

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 Electronically Filed
4 Nov 02 2021 09:58 p.m.
5 Elizabeth A. Brown
6 Clerk of Supreme Court

7 MICHAEL ALLEN MACK,

CASE NO.: 83165

8 Appellant,

9 vs.

10 THE STATE OF NEVADA,

11 Respondent,

12 **ON APPEAL FROM THE FIFTH JUDICIAL DISTRICT COURT IN AND**
13 **FOR THE COUNTY OF NYE, THE HONORABLE KIMBERLY WANKER,**

14 **PRESIDING**

15 **APPELLANT'S APPENDIX ON APPEAL**

16 **VOLUME I**

17
18 David H. Neely III, Esq.
19 NV. Bar No. 3891
20 3520 E. Tropicana Ave., Suite D-1
21 Las Vegas, Nevada 89121
22 Attorney for Appellant

 Aaron Ford, Esq.
 Nevada Attorney General
 100 North Carson Street
 Carson City, Nevada 89701-4717

23 Chris Arabia, Esq.
24 Nye County District Attorney
 P.O. Box 39
 Pahrump, Nevada 89041
 Attorneys for Respondent

1 Appellant, **MICHAEL ALLEN MACK**, by and through his attorney of
2 record, David H. Neely III, Esq., hereby files the following as his Appendix on
3 Appeal Volume One, containing the documents deemed pertinent to the issues on
4 appeal.
5

6 Appellant reserves the right to file supplemental appendixes as required in
7 Opening, Answering or Reply Briefs.
8

9 I hereby certify that I have read this Appendix on Appeal Volume One and
10 to the best of my knowledge, information, and belief, it is not frivolous or
11 interposed for any improper purpose such as to harass or to cause unnecessary
12 delay or needless increase in the cost of litigation. I further certify that this
13 Appendix complies with all applicable Nevada Rules of Appellate Procedure, in
14 particular NRAP 28(e), which requires every assertion in the Brief regarding
15 matters in the record be supported by a reference to the page and volume number
16 of this appendix where the matter is relied on is to be found. I understand that I
17 may be subject to sanctions in the event that the accompanying Brief is not in
18 conformity with the requirements of the Nevada Rules of Appellate Procedure.
19

20 VERIFICATION

21 1. I hereby certify that this Appellant's Appendix on Appeal Volume
22 One complies with the formatting requirements of NRAP 32(a)(6) because:
23
24

1 This Appellant's Appendix on Appeal Volume One has been prepared in a
2 proportionally spaced typeface using Microsoft Word 2016 in Times New Roman
3 14.

4 2. I further certify that the Appendix on Appeal Volume One complies
5 with the page limitation of NRAP 32(a)(7).
6

7 **SUBMITTED** this 2nd day of November, 2021.

8
9
10 

11 DAVID H. NEELY III
12 NV. Bar No. 003891
13 3520 E. Tropicana Ave., Suite D-1
14 Las Vegas, Nevada 89121
15 Attorney for Appellant
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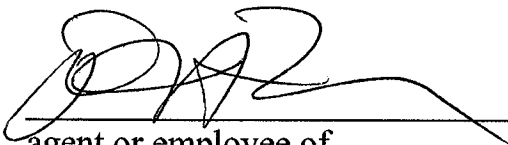
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1 **CERTIFICATE OF SERVICE BY MAIL**

2 **I HEREBY CERTIFY** that I am an agent or employee of the above
3 attorney, and that on the 2nd day of November, 2021, I served the above and
4 foregoing **APPELLANT'S INDEX TO APPENDIX ON APPEAL VOLUME**
5 **ONE** by depositing a copy in the United States mails, postage prepaid, addressed
6 to the f or parties at their last known addresses as indicated below:
7

8
9 Chris Arabia, Esq.
10 Nye County District Attorney
11 P. O. Box 39
Pahrump, NV 89041

12 Aaron Ford, Esq.
13 Nevada Attorney General
100 North Carson Street
14 Carson City, Nevada 89701-4717
Attorneys for Respondents

15
16 
17 agent or employee of
DAVID H. NEELY, III, ESQ.
18
19
20
21
22
23
24

BY A. MALONE

2013 APR 15 PM 3:21

ARR: _____

RECEIVED & FILED

Case No. 13CR01437Department B

LEA Case No(s). 13NY-1005

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP
COUNTY OF NYE, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

CRIMINAL COMPLAINT

MICHAEL ALLEN MACK,
GEORGE QUIROGA and
ARTHUR ALBERT GATZKE,

Defendants. /

The undersigned, BRIAN T. KUNZI, District Attorney, County of Nye, State of Nevada, by and through his deputy, Ross E. Armstrong, complains and charges the above named defendants, MICHAEL ALLEN MACK, GEORGE QUIROGA, and ARTHUR ALBERT GATZKE, with having committed the following offenses within said County of Nye, State of Nevada:

COUNT I

SEXUAL ASSAULT, in violation of NRS 200.366, A CATEGORY 'A' FELONY, committed in the following manner, to wit: That ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND APRIL 9, 2013, in Pahrump Township, Nye County, Nevada, said Defendant MICHAEL ALLEN MACK did willfully and unlawfully subject another person, to wit: NCSO pseudonym "COURTNEY", to sexual penetration, against the victim's will, or under conditions in which said Defendant knew or should have known that the victim was mentally or physically incapable of resisting or understanding the nature of her conduct, by penetrating the victim's vagina.

COUNT II

SEXUAL ASSAULT, in violation of NRS 200.366, A CATEGORY 'A' FELONY, committed in the following manner, to wit: That **ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND APRIL 9, 2013**, in Pahrump Township, Nye County, Nevada, said Defendant **MICHAEL ALLEN MACK** did willfully and unlawfully subject another person, to wit: NCSO pseudonym "**COURTNEY**", to sexual penetration, against the victim's will, or under conditions in which said Defendant knew or should have known that the victim was mentally or physically incapable of resisting or understanding the nature of her conduct, by having the victim perform fellatio;

COUNT III

PREVENTING OR DISSUADING VICTIM FROM REPORTING CRIME, COMMENCING PROSECUTION OR CAUSING ARREST, in violation of NRS 199.305, A CATEGORY 'D' FELONY, committed in the following manner, to wit: That **ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND APRIL 9, 2013**, in Pahrump Township, Nye County, Nevada, said Defendant **MICHAEL ALLEN MACK** did willfully and unlawfully intimidate or threaten another person, prevent or dissuade a victim of a crime or a person acting on behalf of a victim or witness from reporting a crime or possible crime to a peace officer, prosecuting attorney or from commencing a criminal prosecution or from causing the arrest of a person in connection with a crime or hindered or delayed any such victim, agent or witness in his effort to carry out any of those actions, by threatening NCSO pseudonym "**COURTNEY**" with negative action if she reported the crimes he committed against her;

COUNT IV

UNLAWFUL CONTACT WITH PERSON WITH MENTAL ILLNESS, in violation of NRS 207.260, A GROSS MISDEMEANOR, committed in the following manner, to wit: That **ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND APRIL 9, 2013**, in Pahrump Township, Nye County, Nevada, said Defendant **MICHAEL ALLEN MACK** did willfully and unlawfully have contact with a person with mental illness, to wit: NCSO pseudonym "**COURTNEY**", by physically and sexually abusing her and thus engaging in a course of conduct which would cause a reasonable person with mental illness of like mental state to feel terrorized, frightened, intimidated, or harassed, and did cause said person to feel terrorized, frightened, intimidated or harassed;

///

COUNT V

ABUSE OF VULNERABLE PERSON, in violation of **NRS 200.5099**,
A GROSS MISDEMEANOR, committed in the following manner, to
wit: That **ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012**
AND APRIL 9, 2013, in Pahrump Township, Nye County, Nevada,
said Defendant **MICHAEL ALLEN MACK**, did willfully, maliciously and
intentionally strike NCSO pseudonym "**COURTNEY**", a vulnerable
person, with a belt;

COUNT VI

SEXUAL ASSAULT, in violation of **NRS 200.366, A CATEGORY 'A'**
FELONY, committed in the following manner, to wit: That **ON OR**
ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND APRIL 9, 2013,
in Pahrump Township, Nye County, Nevada, said Defendant
GEORGE QUIROGA did willfully and unlawfully subject another
person, to wit: NCSO pseudonym "**COURTNEY**", to sexual
penetration, against the victim's will, or under conditions in which said
Defendant knew or should have known that the victim was mentally or
physically incapable of resisting or understanding the nature of his
conduct, by penetrating her vagina with his penis and/or fingers;

COUNT VII

UNLAWFUL CONTACT WITH PERSON WITH MENTAL ILLNESS,
in violation of **NRS 207.260, A GROSS MISDEMEANOR**, committed
in the following manner, to wit: That **ON OR ABOUT OR BETWEEN**
SEPTEMBER 10, 2012 AND APRIL 9, 2013, in Pahrump Township,
Nye County, Nevada, said Defendant **GEORGE QUIROGA** did
willfully and unlawfully have contact with a person with mental illness,
to wit: NCSO pseudonym "**COURTNEY**", by physically and sexually
abusing her and thus engaging in a course of conduct which would
cause a reasonable person with mental illness of like mental state to
feel terrorized, frightened, intimidated, or harassed, and did cause
said person to feel terrorized, frightened, intimidated or harassed;

COUNT VIII

ABUSE OF VULNERABLE PERSON, in violation of **NRS 200.5099**,
A GROSS MISDEMEANOR, committed in the following manner, to
wit: That **ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012**
AND APRIL 9, 2013, in Pahrump Township, Nye County, Nevada,
said Defendant **GEORGE QUIROGA** did willfully, maliciously and
intentionally strike NCSO pseudonym "**COURTNEY**", a vulnerable
person, with a belt;

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

COUNT IX

SEXUAL ASSAULT, in violation of NRS 200.366, A CATEGORY 'A' FELONY, committed in the following manner, to wit: That ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND APRIL 9, 2013, in Pahrump Township, Nye County, Nevada, said Defendant **ARTHUR ALBERT GATZKE** did willfully and unlawfully subject another person, to wit: NCSO pseudonym "**COURTNEY**", to sexual penetration, against the victim's will, or under conditions in which said Defendant knew or should have known that the victim was mentally or physically incapable of resisting or understanding the nature of her conduct, by penetrating her vagina with his penis;


COUNT X

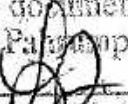
SEXUAL ASSAULT, in violation of NRS 200.366, A CATEGORY 'A' FELONY, committed in the following manner, to wit: That ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND APRIL 9, 2013, in Pahrump Township, Nye County, Nevada, said Defendant **ARTHUR ALBERT GATZKE** did willfully and unlawfully subject another person, to wit: NCSO pseudonym "**COURTNEY**", to sexual penetration, against the victim's will, or under conditions in which said Defendant knew or should have known that the victim was mentally or physically incapable of resisting or understanding the nature of her conduct, by having her perform fellatio on him;

All of which is contrary to the form, force and effect of the statutes in such cases made and provided, and against the peace and dignity of the State of Nevada. Said complainant makes this declaration under penalty of perjury.

DATED this 15th day of April, 2013.

BRIAN T. KUNZI
NYE COUNTY DISTRICT ATTORNEY

By 
ROSS E. ARMSTRONG
Deputy District Attorney

Certified copy
Certified copy of the original
document(s) on file in
Pahrump Justice Court
By:  Date: 8/13/13

13pc01437

CASE NO.:

Connie Foss

DEPT B

2013 APR 15 AM 7:54

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP
COUNTY OF NYE, STATE OF NEVADA

RECEIVED & FILED

THE STATE OF NEVADA,

Plaintiff,

MEDIA REQUEST ALLOWING
ELECTRONIC EQUIPMENT
IN THE COURTROOM

v.

Michael Mack

Arthur Albert Gatzke, Defendant/

Jenny Manning

of

KPVT

hereby

requests permission to Video the proceedings on the above-entitled
case, in the Courtroom, Judge _____ presiding, on the 16 day of
April, 20 13, at the hour of 8AM.

I certify that I am familiar with the Supreme Court Rules 229-246 (inclusive) pertaining to
Cameras and Electronic Media Coverage in the Courts. I also understand that this request must be
submitted to the Court at least twenty-four (24) hours before the proceedings commence unless good
cause can be shown.

It is further understood that any pooling arrangements necessitated among the media shall be
the sole responsibility of the media and must be arranged prior to coverage without calling upon the
Court to mediate any disputes.

DATED this 11th day of April, 20 13

Media Representative

250 Nopha Vista

Pahrump NV 89060

Address/Phone Number

775-751-1600

(s) on file in

Justice Court

Date: 3/13/13

0005

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP
COUNTY OF NYE, STATE OF NEVADA

BY J. Demingo

2013 APR 25 AM 7:49

THE STATE OF NEVADA,

Plaintiff

VS.

RECEIVED & FILED
**AFFIDAVIT AND APPLICATION FOR
APPOINTMENT OF COUNSEL**

MICHAEL A. MACK

Defendant.

MICHAEL A. MACK, affirms under penalty of perjury, deposes and says:

1. That he/she is indigent, charged with a crime in the Justice Court of Pahrump Township, to wit:
SEE ATTACHED HERETO

2. That he/she is without means of employing an attorney.
3. That he/she has no money with which to employ counsel, that he/she has no property, real or personal, which could be sold or encumbered to provide funds for counsel; that he/she is unable to borrow funds with which to employ counsel.

WHEREFORE, affiant requests the above-entitled Court to appoint counsel to represent him/her at the expense of Nye County, State of Nevada.

Address 2620 S MT CHARLESTON DR E
City/State/Zip PAHRUMP, NEVADA
Phone # 775-751-2150
Cell 915-820-2050
Defendant Signature Michael Mack

ORDER APPOINTING COUNSEL

The petitioner above-named, having filed an application with the Court, requesting the appointment of an attorney to represent him/her and having filed an affidavit that he/she is without means of employing an attorney and having indicated the facts concerning his/her financial status and good cause appearing therefore,

IT IS HEREBY ORDERED that THOMAS GIBSON, ESQ. be appointed to represent the Defendant subject to the terms and conditions as set forth in "Procedure for Appointment of Attorney for Indigent Defendant", which rules are hereby incorporated by reference as if set forth in full, and such other rules and regulations which the Court, from time to time may promulgate pursuant to NRS 171.188 to determine the indigent status of the petitioner.

IT IS FURTHER ORDERED that Defendant appear in Court on May 8, 2013 AT 1:30PM
IN DEPARTMENT B for preliminary hearing

DATED this 16th day of April, 2013

Gus Sullivan
Gus Sullivan, Justice of the Peace
Acting Magistrate for Pahrump Justice Court

120806

dge: JASPERSON, KENT

Case No. 13 CR 01437 A
 Ticket No. 13NY-1005
 CTN:

ATE OF NEVADA VS

By:

CK, MICHAEL A DFNDT
 20 S MT CHARLESTON DR E
 HRUMP, NV 89048

By: GIBSON, THOMAS J
 1601 E BASIN AVE
 SUITE 101
 PAHRUMP, NV 89060

2 TROON CT
 NTA TERESA, NM 88008
 b: 07/02/1943
 c: 2003590896

Sex: M
 Sid:

ste#:
 ke:
 ar: Accident: No
 pe:
 nue:
 cation: NV

E COUNTY DISTRICT
 TORNEYS OFFICE

CPLNT

Bond:
 Type:

Set:
 Posted:

arges:

.1 200.366 SEXUAL ASSAULT
 Offense Dt: 09/10/2012 Cvr:
 Arrest Dt: 04/10/2013
 Comments:

.2 200.366 SEXUAL ASSAULT
 Offense Dt: 09/10/2012 Cvr:
 Arrest Dt:
 Comments:

.3 NRS 199.305 INTIMIDATING WITNESS/VICTIM FROM
 REPORTING CRIME
 Offense Dt: 09/10/2012 Cvr:
 Arrest Dt:
 Comments:

.4 207.260 UNLAWFUL CONTACT WITH PERSON WITH
 MENTAL ILLNESS
 Offense Dt: 09/10/2012 Cvr:
 Arrest Dt:
 Comments:

.5 NRS ELDERLY ABUSE
 200.5099(1)
 Offense Dt: 09/10/2012 Cvr:
 Arrest Dt:
 Comments:

ntencing:

Filed	Action	Operator	Fine/Cost	Due
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Totals By:

0.00

*** End of Report ***

PAHRUMP JUSTICE COURT

CASE NO.: 13CFC014137 ACCCB

BY F. DENISON

DEPT B

2013 APR 30 AM 11:58

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP
COUNTY OF NYE, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

MEDIA REQUEST ALLOWING
ELECTRONIC EQUIPMENT
IN THE COURTROOMv. George Quiroga
Arthur Gatzke
Michael Muck Defendant/

Jenny Manning

of

KPVT

hereby

requests permission to Video the proceedings on the above-entitled
case, in the Courtroom, Judge Tasperson presiding, on the 8th day of
MAY 2013, at the hour of 1:30

I certify that I am familiar with the Supreme Court Rules 229-246 (inclusive) pertaining to
Cameras and Electronic Media Coverage in the Courts. I also understand that this request must be
submitted to the Court at least twenty-four (24) hours before the proceedings commence unless good
cause can be shown.

