IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Feb 14 2022 09:00 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

RAJ N. DUGGAL,

Appellant,

vs. No. 83978

THE STATE OF NEVADA,

Respondent.

APPELLANT'S APPENDIX

APPEAL FROM A JUDGMENT OF CONVICTION

FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF ELKO

SHERBURNE M. MACFARLAN, III
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Elko, Nevada 89801
(775) 738-8084

Attorneys for Appellant

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Elko Co. Dep. District Attorney
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(775) 738-3101

Attorneys for Respondent

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CERTIFICATE OF SERVICE

I certify that this document was filed electronically with the Nevada Supreme Court on the 14th day of February, 2022. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

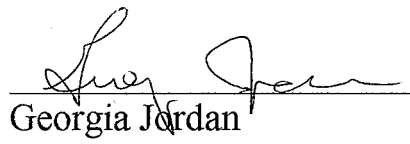
Nevada Attorney General

Lockie & Macfarlan, Ltd.

Elko County District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid to the following address(es):

Raj N. Duggal
2682 Outlook Ct.
Elko NV 89801



Georgia Jordan

FILED
ELKO TOWNSHIP
JUSTICE CRIMINAL COURT

CASE NO. EL-JC-CR-F-21-3169

2021 JUN 11 PM 4:11

CLERK

IN THE ELKO JUSTICE COURT

IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

RAJ NARESH DUGGAL,

Defendant.

CRIMINAL COMPLAINT

COMES NOW, THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by and through its Counsel of Record, the Elko County District Attorney's Office, and based upon the Declaration Of Probable Cause and/or the narrative report and the Officer Declaration executed by the submitting officer in connection with said narrative report, complains and alleges that the Defendant above-named, on or about the 9th day of March, 2021, at or near the location of 2500 Alta Vista Dr. in the city of Elko, within the County of Elko, and the State of Nevada, committed the following described criminal offense(s):

COUNT 1

OPEN OR GROSS LEWDNESS, A GROSS MISDEMEANOR AS DEFINED BY NRS 201.210. (NOC 50971)

That the Defendant engaged in an act or acts of open and gross lewdness in the following manner: by kissing Delia Foster, by putting his tongue in her mouth, by trying to put his hand under her sweatshirt and/or trying to touch her breasts, and/or by trying to put his hand down her pants.

All of which is contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Nevada. Said Complainant, therefore, prays that the Defendant be dealt with according to law.

The Complainant further prays:

XXXX For the issuance of a Warrant of Arrest.

_____ For the issuance of a Summons.

_____ A copy of NRS 201.051 must be attached if charge(s) is/are a violation of NRS 201.020.

The undersigned hereby declares under penalty of perjury that the foregoing Complaint is true to the best of his/her knowledge, information, and belief.

Dated: June 11, 2021.

TYLER J. INGRAM
ELKO COUNTY DISTRICT ATTORNEY

Mark S. Mills
Deputy District Attorney
State Bar No.: 11660

Estimation Of Time Needed

The State estimates that two (2) hours will be needed to conduct the trial/preliminary hearing in this matter.

The Issue Of Obtaining The Discovery

Available In This Matter

To: The Defendant's Counsel or The Defendant Representing Himself/Herself

The Elko County District Attorney's Office has an open file discovery policy. This means you will be provided with a complete copy of all reports, photos and compact discs received by the DA's Office from the submitting Officer and agency in connection with this case. Private Counsel and/or Defendants appearing without Counsel will be charged a reasonable copying and duplication fee. If this is a misdemeanor case the State believes and avers that by providing a copy of the discovery containing the names and addresses of the witnesses the State may call in its case-in-chief, the State is fulfilling its discovery obligations pursuant to NRS 174.234.(1)(b)(2) which provides that:

> (2) The prosecuting attorney shall file and serve upon the defendant a written notice containing the name and last known address or place of employment of any witness the prosecuting attorney intends to call during the case in chief of the State whose name and last known address or place of employment have not otherwise been provided to the defendant pursuant to NRS 171.1965 or 174.235.

Extradition Scope: Nevada and Adjoining States Only (NV, CA, OR, ID, UT, AZ)

DA #G-21-01046/ REPORT #: 2021-00004750/ OFFICER CUNNINGHAM / AGENCY: ELKO POLICE DEPARTMENT

UNSWORN DECLARATION IN

SUPPORT OF CRIMINAL COMPLAINT [1]

COMES NOW Detective Michael Marshowsky who declares the following to the above-entitled Court:

1. That your Declarant, who will present the remainder of this Declaration in the first person, is presently serving as a detective for the Elko Police Department.

2. That on or about March 11, 2021, I became involved in the investigation regarding Raj Naresh Duggal.

3. That I learned that Mr. Duggal, the owner of a local restaurant, had been accused of inappropriately touching "DF," a 19 year old female employee at Duggal's restaurant.

4. That during the course of my investigation I interviewed DF about the allegation, at which time DF informed me that on March 9, 2021, Duggal asked to speak with her, after which she got into his truck with him, where he provided "Truly" alcoholic beverages to her.

5. That DF further disclosed that while in Duggal's truck with him, he kissed her, put his tongue in her mouth, touched or tried to touch her breast, and tried to put his hand down her pants, all without the consent of DF.

6. That I interviewed Duggall, and he confirmed that DF had gotten into his truck with him, that he had provided her with alcoholic beverages, and that he had kissed DF and touched her breast; however, he claimed that the contact between DF and him was consensual.

7. Finally, based upon the information set forth above in this Declaration, I would allege and aver to the above-entitled Court that there is probable cause to believe that Raj Naresh Duggal committed the criminal offense pleaded against him in the attached Criminal Complaint.

---

1 See NRS 53.045 which provides in pertinent part as follows:

Any matter whose existence or truth may be established by an affidavit or other sworn declaration ***may be established with the same effect*** (emphasis added by the State) by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and dated, in substantially the following form:

1. If executed in this state: "I declare under penalty of perjury that the foregoing is true and correct."

Executed on _____ _____
(date) (signature)

FURTHER YOUR DECLARANT SAYETH NOT.

Dated this 8TH day of June, 2021.

Michael Marshowsky

DETECTIVE MICHAEL MARSHOWSKY
Elko ~~County Sheriff's Office~~ (M)
Police Dept.

CASE NO. DC-CR-21-248

DEPT. NO. 3

Affirmation Pursuant to NRS 239B.030
SSN Does Appear _____
SSN Does Not Appear PW

FILED

2021 SEP -8 AM 10: 55

4th JUDICIAL DISTRICT COURT
CLERK _____ DEPUTY B

IN THE FOURTH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

THE STATE OF NEVADA,

Plaintiff,

vs.

