTY, pursuant to
ALFORD, as to COUNT 1 - ATTEMPT SEXUAL ASSAULT WITH
A MINOR UNDER FOURTEEN YEARS OF AGE (F); and as to
COUNT 2 - ATTEMPT LEWDNESS WITH A CHILD UNDER THE
AGE OF 14 (F). The State provided an offer of proof. Court
ACCEPTED plea and ORDERED, matter referred to the Division of
Parole and Probation (P & P) and SET for sentencing. The State and
defense advised that they were WAIVING the Psychosexual Report.

25 On November 19, 2020, at the time set for sentencing, counsel for Defendant indicated
26 that Defendant wished to withdraw his guilty plea and to have Ms. Radosta removed as his
27 counsel of record. The Court granted the request for appointment of counsel to review
28 Defendant's request to withdraw his guilty plea.

1 On December 8, 2020, Michael Sanft, Esq., confirmed as counsel for Defendant.

2 On April 27, 2021, Defendant filed a Motion to Withdraw Guilty Plea. The State's
3 Opposition follows.

4 **STATEMENT OF FACTS**

5 J.W. testified that he no longer went by the name J.W. and went by the name J.M. now.
6 (Grand Jury Transcript, "GJT", Vol. I, p. 8). J.W. testified that he was 12 years of age and his
7 birthday is October 10, 2007. (Id.). J.W. testified that he lived in Las Vegas, with a foster
8 mom. (GJT, Vol. I, p. 9). J.W. had been living with a foster mom for two months. (Id.). J.W.
9 has two siblings, an older sister Jesenia (aka, JoJo) and a younger sister, Janiyah. (Id.). J.W.
10 testified that his younger sister lives with him in foster care. (Id., at p. 9, p. 10). Before living
11 in foster care, J.W. was living with aunt in Mesquite. (Id., at p. 10).

12 J.W. testified that he has contact with his mom through Facetime and prior to living
13 with his aunt, he lived with his mom and two sisters, in Overton, Clark County, Nevada. (GJT,
14 Vol. I, p. 11). J.W. testified that he knew Defendant and that he met Defendant at his
15 grandparent's house, in Logandale. (GJT, Vol. I, p. 12). J.W. testified that he was ten years
16 of age when Defendant began living in Logandale. (GJT, Vol. I, p. 13). J.W. identified a
17 photograph of Defendant, who is also J.W.'s uncle. (GJT, Vol. I, p. 14). J.W. testified that
18 when he first met Defendant everything was going good, but Defendant started doing
19 everything bad within weeks or a month. (Id.). J.W. testified that there are place on his body
20 that nobody is supposed to touch and he identified those places as his penis and his butt. (GJT,
21 Vol. I, p. 15).

22 J.W. testified that Defendant began touching him in private areas. (Id., at p. 15). J.W.
23 was ten years old the first time something happened, and he was living with his mom in
24 Overton. (Id.). J.W. had been at his grandmother's house in Logandale, along with his two
25 sisters, his grandparents, and Defendant. (GJT, Vol. I, p. 16). J.W. and the others went outside
26 to play hide and seek. (Id.). J.W. testified that while they were playing hide and seek
27 Defendant began kissing him in a garage they were hiding in. (Id.). J.W. testified that
28 Defendant was kissing J.W. on the lips until J.W.'s sisters came in and Defendant stopped.

1 (GJT, Vol. I, p. 18). Defendant told J.W. not to tell anybody and J.W. didn't at first, but two
2 days later he told his older sister, who said she was going to tell their mom. (Id.). J.W. testified
3 that his sister JoJo did tell their mother, but their mother never called the police. (GJT, Vol. I,
4 p. 20).