It is further understood that any pooling arrangements necessitated among the media shall be
the sole responsibility of the media and must be arranged prior to coverage without calling upon the
Court to mediate any disputes.

DATED this 30 day of April 20 13

Media Representative

250 Nopha Vista
Pahrump NV 89060
Address/Phone Number

Certified copy
Certified copy of the original
document(s) on file in
Pahrump Justice Court
By: [Signature] Date: 5/13/13

0008

CASE NO. 13 CR 01437

FILED

BY *A. Shoults*

DEPT NO. B

2013 AUG -1 AM 9:10

2013 AUG -2 A 9:38

RECEIVED & FILED

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP
COUNTY OF NYE, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL ALLEN MACK,
GEORGE QUIROGA and
ARTHUR ALBERT GATZKE,

Defendants.

TRANSCRIPT OF PROCEEDINGS

PRELIMINARY HEARING

BEFORE KENT JASPERSON, JUSTICE OF THE PEACE
1520 EAST BASIN AVENUE, PAHRUMP, NEVADA 89060

ON WEDNESDAY, MAY 8, 2013

AT 2:10 P.M.

APPEARANCES:

For the State:

Ross Armstrong, Esq.

Nye County Deputy District Attorney

For Defendant Mack: Thomas Gibson, Esq.

Defendant Quiroga: Harry R. Gensler, Esq.

Defendant Gatzke: Jason L. Earnest, Esq. (Not Present)

Reported by: Deborah Ann Hines, CCR #473, RPR

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E X H I B I T SSTATE'S EXHIBITSOFFEREDADMITTED

(None)

1 WEDNESDAY, MAY 8, 2013

2 ---oOo---

3 THE COURT: Michael Mack, George Quiroga,
4 case number 13 CR 1437. Is the State ready to
5 proceed?

6 MR. ARMSTRONG: The State is ready, your
7 Honor.

8 THE COURT: How many witnesses for the
9 State?

10 MR. ARMSTRONG: Four potential witnesses,
11 your Honor.

12 THE COURT: All right. Any motions?

13 MR. GIBSON: Exclusionary rule please.

14 MR. GENSLER: Join, your Honor.

15 THE COURT: All right. The court would
16 invoke the exclusionary rule and request that anyone
17 who is subpoenaed here to testify today to wait in
18 the outside hallway until you're called to testify
19 and not discuss your testimony with anyone else.

20 MR. ARMSTRONG: Your Honor, just two quick
21 things for the State. One is that I know that there
22 is media here. I'd ask that when the victim is
23 testifying, any cameras be below the bar to protect
24 her privacy.

25 And that in any media accounts she's

1 referred to as the pseudonym "Courtney," which is
2 what she's been assigned. She will say her true name
3 on the stand, but just to remind the media to please
4 use the pseudonym "Courtney."

5 THE COURT: All right.

6 Does the media understand?

7 THE MEDIA: (Nods head.)

8 THE COURT: State may call their first
9 witness.

10 MR. ARMSTRONG: Tammy Alexander.

11 Thereupon--

12 TAMYRA ALEXANDER

13 was called as a witness by the State, and having been
14 first duly sworn, testified as follows:

15 THE COURT: Mr. Armstrong, you may begin.

16 DIRECT EXAMINATION

17 BY MR. ARMSTRONG:

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

20 A. Tamyra Alexander.

21 Q. Can you spell that for me?

22 A. T-a-m-y-r-a.

23 Q. And your last name, how do you spell your
24 last name?

25 A. Alexander, A-l-e-x-a-n-d-e-r.

1 Q. How old are you?

2 A. 45.

3 Q. What is your birth date?

4 A. 9-10-67.

5 Q. And is it okay if I call you Tammy?

6 A. Yes, it is.

7 Q. Tammy, do you understand the difference
8 between the truth and a lie?

9 A. Yes, I do.

10 Q. If I were to say I was wearing a pink suit,
11 is that the truth or a lie?

12 A. That's a lie.

13 Q. Okay. And if I were to say that the judge
14 was wearing a black robe, is that the truth or a lie?

15 A. That's true.

16 Q. You promise today to say only the truth?

17 A. Yes, sir.

18 Q. How far along in school did you get?

19 A. To the eighth grade.

20 Q. Do you know someone by the name of Michael
21 Mack?

22 A. Yes, I do, and he's right here (indicating).

23 Q. Okay. How do you know him?

24 A. By my half brother.

25 Q. How long have you known him?

1 A. All my life.

2 Q. Has your brother Michael ever done anything
3 that you didn't like?

4 MR. GIBSON: Objection, be more specific.
5 Is he a Cubs fan?

6 MR. ARMSTRONG: I'm just trying to give her
7 an opportunity to tell her story.

8 THE COURT: Right.

9 MR. GIBSON: Well, the question is too
10 broad. It's too broad. It also calls for a
11 narrative.

12 THE COURT: I'm going to overrule the
13 objection. I'll let him ask the question and we'll
14 see what happens.

15 BY MR. ARMSTRONG:

16 Q. Tammy, has your brother Michael ever done
17 anything you did not like?

18 A. Yes.

19 Q. What was that?

20 A. What was that? Him putting his penis in my
21 pussy.

22 Q. Okay.

23 A. And in my mouth.

24 Q. I want to talk about that in a little more
25 detail, okay?

1 A. Okay.

2 Q. Do you remember -- has he done that once or
3 more than once?

4 A. More than once.

5 Q. Do you remember the first time?

6 A. Yes, I do. Back in El Paso, Texas when my
7 mother and father was alive.

8 Q. Okay. And has it ever happened here in
9 Pahrump?

10 A. Yes, it has.

11 Q. I believe you said that you're 45 now?

12 A. Yes, sir.

13 Q. And that your birthday is September 10th?

14 A. Yes, sir.

15 Q. Has it happened since you turned 45?

16 A. Yes, it has.

17 Q. Where were you when this happened?

18 A. In his bedroom.

19 Q. And do you know what street that's on?

20 A. No, I don't.

21 Q. Okay. But that's here in Pahrump?

22 A. Yes, it is.

23 Q. Do you know if he lives with anyone else?

24 A. No, he does not. Just with me.

25 Q. Did you have separate bedrooms then?

1 A. Yes, we did.

2 Q. How would it start?

3 A. It would start by me not saying anything to
4 anybody.

5 Q. Okay. And the times that he would, using
6 your words, stick his penis in your pussy --

7 A. Yes.

8 Q. -- that would be in his bedroom, what would
9 he be wearing?

10 A. He'd be wearing black shorts.

11 Q. And by shorts do you mean underwear or
12 running shorts or some other type of short?

13 A. Underwear shorts.

14 Q. Would he have anything on the top half of
15 his body?

16 A. Yes, he would. He would have a white
17 T-shirt on.

18 Q. What would you be wearing?

19 A. I'd be wearing my pink and white nightgown
20 with the flowers on it.

21 Q. And how would it -- how would you both get
22 into his bedroom for that to happen?

23 A. He would call me in there.

24 Q. What would happen next?

25 A. He would ask me to massage his shoulders and

1 back for him.

2 Q. Okay. And would you?

3 A. Yes, I would.

4 Q. And after that happened, what would you do?

5 A. He would ask me to kneel over on the bed and
6 for me to suck it.

7 Q. Okay. And what do you mean by "it" when you
8 say "suck it"?

9 A. His penis.

10 Q. And would you do that after he told you to?

11 A. Yes, I would.

12 Q. And I just want to be clear, would it go
13 inside your mouth or stay outside your mouth?

14 A. In my mouth.

15 Q. And when he would stick his penis in your
16 mouth, what would he do?

17 A. He would cum.

18 Q. And by "cum" do you mean something coming
19 out of his penis?

20 A. Yes, his cum.

21 Q. What would you do next?

22 A. Then I would leave his room and go to my
23 room.

24 Q. And that sex, his penis in your mouth, has
25 that happened since you've been 45?

1 A. Yes.

2 Q. And how many times has it happened since you
3 were 45?

4 A. A lot of times.

5 Q. "A lot" can mean different things to
6 different people.

7 A. Several.

8 Q. Several, okay. More than ten or less than
9 ten?

10 A. More than ten.

11 Q. You also said that his penis would go into
12 your pussy?

13 A. Yes, it would.

14 Q. Would that also happen in his bedroom?

15 A. Yes.

16 Q. And where would you be in the bedroom when
17 that would happen?

18 A. In his bed.

19 Q. And how would you be positioned? Who was on
20 top of who?

21 A. He would be on top of me.

22 Q. And when it was inside your pussy, would it
23 just go in and stay there or move around or something
24 else?

25 A. It would move around.

1 Q. How would it move around?

2 A. When he would be moving on top of me.

3 Q. And that has happened since you've turned
4 45?

5 A. Yes, sir.

6 Q. Would he say anything to you during this
7 time?

8 A. That he loved me.

9 Q. How would it end?

10 A. With a kiss and a hug goodnight and that
11 would be it.

12 Q. Would you say anything to him?

13 A. No.

14 Q. Would you tell him to stop or anything like
15 that?

16 A. Yes, I would.

17 Q. What words would you use?

18 A. I would tell him to stop and he wouldn't.

19 Q. And how many times was it that he put his
20 penis into your pussy?

21 A. A lot of times. More than ten.

22 Q. Since you were 45?

23 A. Yes.

24 Q. And just to clarify, by pussy what part of
25 the body is that? Do you know the formal name for

1 that?

2 A. Yes, I do. Vagina.

3 Q. Okay. And you know the difference between
4 on top of and inside of?

5 A. Yes, I do.

6 Q. And which one was it with Michael?

7 A. Inside.

8 Q. Other than the penis in your vagina and the
9 penis in your mouth, was there any other type of
10 physical activity you did not like?

11 A. Yes. He used to beat me with the belt.

12 Q. Where would he beat you with a belt?

13 A. Either in my bedroom or in his bedroom.

14 Q. Would that be the house here in Pahrump?

15 A. Yes.

16 Q. And has that happened since you were 45?

17 A. Yes.

18 Q. Has that happened once or more than once?

19 A. More than once.

20 Q. Where on your body would he hit you with the
21 belt?

22 A. On my bare ass.

23 Q. What do you mean by "bare ass"?

24 A. With no clothes on.

25 Q. Do you know what part of the belt he would

1 hit you with?

2 A. Yes, I do. With either the strap or the
3 belt buckle.

4 Q. And in one session of him hitting you with
5 the belt, how many times would he hit you with that
6 belt?

7 A. Maybe two or three.

8 Q. Between the strap and the buckle, was there
9 one that hurt more than the other?

10 A. Yes.

11 Q. Which one was that?

12 A. The buckle.

13 Q. What belt would he use?

14 A. My belt with the flowers on it.

15 Q. Would that happen the same times that he
16 would have -- he would stick his penis in you or were
17 there other times?

18 A. Times where he would stick the penis in me.

19 Q. And would that be before he would put his
20 penis inside you or after?

21 A. Before.

22 Q. Did Michael ever tell you about what to say
23 about these activities?

24 MR. GIBSON: Objection, leading.

25 THE COURT: Sustained.

1 BY MR. ARMSTRONG:

2 Q. Would you ever talk about --

3 A. No.

4 Q. -- this stuff?

5 With Michael or anyone else?

6 A. No.

7 Q. Is there a reason why?

8 MR. GIBSON: Objection, speculation.

9 THE COURT: Overruled.

10 MR. GIBSON: Unless without -- foundation.

11 BY MR. ARMSTRONG:

12 Q. Is there a reason why --

13 THE COURT: A reason why she wouldn't talk
14 about it, that's what he's asking.

15 BY MR. ARMSTRONG:

16 Q. Is there a reason why you wouldn't talk
17 about it?

18 A. Yes, because Michael threatened me.

19 Q. How did he threaten you?

20 A. He told me -- told me if I ever told
21 anybody, anybody, that he'd beat me more with the
22 belt.

23 Q. Has he told you that since you turned 45?

24 A. Yes, sir.

25 Q. Where was he when he told you that?

1 A. In my house.

2 Q. Was there anyone in particular he told you
3 not to tell?

4 A. Yes. Everybody here in Pahrump.

5 Q. And how did Michael make you feel?

6 A. Not good.

7 Q. What do you mean by "not good"?

8 A. Uncomfortable.

9 Q. Did you like being with Michael or something
10 else?

11 A. Scared of him.

12 Q. And I think you already pointed to him, but
13 can you tell us something that he's wearing today?

14 A. Yes, I can. He's wearing an orange and
15 white jail outfit.

16 MR. ARMSTRONG: Will the record reflect the
17 in-court identification of Mr. Mack?

18 THE COURT: The record will reflect the
19 in-court identification of Mr. Mack.

20 BY MR. ARMSTRONG:

21 Q. Do you know someone by the name of George
22 Quiroga?

23 A. Yes, I do.

24 Q. How do you know him?

25 A. I've known him for ten years.

1 Q. And has there been anything that -- what do
2 you know him as? Do you have a name for him?

3 A. George.

4 Q. George. Is there anything that George did
5 that you didn't like?

6 A. Yes.

7 Q. What was that?

8 A. George used to hit me with a belt too.

9 Q. Okay. Where would he hit you with a belt?

10 A. On my bare ass.

11 Q. Where would you be when he did this?

12 A. In his bedroom.

13 Q. Was this the same belt that Michael used or
14 a different one?

15 A. The same one.

16 Q. What part of the belt would he hit you with?

17 A. The black part.

18 Q. And how many times would he hit you with
19 that in one session of?

20 A. Two or three.

21 Q. And do you know -- I believe you said it was
22 in his bedroom; is that correct?

23 A. Yes, sir.

24 Q. Do you know where his bedroom is?

25 A. Yes, I do.

1 Q. Where is it?

2 A. It's right around the corner from the front
3 door.

4 Q. Which front door?

5 A. His front door. In his apartment.

6 Q. Is his apartment in Pahrump or somewhere
7 else?

8 A. Here in Pahrump.

9 Q. Is it near anything that you know of?

10 A. Yes, it is. It's right near Evergreen.

11 Q. Is Evergreen a place or a street?

12 A. It's a place where -- Evergreen is a nursing
13 home.

14 Q. Do you recall what apartment he lives in?

15 A. Yes, I do. It's apartment five.

16 Q. Other than hitting you with the belt, is
17 there anything else George would do that you didn't
18 like?

19 A. Yes, he stuck his penis in my pussy.

20 Q. Okay. Where would he do that?

21 A. In his bedroom.

22 Q. The same bedroom where he would beat you
23 with the belt?

24 A. Yes.

25 Q. And has he done that since you've turned 45?

1 A. Yes, sir.

2 Q. How many times has he done that?

3 A. More than once.

4 Q. Would he put his penis anywhere else?

5 A. Yes. In my mouth.

6 Q. And would he put anything else in your pussy
7 or your mouth?

8 A. Yes. He put these instruments up my pussy.

9 Q. Can you describe what one of those might
10 look like?

11 A. They was silver instruments like a doctor
12 would use.

13 Q. And did he do that once or more than once?

14 A. More than once.

15 Q. And would that be in his same bedroom near
16 Evergreen?

17 A. Yes.

18 Q. Would you tell him anything when this would
19 happen?

20 A. I would tell him to stop and he wouldn't.

21 Q. Do you remember what exact words you used to
22 tell him to stop?

23 A. I'd say, Stop, stop, stop, and he would say
24 no.

25 Q. And would the times he hit you with the

1 belt, were those always the same times as him --

2 A. Yes.

3 MR. GENSLER: Same times as what?

4 BY MR. ARMSTRONG:

5 Q. I'm sorry. The belt would be the same times
6 as him sticking his --

7 A. Yes.

8 Q. -- penis or the instruments --

9 A. Yes.

10 Q. -- inside you?

11 A. Yes.

12 Q. Would he put any other part of his body
13 inside you?

14 A. No.

15 Q. And how many times would he stick his penis
16 in your pussy or mouth?

17 A. More than once.

18 Q. And how did George make you feel?

19 A. Uncomfortable.

20 Q. You said that you were scared of Michael.
21 Were you also scared of George?

22 A. Yes.

23 Q. And that man that did all those things to
24 you that you know as George, is he in the courtroom
25 today?

1 A. Yes, sir.

2 Q. Can you please point to him and say
3 something he's wearing?

4 A. He's right here wearing a blue jacket and
5 blue jeans and a dark blue shirt.

6 MR. ARMSTRONG: Okay. Would the record
7 reflect the in-court identification of George?

8 THE COURT: The record will reflect the
9 in-court identification of the other defendant,
10 George.

11 MR. ARMSTRONG: I'll pass the witness at
12 this time, your Honor.

13 THE COURT: Cross-examination, Mr. Gibson?

14 MR. GIBSON: Yes.

15 CROSS-EXAMINATION

16 BY MR. GIBSON:

17 Q. Tamyra, you went through the eighth grade?

18 A. Yes, sir.

19 Q. Where?

20 A. In Englewood, New Jersey.

21 Q. Englewood, New Jersey?

22 A. Yes, sir.

23 Q. And do you recall the address you lived at
24 at the time?

25 A. Yes, I do. 167 Ember Place.

1 Q. And do you remember your Zip code?

2 A. No, I don't.

3 Q. Do you remember the phone number you had
4 then?

5 MR. ARMSTRONG: Objection, your Honor,
6 relevance.

7 THE WITNESS: No.

8 THE COURT: Overruled.

9 BY MR. GIBSON:

10 Q. How long did you live in Englewood, New
11 Jersey?

12 A. For a long time.

13 Q. Do you have any idea how many years?

14 A. No, I don't.

15 Q. Do you have any other brothers or sisters?

16 A. I have five brothers.

17 Q. Five brothers, okay. And --

18 A. One brother died.

19 Q. When did he die?

20 A. Long time ago.

21 Q. And so you had four living brothers at the
22 time you were in eighth grade?

23 A. I had them all living when I was in eighth
24 grade.

25 Q. Did anyone ever touch you --

1 A. No.

2 Q. -- when you were in the eighth grade?

3 A. No.

4 Q. How about when you were in high school?

5 A. No.

6 Q. Excuse me, not high school. High school
7 age, I'm sorry.

8 A. No.

9 Q. Did you ever live in Texas?

10 A. No. I went to go visit my brother Michael
11 in El Paso, Texas but he touched me then. My mom and
12 dad were alive. And he told me not to say nothing.