RAJ NARESH DUGGAL,

Defendant.

CRIMINAL INFORMATION (Filed Pursuant to Plea Agreement)

COMES NOW THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by and through its Counsel of Record, the Elko County District Attorney's Office, and informs the above-entitled Court that Defendant above-named, on or about the 9th day of March, 2021 at or near the location of 2500 Alta Vista Dr. in the city of Elko, within the County of Elko, and the State of Nevada, committed a crime or crimes described as follows:

COUNT 1

CONSPIRACY TO COMMIT BATTERY, A GROSS MISDEMEANOR AS DEFINED BY NRS 199.480 AND NRS 200.481. (NOC 50243)

That the Defendant did meet with one unknown person, and between themselves, and each of them with the other, willfully and unlawfully conspired to commit the crime of Battery, in the following manner: by entering into an agreement the object of which was to kiss Delia Foster, by putting his tongue in her mouth, by trying to put his hand under her sweatshirt and/or trying to touch her breasts, and/or by trying to put his hand down her pants.

All of which is contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Nevada.

Dated: August 30, 2021.

TYLER J. INGRAM
Elko County District Attorney

JEFFREY C. SLADE
Deputy District Attorney
State Bar Number: 13249

Witnesses' names and addresses known to the District Attorney at the time of filing the above Criminal Information, if known, are as follows.

DELIA KAYLINE FOSTER: Address Redacted

MICHAEL JAMES MARSHOWSKY: 1448 SILVER STREET ELKO, NV 89801-3924

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE
9 day of Sept ,2021
Kristine Jakeman
CLERK

CERTIFICATE OF SERVICE

I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the Elko County District Attorney's Office, and that on the 8th day of September, 2021, I hereby served a copy of the CRIMINAL INFORMATION, by delivering, mailing, faxing, or causing to be delivered, faxed, or mailed, a copy of said document to the following:

By delivering to:

HONORABLE DISTRICT COURT JUDGE
FOURTH JUDICIAL DISTRICT COURT
ELKO COUNTY COURTHOUSE
ELKO, NV 89801

LOCKIE & MACFARLAN
ATTORNEY AT LAW
[via box in Clerk's Office]

Amanda Waugh

AMANDA WAUGH
CASEWORKER

DA # G-21-01046

CASE NO. DC-CR-21-248

DEPT. NO. 3

FILED

2021 SEP 15 PM 2:43

4th JUDICIAL DISTRICT COURT
CLERK____ DEPUTY____

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF ELKO, THE STATE OF NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

RAJ N. DUGGAL,
Defendant,

MEMORANDUM OF PLEA AGREEMENT

I hereby agree to enter a plea of no contest to: one count CONSPIRACY TO COMMIT BATTERY, A GROSS MISDEMEANOR AS DEFINED BY NRS 200.481 AND NRS 199.480, as is more fully alleged in the charging document.

My decision to plead no contest is based upon the plea agreement in this case in which the State has agreed to file a Criminal Information charging me with the above mentioned gross misdemeanor. The District Attorney's Office agrees that it will file no further charges arising out of facts related to this incident, now known by the District Attorney's Office. The State agrees to dismiss with prejudice case number EL-JC-CR-M-21-3170 after defendant is sentenced in the above-captioned matter.

At the time of sentencing, the parties will remain free to argue for what each deems an appropriate sentence to be imposed.

CONSEQUENCES OF THE PLEA

I understand that as a consequence of my plea of no contest, I may be imprisoned for a period of not more than 364 days in the Elko County Jail and that I may be fined up to $2,000. I understand that the law requires me to pay an administrative assessment fee, and that in some instances I may be required to pay other costs incurred by the State in this prosecution, such as drug analysis fees or costs of extradition.

I understand that I may be ordered to make restitution to any victim of the offenses to which I am pleading no contest and to the victim of any related offense which is being dismissed or not prosecuted as a result of this agreement, and that even though charges have been dismissed or not brought as a result of this agreement, they may still be considered by the judge in determining the appropriate sentence to be imposed in my case.

I understand that I AM eligible for probation for the offense to which I am pleading no contest.

I understand that if I plead no contest to two or more charges, the sentences may be served concurrently or consecutively, at the discretion of the judge who sentences me.

I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits prescribed by law. I understand that if my attorney, or the State, or both, recommends any particular sentence, the Court is not obligated to follow those recommendations.

I understand that the Division of Parole and Probation will conduct an investigation into, and prepare a report on, my

background and other matters relevant to determining the appropriate sentence to be imposed. My attorney and I, as well as the District Attorney, unless he has otherwise agreed in this document to remain silent, will all have the opportunity to comment on the information contained in the report at the time of sentencing.

FACTUAL BASIS FOR NO CONTEST PLEA

I understand that I am pleading no contest to a fictitious charge. I also understand that a no contest plea will be treated the same as a guilty plea for purposes of sentencing. In part, I am pleading no contest to a fictitious charge to avoid the possibility of being convicted of the original charge, OPEN OR GROSS LEWDNESS.

If the matter proceeded to trial on the original charge, and if the evidence was believed by the trier of fact, the State would be able to prove the following beyond a reasonable doubt:

1. On March 9, 2021, in Elko County, Nevada;
2. I committed an act or acts of open or gross lewdness;
3. By kissing DF, and/or by touching her breast(s).

COLLATERAL CONSEQUENCE OF DEPORTATION

If you are not a citizen of the United States of America, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States of America, or denial of naturalization pursuant to the laws of the United States of America.

WAIVER OF RIGHTS

By entering my plea of no contest, I understand that I am waiving and forever giving up the following rights and privileges:

1. The constitutional right against self-incrimination, including the right to choose whether to testify at trial, and the right to prohibit the prosecutor from commenting on my silence if I choose not to testify.

2. The constitutional right to a speedy, fair and public trial by an impartial jury; the constitutional right to be assisted at trial by an attorney, either retained by me, or appointed for me if I am indigent and cannot afford an attorney; the right to require the State to prove each element of the offense with which I am charged beyond a reasonable doubt; the constitutional right to confront and cross-examine my accusers, and the constitutional right to subpoena witnesses on my behalf.

3. The right to appeal, with the assistance of retained or appointed counsel, the conviction as well as any legal issues arising prior to entry of this no contest plea. By pleading no contest, I specifically waive my right to appeal any and all such issues.

VOLUNTARINESS OF PLEA

I have discussed the elements of all of the original charges against me with my attorney and I understand the nature of those charges.

I understand that the State would have to prove each element of the charges against me at trial beyond a reasonable doubt.

I have discussed with my attorney any possible defenses, defense strategies, and circumstances which might be favorable to

me.