5 J.W. recalled an incident that occurred at his house, while he was in the living room
6 watching T.V., and everyone else was outside. (GJT, Vol. I, p. 21). Defendant came inside
7 and began touching J.W.'s butt. (Id.). J.W. was ten years old at the time and the incident
8 occurred a couple weeks after the garage incident. (GJT, Vol. I, p. 22). J.W. testified that
9 during the incident in the living room, he had been laying on the floor and Defendant came in
10 and got behind him and tried to pull down J.W.'s pants. (GJT, Vol. I, p. 23). J.W. tried to pull
11 his pants back up and get away, but Defendant would not let J.W. leave. (Id.). While J.W. was
12 struggling with Defendant J.W.'s mom came inside causing Defendant to get up really quick
13 and take a dish to the kitchen. (GJT, Vol. I, p. 24). J.W. testified that when Defendant touched
14 his butt that day, he kissed it with his mouth. (Id.). J.W. testified that Defendant kissed his butt
15 before pulling down J.W.'s pants. (Id.).

16 J.W. testified that there was another incident that occurred when J.W.'s mother told
17 Defendant to go to the store for some groceries. (GJT, Vol. I, p. 25). Defendant asked J.W. if
18 he wanted to go and J.W. said no, as did J.W.'s mother. (Id.). Defendant kept trying to
19 convince J.W.'s mom to let him come along and she finally agreed. (Id., at p. 25, p. 26). J.W.
20 and Defendant went to the store and afterwards, they went to some railroad tracks and
21 Defendant told J.W. to touch Defendant's part. (Id., at p. 26). J.W. was 10 or 11 years old
22 when the incident occurred. (Id.). J.W. testified that he was sitting in the passenger seat of the
23 car when they were at the railroad tracks, near his house. (GJT, Vol. I, pp. 27-28). Defendant
24 pulled his pants down and made J.W. touch Defendant's penis with his hand. (Id., at p. 28).
25 J.W. believed the incident occurred in 2018. (GJT, Vol. I, p. 29). J.W. believed the incident
26 happened before his eleventh birthday. (GJT, p. 30).

27 //

28 //

1 J.W. testified that the last time something happened with Defendant was during
2 Christmas or New Year's, 2019 turning 2020. (Id., at p. 30). J.W. was at his grandparent's
3 house in Logandale, along with his sisters, Defendant, and grandparents. (GJT, Vol. I, p. 31).
4 J.W. testified that he was wearing a Billy Eilish shirt that day. (Id.). At bedtime, after J.W.
5 fell asleep, he woke to Defendant coming into his room. (GJT, Vol. I, p. 32). Defendant knelt
6 beside J.W.'s bed and pulled down his pants and underwear. (GJT, Vol. I, pp. 33-34).
7 Defendant put his mouth on J.W.'s penis. (GJT, Vol. I, p. 35). J.W. heard his grandmother
8 coming down the hall and Defendant hid behind J.W.'s door. J.W.'s grandmother opened the
9 bedroom door and noticed that J.W. was awake and she also caught Defendant behind J.W.'s
10 door. (Id., at p. 35, p. 36). J.W. testified that there was a time that Defendant used his hand to
11 touch J.W.'s penis, but he couldn't remember it all that well. (GJT, Vol. I, pp. 38-39). J.W.
12 testified that he eventually told a counselor at school and the police were called.

13 Detective Huth testified that she was employed with the Las Vegas Metropolitan Police
14 Department, assigned to the juvenile sexual assault division, for approximately five years.
15 (GJT, Vol. II, p. 8). In January 2020, Detective Huth was assigned to investigate this case.
16 (Id.). Detective Huth testified that she interviewed J.W., and he was hesitant to disclose. (GJT,
17 Vol. II, p. 9). J.W. told Detective Huth that the first incident that occurred with Defendant
18 happened at his grandmother's house in Logandale. (GJT, Vol. II, p. 10). J.W. stated that they
19 had been playing hide and seek with his sister and he and Defendant went to hide in a shed, at
20 which time Defendant wrapped his arms around J.W. and kissed him more than two times.
21 (Id.). J.W. told Detective Huth that Defendant's mouth touched his lips. (Id.).