13 Q. And that was -- that was in Texas you said?

14 A. Yes. In El Paso.

15 Q. And your mother and father were alive then?

16 A. Yes, sir.

17 Q. And what were you doing visiting your
18 brother in El Paso?

19 A. He asked us to come out to see his new
20 apartment -- his new house.

21 Q. How old were you?

22 A. I don't remember.

23 Q. I mean, do you have an estimation of how old
24 you were? How long is it past the time you were in
25 the eighth grade?

1 A. Long time ago.

2 Q. Okay. But your parents were --

3 A. They were alive and we went down to see his
4 new place. And Michael asked me -- I mean, he told
5 me to come into his bedroom. My mom and dad were
6 alive. And Michael called me in there, because I was
7 sleeping on the couch, and he called me into his room
8 and he wanted to have sex with me, and I told him no.

9 Q. You don't remember how old you were?

10 A. No, I don't.

11 Q. Okay. Where were your parents?

12 A. In a different bedroom sleeping. And he
13 told me not to -- he told me not to say nothing.

14 Q. Okay. Now was that the first time you ever
15 had sexual intercourse?

16 A. Yes.

17 Q. Did you ever get married?

18 A. Yes, I've been married four times.

19 Q. Okay. How old were you the first time you
20 got married?

21 A. I was 21.

22 Q. And where did that marriage take place?

23 A. In Las Vegas. Long time ago.

24 Q. What was your husband's name?

25 A. Johnny Madrid.

1 Q. Johnny Madrid?

2 A. Yes.

3 Q. How long were you married to Johnny Madrid?

4 A. Not very long. It was a short marriage
5 because he hurt me.

6 Q. And how did he hurt you?

7 A. How?

8 Q. Yes.

9 A. Very simply. He threw me from the second
10 story apartment all the way down a flight of stairs
11 and I divorced him.

12 Q. Was he ever prosecuted for that?

13 A. No, he was not.

14 MR. ARMSTRONG: Objection, your Honor,
15 relevance. We're going way off.

16 MR. GIBSON: Well, actually, Judge, we're
17 testing the ability of this -- this witness is
18 alleged to have the mental state of a child. And the
19 acts and the things that are happening goes to show,
20 first of all, her ability to recall and her voracity,
21 because we're going to be looking into all these
22 things so it is important that we be able to explore
23 these areas.

24 THE COURT: Well, they're way off of direct
25 examination by the State. And my understanding is

1 cross-examination should be restricted to whatever
2 was done on direct examination.

3 MR. GIBSON: Except for the fact --

4 THE COURT: Not allowed to venture out into
5 unknown territory for exploratory purposes.

6 MR. GIBSON: Well, I'm exploring her ability
7 to -- it's alleged again that she's mentally
8 challenged, and I want to find out how mentally
9 challenged by some of the questions asking about her
10 background and past. She's been married four times.
11 Perhaps she's not as mentally challenged as some
12 might like to believe.

13 MR. ARMSTRONG: Your Honor, as far as the
14 State does agree with you that it's way far off the
15 direct examination. In addition, unless the defense
16 plans to, you know, bring in something to impeach her
17 at this point, we're just kind of asking her
18 questions to test her.

19 I think given the limited nature of the
20 preliminary hearing, there are other questions that
21 can be asked to test her memory and her voracity, let
22 alone she may not have any personal knowledge of how
23 he was prosecuted or not for those. The State does.

24 THE COURT: Right.

25 MR. GIBSON: Is the court -- at this time

1 then has the court determined that she's competent to
2 testify?

3 THE COURT: I would say that she's competent
4 to testify, but a child has a memory.

5 MR. GIBSON: Understood but...

6 THE COURT: And I don't believe that you're,
7 no harm intended, but I don't believe you're of a
8 medical background or degree to be able to say
9 whether or not her mental capacity is based on the
10 questions you're asking her.

11 MR. GIBSON: But the questions I ask her
12 would be posed or posited to a medical expert or a
13 mental expert later, and that's why we're making a
14 record here so they can look at that, because I'm not
15 sure if we can, unless it's by a court order, force
16 her to go be examined.

17 THE COURT: I'm going to sustain the
18 objection and ask you to confine your questions more
19 to the line of the direct examination that was done
20 by the State.

21 BY MR. GIBSON:

22 Q. You don't remember how many times you had
23 sex with your brother; is that correct?

24 A. That's right.

25 Q. When I say "your brother," referring to the

1 defendant here to my left, Michael?

2 A. Uh-huh.

3 Q. Is that a yes?

4 A. Yes.

5 Q. So you don't remember?

6 A. I do remember but he told me not to say
7 nothing.

8 Q. Well, I'm telling you to say something. How
9 many was it? How many times exactly, to the best of
10 your ability?

11 A. A lot of times back in El Paso and here.

12 Q. So you don't have a number for us?

13 A. No, I don't.

14 Q. And you don't have a date when --

15 A. No, I don't.

16 Q. -- these things happened?

17 Or any dates?

18 A. No.

19 Q. You did say that it happened after you
20 turned 45; is that fair to say?

21 A. That's correct.

22 Q. And that would have been, let's see, 9-10 of
23 '12 is your birth date?

24 A. 9-10-67.

25 Q. I'm sorry. I meant the last -- when you

1 turned 45, that would have been 9-10 of '12?

2 A. Yes.

3 Q. 2012?

4 A. Yes.

5 Q. But even going back to your 45th birthday,
6 your can't say how many times to today, you can't say
7 how many times you've had sex with your brother?

8 A. A lot of times.

9 Q. You can't give me a number, can you?

10 A. No, I can't.

11 Q. Matter of fact, you don't even remember if
12 it was daytime or nighttime?

13 A. Yes, I do remember that. It was nighttime.

14 Q. Every time?

15 A. Yes, it was night.

16 Q. Always at night?

17 A. Always at night.

18 Q. And who else was present?

19 A. Nobody else.

20 Q. Just you two?

21 A. Yes.

22 Q. And he used your favorite little flower
23 belt?

24 A. Yes.

25 Q. To spank you with?

1 A. Yes.

2 Q. Now some people enjoy being spanked. Was
3 that part --

4 A. I didn't enjoy it at all.

5 Q. Did he have any -- your brother have any of
6 his own belts?

7 A. Yes, he did.

8 Q. But he used your flower belt instead?

9 A. Yes, sir.

10 Q. And of course -- do you have that flower
11 belt handy? Do you know where it is?

12 A. Yes, I do know where it is. It's at home.

13 Q. Okay. What does it look like?

14 A. It's leather and it has flowers all over it.

15 Q. Okay. And those flowers, are they leather
16 flowers?

17 A. Yes, they are.

18 Q. Did you wear that belt?

19 A. Yes, I did.

20 Q. When?

21 A. When?

22 Q. Yes.

23 A. On my jeans.

24 Q. No, when. When did you wear the belt?

25 A. When?

1 Q. Yes.

2 A. I wore it every time I went out in public on
3 me jeans.

4 Q. Why would you wear a belt that was used to
5 submit to sex with? Didn't that -- let me rephrase
6 the question. Does not that belt remind you of bad
7 things?

8 A. Yes, it did.

9 Q. And you wore it anyway?

10 A. Yeah. That's the only one I have.

11 Q. What do you do during the day?

12 A. Where am I during the day? At work.

13 Q. Where do you work?

14 A. I work at Progressive Choices Monday through
15 Friday.

16 Q. What do you do there?

17 A. What do I do there? I put old cards
18 together.

19 Q. Do you have any coworkers?

20 A. Yes, I do.

21 Q. What's your supervisor's name?

22 A. Michelle.

23 Q. Michelle what?

24 A. I don't know her last name, I just know her
25 first name is Michelle.

1 Q. And she's your boss?
2 A. Yes, sir, she is.
3 Q. Is she here today?
4 A. No, she's not. She's at a meeting today.
5 Q. Any other coworkers here today?
6 A. No, sir. Susan is.
7 Q. Who's Peter?
8 A. Who's Peter? Peter used to work with me.
9 Q. Peter -- where?
10 A. At Progressive Choices.
11 Q. And is he in court here today?
12 A. No, sir, he's not.
13 Q. And is he your boyfriend now?
14 A. No.
15 Q. When did you start your relationship with
16 Peter?
17 A. Long time ago.
18 Q. How long ago?
19 A. Last year.
20 Q. Before -- I mean, so when you were like
21 still 44 years old?
22 A. Yeah.
23 Q. And you and Peter, did you have a sexual
24 relationship with Peter?
25 A. No. No, we were just friends and always

1 have been and always going to be.

2 Q. What kind of gifts, if any, did you ever
3 give Peter?

4 MR. ARMSTRONG: Objection, your Honor, I
5 don't know the relevance of that question. Again
6 we're going pretty far off.

7 BY MR. GIBSON:

8 Q. Did you ever give Peter a gift?

9 MR. ARMSTRONG: I'm going to object, your
10 Honor.

11 THE COURT: Sustained.

12 BY MR. GIBSON:

13 Q. For the record you said you testified that
14 you've been married four times?

15 A. Yes.

16 Q. Was he each time here in Nevada?

17 A. Yes.

18 Q. And was it each time in Las Vegas?

19 A. Yes.

20 Q. You were never married here in Pahrump?

21 A. No.

22 Q. Did you divorce every --

23 A. Yes, I did.

24 Q. -- one of your four husbands?

25 A. Yes, I did.

1 Q. And as far as you know the record -- well,
2 you got divorced in Clark County?

3 A. Yes.

4 Q. And do you still maintain relationships with
5 any of your four ex-husbands?

6 A. No.

7 Q. Why not?

8 A. Because I don't.

9 Q. Did any of them hurt you besides the first
10 one?

11 A. Yes.

12 Q. Did they all hurt you?

13 A. No, I had to get -- I had to get an
14 annulment on my last one because he married me --
15 married me underneath bigamous. I found out that he
16 was already married to a woman in Italy.

17 Q. So that was annulled but the others were
18 divorces?

19 A. (Nods head.)

20 Q. And he was your last husband?

21 A. Yes, sir, he was.

22 Q. What's his name?

23 A. Leno Aguilar.

24 Q. Can you spell that last name for me?

25 A. No, I cannot, the name. He was Italian.

1 (Cell phone interruption.)

2 THE COURT: Can you turn that off please.

3 BY MR. GIBSON:

4 Q. Did you have any sexual relationships with
5 anybody other than the person you say is your brother
6 in the last year?

7 MR. ARMSTRONG: Objection, your Honor, the
8 rape shield protects her from that type of question.

9 THE COURT: Sustained.

10 MR. GIBSON: It's actually it's not rape
11 shield issue. This again goes back to competency and
12 if she's able to comprehend what she's doing and with
13 whom. It's got to do with bringing up the fact that
14 she's having sexual relationships.

15 THE COURT: Sustained.

16 BY MR. GIBSON:

17 Q. And so it's your position, your testimony
18 that your brother Michael wore black underwear or
19 black shorts when he would have sex with you?

20 A. Yes.

21 Q. Every time?

22 A. Yes, or his gray ones.

23 Q. So black or gray only?

24 A. Yes.

25 Q. So it would be safe to say then if he wasn't

1 wearing his black underwear or his gray underwear,
2 then he wasn't having sex with you?

3 A. Right.

4 Q. At all?

5 A. Right.

6 MR. GIBSON: I'll pass the witness.

7 THE COURT: Mr. Gensler?

8 MR. GENSLER: Thank you, your Honor.

9 CROSS-EXAMINATION

10 BY MR. GENSLER:

11 Q. Tammy, the first time you told anybody about
12 any of this was on April 9th?

13 A. Yes.

14 Q. This year?

15 A. Yes.

16 Q. About a month ago?

17 A. Yes.

18 Q. Who did you tell?

19 A. I told my workers at work.

20 Q. Who was that?

21 A. Michelle.

22 Q. And what did you tell her happened?

23 A. I told her everything that happened.

24 Q. Okay. And then what did she do; do you

25 know?

1 A. Yes.

2 Q. What did she do about that?

3 A. She got my stuff out of the house.

4 Q. She got your stuff out of Michael's house?

5 A. Yes.

6 Q. Where did you go?

7 A. I went to the house and got it out. I went
8 to storage and put it all in a storage unit.

9 Q. And that's while you were working?

10 A. Yes.

11 Q. So sometime during the day while you were
12 working you told Michelle?

13 A. Yes.

14 Q. And then she helped you go get your stuff?

15 A. Yes.

16 Q. Where was Michael?

17 A. He wasn't -- he wasn't at the home. He was
18 already in jail.

19 Q. He was already in jail before you told
20 anybody about what happened?

21 A. No. I told my girlfriend Ellen and Bruce
22 what happened.

23 Q. Okay. Who are Ellen and Bruce?

24 A. Friends of mine.

25 Q. When did you tell them?

- 1 A. I told them first.
- 2 Q. Was that on April 9th?
- 3 A. Yes, it was.
- 4 Q. Before you went to work?
- 5 A. Yes.
- 6 Q. So you told them in the morning, right?
- 7 A. No, I told them on April the 9th.
- 8 Q. Okay. Is that a workday?
- 9 A. Yes.
- 10 Q. Looking at that calendar, that's a Tuesday.
- 11 Does that sound right?
- 12 A. Yes.
- 13 Q. When did you tell them?
- 14 A. I told them that night.
- 15 Q. You told them on the night of April 9th?
- 16 A. Yes.
- 17 Q. And then what did they do?
- 18 A. They took me to their house and I spent the
- 19 night with them.
- 20 Q. Okay. Where did you tell them?
- 21 A. In their car.
- 22 Q. How did it come that you were in their car?
- 23 A. Because we were bringing back the mobile
- 24 home.
- 25 Q. So you were helping them?

1 A. Yes.

2 Q. Where was the mobile home that you were
3 bringing back?

4 A. From Las Vegas.

5 Q. Was that after work on that day?

6 A. Yes, it was.

7 Q. And so while you were in the car, I'm just
8 trying to get it straight, while you were in the car,
9 you just started telling them these things?

10 A. Yes.

11 Q. And then they were --

12 A. We were -- we were -- we had -- we were
13 taking it to Lakeside. And we hit a rock at Lakeside
14 and we called up Michael and told Michael that we hit
15 a rock and that we were trying to get the mobile home
16 off the rock, the tire off the rock, the car off the
17 rock.

18 Q. So you told them about these things that
19 Michael did to you and then you called Michael to
20 come help you?

21 A. No.

22 Q. Then tell me what happened.

23 A. Well, we were trying to get the car off the
24 rock and at the place, and we hit a rock and we
25 couldn't get the tire off of it.

1 Q. Okay.

2 A. And so it took us forever to get the tire
3 off of the rock.

4 Q. And you couldn't do it?

5 A. We couldn't do it.

6 Q. So you needed Michael's help; is that right?

7 A. No. We called in a wrecker and the wrecker
8 came and got us off the rock.

9 Q. So you didn't call Michael?

10 A. No, not at all.

11 Q. Okay. When did you tell Bruce and Ellen
12 about these things that we're talking about today?

13 A. I told them that night.

14 Q. While you were in the car before --

15 A. Yes.

16 Q. -- you hit the rock or after the rock?

17 A. After the rock.

18 Q. So while you were waiting for the wrecker?

19 A. Yes.

20 Q. Okay. And then they just, instead of taking
21 you home, they took you to their house?

22 A. Yes.

23 Q. And then you spent that night there?

24 A. Yes, after I told them.

25 Q. Okay.

1 A. Then we went to the police station.

2 Q. When did you do that? The same night or --

3 A. Yes, the same night.

4 Q. They took you to the police station?

5 A. Yes.

6 Q. And then you met somebody there?

7 A. Yes.

8 Q. Who did you meet there?

9 A. An officer.

10 Q. Do you know who it was?

11 A. No. A lady officer.

12 Q. Okay. Was it Kelly?

13 A. Yes.

14 Q. Did you talk to anybody before you talked to

15 Kelly?

16 A. Yes.

17 Q. When you go to the police station, there's

18 like a window there?

19 A. Yes.

20 Q. You talked to somebody there?

21 A. Yes.

22 Q. And you told them what was going on?

23 A. Yes.

24 Q. And then they brought Officer Kelly to come

25 talk to you?