All of the foregoing elements, consequences, rights and waiver of rights, have been thoroughly explained to me by my attorney. My attorney has answered all of my questions regarding this plea agreement and its consequences to my satisfaction.

I believe that pleading no contest and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am satisfied that my attorney is skilled in criminal defense and that I have been fully and fairly served by my attorney.

I am not now under the influence of any intoxicating liquor, controlled substance or other substance which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea. I am signing this agreement freely and voluntarily, after consultation with my attorney, and I am not acting under duress, coercion, or promises of leniency except as expressly set forth in this agreement.

DATED this 15th day of Sep., 2021.

RAJ N. DUGGAL
Defendant

DATED this 8 day of September, 2021.

JEFFREY S. SLADE
Nevada Bar No. 13249
Deputy District Attorney

CERTIFICATE OF COUNSEL

I, the undersigned, as the attorney for the Defendant named

herein and as an officer of the court, hereby certify that:

1. I have fully explained to the Defendant the allegations contained in the charges to which no contest pleas are being entered.

2. I have advised the Defendant of the penalties for each charge and the restitution that the Defendant may be ordered to pay.

3. All pleas of no contest offered by the Defendant pursuant to this Agreement are consistent with the facts known to me and are made with my advice to the Defendant and are in the best interest of the Defendant.

4. To the best of my knowledge and belief, the Defendant:

a. Is competent and understands the charges and the consequences of pleading no contest as provided in this Agreement.

b. Executed this Agreement and will enter all no contest pleas pursuant hereto voluntarily.

c. Was not under the influence of intoxicating liquor, a controlled substance or other substance at the time of the execution of this Agreement.

DATED this 15 day of Sept., 2021.

SHERBURNE M. MACFARLAN, III
Nevada Bar No. 3999
Attorney for Defendant

Nevada Department of
Public Safety
Dedication Pride Service

PRESENTENCE INVESTIGATION REPORT

The Honorable Mason E. Simons
Department III, Elko County
Fourth Judicial District Court

RECEIVED
NOV 18 2021

Date Report Prepared: November 15, 2021

Prosecutor: Jeffrey C. Slade, Esq., DDA
Defense Attorney: David B. Lockie, Esq., Retained

PSI: 626242

I. CASE INFORMATION

Defendant: Raj Naresh Duggal
Case: DC-CR-21-248
P&P Bin: 1005541356

PCN: ELSO4009961C
Offense Date: 03/09/2021
Arrest Date: 06/29/2021 (book/release)
Plea Date: 10/08/2021 No Contest
Sentencing Date: 12/10/2021

II. CHARGE INFORMATION

Offense: Count 1: Conspiracy to Commit Battery
NRS: 200.481 and 199.480 **Category:** Gross Misdemeanor
NOC: 50243
Penalty: By a term of not more than 364 days in the county jail or by a fine of not more than $2,000 or by both fine and imprisonment.

III. DEFENDANT INFORMATION

Address: 2682 Outlook Court
City/State/Zip: Elko, Nevada 89801
NV Resident: Yes
SSN: 611-34-3569
POB: India
Date of Birth: 03/08/1962
Age: 59
Phone: 775-934-1051
Driver's License: 0601090967
State: Nevada
Status: Valid

FBI: 460298HE7
SID: NV04713551
Aliases: Raj Duuggal
Additional SSNs: None known
Additional DOBs: None known
Additional POB: None known
Alien Registration: A091503116
US Citizen: Defendant reported that he is a US Citizen
Notification Required per NRS 630.307: No

Identifiers:
Sex: Male **Race:** Pacific Islander **Height:** 5'08" **Weight:** 178 lbs.
Hair: Black **Eyes:** Brown
Scars: None reported
Tattoos (type and location): None reported

Social History: The following social history is as related by the defendant and is unverified unless otherwise noted:

Childhood/Family: Mr. Duggal reported that his parents raised him together with his siblings. He maintains contact with his whole family, including mother Kaushlya Devi, Brother Harvinder Kumac, and Sister Niranda Devi, all of Indian. He stated that his "whole family is very responsible and great and everyone in the family works hard and lives great lives."

Marital Status: Mr. Duggal has been married to Mandeep Kaur for 28 years.

Children: The defendant has two adult children, son Jaskaraun S. Raj, age 27, of Elko, Nevada; and daughter Amninder Kaur, age 25, of Layton Utah.

Custody Status of Children: The defendant's children have reached the age of majority.

Employment Status: Mr. Duggal has been employed as a manager/owner of Hi Discount Food and Liquor since 2001 and earns $4,000 per month income. He was previously employed as a lead person at Rite Ad in Woodland California from 1995 until 1999.

Number of Months Employed Full Time in 12 months prior to commission of Instant Offense: 12

Age at first arrest: 19 or younger ☐ 20- 23 ☐ 24 or older ☒

Income: $8,000 **Other Sources:** $7,000 rents, $10,000 Spouse income

Assets: The defendant has $290,000 in savings, his vehicles are valued at $125,000, and he has $40,000 in jewelry.

Debts: Mr. Duggal owes $160,000 on his home mortgage and has a $140,000 mortgage on a home in Layton, Utah.

Education: Mr. Duggal reported that he earned his high school diploma in Nainewal, India.

Military Service: The defendant reported that he has not served in the armed forces; however, he did register for selective services.

Health and Medical History: The defendant is in good health; however, he does have high blood pressure for which he is under a physician's care and taking Losartan and Potassium.

Mental Health History: Mr. Duggal has not participated in mental health counseling.

Gambling History: The defendant reported having no problematic history of gambling.

Substance Abuse History: Mr. Duggal reported that he first consumed alcohol at the age of 27 and drinks "occasionally" with the last time being a month ago. He denied any use of any other illicit substances and spends $20 per week on alcohol. The defendant believes his drug/alcohol use to not be problematic.

Gang Activity/Affiliation: The defendant denied any affiliation with gang activity.