22 J.W. also described an incident that happened in the living room of his house while he
23 was watching T.V. (GJT, Vol. II, p. 11). J.W. described that he had been laying on his left side
24 and Defendant laid down on his left side behind J.W. (Id.). Defendant had J.W. lie on his back
25 and put his hand on J.W.'s penis, before placing his mouth on J.W. penis and moving it up and
26 down. (Id.). Detective Huth testified that she asked J.W. if anyone had ever touched his butt
27 and J.W. told her that no one had touched his butt or buttocks. (GJT, Vol. II, p. 13). Detective
28 Huth testified that J.W. told her that Defendant had had inappropriately touched him on ten

occasions. (Id.).

LEGAL ARGUMENT

In his motion, Defendant claims that he should be allowed to withdraw his guilty plea because it was not knowingly and intelligently entered and because it would be fundamentally unfair to allow the pleas to stand. Defendant is wrong.

NRS 176.165 states in pertinent part:

Except as otherwise provided in the section, a motion to withdraw a plea of guilty, guilty but mentally ill or nolo contendere may be made only before sentencing is imposed or imposition of sentence is suspended. To correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.

The law in Nevada clearly establishes that a plea of guilty is presumptively valid and the burden is on the defense to show that the plea was not voluntarily entered. Wingfield v. State, 91 Nev. 336 (1975). A defendant who seeks to withdraw a plea of guilty must show good cause therefore, as a plea of guilty is presumptively valid. Wynn v. State, 96 Nev. 673, 675, 615 P.2d 946, 947 (1980). The case of Patton v. Warden, 91 Nev. 1 (1975) suggests that the presence and advice of counsel is a significant factor in determining the voluntariness of a plea of guilty. Furthermore, the Nevada Supreme Court makes it clear in the case of Heffley v. Warden, 89 Nev. 573 (1973) that the guidelines for voluntariness of pleas of guilty "do not require the articulation of talismanic phrases." It required only that the record must affirmatively disclose that a defendant who pled guilty entered his plea understandingly and voluntarily. Brady v. United States, 397 U.S. 742 (1970)."

In Wilson v. State, 99 Nev. 362 (1983), the Nevada Supreme Court stated:

In Higby v. Sheriff, 86 Nev. 774, 476 P.2d 959 (1970), we concluded that certain minimum requirements must be met when a judge canvasses a defendant regarding the voluntariness of a guilty plea. We held that the record must affirmatively show the following: (1) the defendant knowingly waived his privilege against self-incrimination, the right to trial by jury, and the right to confront his accusers; (2) the plea was voluntary, was not coerced, and was not the result of a promise of leniency; (3) the defendant understood the consequences of his plea and the range of punishments; and (4) the defendant understood the nature of the charge, i.e., the elements of the crime. Id. at 781, 476 P.2d at 963. As to this last requirement, we subsequently

1 held that in order for the record to show an understanding of the nature
2 of the charge it is necessary that there be either a showing that the
3 defendant himself understood the elements of the offense to which the
4 plea was entered or a showing that the defendant has made factual
statements to the court which constitute an admission to the pleaded
to offense. Hanley v. State, 97 Nev. 130, 135, 624 P.2d 1387, 1390
(1981).

5 The Court reviewing the validity of a guilty plea may look at the entire record in order
6 to determine whether a plea was entered knowingly and intelligently in light of all the
7 circumstances. The Court may determine that the guilty plea is valid by reason of the plea
8 canvass itself or under a 'totality of the circumstances approach'. Bryan v. State, 102 Nev. 268
9 (1986).

10 The Nevada Supreme Court has held that in order to properly accept a guilty plea the
11 court must sufficiently canvass the defendant to determine if he knowingly and intelligently
12 entered into the plea. Williams v. State, 102 Nev. 268, 721 P.2d 364 (1986). A determination
13 of whether a defendant knowingly and intelligently entered into a plea must be made by using
14 a totality of the circumstances approach. Iverson v. State, 107 Nev. 94, 99, 807 P.2d 1372
15 (1991) (*citing* Bryant v. State, 102. Nev. 268, Nev. 268, 721 P.2d 364 (1986)). The totality of
16 the circumstances approach requires that the trial court review the entire record to determine
17 whether the plea was valid. Mitchell v. State, 109 Nev. 137, 848 P.2d 1060, 1061 62 (1993).