1 A. Yes.

2 Q. And she took you back into a room somewhere
3 to talk?

4 A. Right.

5 Q. In private?

6 A. Yes.

7 Q. I assume?

8 A. Yes.

9 Q. And so you talked to her and told her what
10 you told us today?

11 A. Yes.

12 Q. And did you talk to any other officers that
13 day?

14 A. No. Then she took me to Las Vegas to the
15 hospital for me to get tested.

16 Q. Did you talk to David that day?

17 A. Yes.

18 Q. That's David Boruchowitz, right?

19 A. Yes.

20 Q. Did you talk to any other officers?

21 A. No.

22 Q. Then Kelly took you to Vegas after you
23 talked to them?

24 A. Yes.

25 Q. And you were examined there?

1 A. Yes. At Humana Sunrise.

2 Q. Did you tell the people there what happened?

3 A. Yes.

4 Q. And then they took some evidence, right?

5 A. Yes.

6 Q. Then you talked to some other people even
7 more after that about this, right?

8 A. Yes.

9 Q. Who did you talk to next?

10 A. To the hospital.

11 Q. After the hospital. Did you talk to a nurse
12 there?

13 A. Yes, I did.

14 Q. Okay. Did you talk to a doctor?

15 A. Yes, I did.

16 Q. More than one?

17 A. Yes.

18 Q. How many? Two? Three? Four?

19 A. About four.

20 Q. Four doctors. A nurse and four -- how about
21 nurses, one or more?

22 A. More than one nurse.

23 Q. More nurses than doctors?

24 A. Yes, more nurses than doctors.

25 Q. Okay. And you told all of them what

1 happened, right?

2 A. Yes.

3 Q. And then did you stay overnight?

4 A. Yes, over at Ellen and Bruce's house.

5 Q. Not in the hospital?

6 A. No, I got back around 6:00 in the morning.

7 Q. So Ellen and Bruce brought you home?

8 A. No.

9 Q. To their house?

10 A. Kelly did.

11 Q. Oh, okay.

12 A. Kelly brought me home at 6:00 in the
13 morning.

14 Q. To Ellen and Bruce's though?

15 A. Yes.

16 Q. Not to your home?

17 A. No.

18 Q. Did you then go to work that day?

19 A. Yes, I did.

20 Q. And that's when you talked to Michelle?

21 A. Right.

22 Q. And then she helped you go get your stuff?

23 A. Yes.

24 Q. So that wasn't until the next day?

25 A. Day.

1 Q. And then did you talk to any other
2 investigators?

3 A. No, not that I remember.

4 Q. You didn't talk to Emily?

5 A. No.

6 Q. Okay. Who told you to use the word "penis"?

7 A. Nobody.

8 Q. Is that a word you normally use?

9 A. Yes.

10 Q. That's the word you use for a man's...

11 A. I know.

12 Q. Okay. Where did you learn that? In school
13 or on the -- when you were growing up?

14 A. In school.

15 Q. Okay. What happened on your birthday, your
16 last birthday?

17 A. Well, on my last birthday, nothing much.

18 Q. Do you remember it?

19 A. No, not really.

20 Q. Well, the D.A.'s been asking you all this
21 stuff about things that happened since your last
22 birthday and you don't even really remember it?

23 A. No, not really.

24 Q. Okay. When people hurt you, you get mad,
25 don't you, at them?

1 A. Yeah.

2 Q. And you can hold a grudge, right?

3 A. Yeah.

4 Q. Like your brother Bill?

5 A. Yeah.

6 Q. What's happened with your brother Bill? You
7 haven't talked to him in years, right?

8 A. Right.

9 Q. Because he hurt you?

10 A. Yeah.

11 Q. One time, right?

12 A. Yeah, one time.

13 Q. That was it?

14 A. Yeah.

15 Q. He's out? History?

16 A. Yeah.

17 Q. No more contact?

18 A. No.

19 Q. Okay. Same with your brother Jerry?

20 A. Yeah.

21 Q. Same thing, you don't mess around. If they
22 hurt you, you don't go back for more?

23 A. Nope.

24 Q. No, okay. Do you drive?

25 A. No.

1 Q. Have you ever driven?

2 A. No.

3 Q. You don't have a driver's license?

4 A. No.

5 Q. You can't get one?

6 A. No.

7 Q. How did you get to George's?

8 A. Michael Mack or George's friends come and
9 pick me up.

10 Q. How many times have you been to George's
11 house -- apartment?

12 A. Twice.

13 Q. Two times. And the first time, how did you
14 get there?

15 A. George came and picked me up.

16 Q. He drove?

17 A. His friend came and got me with him -- with
18 him.

19 Q. Do you know his friend's name?

20 A. No, I don't.

21 Q. Do you know when that was?

22 A. No, I don't.

23 Q. Long time ago?

24 A. Yeah.

25 Q. And the second time, how did you get there?

1 A. Michael Mack took me.

2 Q. Michael?

3 A. Yes, Michael.

4 Q. And how did you get there? I mean, do you
5 know when that was? I'm sorry.

6 A. No, I don't.

7 Q. Did you ever go out to the Nugget or
8 anything with George?

9 A. No.

10 Q. Never?

11 A. No.

12 Q. Did you ever tell anybody that you were
13 going to marry him?

14 A. No.

15 Q. No? You never said that to anybody?

16 A. No.

17 Q. You never felt that way about him?

18 A. No.

19 Q. So if somebody were to say that, they'd be
20 lying?

21 A. Uh-huh.

22 Q. Not just George, if George said that, if
23 anybody said that?

24 A. No.

25 Q. They'd be lying?

1 A. Uh-huh.

2 Q. And when you went to George's, you'd wear
3 your belt?

4 A. Yes, sir.

5 Q. What belt are we talking about?

6 A. The black one with the flowers on it.

7 Q. Is that the only belt you have?

8 A. Yes, sir.

9 Q. You only have one?

10 A. Yeah.

11 Q. Okay. So it's not just your favorite one,
12 it's your only one?

13 A. Exactly.

14 Q. You talked about -- the first time I've ever
15 heard -- I mean, you've talked to the police so we've
16 seen paperwork. I mean, just so you know, they give
17 it to us and we've seen it. And you talked to other
18 people and we've seen that, but the first time I ever
19 heard about you talking about George using silver
20 instruments was today.

21 A. (Nods head.)

22 Q. Where did that come from?

23 A. It's the truth. He did.

24 Q. And can you describe them for me?

25 A. Yeah, they're like...

1 Q. You say they were like the doctor would use?

2 A. Yeah, when they -- yeah, when they stick
3 them up your vagina, yeah.

4 Q. So like when you go in for a medical exam?

5 A. Medical exam, yeah.

6 Q. And they put you up in the stirrups and that?

7 A. Yeah.

8 Q. The instruments the doctor uses is what he
9 had?

10 A. Yes. He really does too.

11 Q. Okay. So would he conduct an exam on you?

12 A. Yeah.

13 Q. Is that what he was doing?

14 A. He would.

15 Q. And which time was that?

16 A. Every time I would go over there he would
17 want to do that with me.

18 Q. So the two times?

19 A. Yeah.

20 Q. Did you tell Kelly about that?

21 A. No.

22 Q. Did you tell David about that?

23 A. No.

24 Q. Did you tell Bruce and Ellen about that?

25 A. No.

1 Q. Did you tell Michelle about that?

2 A. No.

3 Q. Anybody I'm missing that you -- did you tell
4 the doctors in Vegas?

5 A. No.

6 Q. Were they doing an exam like that too?

7 A. Yes.

8 Q. And you didn't mention to them that --

9 A. No.

10 Q. -- George had done that to you?

11 A. No.

12 Q. Okay. You see George here today, right?

13 A. Yes, I do.

14 Q. When was the last time you saw him before
15 today?

16 A. First time in a long time.

17 Q. Years?

18 A. (Nods head.)

19 Q. Okay. Nothing further, your Honor.

20 THE COURT: Redirect by the State?

21 MR. ARMSTRONG: Yes, a few questions, your
22 Honor.

23 REDIRECT EXAMINATION

24 BY MR. ARMSTRONG:

25 Q. Tammy, you just testified that you don't

1 remember what you did on your 45th birthday, right?

2 A. Huh-uh.

3 Q. But you remember -- do you remember turning
4 45?

5 A. Yes.

6 Q. And you're able to remember things happening
7 before it and after?

8 MR. GENSLER: Objection, leading.

9 MR. GIBSON: Also compound.

10 THE COURT: Sustained.

11 BY MR. ARMSTRONG:

12 Q. Are you able to remember things before,
13 after you -- you can distinguish between when you
14 were 45 and when you were not, correct?

15 A. Yeah.

16 Q. You said that you don't remember speaking
17 with an Emily. Were you ever interviewed by someone
18 after the police in a setting other than at the
19 police station?

20 A. Yeah.

21 Q. Do you remember what she looked like?

22 A. No, I don't, not offhand.

23 Q. Why did you tell Ellen and Bruce?

24 A. Why? I felt comfortable around them.

25 Q. You just told the attorneys over here that

1 it had been a couple of years since you've seen
2 George.

3 A. Yes.

4 Q. You also said that you -- that he had done
5 these things to you since you turned 45?

6 A. Yes.

7 Q. You turned 45 last year, correct?

8 A. Yes.

9 Q. So has it been years since you've seen him
10 or has it been since your 45th birthday? Which one
11 is correct? Does that question make sense or do you
12 want me to...

13 A. Do it again please.

14 Q. You testified once here that it was -- it's
15 been years since you've seen George?

16 A. Uh-huh.

17 Q. But when I asked, you said that it had been
18 since you turned 45, which was last year. So which
19 one is correct?

20 A. Since I -- since years.

21 Q. Since you turned 45 or has it been...

22 A. Years.

23 MR. GENSLER: Asked and answered, your
24 Honor.

25 THE COURT: Sustained.

1 BY MR. ARMSTRONG:

2 Q. Do you know how many years it's --

3 A. No, I don't.

4 MR. ARMSTRONG: No further questions, your
5 Honor?

6 MR. GIBSON: Nothing, your Honor.

7 MR. GENSLER: I have one follow-up.

8 THE COURT: All right.

9 RECROSS-EXAMINATION

10 BY MR. GENSLER:

11 Q. Who are you staying with now?

12 A. I'd rather not say.

13 Q. Okay. When you told Bruce and Ellen, you
14 wanted to go stay with them, didn't you?

15 A. Yeah.

16 Q. Because you like them?

17 A. Yeah.

18 Q. You thought that would be a good situation
19 for you?

20 A. Uh-huh.

21 Q. Right?

22 A. Yes.

23 Q. So that's why you told them?

24 A. Yes.

25 Q. And then that's why we're here today?

1 A. Yes.

2 MR. GENSLER: Okay. Thank you.

3 MR. ARMSTRONG: No further questions.

4 THE COURT: All right. This witness may be
5 excused then?

6 MR. ARMSTRONG: Yeah, subject to recall,
7 your Honor.

8 THE COURT: Thank you. State's next
9 witness?

10 MR. ARMSTRONG: The State's next witness is
11 Susan Kallaher.

12 MR. GENSLER: Ross, can you tell me what
13 pages those are?

14 MR. ARMSTRONG: It starts on page 28 of her
15 report.

16 Thereupon--

17 SUSAN KALLAHER
18 was called as a witness by the State, and having been
19 first duly sworn, testified as follows:

20 MR. GENSLER: Your Honor, before we start,
21 can I literally take 30 seconds to get a drink of
22 water? My throat is just killing me.

23 THE COURT: All right. That's fine.

24 MR. GENSLER: Thank you, your Honor.

25 (Discussion off the record.)

1 THE COURT: All right. Mr. Armstrong, you
2 may begin.

3 DIRECT EXAMINATION

4 BY MR. ARMSTRONG:

5 Q. Please state and spell your name for the
6 record.

7 A. Susan Kallaher, S-u-s-a-n, K-a-l-l-a-h-e-r.

8 Q. How are you employed?

9 A. I'm employed by the State of Nevada with the
10 Division of Mental Health and Environmental Services
11 as a service coordinator.

12 Q. And how long have you been there?

13 A. Just a little over three years.

14 Q. What type of education do you have?

15 A. I have undergraduate and graduate degrees in
16 rehabilitation and counseling.

17 Q. Can you explain to the court what you do at
18 work?

19 A. As a service coordinator we do not provide
20 any direct services. We help to ensure that our
21 individuals receive the services that they should be
22 getting and requested services. So we help them
23 access community resources.

24 Q. What type of individuals do you help?

25 A. Persons with developmental disabilities.

1 Q. Are you familiar with someone by the name of
2 Tamyra Alexander?

3 A. Yes.

4 Q. How do you know her?

5 A. She's on my caseload.

6 Q. How long have you known her?

7 A. Since January of 2010.

8 Q. And since January of 2010, how often do you
9 have contact with her?

10 A. A minimum of one time per month, one or more
11 times per month.

12 Q. When was the last time you had contact with
13 her?

14 A. This morning.

15 Q. When was the last time you had contact with
16 her in a professional --

17 A. Prior?

18 Q. Yeah.

19 A. To this morning? That would have been last
20 week.

21 Q. And what did you do with her last week?

22 A. Well, I just talked with her about her
23 placement, where she was living, how things were
24 going. Her life has changed dramatically so she
25 hasn't been able to access community resources like

1 she used to and participate in activities as she was.

2 Q. As part of your work there are assessments
3 that are done to individuals to determine if they
4 qualify?

5 A. Well, in order to receive services at Desert
6 Regional Center, there is a standardized procedure
7 that is completed through an intake department. And
8 that is what they do is they're seen by a licensed
9 psychologist.

10 As part of my position I do not complete any
11 testing but I complete annual social assessments to
12 see where they're at, what goals they would like to
13 help -- what goals they would like to achieve within
14 the next year.

15 Q. And have there been assessments of
16 Miss Alexander's capacity, mental capacity?

17 A. Yes.

18 Q. And what type of assessments have been done?

19 A. Those assessments were IQ tests that were
20 completed for her eligibility for Desert Regional
21 Center.

22 Q. And what is the IQ that you have to have to
23 be eligible for?

24 MR. GIBSON: Your Honor, I'm going to object
25 at this time. This witness is not qualified to

1 answer. She's not been qualified as an expert in
2 this area. She stated before that she doesn't even
3 give the tests, she just writes out -- does
4 overviews.

5 And without having a registered, or, excuse
6 me, a licensed psychologist or psychiatrist that does
7 this specialty, then anything that she said would be
8 hearsay and she's not qualified to testify to.

9 MR. GENSLER: I'd join in the objection,
10 your Honor.

11 THE COURT: All right.

12 MR. ARMSTRONG: Your Honor, the question was
13 is there a range of IQ that makes someone eligible
14 for the program. I haven't asked her what
15 Miss Alexander's IQ level is or anything like that.
16 I'm just asking her if she knows in order to get into
17 a program what's the IQ level you have to have.

18 MR. GIBSON: Still it borders on expertise
19 that because who does she -- unless the proper
20 foundation is laid, this witness is not competent,
21 has not been made competent to testify that she has
22 knowledge and the ability to make assessments or to
23 state what the protocol and procedures are.

24 THE COURT: All right. I'll sustain the
25 objection. If you can lay a little more foundation

1 as to her knowledge and background in the program.

2 BY MR. ARMSTRONG:

3 Q. Okay. What type of -- in addition to your
4 formal education, what type of training do you have
5 for your position?

6 A. Well, training for my position, I'm -- when
7 you apply for a job with the State, there are several
8 steps you go to in order to qualify even for an
9 interview. So you have to have years of experience
10 with persons with developmental disabilities I
11 believe.

12 Q. What did you do prior to working for the
13 State?

14 A. My five years -- the previous five years
15 before that I was going to school and I was a
16 stay-at-home mother. Before that I was a therapist
17 at a mental health -- for a mental health facility at
18 a facility in Georgia, prison facility.

19 Q. And I believe you testified that there
20 has -- that there are certain intake requirements for
21 where you are now?

22 A. Yes.

23 Q. What are those requirements?

24 A. I'm not in the intake department; however,
25 the IQ -- the 69 or below or a qualifying condition

1 so, which would be like a seizure disorder, perhaps
2 autism, to qualify for services with Desert Regional
3 Center.

4 Q. Okay. So in order for someone to get on
5 your caseload, they would have to meet one of those
6 criteria?

7 A. Yes.

8 Q. And Miss Alexander is on your caseload?

9 A. Yes, she is.

10 Q. And are you aware of the last time she was
11 tested?

12 A. Yes.

13 Q. How long ago was that?

14 A. 1996. February of 1996.

15 Q. And have there been any new tests or doctors
16 appointments since this whole thing started with
17 the --

18 A. No.

19 Q. -- criminal justice?

20 And based on your assessments of her, are
21 there certain things that she's capable of doing and
22 certain things she's not?

23 MR. GIBSON: I'm going to object, Judge. I
24 don't believe she stated she did assessments. I
25 think she did work with other people's assessments.

1 That's my understanding anyway.

2 MR. ARMSTRONG: I can rephrase, your Honor.

3 THE COURT: All right.

4 BY MR. ARMSTRONG:

5 Q. Based on your interactions with Tammy,
6 explain what kind of your typical interaction with
7 Tammy might be.

8 A. Well, I always see Tammy at work. She works
9 in a shelter workshop here in town. And we talk
10 about, you know, what things is she able to do, what
11 she needs support with and help her to access
12 resources in order to be supportive in what she wants
13 to achieve and be as independent as possible.