IV. CRIMINAL RECORD

Records of Federal Bureau of Investigation (FBI), National Crime Information Center (NCIC), and any other applicable sources reflect the following information:

CONVICTIONS- **FEL:** 0 **GM:** 0 **MISD:** 0

INCARCERATIONS- **PRISON:** 0 **JAIL:** 0

SUPERVISION HISTORY:

CURRENT- **Probation Terms:** 0 **Parole Terms:** 0

PRIOR TERMS:

Probation- **Revoked:** 0 **Discharged:** **Honorable:** 0 **Other:** 0

Parole- **Revoked:** 0 **Discharged:** **Honorable:** 0 **Other:** 0

Adult:

Arrest Date:	Offense:	Disposition:
06/29/2021 Elko Police Dept. Elko, Nevada	I. Sell, Furnish, or Assist Minor to Obtain Alcoholic Beverage (M)	EL-JC-CR-M-21-3170: Scheduled to be dismissed per global plea agreement
06/29/2021 Elko Police Dept. Elko, Nevada	I. Open/Gross Lewdness (GM)	**Instant Offense, DC-CR-21-248** 10/08/2021 Plea of No Contest I: Conspiracy to Commit Battery (GM) Sentencing 12/10/2021

Supplemental Information: N/A

V. OFFENSE SYNOPSIS

Records provided by the Elko County Sheriff's Office and the Elko County District Attorney's Office reflect that the instant offense occurred substantially as follows:

On 03/10/2021, at approximately 1:26 PM, officers were dispatched to the Elko Police Department in reference to a past-tense sexual assault. Upon arrival, the reporting person, a 19-year-old female, reported that she works for the Arctic Circle in Elko, Nevada and her boss, who she knows as "Raj", asked her to feed his animals while he and his family were out of town. The victim agreed to do that and went about her day. Later, "Raj" asked the victim to come to the back of the store and he asked her if she drank alcohol. The victim told "Raj" that she drank "Truly's" or "White Claws" at home with her parents on occasion. Mr. Duggal then asked the victim how old she was, and she told him she was 19 years old and went back to work. After approximately 20 minutes had passed Mr. Duggal asked her if he could talk to her outside.

The victim stated she had clocked out at approximately 8:00 PM and went outside to talk to Mr. Duggal. She stated she moved her car next to the defendant's truck and got in the passenger seat to talk to him. He asked her to drink with him and she had felt obligated to drink with him because he was her boss, and she didn't want to tell him no. Mr. Duggal provided her a "Truly" alcoholic seltzer drink and she opened one of them and drank approximately half of it and gave it to Mr. Duggal.

The victim stated at this time, Mr. Duggal began to tell her how pretty she is and how hard of a worker she is and he would help her become a business woman. She thanked him for the compliment and told him she was going to continue working for his business until she moved away, and Mr. Duggal then offered to rent her a room so she would stay in Elko to work for him. The victim told Mr. Duggal she should get home because it was late, and she had been at work for nine hours. Mr. Duggal held out his arms for a hug and the victim stated that it was not abnormal for them to hug in the store, but when she hugged him, he began to kiss her, starting on her cheek. The victim pulled away from Mr. Duggal and told him he was her boss, and she was not okay with that happening at all. The victim began crying while telling officers that Mr. Duggal grabbed her and put his tongue in her mouth while kissing her. She stated he proceeded to try to put his hands under her shirt and into her pants. The defendant tried to grab her breast; however, he only cupped her breast on the outside of her shirt. She stated that her work pants were tight, prohibiting the defendant from being successful at getting his hands

in her pants. She told him to stop again, and he sucked on her lip so hard it bruised her lip. Officers noted that there was a bruise on the left side of the victim's lower lip.

The victim then stated that she got out of Mr. Duggal's truck as calmly as she could so she could go home to her mother. The defendant asked her to not tell her mother about him buying her alcohol and kissing her. He also asked the victim to not tell his family and the victim agreed she would not and left the scene.

Officers interviewed Mr. Duggal on 03/11/2021. During the interview, Mr. Duggal admitted to kissing and touching the victim's breast but claimed it was consensual and maintained that the victim initiated the contact between them. He admitted to giving the underage female alcoholic beverages and drinking with her. Video surveillance was able to verify the victim and the defendant's stories; however, it was unclear as to the nature of the consensual nature of the interactions.

During the course of the investigation, officers became aware of the possibility that other employees had experienced similar sexual interactions with Mr. Duggal; however, they were unable to verify the identity of victims of inappropriate sexual activity involving the defendant. The owner of the property that Mr. Duggal rents for one of his other businesses did confirm that his surveillance had captured Mr. Duggal inappropriately proposition an underage child for a sexual favor in exchange for using his phone. The owner of the property explained that Mr. Duggal likes to drink alcohol inside his business with females after it closes and recalled seeing Mr. Duggal drinking with a nude "hippie girl" inside the business one time.

Reports were forwarded to the District Attorney's office for prosecutorial review.

VI. DEFENDANT'S STATEMENT

☒ See Attached ☐ Defendant interviewed; no statement submitted ☐ Defendant not interviewed

VII. VICTIM INFORMATION/STATEMENT

Attempts were made to contact the victim (VC2282491) in order to obtain a Victim Impact Statement and restitution claim; to date no response has been received by the Division. If the requested information is received after this report has been submitted, it will be provided to the Court.

VIII. CUSTODY STATUS/CREDIT FOR TIME SERVED

Custody Status: Released on Own Recognizance **CTS:** 0 DAYS: June 29, 2021 to November 29, 2021
Booked and Released only

IX. PLEA NEGOTIATIONS

In exchange for the defendant's plea of guilty, the State, the defense, and the defendant have agreed to recommend the following: The State agrees to dismiss with prejudice EL-JC-CR-M-21-3170 after defendant is sentenced in the above-captioned matter. At the time of sentencing, the parties remain free to argue for what each deems an appropriate sentence to be imposed.

X. FEES AND NEVADA REVISED STATUTE REQUIREMENTS

Administrative Assessment: $25.00 **Chemical/Drug Analysis:** N/A **DNA:** $150 and submit to test
DNA Admin Assessment: $3.00

Mandatory Fine: N/A **Mandatory Prison/Probation:** No

☒ Pursuant to NRS 239B.030, the undersigned hereby affirms this document contains the social security number of a person as required by NRS 176.145.

☐ Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

Pursuant to NRS 176.156 (1)(b), the Division shall afford an opportunity to each party to object to factual errors in the presentence investigation report. Any perceived factual errors should be immediately reported, in writing, to defense counsel, the prosecuting attorney, and the Division of Parole and Probation. The Court may order the Division to correct the contents of the report following sentencing if, within 180 days after the date on which the judgement of conviction was entered, the prosecuting attorney and the defendant stipulate to correcting the contents of the report. This presentence investigation report may be considered during future proceedings, including those held by the Nevada Board of Parole Commissioners, in accordance with NRS 176.156 (2),(3), and (4).

The information used in the Presentence Investigation Report may be utilized reviewed by federal, state and/or local agencies for the purpose of prison classification, program eligibility and parole consideration.