18 Defendant fully understood the consequences of his guilty plea. On October 6, 2020,
19 prior to the entry of his guilty plea, Defendant and his counsel participated in a settlement
20 conference and the agreement was reached with the prosecutor. Due to COVID related
21 restrictions and at the direction of Defendant, Ms. Radosta affixed Defendant's signature to
22 the Guilty Plea Agreement on October 6, 2020. The Guilty Plea Agreement was electronically
23 filed with the Court that same day. The Court accepted Defendant's guilty plea after orally
24 canvassing Defendant. A copy of the Guilty Plea Agreement, "GPA", is attached hereto as
25 State's Exhibit "1". The Guilty Plea Agreement extensively lists the consequences of the plea.
26 *See* Taylor v. Warden, 96 Nev. 272, 275, 607 P.2d 587, 589 (1980) (Court held factor in
27 determining voluntariness of plea is whether defendant understood consequences of his plea).

28 //

1 In addition, the Guilty Plea Agreement states that Defendant discussed with his attorney
2 any possible defenses, defense strategies and circumstances which might be in his favor and
3 that all of the foregoing elements, consequences, rights and waiver of rights have been
4 thoroughly explained to him by his attorney. See State's Exhibit "1", p. 6.

5 Defendant also fully understood the nature of the charge against him. The Amended
6 Indictment lists all of the elements of the crimes. Moreover, Defendant's counsel swore, under
7 penalty of perjury and the threat of sanctions from the State Bar Association of Nevada, that
8 she fully explained to Defendant the allegations contained in the charge to which the guilty
9 plea is being entered. See State's Exhibit "1", p. 7.

10 The transcript of the entry of plea in this matter, which is attached hereto as State's
11 Exhibit "2", does not contain any information which would lead this Court to the conclusion
12 that the Defendant did not enter into his plea freely and voluntarily, and with a complete
13 understanding of what he was doing.

14 In Stevenson v. State, 354 P.3d 1277, 131 Nev. Adv. Rep. 61 (2015), the Nevada
15 Supreme Court determined that district court must consider the totality of the circumstances
16 to determine whether permitting withdrawal of a guilty plea before sentencing would be fair
17 and just.

18 In that case, the Court affirmed the Judgment pursuant to a guilty plea of two counts of
19 attempt sexual assault finding the following:

20 Having determined that a district court may grant a defendant's motion
21 to withdraw his guilty plea before sentencing for any reason where
22 permitting withdrawal would be fair and just, we turn now to the
23 reasons Stevenson has given as to why withdrawal was warranted.
24 The crux of Stevenson's argument below as to why he should be
25 allowed to withdraw his plea was that the members of his defense
26 team lied about the existence of the video in order to induce him to
27 plead guilty. The district court considered this contention and gave
28 Stevenson considerable leeway to demonstrate how he was lied to or
misled. Stevenson struggled to articulate a cohesive response,
pointing instead to circumstances which, viewed in context, were
neither inconsistent nor suspicious. After considering Stevenson's
arguments, as well as the testimony presented at the multiple
evidentiary hearings, the district court found that no one lied to
Stevenson about the time it would take to determine whether the video
could be extracted or otherwise misled him in any way. The district
court also found that Stevenson's testimony in this regard was not

1 credible. We must give deference to these findings so long as they are
2 supported by the record, *see Little v. Warden*, 117 Nev. 845, 854, 34
3 P.3d 540, 546 (2001) (giving deference to factual findings made by
the district court in the course of a motion to withdraw a guilty plea),
which they are. Based on these findings, withdrawal was not
warranted on this ground.