14 Q. What are some of those things that she can
15 do on her own to be independent?

16 A. Well, Tammy can bathe independently. She
17 can comb and style her hair, create social contacts
18 with friends, those types of things.

19 Q. What types of things are she incapable of
20 doing?

21 A. She cannot utilize banking facilities. She
22 understands that money issues to make a transaction
23 but she would not be able to count the change. So
24 she would not be able to cook independently on a
25 stove or do her laundry without supervision.

1 Q. What are safety skills?

2 A. Tammy's very trusting in nature so she would
3 be -- she can meet somebody and then that afternoon
4 or within minutes be willing to go with them. She
5 would know to dial 911 in an emergency and evacuate
6 the house in a fire, but she may go -- then just go
7 with somebody she's never met. She's very
8 vulnerable.

9 Q. And are you involved in any sort of -- are
10 there folks on your caseload that are totally
11 independent without guardians or do they all have
12 guardians? Is that part of your job?

13 A. Some people do have guardians, some people
14 do not.

15 Q. Do you know if Tammy has one?

16 A. She does have a guardian.

17 Q. And do you know who her current guardian is?

18 A. Yes.

19 Q. Who is that?

20 A. Shirley Trumble.

21 Q. Who was her guardian prior to that?

22 A. Michael Mack.

23 Q. And if he's the guardian, then would you
24 interact with him as well?

25 A. Absolutely. I would see him a minimum of

1 one time per year at our annual meeting, which
2 happens during her birth month, September.

3 MR. GENSLER: I'm sorry?

4 THE WITNESS: September. Her birthday is in
5 September, so at a minimum I saw him every September.

6 BY MR. ARMSTRONG:

7 Q. Was there ever a point where the two of you
8 discussed getting Tammy some counseling?

9 A. Yes.

10 Q. What was that based on?

11 A. A review of her file in which I saw that she
12 had received previous counseling and the success that
13 was reported by her employer during that time, and
14 the trauma that she has sustained previously with her
15 previous marriages.

16 Q. And what did Mr. Mack think about getting
17 Tammy some counseling?

18 A. He said that he didn't have the time or the
19 money to take her to counseling and that anybody can
20 just sit and talk with Tammy.

21 MR. ARMSTRONG: Pass the witness, your Honor.

22 THE COURT: Mr. Gibson?

23 CROSS-EXAMINATION

24 BY MR. GIBSON:

25 Q. Yes. Is it Kallaher?

1 A. Kallaher.

2 Q. Kallaher, I'm sorry. Miss Kallaher, you
3 stated you were a rehab counselor; is that correct?

4 A. I have a degree in rehabilitation
5 counseling.

6 Q. And is that a B.A.? B.S.?

7 A. A B.S.

8 Q. B.S., okay. Do you have any degrees above
9 bachelor level?

10 A. Yes.

11 Q. What do you have?

12 A. I have a master's degree in counselor
13 education.

14 Q. Okay. That's an M.S. or M.A.?

15 A. M.S.

16 Q. Counselor education. So what is counselor
17 education?

18 A. In counselor education it's a department
19 within the university and the college of education,
20 and underneath in the school I was at, the counselor
21 of education program offered three programs:
22 Rehabilitation counseling, mental health counseling
23 and school counseling.

24 Q. Okay. And as a counselor your job is to
25 basically then help the subject integrate into

1 society?

2 A. That is not the position I have.

3 Q. What is --

4 A. The position I have is that of a service
5 coordinator, and as a service coordinator we do not
6 provide direct services.

7 Q. You don't provide any testing?

8 A. Desert Regional Center has an intake
9 program, the intake department that will test, if
10 needed, if something has -- for eligibility
11 determination into our program. So we do have
12 psychologists on staff but...

13 Q. There was a -- the last time she was tested
14 was when?

15 A. In 1996. In February of 1996.

16 Q. February '96. Where was that done?

17 A. It was done in Las Vegas.

18 Q. By whom?

19 A. I'm not sure of the psychologist's name, but
20 it was through Desert Regional Center for eligibility
21 determination for our program, which is a voluntary
22 program.

23 Q. What is the advantage of a person being in
24 your program versus a person who might be at a
25 certain level where they don't qualify, say their IQ

1 was too high or they were more intelligent?

2 A. Well, people that are in our program require
3 support in almost every area of life.

4 Q. Right.

5 A. So that advantage is that we are helping
6 them to access resources and to ensure -- if we see a
7 need, that we would recommend that need; however, it
8 is up to that individual or their guardian to
9 determine if they're going to take the suggestions
10 and recommendations.

11 Q. Understood. So what you do is you make
12 recommendations and suggestions to the subject?

13 A. Uh-huh.

14 Q. And based upon your -- your job is to make
15 sure that, provided they qualify, that the people get
16 the services you feel they need?

17 A. Yes, and help them make them aware of
18 community -- available community resources that they
19 may not know about.

20 Q. And again is it kind of like, by analogy,
21 say it was like welfare or SSI, you may have a
22 situation where you don't qualify for certain things
23 because you make too much money, you're too
24 intelligent, you're too educated, so on and so forth;
25 would that be fair to say?

1 A. I don't understand the question.

2 Q. In other words, if a person met a certain
3 criteria and they were -- say their IQ level was
4 higher than average or that they didn't have any
5 seizure disorders or whatnot, then they would not
6 qualify for your...

7 A. Our program.

8 Q. Yeah, your program. Thank you.

9 A. Right. You have to qualify through the
10 intake department, which is overseen by the licensed
11 psychologists.

12 Q. And in order to qualify for your program and
13 derive the benefits from your program, you have to
14 have qualified through certain criteria?

15 A. Yes, standardized criteria, yes.

16 Q. And if you don't make those standardized
17 criteria, say if you're over or under-qualified, then
18 you can't help them?

19 A. If they do not qualify for services, we
20 don't provide them just voluntary -- there are people
21 who -- right.

22 Q. So in other words what I'm saying is if a
23 person came into your office and the testing was if
24 they were intelligent, they were able to hold a
25 decent job, so on and so forth, then you would tell

1 them that they are overqualified or that you
2 couldn't --

3 A. I'm not sure what the intake department
4 tells them. They determine the eligibility and they
5 send out I suppose a letter. You would have to ask
6 the intake department.

7 Q. And one of the axis that you look at to
8 qualify in this matter would be a seizure disorder?

9 A. I don't determine eligibility. So Tamyra --
10 I didn't determine her eligibility to the program.

11 Q. Who does determine the eligibility?

12 A. The intake department at Desert Regional
13 Center.

14 Q. Okay. And where is that? Is that Desert
15 Regional Center --

16 A. In Las Vegas.

17 Q. Who is in charge of that specific
18 department, if you know?

19 A. I'm not -- I'm not sure. I don't work at
20 that office. I receive the case after it is
21 deemed -- if they're eligible for services it goes to
22 committee and they assign the cases.

23 Q. Somebody else gives the testing for the
24 proper criteria, correct?

25 A. Yes.

1 Q. And those tests are done under controlled
2 conditions?

3 A. There's a standardized process.

4 Q. And during that standardized process, are
5 you familiar with the protocol, how those tests are
6 done?

7 A. No.

8 Q. And the only thing you really know, I mean
9 for practical purposes, is you get the bottom line or
10 the test results that someone else administered?

11 A. Yes.

12 Q. And again how long have you been familiar
13 with --

14 A. Since January of 2010.

15 Q. -- Tamyra?

16 2010. And you saw her on a monthly basis
17 since then?

18 A. Yes. Minimum of. One time or more a month.

19 Q. I'm sorry?

20 A. One time or more per month.

21 Q. And is there ever any issues about her
22 being -- any of her prior marriages, does that work
23 into the --

24 A. No.

25 Q. -- program?

1 A. No.

2 Q. And do you know does she have any children;
3 do you know?

4 A. Not that I know of.

5 Q. And do you know how many times she's been
6 married in the past?

7 A. Well, that's a question. I believe it was
8 two. Last September Mr. Mack told me it had been
9 four.

10 Q. Why did you believe it was two?

11 A. Because I had read that in a previous
12 report.

13 MR. GIBSON: Pass the witness.

14 THE COURT: Mr. Gensler?

15 MR. GENSLER: Thank you, your Honor.

16 CROSS-EXAMINATION

17 BY MR. GENSLER:

18 Q. Where did you get your B.S. from?

19 A. Emporia State University.

20 Q. Emporia?

21 A. Emporia, E-m-p-o-r-i-a.

22 Q. Is that in Georgia?

23 A. It's in Kansas.

24 Q. Kansas. And your M.S.?

25 A. Same.

1 Q. Same. In your position as the coordinator,
2 do you prepare reports?

3 A. Yes.

4 Q. What kind of reports do you prepare?

5 A. Annual social assessments and individualized
6 service plans.

7 Q. And what did you prepare in Miss Alexander's
8 case?

9 A. We had our annual meeting, we go over
10 progress that she has made during the past year,
11 review any physician appointments, medications, has
12 there been any increase or decrease in levels of
13 functioning.

14 Q. And that all goes into a report?

15 A. Yes.

16 Q. And does that -- I have an annual social
17 assessment. What was the other one?

18 A. The individualized service plan.

19 Q. Okay. The individualized -- I assume the
20 annual social assessment is annual?

21 A. Yes, they're both annually.

22 Q. In her birth month?

23 A. Yes.

24 Q. So two reports in the same month every year?

25 A. Yes.

1 Q. Did you do one this year?

2 A. I did one in September of 2012.

3 Q. Did you, okay. And that's the -- so that's
4 the last one?

5 A. Yes.

6 Q. For that report, prior to that report had
7 Tamyra told you anything about any illegal sexual
8 contact with anybody?

9 A. No.

10 Q. If she had, that would have been in your
11 report, right?

12 A. Yes.

13 Q. Of course. That's important, right?

14 A. Yes.

15 Q. Prior to April 9th of this year, had she
16 told you anything like that?

17 A. No.

18 Q. And you have a duty to report that if she
19 does?

20 A. Yes.

21 Q. In addition to putting it in a report?

22 A. Yes.

23 Q. What is -- I'm a little confused -- what is
24 actually -- what actually is Desert Regional Center?
25 Is that a part of a state agency?

1 A. Yes.

2 Q. Is that a hospital?

3 A. No. It is a part of a state agency. It's
4 a Division of Mental Health and Environmental
5 Services.

6 Q. Okay. So it's --

7 A. We are a state agency.

8 Q. The same agency that you're in?

9 A. Yes.

10 Q. The same overseeing agency?

11 A. Yes.

12 Q. When you prepare a report, you use some
13 abbreviations in there, right? For example, what's
14 PCI staff?

15 A. Progressive choices. That's the workshop
16 where Tammy works here in town.

17 Q. And what's SC? Is that you?

18 A. Yes, service coordinator.

19 Q. So you do some thorough reports because you
20 only do them once a year; you want all the
21 information in there, right?

22 A. I am able to report what is told to me.

23 Q. And was September of 2012 the first one you
24 did on Tammy?

25 A. No.

1 Q. You've done them every year since you've
2 been in on her case or since she's been on your
3 caseload?

4 A. Yes.

5 Q. Did you, in your report, indicate that Tammy
6 has a long history of creating lies, fabrications and
7 stories?

8 A. Yes.

9 Q. And these lies range from little white lies
10 to allegations of abuse?

11 A. Yes.

12 Q. And she received counseling in the past for
13 that?

14 A. Yes.

15 Q. Did she also inform PCI that she had breast
16 cancer?

17 A. Yes.

18 Q. And was receiving chemotherapy?

19 A. Yes.

20 Q. That was a lie, right?

21 A. Yes.

22 Q. You determined that not to be true, correct?

23 A. Yes.

24 Q. And you expressed concern -- or concern was
25 expressed that these attention seeking lies were

1 becoming more elaborate?

2 A. Yes.

3 Actually --

4 Q. That's fine. I don't have any question on
5 that.

6 Did you receive information that Tammy had
7 given Peter a wedding band?

8 A. When I was at the meeting, yes.

9 Q. Were they married?

10 A. No.

11 Q. What was that about? Any idea?

12 A. There is -- they were involved in a
13 relationship that had developed at work.

14 Q. Okay. And so she gave him a wedding band?

15 A. That's what I was told, yes.

16 Q. Were you told about any sexual contact
17 between them?

18 A. No.

19 Q. And you discussed with Tammy her
20 storytelling, correct?

21 A. Absolutely.

22 Q. And she also was making threats to other
23 clients?

24 A. Yes.

25 Q. And spreading rumors about other clients?

1 A. Yes.

2 Q. And that was upsetting the other clients?

3 A. Yes.

4 Q. And Tammy was told to stop that?

5 A. Yes.

6 MR. GENSLER: Thank you. Nothing further.

7 THE COURT: Redirect by the State?

8 MR. ARMSTRONG: Court's indulgence, your

9 Honor.

10 THE COURT: All right.

11 REDIRECT EXAMINATION

12 BY MR. ARMSTRONG:

13 Q. I just want to make sure. We talked about
14 Tammy's stories. I just want to make sure. In your
15 report you wrote that since the breast cancer one,
16 you had the discussion with her, those decreased
17 significantly?

18 A. Yes.

19 Q. And that was prior to the current
20 allegations that arose in this case?

21 A. Yes.

22 Q. And in your experience with her, when it is
23 explained to her the importance of telling a truth,
24 which is a lie, what does she do?

25 A. She will redirect and tell the truth.

1 Q. I just want to make sure I got this correct.
2 Based on your interactions with her and her
3 eligibility for your requirements, she requires some
4 sort of external support? She can't do it on her
5 own?

6 A. . Absolutely.

7 MR. ARMSTRONG: No further questions, your
8 Honor.

9 THE COURT: Anything else, Mr. Gibson?

10 MR. GIBSON: No, your Honor.

11 THE COURT: Mr. Gensler?

12 MR. GENSLER: I have one or two follow-ups.

13 RE CROSS-EXAMINATION

14 BY MR. GENSLER:

15 Q. So when you catch her in a lie and you talk
16 to her about it, then she tells the truth for a
17 while?

18 A. Right. She tends to wax and wane.

19 Q. And then you'd catch her in another one,
20 talk to her about it then she tells the truth for a
21 while?

22 A. That's my experience.

23 Q. Okay. Have you had any experience in
24 whether they're getting more significant, the level
25 of lying?

1 A. No. It...

2 Q. Well, you did this (indicating), ebb and
3 flow?

4 A. She tends to tell lies and then she
5 redirects them and she'll -- she is a little child.
6 Her mental capacity is that of a little child so she
7 is redirected and then she goes and then she will
8 test the boundaries again.

9 Q. And it's being attention seeking?

10 A. Many times, yes.

11 Q. And who's she staying with now?

12 A. She is in an emergency respite placement.

13 Q. Do you know Bruce and Ellen?

14 A. I'm sorry?

15 Q. Do you know Bruce and Ellen?

16 A. I have met them once I believe.

17 Q. But she's not staying with them?

18 A. No.

19 MR. GENSLER: Okay. Thank you.

20 Thank you, your Honor.

21 MR. GIBSON: I have a follow-up on

22 Mr. Gensler's question, Judge.

23 THE COURT: On Mr. Gensler's question?

24 MR. GIBSON: Yes.

25 THE COURT: Okay.

RE CROSS-EXAMINATION

1
2 BY MR. GIBSON:

3 Q. You stated that -- I think your term was wax
4 and waning for -- is that a yes? I'm sorry. She's
5 taking it all down.

6 A. Yes.

7 Q. And would you, if asked to give an opinion
8 based upon your observations and your experience
9 through your job and your training --

10 MR. ARMSTRONG: Objection, your Honor. He's
11 going to ask for an opinion. He's already stated --
12 Mr. Gibson has stated she's not an expert, she can't
13 give an opinion.

14 MR. GIBSON: Well, she can give an opinion
15 on her experiences. Police do it all the time.
16 They're not experts.

17 THE COURT: Mr. Gibson, you're the one that
18 raised the question that she couldn't testify to when
19 you were asking her about the IQ and whether or not
20 she was qualified to be in the program.