Should the court consider granting probation pursuant to a program of intensive supervision pursuant to NRS 176A.440, the Division requests the court to consider the following factors in making that determination:

- Intensive supervision with electronic monitoring may only be utilized if the defendant is capable of paying the daily fee for the electronic monitoring.
  - The monitoring fee ranges from $9.00 to $18.50 per day depending on factors such as alcohol monitoring, GPS, or radio frequency versus cellular connectivity.
  - This fee is payable from the defendant directly to the electronic monitoring vendor.
- Placement of the defendant on a term of intensive supervision may conflict with the level of supervision established by the risk assessment required under NRS 213.1078, which states:

- Section 7: *"Upon finding that a term or condition of probation ordered pursuant to subsection 1 of NRS 176A.400 or the level of supervision set pursuant to this section does not align with the results of a risk and needs assessment administered pursuant to section 1 or 2, the supervising officer shall seek a modification of the terms and conditions from the court pursuant to subsection 1 of NRS 176A.450".*

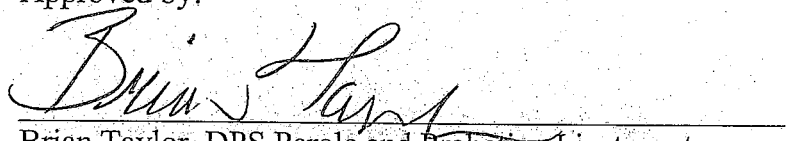
In accordance with current Interstate Commission for Adult Offender Supervision rules and requirements, all felony convictions and certain [gross] misdemeanors are offense eligible for compact consideration. Due to Interstate Compact standards, this conviction may or may not be offense eligible for courtesy supervision in the defendant's state of residence. If not offense eligible, the Division may still authorize the offender to relocate to their home state and report by mail until the term of probation is complete and/or the case has been completely resolved.

Respectfully Submitted,

Tom Lawson, Chief

Report prepared by: Michelle Gavorsky
DPS Parole and Probation, Specialist III
mgavorsky@dps.state.nv.us

Approved by:



Brian Taylor, DPS Parole and Probation Lieutenant
Northern Command, Elko County, Nevada
brian.taylor@dps.state.nv.us

Nevada Department of **Public Safety** Parole and Probation

Division of Parole and Probation
Presentence Investigation Questionnaire

Defendant Statement

Explain in your own words the circumstances of your offense, why you committed the offense, your present feelings about your situation, and why you may be suitable for probation. A copy of this statement will be sent to the judge. Write or print clearly. If using a pencil, please write as dark as possible. If you do not want to submit a written statement, you must still initial that you acknowledge when and how changes to the PSI may be made. Case# _____

Pursuant to NRS 176.156 §1(b), the Division shall afford an opportunity to each party to object to factual errors in the presentence investigation report. Any perceived factual errors should be immediately reported, in writing, to defense counsel, the prosecuting attorney, and the Division of Parole and Probation. The Court may order the Division to correct the contents of the report following sentencing if, within 180 days after the date on which the judgement of conviction was entered, the prosecuting attorney and the defendant stipulate to correcting the contents of the report. This presentence investigation report may be considered during future proceedings, including those held by the Nevada Board of Parole Commissioners, in accordance with NRS 176.156 §2, 3, and 4. The information used in your Presentence Investigation Report may be reviewed by federal, state and/or local agencies and used for future determinations to include, but not limited to: mental health, parole consideration, pardon investigation

Initials KD

Defendant Signature R Duggal

Date 11-10-21

Lockie

FILED

2021 DEC 13 AM 11:38

4th JUDICIAL DISTRICT COURT
CLERK ____ DEPUTY ____

CASE NO. DC-CR-21-248

DEPT. NO. 3

FOURTH JUDICIAL DISTRICT COURT

COUNTY OF ELKO, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAJ NARESH DUGGAL,

Defendant.

JUDGMENT OF CONVICTION

On October 8, 2021, Defendant, RAJ NARESH DUGGAL, (Date of Birth: March 8, 1962; Place of Birth: India) entered a plea of no contest to the crime of **COUNT 1: CONSPIRACY TO COMMIT BATTERY, A GROSS MISDEMEANOR AS DEFINED BY NRS 199.480 AND NRS 200.481 (NOC 50243)** which crime occurred on or about March 9, 2021, and sentenced Defendant on December 10, 2021 as follows:

IT IS HEREBY ORDERED that Defendant shall pay an administrative assessment fee of $25.00 pursuant to NRS 176.062.

IT IS FURTHER ORDERED that Defendant shall pay a DNA administrative assessment fee of $3.00 pursuant to NRS 176.0623.

IT IS FURTHER ORDERED that Defendant shall pay a $150.00 fee for purposes of obtaining a biological specimen from the Defendant and for performing genetic marker analysis of said specimen pursuant to

RECEIVED

NRS 176.0915.

IT IS FURTHER ORDERED that Defendant shall submit a biological specimen for genetic marker analysis pursuant to NRS 176.0913, unless a biological specimen was previously provided.

IT IS FURTHER ORDERED that Defendant shall pay a fine of $2,000.00.

IT IS FURTHER ORDERED that the cash bail posted in the amount of $5,000.00 shall be used to satisfy all outstanding fines and fees owed in this matter, and the remainder shall then be returned to the posting party.

IT IS FURTHER ORDERED that for Count 1, Defendant shall be incarcerated in the Elko County Jail for a period of 364 days. The Defendant shall receive credit for 0 days previously served as December 10, 2021. Defendant shall be immediately remanded into the custody of the Elko County Sheriff's Office to begin serving said sentence.

At the time Defendant entered his plea of guilty, and at the time he was sentenced, he was represented by David Lockie, Esq.

THEREFORE, the Clerk of the Court is directed to enter this Judgment of Conviction as part of the record in the above-entitled matter.

DATED this 13 day of December, 2021.

HON. MASON E. SIMONS
District Court Judge

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 3, and that on this 13 day of December, 2021, I served by hand delivery by placing a copy of said document in the agency box located in the Elko County Clerk's Office, a true copy of the foregoing document to:

Elko County District Attorney's Office

David Lockie, Esq.

State of Nevada, Division of Parole & Probation

Elko County Sheriff's Office

Court Employee

Case No. DC-CR-21-248

Dept. No. 3

FILED

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ELKO CO DISTRICT COURT

CLERK____ DEPUTY____

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

THE STATE OF NEVADA,

Plaintiff,

vs.

NOTICE OF APPEAL

RAJ NARESH DUGGAL,

Defendant.

_____/

COMES NOW, Petitioner, by and through his attorneys, LOCKIE & MACFARLAN, LTD., and appeals from the JUDGMENT OF CONVICTION entered on December 13, 2021, in the Fourth Judicial District Court, Elko County, Nevada.

DATED this 16 day of December, 2021.

LOCKIE & MACFARLAN, LTD.