4 Id., 354 P.3d 1277 at 1281.

5 The Court went on to state:

6 Similarly, unconvincing is Stevenson's contention that he was coerced
7 into pleading guilty based on the compounded pressures of the district
8 court's "erroneous" evidentiary ruling regarding his motion to
9 suppress the video, standby counsel's pressure to negotiate a plea, and
10 time constraints. We need not consider whether the lower court's
11 ruling regarding the video was correct, because even assuming it was
12 not, undue coercion occurs when "a defendant is induced by promises
13 or threats which deprive the plea of the nature of a voluntary act," *Doe*
14 *v. Woodford*, 508 F.3d 563, 570 (9th Cir. 2007) (internal quotation
15 marks omitted), not where a court makes a ruling later determined to
16 be incorrect, *see generally Brady v. United States*, 397 U.S. 742, 757,
17 90 S.Ct. 1463, 25 L. Ed. 2d 747 (1970)("[A] voluntary plea of guilty
18 intelligently made in the light of the then applicable law does not
19 become vulnerable because later judicial decisions indicate that the
20 plea rested on a faulty premise."). **Moreover, time constraints and
pressure from interested parties exist in every criminal case, and
there is no indication in the record that their presence here
prevented Stevenson from making a voluntary and intelligent
choice among the options available. See Doe, 508 F.3d at 570
("The test for determining whether a plea is valid is whether the
plea represents a voluntary and intelligent choice among the
alternative courses of action open to the defendant." (internal
quotation marks omitted)); Miles v. Dorsey, 61 F.3d 1459, 1470
(10th Cir. 1995). "Although deadlines, mental anguish,
depression, and stress are inevitable hallmarks of pretrial plea
discussions, such factors considered individually or in aggregate
do not establish that [a defendant's] plea was involuntary.").**

21 Id., 354 P.3d 1277 at 1281. (Emphasis added)

22 The Court concluded:

23 Finally, we reject Stevenson's implied contention that withdrawal was
24 warranted because he made an impulsive decision to plead guilty
25 without knowing, definitively, whether the video could be viewed.
26 Stevenson did not move to withdraw his plea for several months,
27 which contradicts his suggestion that he entered his plea in a state of
28 temporary confusion while in the throes of discovering that the video
was not easily accessible. *See United States v. Alexander*, 948 F.2d
1002, 1004 (6th Cir. 1991) **(explaining that one of the goals of the
fair and just analysis "is to allow a hastily entered plea made with
unsure heart and confused mind to be undone, not to allow a
defendant to make a tactical decision to enter a plea, wait several
weeks, and then obtain a withdrawal if he believes that he made a
bad choice in pleading guilty" (internal quotation marks**

1 **omitted))**; United States v. Barker, 514 F.2d 208, 222, 168 U.S. App.
2 D.C. 312 (DC Cir. 1975). "A swift change of heart is itself strong
3 indication that the plea was entered in haste and confusion[.]". Most
4 importantly, Stevenson relied upon the uncertainty surrounding the
5 video as leverage to negotiate an extremely favorable plea despite the
6 apparently strong evidence against him. See United States v.
7 Ensminger, 567 F.3d 587, 593 (9th Cir. 2009) **("The guilty plea is not**
8 **a placeholder that reserves [a defendant's] right to our criminal**
9 **system's incentives for acceptance of responsibility unless or until**
10 **a preferable alternative later arises. Rather, it is a grave and**
11 **solemn act, which is accepted only with care and discernment."**
12 **(internal quotation marks omitted))**.

13 Considering the totality of the circumstances, we have no difficulty in
14 concluding that Stevenson failed to present a sufficient reason to
15 permit withdrawal of his plea. **Permitting him to withdraw his plea**
16 **under the circumstances would allow the solemn entry of a guilty**
17 **plea to "become a mere gesture, a temporary and meaningless**
18 **formality reversible at the defendant's whim."** Barker, 514, F.2d
19 **at 221. This we cannot allow.**

20 Id., 354 P.3d 1277 at 1281-1282.

21 Furthermore, a plea wherein the Defendant does not admit to the specific elements of
22 the crime, like the one involved in this case, is acceptable when a defendant intelligently
23 concludes that his interests require entry of a guilty plea and the record before the judge
24 contains strong evidence of guilt. North Carolina v. Alford, 400 U.S. 25, 91 S.Ct 160, (1970).
25 Consistent with this decision the Supreme Court of Nevada has held that a judgment of
26 conviction entered pursuant to a plea is constitutionally infirm when there is no evidence of
27 actual guilt. Lyons v. State, 105 Nev. 317, 775 P.2d 219 (1989).