21 MR. GIBSON: Fair enough.

22 THE COURT: Sustained.

23 MR. GIBSON: Save it for later.

24 THE COURT: Anything else?

25 MR. ARMSTRONG: No further questions, your

1 Honor.

2 THE COURT: This witness may be excused?

3 MR. ARMSTRONG: Yes.

4 THE COURT: Thank you.

5 MR. ARMSTRONG: Detective Boruchowitz.

6 Thereupon--

7 DAVID BORUCHOWITZ

8 was called as a witness by the State, and having been
9 first duly sworn, testified as follows:

10 THE COURT: Mr. Armstrong.

11 DIRECT EXAMINATION

12 BY MR. ARMSTRONG:

13 Q. Please state and spell your name for the
14 record.

15 A. David Boruchowitz, B-o-r-u-c-h-o-w-i-t-z.

16 Q. What is your current occupation?

17 A. I'm a detective with the Nye County
18 Sheriff's Office.

19 Q. How long have you been with the Nye County
20 Sheriff's Office?

21 A. Approximately seven years.

22 Q. Have you ever been involved in an
23 investigation dealing with someone named Tammy
24 Alexander?

25 A. I have.

1 Q. As part of that investigation, was she given
2 a pseudonym?

3 A. She was.

4 Q. And what is that?

5 A. Courtney.

6 Q. How did your involvement in this case begin?

7 A. I was called to the office to assist
8 Sergeant Jackson on a report of a sexual assault.

9 Q. What is Sergeant Jackson's first name?

10 A. Kelly.

11 Q. What did you do when you arrived?

12 A. I met with her initially and then
13 subsequently met with Tammy.

14 Q. What was the purpose of you meeting with
15 Tammy?

16 A. To ascertain the details of the allegation.

17 Q. When you were -- how many interviews have
18 you done with victims in your time with the sheriff's
19 office?

20 A. Hundreds.

21 Q. Was your -- was Tammy able to communicate
22 with respect of a 45-year-old woman to communicate?

23 A. She did not communicate age appropriately.

24 Q. In what way?

25 A. During my interview with her, often the

1 interview was more like that of interviewing a
2 toddler.

3 Q. Based on your interview with Courtney, what
4 did you do next?

5 A. I went to the residence of Michael Mack.

6 Q. Where was that residence?

7 A. On Mount Charleston. Don't remember the
8 numbers.

9 Q. That's here in Pahrump?

10 A. Yes, sir.

11 Q. And about what time of day did you
12 interview; do you recall?

13 A. It was in the early morning. Probably just
14 after midnight I believe.

15 Q. And based on your interview with Courtney,
16 what questions did you ask him?

17 A. Initially --

18 MR. GIBSON: Objection, foundation. We
19 don't have a date and place.

20 THE COURT: Sustained.

21 BY MR. ARMSTRONG:

22 Q. What date was this involvement on?

23 A. The 10th of April.

24 Q. And did you --

25 MR. GENSLER: Your Honor, can I ask for

1 clarification? Can I ask him a voir dire question
2 just to clarify this date?

3 THE COURT: How do you want to clarify it?
4 He said it was in the early morning hours just after
5 midnight on the 10th of April. How much more clearer
6 can that be?

7 MR. GENSLER: Well, I'm not sure if he's
8 talking -- the question was vague then. I'd object
9 to the question.

10 THE COURT: Okay. Go ahead.

11 VOIR DIRE EXAMINATION

12 BY MR. GENSLER:

13 Q. Did you meet with Tammy on the 10th?

14 A. I'd have to double-check my report. I
15 believe I met with her on the 9th.

16 Q. You met with her on the 9th and you met with
17 Mack on the 10th?

18 A. That's correct.

19 MR. GENSLER: Okay. Thank you.

20 FURTHER DIRECT EXAMINATION

21 BY MR. ARMSTRONG:

22 Q. And explain to the court how your
23 questioning of Mack progressed or started.

24 A. Initially I simply inquired as to where she
25 was and as to her physical and mental capability.

1 Q. What did -- where did he say she was?

2 A. He didn't know. She had gone to a friend's
3 house for dinner and he said he hadn't heard from her
4 since.

5 Q. What did he say about her mental abilities?

6 A. Throughout the conversation he indicated I
7 think it was between three and four years old is what
8 he said she was mentally.

9 Q. Did you ever confront him with any type of
10 physical abuse?

11 A. I did. I confronted him with that.

12 Q. Explain to the court how that happened.
13 What type of abuse?

14 A. I confronted him with both the allegations
15 regarding beating Tammy with a belt and the sexual
16 allegations that she made against him.

17 Q. And what was his initial response to the
18 sexual stuff?

19 A. Denied it completely.

20 Q. And did that change throughout your
21 interview or did he maintain that position
22 throughout?

23 A. No, it changed throughout the interview.

24 Q. How did it change?

25 A. Initially it progressed to that they gave

1 massages to each other. It then went to oral sex
2 between them and progressed then to rubbing his penis
3 on her vagina.

4 Q. The oral sex, was that her performing oral
5 sex on him or him performing oral sex on her or both?

6 A. He said her performing oral sex on him.

7 Q. Where did he say that would occur?

8 A. It was in the living area of the residence
9 as well as his bedroom.

10 Q. And did -- what, if anything, did he say
11 about any vaginal sex?

12 A. He said that did not occur. He went on
13 often that for whatever reason he was fixated on
14 physical penetration. He said that that did not
15 occur; however, he said that he did do the penis
16 rubbing on the vagina, penetrating the lips only of
17 the vagina.

18 Q. So he did confirm that he penetrated the
19 lips?

20 A. Just the lips, yes, sir.

21 Q. Did that occur in the same place, here in
22 Pahrump at the residence?

23 A. Yes, at the Mount Charleston residence.

24 Q. Did you confront him about telling her not
25 to tell anyone?

1 A. Yes, I did.

2 Q. What was his response?

3 A. He said that he knew it was wrong and that
4 he didn't want to get in trouble so he had told her
5 not to tell anyone.

6 Q. Do you recall if he said that there were
7 consequences if she did?

8 A. I'm not sure I understand the question.

9 Q. Okay. Did he just tell her not to tell or
10 was there some sort of threat along with that?

11 A. She had disclosed that he had threatened
12 her; however, I don't recall him confirming that he
13 had.

14 Q. What, if anything, did he say about beating
15 her with a belt?

16 A. He denied that.

17 Q. Did he give you a timeframe for when the
18 sexual contact happened, the oral sex and the
19 penetrating her lips?

20 A. Yes, within the last couple of months when I
21 was interviewing him.

22 Q. Did he give you an estimation of how many
23 times it occurred?

24 A. Numerous times. I don't recall the exact
25 amount. I think we finally agreed it had been

1 dozens, to the best of my memory.

2 Q. Based on your investigation did you collect
3 anything physically from the residence, like clothing
4 or anything like that?

5 A. Yes, we collected some of his clothing from
6 the washing machine.

7 Q. What clothing was that?

8 A. I believe it was a pair of gray underwear.

9 Q. How long did your interview last?

10 A. I don't recall.

11 Q. Do you recall it just a few minutes that he
12 went from denying it to admitting or did it take an
13 extended period of time?

14 A. I would say the entire interview was
15 approximately 45 minutes from start to finish.

16 Q. And other than being her brother, did he
17 confirm any other type of legal relationship between
18 the two?

19 A. Yes, he told me he was her legal guardian,
20 that he had taken that over from her parents when
21 they were deceased.

22 Q. And did he say there was a reason she needed
23 a guardian?

24 A. Yes, he said she was not capable of taking
25 care of herself.

1 Q. Did he say anything about her being capable
2 of understanding consequences or just that she
3 couldn't take care of herself?

4 A. I do believe that came up in the interview;
5 however, I don't recall his exact response.

6 Q. But that in his -- and he believed she was
7 about a three- or four-year-old level?

8 A. Yes.

9 MR. GIBSON: Objection, your Honor.
10 Speculation to what my client believed.

11 MR. GENSLER: I'd object also as to
12 speculation but also hearsay as to Mr. Quiroga.

13 MR. ARMSTRONG: I would just say, your
14 Honor, Detective Boruchowitz previously testified
15 that Mack told him that her mental capacity was about
16 three or four years old.

17 THE COURT: Correct.

18 MR. GIBSON: Correct, but he can't say what
19 my client believed or didn't believe because how
20 would he know?

21 THE COURT: It was a statement that he made
22 during the interview. I don't think there was
23 anything that was said about Mr. Quiroga during the
24 interview. He didn't even talk about it.

25 MR. GENSLER: No, but Detective Boruchowitz

1 is testifying about a statement that Mr. Mack made.

2 THE COURT: Correct.

3 MR. GENSLER: And an opinion that he has,
4 which the statement is admissible against Mr. Mack,
5 it's not admissible against Mr. Quiroga.

6 THE COURT: Correct.

7 MR. GENSLER: And we've also objected as to
8 his opinion, which may or may not be admissible
9 against Mr. Mack but it's certainly not admissible
10 against Mr. Quiroga.

11 THE COURT: Correct.

12 MR. GENSLER: Okay.

13 THE COURT: So the objection with regard to
14 Mr. Quiroga would be sustained. The one with regards
15 to Mr. Mack I'll overrule.

16 MR. GENSLER: Thank you.

17 BY MR. ARMSTRONG:

18 Q. Did you ever interview a Mr. Quiroga?

19 A. I did.

20 Q. When did you interview him?

21 A. That was later that evening, I believe just
22 before 9:00 o'clock on the 10th of April.

23 Q. Where did you interview him?

24 A. At his residence.

25 Q. Do you recall where his residence is? In

1 general. I don't need a specific address or
2 anything.

3 A. Just down from Evergreen.

4 Q. What is Evergreen?

5 A. A nursing facility here in Pahrump.

6 Q. Okay. And why did you go interview
7 Mr. Quiroga?

8 A. The victim contacted me after she was aware
9 of the arrests in this case and indicated that
10 Mr. Quiroga had also raped her.

11 Q. So it was after that secondary contact with
12 the victim you interviewed Mr. Quiroga?

13 A. That's correct.

14 Q. And did you confront him with the
15 allegations of a sexual relationship?

16 A. I did.

17 Q. And what was his response to that?

18 A. He initially indicated that it was just a
19 cuddling, kissing relationship; however, subsequently
20 he confirmed the sexual relationship.

21 Q. What type of sexual relationship did you
22 confirm?

23 A. He indicated that he had penetrated her
24 vagina with his fingers and that she had touched his
25 penis on more than one occasion.

1 Q. And was that touching with her mouth or her
2 hands or something else?

3 A. I'd have to look at my report to refresh my
4 memory. I apologize.

5 Q. And did Mr. Quiroga discuss with you
6 anything about her mental capacity?

7 A. Yes, he did.

8 Q. What did he say about her mental capacity?

9 A. There was much conversation about it. He
10 indicated he was aware that Michael was her guardian
11 for reasons of mental capacity. He also said that he
12 perceived that she was much like a teenager mentally,
13 even referred to their relationship as teenage love.

14 Q. And did he give you a timeframe for when
15 they last had a sexual encounter?

16 A. Yes. He also indicated the last several months.

17 Q. And did he say how long it had lasted, how
18 long it had been going on?

19 A. Yes, he said it had been going on for quite
20 some time, back to when her parents were still alive.

21 Q. And the man you know as Mr. Mack who told
22 you about having oral sex and penetrating the lips of
23 Courtney's vagina, is he in the courtroom today?

24 A. Yes.

25 Q. What is he wearing?

1 A. He's wearing the orange and white jail
2 jumpsuit.

3 MR. ARMSTRONG: Let the record reflect the
4 in-court identification of Mr. Mack.

5 THE COURT: The record will reflect the
6 in-court identification of Mr. Mack.

7 BY MR. ARMSTRONG:

8 Q. And Mr. Quiroga, same question, is he here
9 today?

10 A. Yes.

11 Q. Okay. Can you point to him and say
12 something he's wearing?

13 A. He's wearing a black shirt with a blue
14 jacket over it.

15 MR. ARMSTRONG: Would the court record
16 reflect --

17 THE COURT: The record will reflect the
18 in-court identification of Mr. Quiroga as well.

19 MR. ARMSTRONG: Court's indulgence, your
20 Honor.

21 I'll pass the witness at this time.

22 THE COURT: Mr. Gibson?

23 CROSS-EXAMINATION

24 BY MR. GIBSON:

25 Q. Yes. Detective, I believe in your direct

1 testimony you referred to Tamyra as at times having a
2 mentality of a toddler. I'm paraphrasing but is that
3 fair to say?

4 A. Yes, sir.

5 Q. Do toddlers often use the word "pussy" in
6 referring to the vagina?

7 A. I have had several victims of sexual assault
8 that did.

9 Q. Okay. But she didn't refer to "pussy" to
10 you, correct?

11 A. I don't recall. I'd have to review that.

12 Q. And if it wasn't in your report, then odds
13 are it wouldn't -- you would not have -- that word
14 would not have been used?

15 A. It would either be in the report or the
16 transcript of the interview.

17 Q. Right. I guess the absence thereof means
18 that she didn't say that word to you ever?

19 A. If it's not in the transcript, she did not
20 say that word to me, yes.

21 Q. Okay. What terminology did Tamyra use to
22 describe male and female genitals?

23 A. I don't believe we got into that. That was
24 the forensic interview is where that's covered.

25 Q. Did you ever locate a belt?

1 A. No.

2 Q. A flowered belt?

3 A. I did not.

4 Q. Or a belt of any kind?

5 A. At the residence?

6 Q. Anywhere.

7 A. No.

8 Q. In this case.

9 A. No, I did not.

10 Q. And did Tamyra tell you that she was spanked
11 with a belt at any time?

12 A. Yes.

13 Q. Did she describe the belt to you?

14 A. I don't recall a description.

15 Q. Okay. Did you ever look for it? Did you
16 find it relevant?

17 A. Yes. We looked at the residence. I did not
18 find a belt.

19 Q. A belt of any kind for her?

20 A. I didn't find a belt in her bedroom at all.

21 MR. GIBSON: No further questions.

22 THE COURT: Mr. Gensler?

23 CROSS-EXAMINATION

24 BY MR. GENSLER:

25 Q. Detective Boruchowitz, in your profession

1 you regularly prepare reports, right?

2 A. I do.

3 Q. What's the purpose of a report?

4 A. To document events.

5 Q. And it's important to be accurate, right?

6 A. It is.

7 Q. So you check and double-check to make sure
8 they're accurate?

9 A. Yes, sir.

10 Q. And in this case there's some transcripts as
11 well because there was some taped interviews?

12 A. That's correct.

13 Q. Were they prepared before you prepared your
14 report?

15 A. No, they were prepared afterwards.

16 Q. So you did not rely on any transcripts in
17 the preparation of your report?

18 A. No, I did not.

19 Q. But you relied on the interviews in
20 preparation of your report?

21 A. That's correct.

22 Q. What you heard you relied on but not what
23 was transcribed?

24 A. That's correct.

25 Q. Whenever Tammy talked to you about these

1 incidents, didn't she say, He put his penis in my
2 vagina?

3 A. Like I testified, I don't recall her
4 specific wording. That was the gist of what I took
5 away from the interview though.

6 Q. And we're talking about the specific words
7 though, and you don't remember that.

8 A. No. I'd have look at the transcript to tell
9 you exactly what it was.

10 Q. Did you do that before you came to court
11 today?

12 A. No, I reviewed my report.

13 Q. And did everything in your report seem
14 accurate?

15 A. Yes. I didn't notice any inaccuracies.

16 Q. Have you ever reviewed the transcripts?

17 A. Yes. When they came back prior to sending
18 them to Mr. Armstrong, I browsed through them real
19 quickly.

20 Q. Did you ever determine if they truly and
21 accurately represented what was on the tapes?

22 A. I saw nothing that was a flag that there was
23 inaccuracies.

24 Q. Okay. In your browsing you couldn't
25 determine that?

1 A. What's that?

2 Q. In your browsing of the transcript you
3 couldn't determine whether they truly and accurately
4 reflect what was said?

5 A. That's what I just said. I said I did not
6 notice any inaccuracies.

7 Q. I'm saying in browsing that you didn't
8 notice any inaccuracies?

9 A. That's correct, I did not.

10 Q. You didn't study them to determine whether
11 they truly reflected --

12 A. That's correct, I did not study them.

13 Q. Every interview that was conducted in this
14 case was taped in some manner, either audio or video?

15 A. To the best of my recollection I believe
16 they were all recorded.

17 Q. Every interview you conducted was taped?

18 A. I don't believe I recorded my conversation
19 with the individuals that brought in the victim. I
20 don't believe that was recorded because I --

21 Q. I'm sorry.

22 A. That was in the front lobby. I don't
23 remember.

24 Q. And you didn't interview them, you just
25 talked to them?

1 A. Just a conversation.

2 Q. How many interviews did you have with Tammy?

3 A. Just one interview.

4 Q. One that you had yourself?

5 A. That's correct.

6 Q. How many did you have with Mr. Quiroga?

7 A. Just one as well.

8 Q. Okay. Those were both taped and both

9 transcribed?

10 A. I believe so, yes.

11 Q. Did you examine Tammy?

12 A. Physical examination?

13 Q. Correct.

14 A. No, sir.

15 Q. What was she wearing when you saw her?

16 A. I have no clue.

17 Q. You can't remember?

18 A. No, sir.

19 Q. Didn't take any pictures of her?

20 A. No, sir.

21 Q. But as far as you know an examination of her

22 was conducted?

23 A. Yes, sir.

24 Q. In Las Vegas?

25 A. Yes, sir.

1 Q. Have you got the results of that examination
2 yet?

3 A. I have not.

4 Q. Did you get any preliminary results?

5 A. I have not.

6 Q. Was she examined by anyone before she was
7 taken to Las Vegas?

8 A. I don't believe so, no, sir.

9 Q. So Sergeant Jackson didn't do an
10 examination?

11 A. No, sir.

12 Q. When you interviewed Tammy, she told you
13 where the belt would be, right?

14 A. I don't recall specifically.

15 Q. You don't recall her saying it would be
16 laying on the bed in her room?

17 A. I don't recall where she said it would be
18 specifically. I do believe she said it was in her
19 room but I don't recall at that point.