By Donald Lockie #2384 / For

SHERBURNE M. MACFARLAN, III
Nevada Bar No. 3999
Attorneys for Petitioner
919 Idaho Street
Elko, Nevada 89801
(775) 738-8084

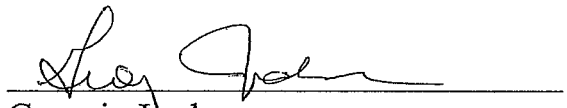
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Lockie & Macfarlan, Ltd., Attorneys at Law, and that on the 16th of December, 2021, I mailed a true and correct copy of the above and foregoing NOTICE OF APPEAL by placing the same, postage prepaid, in the United States mail at Elko, Nevada, addressed as follows:

Supreme Court of Nevada
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

Elko Co. District Attorney's Office
540 Court Street, 2nd Floor
Elko, NV 89801

Raj N. Duggal
c/o Elko County Jail
P. O. Box 2028
Elko, NV 89803



Georgia Jordan

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2022 JAN 10 PM 12: 12
4th JUDICIAL DISTRICT COURT
CLERK ____ DEPUTY ____

IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO,
BEFORE THE HONORABLE MASON SIMONS, DISTRICT JUDGE

-oOo-

STATE OF NEVADA,
Plaintiff,
V.
RAJ NARESH DUGGAL,
Defendant.

Case No. DC-CR-21-248
Dept. No. 3

COPY

Rough Draft
Transcript of Proceedings
Sentencing Hearing

December 10, 2021
Elko, Nevada

Transcribed By: Julie Rowan - (775) 745-2327

1 A P P E A R A N C E S

2

For the Plaintiff: Ryan McCormick, Esq.
3 Elko County District Attorney's Office
4 540 Court Street, 2nd Floor
Elko, NV 89801

5

For the Defendant: David Lockie, Esq.
6 Lockie & Macfarlan
919 Idaho Street
7 Elko, NV 89801

8 -oOo-

9

I N D E X

10

11 WITNESSES ON BEHALF OF THE PLAINTIFF: Page

12 None

13

WITNESSES ON BEHALF OF THE DEFENSE:

14

None

15

16 EXHIBITS:

17 None

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1 DECEMBER 10, 2021, ELKO, NEVADA
2 -oOo-
3 THE COURT: The time is 10:05 -- or
4 10:05 a.m. It's December 10th, 2021. This is Case
5 DC-CR-21-248, the State of Nevada versus Raj N. Duggal.
6 The Defendant is here in the courtroom, out of custody,
7 along with counsel, Mr. Lockie. Mr. McCormick is here
8 from the District Attorney's Office.
9 On October 8th, 2021, the Defendant pled
10 guilty to one count of conspiracy to commit battery, a
11 gross misdemeanor level offense. This is the time set
12 for entry of judgment and the imposition of sentence.
13 Are the parties ready to proceed?
14 MR. MCCORMICK: Yes, Your Honor.
15 MR. LOCKIE: We're ready as well.
16 THE COURT: The Court did receive a
17 presentence investigation report that was prepared by
18 the Division of Parole and Probation on November 15th,
19 2021. I have reviewed that prior to court. Did either
20 party have any errors or omissions they needed to
21 correct, Mr. Lockie?
22 MR. LOCKIE: None for the Defense, Your
23 Honor.
24 THE COURT: Okay. Mr. McCormick, do you have
25 any?

1 MR. MCCORMICK: Not for the State, Your
2 Honor.
3 THE COURT: All right. What's the State's
4 position on sentencing, Mr. McCormick?
5 MR. MCCORMICK: Your Honor, regardless of the
6 Defendant's lack of criminal history, the State would be
7 recommending the maximum possible sentence in this case.
8 That is 364 days to be actually served in jail and a
9 $2,000 fine.
10 The facts of this case are beyond disturbing
11 when you start to begin to unpack them. The fact that
12 the Defendant premeditated his move by inquiring as to
13 the Defendant's age and whether she drank alcohol is
14 disturbing to say the least.
15 He then provided her with that alcohol
16 knowing full well that she was under the legal drinking
17 age. He also requested that the victim not inform her
18 mother of what happened. Next, even if we accept his
19 account that this event was consensual, it raises some
20 serious issues as to what he believes is consent.
21 He was the victim's boss, much older than
22 her, and thought alcohol was necessary to obtain that
23 consent. Even if we play the hypothetical game and say
24 he wasn't her boss and she was close to his same age and
25 of legal drinking age, to say that anybody would need

1 alcohol to gain consent is questionable at best.
2 Not only was there this situation, but the
3 owner of the property also the reported -- has also
4 reported that he has seen the Defendant on surveillance
5 propositioning another underage child. This man's a
6 predator, and he needs to serve time in this case. The
7 State believes that not much weight should be given to
8 the fact that he doesn't have much criminal history,
9 because based on the reports, it looks like he just
10 hasn't been caught yet.
11 The leniency he received in this case is the
12 fact that he did get a gross misdemeanor, and that's
13 because the victim, who is here and in the back of the
14 courtroom right now -- we do not -- we put a lot of
15 weight, the State does, and my entire office, and I do
16 believe the City Attorney and a lot of D.A.'s Offices
17 around the State put a ton of wait in the fact that we
18 don't like to put this person on the stand and put them
19 through a situation where I have to bring up that
20 situation again and make them relive it and then subject
21 them to cross-examination where each Defense counsel who
22 comes through here has a duty to give their client the
23 best chance, which includes hammering a 19-year-old girl
24 on the stand about a situation of what happened. So
25 he's gotten leniency in this case. He doesn't have a

1 felony. He has a gross misdemeanor.
2 The actions of the Defendant in this case are
3 deplorable. They're absolutely wrong, and we don't
4 believe -- my office does not believe that any justice
5 in this case is anything short of serving that 364 days
6 in the Elko County Jail and the $200 -- or the $2,000
7 fine.
8 THE COURT: Okay. Mr. Lockie.
9 MR. LOCKIE: Thank you, Your Honor.
10 Just a couple of issues that we take with the
11 District Attorney's argument is first of all, it's
12 speculation about other crimes of which there is
13 absolutely zero evidence before this Court, and that is
14 palpable and that is suspect. There is not one piece of
15 evidence presented to the Court whatsoever about other
16 crimes that he hasn't been caught yet, and it's an
17 improper argument on the part of the prosecutor to make.
18 The second is a misrepresentation to the
19 Court that the Defendant is lucky because he didn't get
20 a felony because the initial charge was a gross
21 misdemeanor. The prosecutor is now standing that he's
22 lucky somehow, misrepresenting the nature of the
23 negotiations in this case and insinuating to this Court
24 that the Defendant had a felony, which is false.
25 It's overtly false, and it's right there in