28 The trial court, "in accepting the plea, must determine that there is a factual basis for
the plea, and he must further inquire into and seek to resolve the conflict between the waiver
of trial and the claim of innocence." Tiger v. State, 98 Nev. 555, 654 P.2d 1031 (1982) (citing
Alford, *supra*). In Tiger, the court found that the defendant did not admit facts constituting
necessary elements of any crime that would support conviction. Tiger, 654 P.2d at 1033.
There, the defendant admitted that he was present at the scene of the crime; that he voluntary
entered the residence; that he knew that a shooting had occurred, and that he ran away. The
court held that he did not admit facts constituting the necessary elements of first degree
murder. Consequently, the court set the defendant's guilty plea agreement aside. Id. at 1033.

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1 The record in the instant case contains a guilty plea agreement, discussed *supra*,
2 pursuant to Alford decision, which is signed by defense counsel, at the direction of Defendant,
3 and indicates the rights waived by Defendant, as well as the consequences of entering a guilty
4 plea. The agreement in cooperation with the canvassing, discussed *supra*, further provides
5 that Defendants plea was clearly authorized and constitutional.

6 Based on the totality of the circumstances, there was a sufficient factual basis for
7 Defendant's plea. Moreover, there is no need for the Defendant himself to make or adopt the
8 State's facts in order for an Alford plea to be valid. The court need only elicit a factual basis
9 for the plea indicating strong evidence of Defendant's guilt. Here, the Defendant did not
10 make a factual allegation of guilt. However, there was a detailed factual representation of the
11 evidence the State would be able to prove if it were to take Defendant's case to trial. The plea
12 clearly represents a voluntary and intelligent choice among the alternative courses of action
13 open to the defendant. North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 164 (1970).

14 In this case, Defendant was thoroughly canvassed by this Court at the time he entered
15 his guilty plea and had ample opportunity to speak up about the issues he now raises in his
16 motion and he did not do so. The reality is that this Defendant is suffering from buyer's
17 remorse and nothing more.

18 Defendant's prior counsel, Ms. Radosta, is a highly skilled, well-respected Deputy
19 Public Defender, who regularly appears before the Eighth Judicial District Courts. By
20 Defendant's own admission, Ms. Radosta met with Defendant various times to discuss
21 discovery, defenses, legal issues, and possible resolution including trial or negotiations. See
22 Defendant's Motion to Withdraw Guilty Plea, 04/27/2021 at 2. Defendant also acknowledges
23 Ms. Radosta reached out to Defendant's parents, per Defendant's request, to interview them.
24 Id. at 3. Defendant acknowledges that Ms. Radosta also requested additional discovery from
25 the State. Id. Defendant also participated, along with his prior counsel, Ms. Radosta, in a
26 robust settlement conference with the State. The result of the settlement conference was such
27 that Defendant, by virtue of the plea negotiations, was permitted to enter an Alford Plea to
28 Count 1 – Attempt Sexual Assault with a Minor Under Fourteen Years of Age and Count 2

1 Attempt Lewdness with a Child Under the age of 14, to avoid spending the rest of his life in
2 prison. Quite frankly, it is unclear what more defense counsel could have done to ensure the
3 best possible outcome for her client in this matter. Defendant's Motion to Withdraw Plea is
4 without any legal or factual support, and the record is devoid of any evidence in support of
5 Defendant's bare allegations.

6 Lastly, Defendant has not shown a substantial reason which demonstrates it would be
7 fair and just to allow him to withdraw his plea. At the time of the settlement conference,
8 Defendant was fully aware of the case against him and was not rushed into the agreement.
9 Defendant understood the agreement and the consequences of his plea; accordingly, there is
10 no basis under the law to allow him to withdraw his plea.