20 Q. She wasn't wearing it --

21 A. No, sir.

22 Q. -- when you met with her?

23 You don't have a copy of the transcript with
24 you of any of the interviews?

25 A. No, sir.

1 Q. But it's your testimony today that on
2 Mr. Quiroga's interview and in that transcript he
3 said that he penetrated Tammy's vagina with his
4 fingers?

5 A. I don't recall his exact wording, if that
6 was his wording or not. I can look at the --

7 Q. Well, you testified you said that's what he
8 said?

9 A. Right. I don't recall if that was his exact
10 wording or not.

11 Q. So you can't testify here one way or the
12 other whether he said that he penetrated her vagina?

13 A. Yes, I believe he said he penetrated with
14 his fingers. I can look at my report and refresh my
15 memory to the extent of that.

16 Q. Okay. Do you have it?

17 A. I do.

18 MR. GENSLER: Can he look at his report to
19 refresh his recollection, your Honor?

20 THE COURT: That's fine.

21 THE WITNESS: I'm ready when you are, sir.

22 BY MR. GENSLER:

23 Q. Okay. Can you refer me to a page?

24 A. Page five of my report.

25 MR. ARMSTRONG: Page nine of discovery.

1 MR. GENSLER: Page nine of the discovery.

2 Thank you.

3 BY MR. GENSLER:

4 Q. Okay. Where are we looking?

5 A. Halfway down says he stated that he's
6 fingered her at his apartment on North Blagg Street
7 but he did not have sex with her because he could not
8 get an erection.

9 Q. Okay. And by "fingered" you take that to be
10 penetrated?

11 A. Yes, based on the interview, again this is
12 not a direct quote from him, the transcript would
13 show the exact quote, but based on what he did say to
14 me, that was the reference.

15 Q. Do you see a difference between fingered and
16 penetrated?

17 A. No, sir.

18 Q. Did you see a difference between touched and
19 fingered?

20 A. Yes, sir.

21 Q. Do you see a difference between touched and
22 penetrated?

23 A. There is a difference; however, they're
24 often the same.

25 Q. Okay. But there is a difference?

1 A. Between touched and penetrated?

2 Q. Yeah. I'm just wondering if he said touched
3 in the interview why you would use fingered in your
4 report and penetrated on the stand?

5 A. I'm not sure. I'd have to look at the
6 transcript to see exactly what he said to lead me to
7 believe that.

8 Q. You don't have that here to look at?

9 A. I don't.

10 MR. ARMSTRONG: I have one, if you'd like
11 him to.

12 MR. GENSLER: I'd like him to point out to
13 me where he said that.

14 MR. ARMSTRONG: Sure.

15 MR. GENSLER: Where Mr. Quiroga said that.

16 MR. ARMSTRONG: May I approach, your Honor?

17 THE COURT: Yes.

18 MR. ARMSTRONG: It's page 50.

19 BY MR. GENSLER:

20 Q. For the record you're reviewing a copy of
21 the transcript that Mr. Armstrong just gave you,
22 right?

23 A. I am.

24 Q. Does that appear to be a true and accurate
25 copy of the transcript that you've seen previously,

1 just by browsing it?

2 A. I believe this is a transcript of Mr. Mack.

3 MR. ARMSTRONG: I'm sorry.

4 MR. GENSLER: Good thing I asked.

5 MR. ARMSTRONG: Try this one. Page 50.

6 THE WITNESS: All right.

7 MR. ARMSTRONG: Your page 50 on the upper
8 right-hand corner.

9 THE WITNESS: Right.

10 BY MR. GENSLER:

11 Q. For the record you're now reviewing a
12 transcript that is Mr. Quiroga's purportedly?

13 A. Yes, sir.

14 Q. It appears to be a true and accurate copy of
15 the transcript you previously reviewed?

16 A. To the best of what I've seen so far, yes,
17 sir.

18 Q. Other than the bunch of Post-its it has on
19 it?

20 A. Yes, sir.

21 Q. And Mr. Armstrong referred you to a page,
22 right?

23 A. That's correct.

24 Q. What page did he refer you to?

25 A. He referred me to page 50.

1 Q. Is that the upper right-hand corner or the
2 lower right-hand corner?

3 A. Upper right-hand corner, sir.

4 MR. ARMSTRONG: Page ten also, Detective
5 Boruchowitz.

6 THE WITNESS: That's what I was looking at.

7 MR. ARMSTRONG: Page nine and ten.

8 THE WITNESS: I'm ready when you are.

9 BY MR. GENSLE:R:

10 Q. Did you find it?

11 A. Yes.

12 Q. Okay. Where can I look?

13 A. Page nine on the bottom.

14 MR. ARMSTRONG: Page 143 of discovery.

15 BY MR. GENSLE:R:

16 Q. So page nine of the transcript over to page
17 ten?

18 A. Yes, sir.

19 Q. And so you took -- this is a correct
20 recitation of these questions and answers? And
21 correct me if I'm wrong, but you took this to say
22 that Mr. Quiroga said that he penetrated Tammy with
23 his fingers, this part I'm going to read? And
24 correct me if I get the wrong part. Starting at the
25 bottom of page nine it says, Okay -- this is you.

1 Okay, she's saying that you put your fingers in her
2 vagina. And then the answer is, Oh, yeah, I touched
3 her. Then your question was, Okay. And the answer
4 was, I touched her, yeah. And you took that mean he
5 placed his fingers in her vagina?

6 A. Yes. I took saying "yes" to the fact that
7 she said he put his fingers in her vagina an
8 affirmative response.

9 Q. So you totally disregarded the "I touched
10 her" explanation of it?

11 A. I did not disregard that. That is in direct
12 response to putting his fingers in her vagina.

13 Q. And he says, Oh, yeah, I touched her?

14 A. That's correct.

15 Q. And that means that he's agreeing with what
16 you said?

17 A. I don't know of no way that you would take
18 that.

19 Q. Okay. But that's the only part that you can
20 point to?

21 A. The reference, page 50 that Mr. Armstrong
22 had me look at, is a follow-up to that line of
23 questioning.

24 Q. Well, yeah, it's a follow-up of you again
25 trying to get him to say that he put his fingers in

1 her vagina but yet all he would acknowledge was that
2 he touched her, correct?

3 A. I wasn't trying to get him to say anything,
4 sir.

5 Q. You weren't? You weren't trying to get him
6 to confess?

7 A. No, I was simply trying to get the facts
8 from him as to what occurred.

9 Q. So you don't do that, try to get people to
10 confess?

11 A. That's what I said, I'm trying to get the
12 facts from him, not trying to get him to say
13 something specific.

14 Q. But I'm asking you, you don't try to get
15 people to confess?

16 A. Yes, I just said that. I try to get the
17 facts from people.

18 Q. Yes or no, do you try to get people to
19 confess?

20 A. Yes.

21 Q. Okay. It's not that hard. And --

22 A. Not often.

23 Q. In this case you were trying to get
24 Mr. Quiroga to confess, yes or no?

25 A. Yes. That's my job.

1 Q. Okay. And in doing that you can lie, right?

2 A. I can.

3 Q. And you do?

4 A. I do.

5 Q. Regularly?

6 A. Quite often.

7 Q. Often, right?

8 A. Yes, sir.

9 Q. But you can't lie in court?

10 A. That's correct.

11 Q. Okay. We know that because you've taken an
12 oath?

13 A. Yes, sir.

14 Q. And so do you lie when you talk to victims?

15 A. Not on a regular basis. I don't know
16 specifically a case that I can say.

17 Q. In this case you told Tammy that you would
18 not lie to her, correct?

19 A. I don't recall if I told her that.

20 Q. Do you want to look at that transcript?

21 A. I can if you want me to.

22 Q. You can't recall anything, you might as well
23 look at the transcripts.

24 Do you have a copy of that one or should I
25 give him mine?

1 MR. ARMSTRONG: (Complies.)

2 BY MR. GENSLE:R:

3 Q. And I can refer you to a page. Try 32.

4 MR. ARMSTRONG: What page of discovery is
5 that?

6 MR. GENSLE:R: 39 towards the bottom.

7 THE WITNESS: Yes, sir, I did tell her that.

8 BY MR. GENSLE:R:

9 Q. Okay. Is that a truth or a lie?

10 A. I don't recall any specific lies that I told
11 her.

12 Q. So that was the truth?

13 A. To the best of my memory.

14 Q. Is it hard to remember whether you're
15 telling the truth or not?

16 A. No, sir.

17 Q. Is it a truth or a lie?

18 A. I don't recall lying. I'd have to review
19 the entire transcript, sir.

20 Q. How about in reports, when you prepare
21 reports, those have to be true too, right?

22 A. That's correct.

23 Q. So interviews you don't have to tell the
24 truth but reports and testimony you do have to tell
25 the truth?

1 A. Yes, sir.

2 Q. And you have no trouble with that line?

3 A. No, sir.

4 Q. I asked you briefly -- I asked you a little
5 while ago, I'd like to go into it a little more.

6 Tammy went into Las Vegas for some medical tests?

7 A. Yes, sir.

8 Q. And you said you don't have any results back
9 yet?

10 A. I don't believe I've gotten them back, no,
11 sir.

12 Q. Do you have any kind of a timeframe that
13 you're looking at or have you had any communication?
14 I know it's compound but...

15 A. I believe she went to UMC, and I haven't had
16 one there in a while but they're usually about three
17 to four months behind in getting the paperwork to us.

18 Q. And she told you that she had sex with
19 Mr. Quiroga the day before, right?

20 A. No, I don't believe she said she had sex
21 with Mr. Quiroga the day before.

22 Q. Did you retrieve a calendar from her home?

23 A. I'd have to look at my report. If I
24 retrieved it, I definitely photo'd it.

25 Q. You definitely what?

1 A. Photographed it.

2 Q. So you saw a calendar?

3 A. Yes, sir.

4 Q. And she told you about that and it was
5 important, right?

6 A. She did tell me about that, yes, sir.

7 Q. You felt it was important, that's why you
8 looked for it?

9 A. It was important to look for it, yes, sir.

10 Q. Do you know if it was important to retrieve
11 it or not?

12 A. No. Once it was -- once I viewed it, the
13 importance was not nearly as significant.

14 Q. What was it, a 2013 calendar?

15 A. It was.

16 Q. If you didn't retrieve it, what did you
17 photograph?

18 A. The calendar page.

19 Q. Every month or is it just all on one page?

20 A. The only page that had markings on it.

21 Q. Do you know what month that was?

22 A. It was the current month.

23 Q. And that was April at that time?

24 A. Yes.

25 Q. And that was on April the 10th?

1 A. Yes, sir.

2 Q. So you didn't look back at March? February?
3 January?

4 A. Those pages were not there.

5 Q. They'd already been ripped off?

6 A. Yes, sir.

7 Q. Have you had any communication with anybody
8 at the, for lack of a better term, the lab that
9 conducted the forensic examination of Tammy?

10 A. It was actually at the University Medical
11 Center, and I'm assuming you're asking after the
12 exam?

13 Q. Right. After the exam was conducted, did
14 you talk to anybody, either at UMC, nurses, doctors,
15 lab technicians where the results or the evidence
16 would have been sent to be analyzed?

17 A. I don't believe I've had any contact with
18 any of them since then, no, sir.

19 Q. As far as you can recall you had no
20 discussions about those results?

21 A. No.

22 Q. And would UMC conduct the tests or the
23 analysis or would that be sent to a crime lab?

24 A. They do the physical examination, collect
25 any evidence and send it to the Las Vegas crime lab.

1 Q. So that's Las Vegas Metropolitan Police
2 Department forensics laboratory?

3 A. Yes, sir.

4 MR. GENSLER: All right. Thank you.
5 Nothing further.

6 THE COURT: Any redirect by the State?

7 REDIRECT EXAMINATION

8 BY MR. ARMSTRONG:

9 Q. Quick question for you, Detective
10 Boruchowitz. Do you recall asking Mr. Quiroga if he
11 knew if Courtney was capable of orgasming?

12 A. I did ask him that.

13 Q. And do you recall what his response was?

14 A. I recall he said several times that she
15 liked it, but I don't recall if he specifically
16 answered that question.

17 Q. Okay. Would it refresh your recollection to
18 look at the transcript?

19 A. It would.

20 Q. Go ahead and take a look at the bottom of
21 page 49.

22 A. I'm ready when you are.

23 Q. Okay. Do you recall if you -- if he -- what
24 he said in response to your question if she was
25 capable of orgasming?

1 A. He said yes.

2 Q. And then you went into the questioning about
3 the finger?

4 A. Yes, sir.

5 Q. Okay. And what did he say about -- in
6 response to you asking him about putting the finger
7 in her, what did he say?

8 A. He said she really liked it.

9 Q. I just want to clarify one thing. You had
10 one formal interview with Tammy; is that correct?

11 A. Yes, sir.

12 Q. And then you had a phone conversation with
13 her later about George?

14 A. Yes, sir.

15 Q. And that phone conversation is not --
16 there's no transcript of that or a recording of that?

17 A. Right. That was not an interview at all.
18 She called, I answered the phone, took the
19 information and made a referral.

20 MR. ARMSTRONG: No further questions, your
21 Honor.

22 THE COURT: All right. Anything else for
23 this witness?

24 MR. GENSLER: Yes.

25 You got anything?

1 MR. GIBSON: No, Judge. Thank you.

2 THE COURT: All right.

3 RECROSS-EXAMINATION

4 BY MR. GENSLER:

5 Q. Where did you see Mr. Quiroga say that he
6 put his finger in her and she really liked it?

7 A. The question was asked is what his response
8 was, and it's on page 50. He said, You know it's
9 something she very -- you know, and she -- it's
10 something she enjoyed very much. He said, you know,
11 she used to tell me about it, okay.

12 Q. So Mr. Quiroga told you that she told you
13 about -- that she told him about it?

14 A. About really liking sex.

15 Q. Right. That's what he told you?

16 A. Yes, sir. That's what I just read.

17 Q. When Mr. Armstrong asked you the question,
18 he said he told you that when he put his finger in
19 her she really liked it and you said yes?

20 A. That wasn't his question, sir.

21 MR. GENSLER: Can I get a readback on that?

22 (Record read by the reporter.)

23 BY MR. GENSLER:

24 Q. Isn't that what I just said?

25 A. No, sir.

1 Q. Okay. How is what I said different than
2 that?

3 A. Mr. Armstrong asked me what his response was
4 after my statement about putting his finger inside of
5 her, and his response was, She really liked it. That
6 was my response to those questions.

7 Q. Okay. And that's somehow different?

8 A. Yes, sir.

9 Q. Okay. When you went there to talk to
10 Mr. Quiroga, your intention was to arrest him, right?

11 A. No, sir.

12 Q. So you arrested him based upon what?

13 A. Probable cause after his confession relating
14 to the crime.

15 Q. So after he said he touched her, that was
16 your probable cause?

17 A. After that entire interview, yes, sir.

18 Q. That's why you arrested him because he said
19 he touched her?

20 A. That's not the only thing he said.

21 Q. What else did he say?

22 A. The reference to he touched her was an
23 affirmative response about putting his finger inside
24 of her vagina.

25 Q. Okay. Anything else?

1 A. Yes. He indicated that she -- that he knew
2 that she was mentally handicapped, she was incapable
3 of understanding consequences of the sexual
4 relationship.

5 Q. That's in there somewhere too I take it?

6 A. Yes, sir.

7 Q. Okay. Anything else?

8 A. I don't recall every detail of the rest of
9 his interview, but based on her phone call and his
10 interview, that's what the probable cause was based
11 on.

12 Q. Okay. Well, the phone call was before you
13 interviewed him?

14 A. That's correct.

15 Q. Didn't happen during the interview?

16 A. That's correct.

17 Q. So based upon the phone call, you were going
18 over there to arrest him? Didn't matter what he
19 said?

20 A. That's not true, sir.

21 Q. So if he would have said nothing happened,
22 you wouldn't have arrested him?

23 A. That's correct.

24 MR. GENSLER: I have to remember that one.

25 Okay. Thank you.

1 MR. ARMSTRONG: Nothing further from the
2 State.

3 THE COURT: All right. This witness may be
4 excused?

5 THE WITNESS: Thank you, Judge.

6 THE COURT: Any other witnesses for the
7 State?

8 MR. ARMSTRONG: No, your Honor. We'll
9 forego our fourth witness.

10 THE COURT: State rests?

11 MR. ARMSTRONG: State rests.

12 THE COURT: Anything from defense?

13 MR. GIBSON: Not from my client, Judge. And
14 I explained to him his right to take the stand,
15 present evidence and it's our choice not to do so
16 today. Thank you.

17 THE COURT: All right.

18 MR. GENSLER: And as to Mr. Quiroga we have
19 no evidence to present at this preliminary hearing
20 either. He does understand that, as Mr. Gibson just
21 indicated. And as I indicated we have nothing to
22 present here at this stage.

23 THE COURT: All right. Anything in closing?

24 MR. ARMSTRONG: Your Honor, I would just
25 note that for the cases that involve a vulnerable

1 person or mental illness that a vulnerable person is
2 someone who suffers from a condition of physical and
3 mental incapacitation because of a developmental
4 brain damage or mental illness.