1 front of the District Attorney. It's in his computer,
2 and it's in his file, and the District Attorney makes a
3 false representation to the Court about his luck in not
4 having a felony. So we've got two issues with the
5 prosecution first of all.
6 THE COURT: Mr. McCormick, do you want to
7 clear up any of those --
8 MR. MCCORMICK: Yes, I would, Your Honor. To
9 say that there is no evidence of that is patently false.
10 Any evidence -- someone coming and giving testimony of
11 something and someone saying something, as reported to
12 the PSI and the facts of this case, is, in fact,
13 evidence, whether or not it's given the substantial
14 weight and whether or not it should be cross-examined is
15 for another issue.
16 But the fact that it is evidence, we do have
17 someone reporting that these things happened, which, in
18 fact, is testimony, is a report, is, in fact, evidence.
19 To say that it didn't happen is -- it would be a
20 situation for trial, but he did take a plea in this
21 case.
22 And the fact of the matter is, this case
23 didn't get unpacked as nearly -- as much as it could
24 have, but to say that he couldn't have faced a felony in
25 this matter is also speculative. There is, I guess, at

1 least probable cause or there's situations in the
2 reports given in how this situation -- or this matter
3 materialized to say that a felony could have happened.
4 So to say it's patently wrong for me to
5 suggest that that is incorrect because I do believe the
6 standard that a judge may consider in these situations
7 is whether or not it's arbitrary and completely out of
8 left field. It's a very standard that you shouldn't
9 consider something unless it's completely ridiculous and
10 completely wrong to do so.
11 So I believe that there is evidence of these
12 situations. The fact that it wasn't brought out at
13 trial or presented in a form where it was authenticated
14 and cross-examined is -- to say that it's not evidence
15 is incorrect.
16 THE COURT: But you're acknowledging the
17 complaint filed initially by your office on June 11th,
18 2021, charged Mr. Duggal with one count of open or gross
19 lewdness --
20 MR. MCCORMICK: Yes.
21 THE COURT: -- which would be the gross
22 misdemeanor?
23 MR. MCCORMICK: Yes, I do acknowledge the
24 fact that he was originally charged with that, but to
25 say that it couldn't have been more, it's -- yes, it is

1 speculative, but we also have taken a deal in this case.
2 But to say it's incorrect that that situation might have
3 presented itself is also incorrect.
4 THE COURT: Okay. And, obviously, had that
5 charge proceeded, that would have potentially put
6 Mr. Duggal in a situation where he would have been
7 classified as a sex offender where this charge would not
8 have such a consideration.
9 MR. MCCORMICK: Yes, Your Honor.
10 THE COURT: Okay. Mr. Lockie.
11 MR. LOCKIE: Yes, Your Honor, the second
12 point is accurate.
13 THE COURT: Uh-huh.
14 MR. LOCKIE: The first point we don't agree
15 with so much.
16 THE COURT: Right.
17 MR. LOCKIE: There was an opportunity to
18 arrest the Defendant. There was an opportunity to
19 review this case.
20 THE COURT: Right.
21 MR. LOCKIE: And those were the charges that
22 were filed. So before the Court is Mr. Duggal who is 59
23 years old in this case, which cuts both ways. He is 59
24 and has no record whatsoever of any kind of criminal
25 history, and it's hard to think of times when we come

1 before the Court with 59-year-old people with zero
2 record whatsoever.
3 And, again, we're looking at a proposition of
4 what the Court does in terms of protecting the community
5 and evaluating first. So to have a squeaky clean record
6 of criminal history at 59 years old is remarkable. He's
7 been a productive citizen here. He's a local business
8 owner, and, you know, has a family. He's contributed
9 significantly to the community, and he does so on a
10 frequent basis.
11 He clearly is an asset to the community on
12 balance, which doesn't minimize what he did here. It
13 doesn't minimize any of that, but it's balance. And the
14 State is right to the extent that the original charge in
15 this case could have been one that would have caused him
16 to register as a sex offender with regards to open and
17 gross lewdness, even though they exist at the same
18 level.
19 And we get to the point of a 59-year-old
20 gentleman with no record of criminal history whatsoever,
21 and so even the idea of coming to Court for him is a
22 horrifying proposition. You know, he's been in the
23 United States for a long time, but he comes from India.
24 And I had an opportunity to speak with him about the
25 nature of the criminal justice system in India, which is

1 probably a topic for a different conversation, but it's
2 -- it's not like here. Basically, you can buy your way
3 out of stuff there.
4 And I'm just prefacing that to the argument
5 here that the Defendant should receive a substantial
6 fine, and I want to clarify with the Court that he
7 already understood there's a clear distinction between
8 buying your way out of a problem, like in India, and a
9 legitimate fine basis that would occur.
10 THE COURT: Uh-huh.
11 MR. LOCKIE: And I think the Court can see
12 where that sort of misperception might exist, but it's
13 clearly punitive --
14 THE COURT: Right.
15 MR. LOCKIE: -- in his view, not a way around
16 it.
17 THE COURT: Right.
18 MR. LOCKIE: There's $5,000 cash bail in this
19 case, and, obviously, the Court can impose a fine. The
20 question then becomes -- the two other issues on the
21 table are jail time, probation, or a combination of
22 both. Those are where we are.
23 So in addition to imposing a fine, the Court
24 has the authority to place him on probation for a period
25 of year and, potentially, impose some period of jail

1 time as a condition of that probation as a punitive
2 measure, or the Court could skip the probation, as
3 suggested by the State's case, and just send him
4 straight away to jail for a year.
5 Given the balancing, again, of interest and
6 what it means to this Defendant in terms of punishment,
7 it's our view that the 364 days in jail would be
8 excessive under current conditions as they exist at the
9 jail, which is not the Court's fault, not the D.A.'s
10 fault, or Mr. Duggal, but it's -- it's a relatively
11 untenable resolution to this case, not simply for that
12 reason, but for the other reasons of his age and
13 completely clean record that he has here.
14 So clearly, he's a suitable person for
15 probation when you look. It would be -- I'm just
16 talking about pure suitability versus deserving, two
17 different questions. But we do get over the suitability
18 hurdle rather quickly by looking at it. The question
19 is, is whether he should be placed on probation, and the
20 purpose of probation would be to provide supervision of
21 him to ensure that he complies basically with good
22 conduct because there isn't any drug or alcohol problem
23 here or anything like that.
24 THE COURT: Right.
25 MR. LOCKIE: And that -- that, nevertheless,