11 **CONCLUSION**

12 Based upon the above, the State respectfully requests Defendant's Motion to Withdraw
13 Guilty Plea be DENIED.

14 DATED this day of July, 2021.

15 STEVEN B. WOLFSON
16 DISTRICT ATTORNEY
Nevada Bar #001565

17 BY */s/ Sandra K. Digiacomo*
18 SANDRA K. DIGIACOMO
19 Chief Deputy District Attorney
Nevada Bar #006204

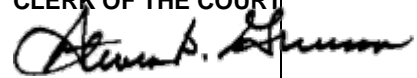
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that service of the above and foregoing was made this 6th day of JUNE
3 2021, to:

4 MICHAEL SANFT, ESQ.
5 mihcael@sanftlaw.com

6
7 BY /s/ Howard Conrad
8 Secretary for the District Attorney's Office
9 Special Victims Unit

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-20-349446-1
DEPT. XVIII

10 vs.

11 AARON MARIO MEDINA,
12 Defendant.

13
14 BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE
15 THURSDAY, JULY 8, 2021

16 ***RECORDER'S TRANSCRIPT OF HEARING:***
DEFENDANT'S MOTION TO WITHDRAW PLEA

17
18
19 APPEARANCES:

20 For the State:

SANDRA DiGIACOMO, ESQ.
Deputy District Attorney

21
22 For the Defendant:

MICHAEL W. SANFT, ESQ.

23
24
25 RECORDED BY: YVETTE SISON, COURT RECORDER

1 Las Vegas, Nevada, Thursday, July 8, 2021

2
3 [Hearing began at 11:45 a.m.]

4 THE COURT CLERK:, C349446, Aaron Medina

5 THE DEFENDANT: Good Afternoon, Your Honor.

6 THE COURT: Good Afternoon.

7 MS. DiGIACOMO: And Your Honor, Sandra DiGiacomo on
8 behalf of the State.

9 THE COURT: Good Morning.

10 MR. SANFT: Good Morning, Your Honor, Michael Sanft, on
11 behalf of Mr. Medina, who's present in custody.

12 THE COURT: Okay, I've read everything. Mr.Sanft, anything?

13 MR. SANFT: No, Your Honor. If the Court doesn't have
14 anything questions with regards to my motion, I'll submit at this point.

15 THE COURT: I don't. I gotta be honest; it's feeling more like
16 buyer's remorse than anything else. I don't see anything here. It's -- all
17 of his claims seem to be belied by the record.

18 MR. SANFT: Yes, Your Honor, I guess the bigger issue with
19 regards to how Mr. Medina feels about it, is the fact that -- you know,
20 when we started going through this Covid process and we were having
21 these early settlement conferences and that kind of thing that -- I guess
22 on some level he felt that there was some compression here, to the point
23 where he was either rushed, didn't know what was going on, felt that
24 maybe his counsel wasn't really participating in such a way that he felt
25 rose to the level to which he was being represented adequately and as a

1 result felt like he was taking matters in his own hands to come up with
2 that negotiation.

3 But, you're right. I mean it definitely looks -- on the face of it,
4 like it is buyer's remorse. I think ultimately though, his position is a
5 unique situation where he's the one now feeling like he's making the
6 decision and doing it on his own without the help of counsel, and I think
7 that's kind of the crux of what he wanted to portray to the Court.

8 THE COURT: I mean I don't know if its app -- well -- never
9 mind. I'm not going to comment on the negotiation itself or the -- never
10 mind. Not sure that it's in his best interest, I guess to withdraw --

11 MR. SANFT: Sure.

12 THE COURT: -- quite frankly is -- I guess where I was going
13 with it. But, in any event, I don't see anything in the record. I mean, if
14 you want to do the Corona virus thing, that effectively undoes every
15 negotiation we've done in the last 18 months, and I just don't see any
16 legal basis or anything in the motion that would warrant it. Ms.
17 DiGiacomo, did you want to add anything?

18 MS. DiGIACOMO: No, Your Honor. I would just put that this
19 was a long settlement conference, and -- it was Judge Barker, and we
20 went back and forth and back and forth, and they got me down from --
21 my offer was 16 to 40 years or 110 to life, and I thought this was a good
22 resolution for him, as well as both parties, and they got me to agree to
23 an Alford, so.