1 would provide an opportunity for Mr. Duggal,
2 understanding he's on probation, which constitutes and
3 reinforces a requirement of good conduct, I believe,
4 anyway to someone who has to interact with law
5 enforcement.
6 It means different things to different
7 people. Some defendants could come in on a gross
8 misdemeanor, probation, that's not a big deal.
9 THE COURT: Right.
10 MR. LOCKIE: For him, any contact with
11 authorities in the system is exceptionally meaningful.
12 THE COURT: Uh-huh.
13 MR. LOCKIE: Or the Court could not give
14 probation and just send him straight away to jail.
15 THE COURT: Uh-huh.
16 MR. LOCKIE: I've already discussed that. So
17 there's plenty in the mix here for the Court to balance
18 the interest of justice, plenty of tools available in
19 the chest that serve the interest of the community in
20 terms of protecting the community, but also serve the
21 interests of the community in keeping a person, you
22 know, not incarcerated for an enormous amount of time
23 and thereby, essentially, depriving the community of
24 that resource.
25 Mr. Duggal knows and appreciates what

1 happened here was wrong. That's where I prefaced
2 everything with the 59 years of age perhaps cutting in a
3 couple different directions, a clean record, but then we
4 got an age disparity of 40 years here.
5 We're not talking about an underage female in
6 this case, but there is a disparate position of both age
7 and relationship meaning occurring within the context of
8 employment. And so we understand that part. But to be
9 clear, this isn't, you know, a child sex case --
10 THE COURT: Right. Right.
11 MR. LOCKIE: -- which is distinguishable.
12 So, Your Honor, certainly, we don't concur
13 with the District Attorney with regards to 364 days in
14 jail and urge the Court to fashion a remedy in this case
15 that balances the interests of justice and that if there
16 is any jail time imposed within the mix of whatever the
17 Court decides, that he be allowed to do so
18 intermittently.
19 THE COURT: Okay. Does your client still own
20 this particular business establishment?
21 MR. LOCKIE: Yeah, he owns this one and
22 several others.
23 THE COURT: Several other businesses, okay.
24 Mr. Duggal, you do have an opportunity to
25 make a statement to the Court prior to sentencing.

1 You're not required to make a statement, but this is
2 your opportunity to do so if you would like to say
3 something to the Court. Is there anything you would
4 like to tell me before you're sentenced?
5 THE DEFENDANT: I rely on my attorney.
6 THE COURT: Okay. I'll just start this by
7 saying I did see the reference in the presentence
8 investigation report, which I'm sure comes from --
9 probably from the discovery materials of some variety
10 about the possibility that other employees had
11 experienced similar sexual interactions with Mr. Duggal
12 or that there might be some suggestion that he did this
13 with other people.
14 I'm really not putting much weight, if any,
15 on any such comments. Obviously, what's of concern here
16 is what -- what's alleged just in the facts of this
17 case. I think those are -- are disturbing enough,
18 right? And what concerns me in this case is what
19 appears to be sort of predatory type behavior, I guess
20 we could describe it as, right?
21 Someone is singling out a person, acquiring
22 alcohol attempting to, I guess, reduce the inhibitions
23 of a person, putting a person in sort of an untenable
24 position. A person, obviously, expresses their
25 displeasure or lack of acceptance of these things on

1 multiple occasions, according to the synopsis, and then,
2 of course, there are attempts made to sort of cover it
3 up by telling the -- the victim not to report it to
4 people such as the mother of the victim, etcetera.
5 I think this is a very serious offense,
6 and, obviously, I understand, as well, that he's nearly
7 60 years old and hasn't shown any propensity for
8 involvement with the criminal justice system up to this
9 point, but that being said, the Court also recognizes
10 that sometimes, even in light of not having any
11 particular criminal history, that the offense, in and of
12 itself, the serious nature of the offense itself, lends
13 itself to serious penalties being imposed, even in the
14 lack of the prior criminal history. And I think that's
15 what we have in this particular case.
16 So in this particular matter, the Court will
17 order that a Judgment of Conviction be entered
18 adjudicating the Defendant guilty of one count of
19 conspiracy to commit battery, a gross misdemeanor. The
20 Defendant is ordered to pay the various fees outlined in
21 the presentence investigation report. Those are noted
22 in the middle of page 6; $25 administrative assessment,
23 $3 DNA administrative assessment, $150 DNA testing fee.
24 He's also ordered to pay a $2,000 fine as
25 well in this matter. He's also required to submit to a

1 testing of his genetic markers as well. I don't believe
2 that he has done that as of this moment.
3 I'm going to order -- I'm going to follow the
4 State's recommendation and order a sentence of 364 days
5 in the Elko County Jail. The request for probation is
6 denied, and I'm going to have him remanded into custody
7 to begin serving that jail sentence.
8 Anything else at this time before we adjourn?
9 MR. MCCORMICK: No, Your Honor.
10 MR. LOCKIE: Nothing further, Your Honor.
11 THE COURT: Okay.
12 (Whereupon, proceeding concluded)
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1 C E R T I F I C A T I O N

2

3 I, JULIE ROWAN, do hereby certify:

4 That on December 10, 2021, a sentencing
5 hearing was held in the within-entitled matter in the
6 Fourth Judicial District Court, Department 3, within the
7 State of Nevada, in and for the County of Elko;

8 That said hearing was recorded on a
9 recording system, and said recording was delivered to me
10 for transcription;

11 That the foregoing transcript, consisting of
12 pages 1 through 18, is a full, true, and correct
13 transcript of said recording performed to the best of my
14 ability.

15 Dated this 6th day of January, 2022.

16

17 Julie Rowan

18

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$150 [1] - 16:23
$2,000 [3] - 4:9, 6:6, 16:24
$200 [1] - 6:6
$25 [1] - 16:22
$5,000 [1] - 11:18

1

1 [1] - 18:12
10 [3] - 1:20, 3:1, 18:4
10:05 [2] - 3:3, 3:4
10th [1] - 3:4
11th [1] - 8:17
15th [1] - 3:18
18 [1] - 18:12
19-year-old [1] - 5:23

2

2021 [7] - 1:20, 3:1, 3:4, 3:9, 3:19, 8:18, 18:4
2022 [1] - 18:15
2nd [1] - 2:4

3

3 [3] - 1:12, 16:23, 18:6
364 [5] - 4:8, 6:5, 12:7, 14:13, 17:4

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40 [1] - 14:4

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540 [1] - 2:4
59 [4] - 9:22, 9:23, 10:6, 14:2
59-year-old [2] - 10:1, 10:19

6

6 [1] - 16:22
60 [1] - 16:7
6th [1] - 18:15

7

745-2327 [1] - 1:24
775 [1] - 1:24

8

89801 [2] - 2:4, 2:7
8th [1] - 3:9

9

919 [1] - 2:6

A

a.m [1] - 3:4
ability [1] - 18:14
absolutely [2] - 6:3, 6:13
accept [1] - 4:18
acceptance [1] - 15:25
according [1] - 16:1
account [1] - 4:19
accurate [1] - 9:12
acknowledge [1] - 8:23
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