24 I understand what he is saying, but I don't think that there's
25 any basis in reality for the Defendant's beliefs regarding how the

1 settlement conference went, and how these negotiations came about.
2 He was not rushed, and I think he's just looking for anyway to get out of
3 the plea because it is buyer's remorse, and with that, I'll submit it.

4 THE COURT: All right. It'll be denied as set forth in the
5 State's opposition. Ms. DiGiacomo, if you'll prepare the order. I would
6 note that I think -- again, everything is belied by the record. It appears
7 he had ample opportunity to consider it. I don't see Ms. Radosta -- I've
8 never known her to, and I don't see her pressuring or pushing anything;
9 and similarly with Judge Barker, I've never seen him pressure, push, or
10 anything else; and again, to me it's clear from the record that there was
11 no basis to withdraw his plea, so --

12 MS. DIGIACOMO: We need a sentencing date then, Your
13 Honor.

14 THE DEFENDANT: Your Honor, may I say something please?

15 THE COURT: Between you and your attorney -- well, actually
16 we're going to put the Public Defender back on?

17 MR. SANFT: I think that was my question, I don't know how
18 the Court practices that here but --

19 THE COURT: Yes. So --

20 MS. DIGIACOMO: It should.

21 THE COURT: -- Ms. Radosta will be re-appointed.

22 THE DEFENDANT: Ma'am, that's what my comment was
23 going to be about.

24 THE COURT: What's your comment?

25 THE DEFENDANT: Not only was there pressure with --

1 between me and Ms. Radosta, it was also that she didn't offer any
2 defensive strategies with me. So, that's why when we went to the
3 settlement conference, I felt like I had to take the case into my hands
4 with any -- without any legal assistance.

5 So, with the agreement that we came up with was -- that I had
6 came up with; and I felt like I was pressured into it, because we just kept
7 going back and forth with no agreement; and to be honest, I wouldn't be
8 comfortable if I was represented by Ms. Radosta again.

9 THE COURT: Mr. Sanft, in light of everything that's going on,
10 and it is a stipulated sentence, it might just be more efficient to keep you
11 on if that's all right.

12 MR. SANFT: Sure, Your Honor.

13 THE COURT: I mean --

14 MR. SANFT: And I understand, Your Honor, and as a result,
15 yes, that's fine, I will --

16 THE COURT: -- I mean, here's the problem, he's made all of
17 these accusations against Ms. Radosta, and so --

18 MR. SANFT: Yes, Your Honor.

19 THE COURT: All right. I'm going to go ahead and keep Mr.
20 Sanft on for sentencing.

21 THE DEFENDANT: Thank you, ma'am.

22 THE COURT CLERK: August 17th at 11 a.m.

23 [Colloquy The Court and the clerk]

24 MS. DIGIACOMO: It's a Tuesday, Your Honor.

25 THE COURT: There's potentially going to be a Senior Judge

1 there, I'm just debating whether I want to put it in September --

2 MS. DiGIACOMO: I'm fine with whenever, Your Honor.

3 THE COURT: I'm sorry.

4 MS. DiGIACOMO: I said, I'm fine with whenever.

5 THE COURT: All right, August 17 is fine.

6 THE COURT CLERK: August 17th at 11 a.m.

7 THE COURT: Thank you, Mr. Sanft.

8 THE DEFENDANT: Mr. Sanft, can you come and see me at
9 your earliest convenience please?

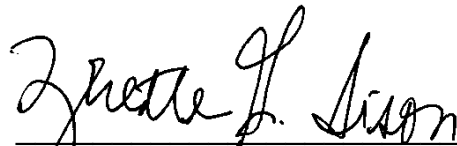
10 MR. SANFT: All right Aaron.

11 THE DEFENDANT: Thank you.

12 [Hearing concluded at 11:52 a.m.]

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

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20 Yvette G. Sison
21 Court Recorder/Transcriber
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