5 And a person with mental illness is defined
6 as a person who has any mental dysfunction leading to
7 impairment -- impaired ability to maintain himself or
8 herself or to function effectively in his or her life
9 situation without external support. Other than that
10 I'll reserve for rebuttal.

11 THE COURT: All right.

12 MR. GIBSON: I'm going to submit, your
13 Honor. Anything I do in the future is going to be
14 trial related.

15 THE COURT: All right.

16 MR. GENSLER: Your Honor, I don't have a
17 whole lot to argue about at this time, but I would
18 like you to consider, as you do in every case, the
19 credibility of the witnesses. And what's
20 particularly important here in our case is the
21 testimony of Miss Kallaher who has the longest
22 history, I guess other than Mr. Mack, is she has the
23 longest history with Miss Alexander.

24 And she talked quite a bit about issues with
25 telling the truth and getting people in trouble and

1 telling stories and lies, waxing and waning, when you
2 confront her about it she's okay for a while but then
3 she falls right back into that pattern.

4 You have very serious charges against
5 Mr. Quiroga here that are totally uncorroborated.
6 All you have is the testimony of Miss Alexander
7 which, as Miss Kallaher basically indicated, can't be
8 trusted always.

9 So on that I would submit as well. And by
10 submit I do not mean that I agree that all the
11 charges against Mr. Quiroga should result in a
12 bindover, I merely submit it to the court's proper
13 determination.

14 MR. ARMSTRONG: Your Honor, just a quick
15 rebuttal to that is Miss Kallaher also testified that
16 when the victim understands the importance of telling
17 the truth, as I questioned her when the victim first
18 took the stand, she understands that she needs to
19 tell the truth. And that since the last episode that
20 had -- those occurrences have significantly
21 decreased. So I'd just submit on that.

22 THE COURT: All right. Well, based on the
23 testimony that I heard here today and what was
24 presented to the court with regards to this case, I
25 feel that the State has met their burden of proof

1 with regards to that.

2 In addition to the testimony of
3 Miss Kallagher and what she had to say, there was also
4 the testimony of the detective and the transcripts
5 that he related to that we went back and forth for a
6 long time over what was said in the transcripts.

7 So I feel the State has met their burden of
8 proof with regards to this case and I'm going to
9 order that both defendants are bound over to the
10 district court to answer to said charges there. It
11 would be under district court case number.

12 THE CLERK: CR 7444 A, May 17th, 2013,
13 9:00 a.m.

14 THE BAILIFF: Mack is remanded, Judge?

15 THE COURT: Mr. Mack is remanded, yes.

16 Court's adjourned.

17 (Thereupon the proceedings
18 were concluded at 4:27 p.m.)

19 * * * * *

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25

CERTIFICATE OF REPORTER

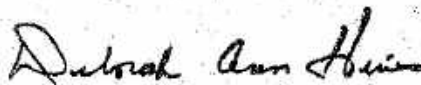
STATE OF NEVADA)

SS:

COUNTY OF NYE)

I, Deborah Ann Hines, certified court reporter, 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 that thereafter said shorthand notes were transcribed into typewriting at and under my direction and supervision and the foregoing transcript constitutes a full, true and accurate record of the proceedings had.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 30th day of July, 2013.

Deborah Ann Hines, CCR #473, RPR

PAHRUMP JUSTICE COURT

BY **F. DENISON**CASE NO.: 13CR 01437 A
DEPT B

2013 MAY -8 PM 3:16

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IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP
COUNTY OF NYE, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

MEDIA REQUEST ALLOWING
ELECTRONIC EQUIPMENT
IN THE COURTROOM# Michael Mack

Defendant/

Michelle Hermann of The Mirror hereby
requests permission to record, photograph the proceedings on the above-entitled
case, in the Courtroom, Judge Ken Taperson presiding, on the 8th day of
May, 20 13, at the hour of 1330.

I certify that I am familiar with the Supreme Court Rules 229-246 (inclusive) pertaining to
Cameras and Electronic Media Coverage in the Courts. I also understand that this request must be
submitted to the Court at least twenty-four (24) hours before the proceedings commence unless good
cause can be shown.

It is further understood that any pooling arrangements necessitated among the media shall be
the sole responsibility of the media and must be arranged prior to coverage without calling upon the
Court to mediate any disputes.

DATED this 6th day of May, 20 13Michelle Hermann
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1 PJC Case No. 13CR01437 A
2 PJC Dept: B
3 DC Case No. CR7444A

4 IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP
5 COUNTY OF NYE, STATE OF NEVADA

6 *****

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs

BINDOVER ORDER

10 MICHAEL ALLEN MACK,

11 Defendant. /

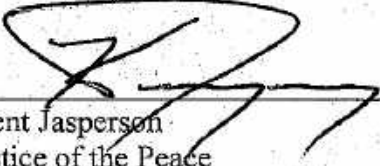
12 IT APPEARS to the court that public offenses, namely, **COUNT I: SEXUAL ASSAULT,**
13 **violation of NRS 200.366, A CATEGORY 'A' FELONY; COUNT II: SEXUAL ASSAULT,**
14 **violation of NRS 200.366, A CATEGORY 'A' FELONY; COUNT III: PREVENTING OR**
15 **DISSUADING VICTIM FROM REPORTING CRIME, COMMENCING PROSECUTION**
16 **OR CAUSING ARREST, violation of NRS 199.305, A CATEGORY 'D' FELONY; COUNT**
17 **IV: UNLAWFUL CONTACT WITH PERSON WITH MENTAL ILLNESS, violation of NRS**
18 **207.260, A GROSS MISDEMEANOR; COUNT V: ABUSE OF VULNERABLE PERSON,**
19 **violation of NRS 200.5099, A GROSS MISDEMEANOR,** have been committed and it further
20 appears to the court that the defendant, **MICHAEL ALLEN MACK,** has committed the same.

21
22 IT IS THEREFORE ORDERED that the defendant, **MICHAEL ALLEN MACK,** be and is
23 hereby ordered bound over to the 5th Judicial District Court, and there held to answer to said
24 charge(s).
25

1 IT IS FURTHER ORDERED that the defendant, **MICHAEL ALLEN MACK**, appear in the
2 District Courtroom of the Nye County Government Center, 1520 E Basin Avenue, Pahrump, Nevada,
3 for arraignment on said charge(s) on Friday, May 17, 2013 at 9:00 o'clock a.m.

4 IT IS FURTHER ORDERED that the defendant be admitted to bail in the sum of N/A.

5 DONE IN OPEN COURT this 8th day of May 2013.

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25
Kent Jaspersen
Justice of the Peace

FILED

2013 MAY 14 A 11:4
NYE COUNTY CLERK
BY DEPUTY

Case No. CR7444A

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

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

INFORMATION

MICHAEL ALLEN MACK,
GEORGE QUIROGA and
ARTHUR ALBERT GATZKE

Defendants.

BRIAN T. KUNZI, District Attorney within and for the County of Nye, State of Nevada, informs the Court that MICHAEL ALLEN MACK and GEORGE QUIROGA, before the filing of this Information, did then and there, in Nye County, Nevada, commit the following offenses, to wit:

COUNT I

SEXUAL ASSAULT, in violation of NRS 200.366, A CATEGORY 'A' FELONY, committed in the following manner, to wit: That ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND APRIL 9, 2013, in Pahrump Township, Nye County, Nevada, said Defendant MICHAEL ALLEN MACK did willfully and unlawfully subject another person, to wit: NCSO pseudonym "COURTNEY", to sexual penetration, against the victim's will, or under conditions in which said Defendant knew or should have known that the victim was mentally or physically incapable of resisting or understanding the nature of her conduct, by penetrating the victim's vagina;

COUNT II

SEXUAL ASSAULT, in violation of **NRS 200.366, A CATEGORY 'A' FELONY**, committed in the following manner, to wit: That **ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND APRIL 9, 2013**, in Pahrump Township, Nye County, Nevada, said Defendant **MICHAEL ALLEN MACK** did willfully and unlawfully subject another person, to wit: NCSO pseudonym "**COURTNEY**", to sexual penetration, against the victim's will, or under conditions in which said Defendant knew or should have known that the victim was mentally or physically incapable of resisting or understanding the nature of her conduct, by having the victim perform fellatio;

COUNT III

PREVENTING OR DISSUADING VICTIM FROM REPORTING CRIME, COMMENCING PROSECUTION OR CAUSING ARREST, in violation of **NRS 199.305, A CATEGORY 'D' FELONY**, committed in the following manner, to wit: That **ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND APRIL 9, 2013**, in Pahrump Township, Nye County, Nevada, said Defendant **MICHAEL ALLEN MACK** did willfully and unlawfully intimidate or threaten another person, prevent or dissuade a victim of a crime or a person acting on behalf of a victim or witness from reporting a crime or possible crime to a peace officer, prosecuting attorney or from commencing a criminal prosecution or from causing the arrest of a person in connection with a crime or hindered or delayed any such victim, agent or witness in his effort to carry out any of those actions, by threatening NCSO pseudonym "**COURTNEY**" with negative action if she reported the crimes he committed against her;

COUNT IV

UNLAWFUL CONTACT WITH PERSON WITH MENTAL ILLNESS, in violation of **NRS 207.260, A GROSS MISDEMEANOR**, committed in the following manner, to wit: That **ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND APRIL 9, 2013**, in Pahrump Township, Nye County, Nevada, said Defendant **MICHAEL ALLEN MACK** did willfully and unlawfully have contact with a person with mental illness, to wit: NCSO pseudonym "**COURTNEY**", by physically and sexually abusing her and thus engaging in a course of conduct which would cause a reasonable person with mental illness of like mental state to feel terrorized, frightened, intimidated, or harassed, and did cause said person to feel terrorized, frightened, intimidated or harassed;

///

COUNT V

ABUSE OF VULNERABLE PERSON, in violation of NRS 200.5099, A GROSS MISDEMEANOR, committed in the following manner, to wit: That **ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND APRIL 9, 2013**, in Pahrump Township, Nye County, Nevada, said Defendant **MICHAEL ALLEN MACK**, did willfully, maliciously and intentionally strike NCSO pseudonym "**COURTNEY**", a vulnerable person, with a belt;

COUNT VI

SEXUAL ASSAULT, in violation of NRS 200.366, A CATEGORY 'A' FELONY, committed in the following manner, to wit: That **ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND APRIL 9, 2013**, in Pahrump Township, Nye County, Nevada, said Defendant **GEORGE QUIROGA** did willfully and unlawfully subject another person, to wit: NCSO pseudonym "**COURTNEY**", to sexual penetration, against the victim's will, or under conditions in which said Defendant knew or should have known that the victim was mentally or physically incapable of resisting or understanding the nature of his conduct, by penetrating her vagina with his penis and/or fingers;

COUNT VII

UNLAWFUL CONTACT WITH PERSON WITH MENTAL ILLNESS, in violation of NRS 207.260, A GROSS MISDEMEANOR, committed in the following manner, to wit: That **ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND APRIL 9, 2013**, in Pahrump Township, Nye County, Nevada, said Defendant **GEORGE QUIROGA** did willfully and unlawfully have contact with a person with mental illness, to wit: NCSO pseudonym "**COURTNEY**", by physically and sexually abusing her and thus engaging in a course of conduct which would cause a reasonable person with mental illness of like mental state to feel terrorized, frightened, intimidated, or harassed, and did cause said person to feel terrorized, frightened, intimidated or harassed;

COUNT VIII

ABUSE OF VULNERABLE PERSON, in violation of NRS 200.5099, A GROSS MISDEMEANOR, committed in the following manner, to wit: That **ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND APRIL 9, 2013**, in Pahrump Township, Nye County, Nevada, said Defendant **GEORGE QUIROGA** did willfully, maliciously and intentionally strike NCSO pseudonym "**COURTNEY**", a vulnerable person, with a belt;

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

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

3 Witnesses and their addresses known to the District Attorney of Nye County,
4 State of Nevada, at the time of the filing of this Information:

5 DEPUTY ROBIN BECHT
6 NYE COUNTY SHERIFF'S OFFICE
7 PAHRUMP, NEVADA

EMILY SMITH
621 S. BLAGG
PAHRUMP, NEVADA

8 DETECTIVE DAVID BORUCHOWITZ
9 NYE COUNTY SHERIFF'S OFFICE
10 PAHRUMP, NEVADA

SUSAN KALLAHER
3100 W. SAHARA AVENUE, SUITE
204
LAS VEGAS, NEVADA

11 SERGEANT KELLY JACKSON
12 NYE COUNTY SHERIFF'S OFFICE
13 PAHRUMP, NEVADA

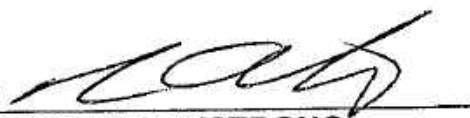
JANE DOE
c/o NYE COUNTY DISTRICT
ATTORNEY'S OFFICE
PAHRUMP, NEVADA

14 DEPUTY JOHN KAKAVULIAS
15 NYE COUNTY SHERIFF'S OFFICE
16 PAHRUMP, NEVADA

17 DETECTIVE MICHAEL EISENLOFFEL
18 NYE COUNTY SHERIFF'S OFFICE
19 PAHRUMP, NEVADA

20 DATED this 13th day of May, 2013.

21 BRIAN T. KUNZI
22 NYE COUNTY DISTRICT ATTORNEY

23 By 
24 ROSS E. ARMSTRONG
Deputy District Attorney

CERTIFICATE OF SERVICE BY MAIL

I, Jessica Cannon, Executive Legal Secretary, Office of the Nye County District Attorney, P.O. Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

**INFORMATION in
5TH JDC Case No(s). CR7444A
STATE v. MICHAEL ALLEN MACK and GEORGE QUIROGA**

upon said Defendant(s) herein by hand delivering a true and correct copy thereof, on
5.13.13 to the following:

THOMAS GIBSON, ESQUIRE
At the Nye County District Attorney's Office
Pahrump, Nevada

HARRY GENSLER, ESQUIRE
At the Nye County District Attorney's Office
Pahrump, Nevada


Jessica Cannon

FILED

1 CASE NO. CR 7444A

2 DEPT NO. 1

2013 JUL 22 P 1:08
Nye County Clerk
BY DEPUTY

3
4 IN AND FOR THE FIFTH JUDICIAL DISTRICT COURT
5 COUNTY OF NYE, STATE OF NEVADA
6

7 THE STATE OF NEVADA,)
8 Plaintiff,) TRANSCRIPT OF PROCEEDINGS
9 vs.) ARRAIGNMENT HEARING
10 MICHAEL ALLEN MACK,)
11 Defendant.)
12

13 BEFORE THE HONORABLE KIMBERLY WANKER,
14 DISTRICT COURT JUDGE
15 1520 EAST BASIN AVENUE, PAHRUMP, NEVADA 89060
16 ON FRIDAY, MAY 17, 2013
17 AT 10:13 A.M.
18

19 APPEARANCES:

20 For the State: Ross Armstrong, Esq.
21 Nye County Deputy District Attorney
22

23 For the Defendant: Thomas Gibson, Esq.
24

25 Reported By: Tracy A. Manning, CCR No. 785

1 FRIDAY, MAY 17, 2013

2 ---oOo---

3 THE COURT: Good morning, Mr. Mack.

4 THE DEFENDANT: Morning.

5 THE COURT: This is the time and place set
6 for arraignment in Case No. CR 7444A, State of
7 Nevada versus Michael Allen Mack. The record will
8 reflect the presence of Mr. Mack, his attorney, Tom
9 Gibson, and we have Ross Armstrong on behalf of the
10 Nye County District Attorney's office and all
11 officers of the court.

12 Before we begin, there's a disclosure that
13 I must make in this case as the District Court
14 judge.

15 As you know, I am extremely active in this
16 community. I belong to many different community
17 organizations and participate in numerous community
18 events and activities.

19 I'm acquainted with Mr. Mack through my
20 community activities. Both Mr. Mack and I are
21 members of Kiwanis. In fact, although I was
22 introduced to Kiwanis by Linda DeMeo, it was
23 Mr. Mack who signed as my sponsor for membership.

24 I've also participated with the Fifth
25 Judicial Adult Drug Court at the United States

1 Department of Agriculture Food Commodity Giveaway
2 through New Hope Path of Hope Church. And Mr. Mack,
3 it -- was the coordinator that would come to drug
4 court to recruit folks to help at those events. And
5 I have referred to Mr. Mack in my drug court as,
6 there's my friend, Mr. Mack. Coordinate with him to
7 participate in drug court.

8 I have never, however, had any association
9 with Mr. Mack outside of community organizations.
10 I've never had a social or any other personal
11 relationship with Mr. Mack. I have had -- I have
12 no -- I had no idea that Mr. Mack even had any
13 relatives living in Pahrump, never been out to
14 dinner with him, never done anything in a personal
15 relationship. Only met and worked with him as part
16 of my involvement in the community.

17 The reason I am making this disclosure is
18 as follows: As part of the Nevada Code of Judicial
19 Conduct, Canon 2: A judge shall perform the duties
20 of judicial office impartially, competently and
21 diligently.

22 And there is a rule, Rule 2.11. Rule 2.11
23 says: A judge should disclose on the record that
24 the judge believes the party or their lawyers might
25 reasonably consider relevant to a possible motion

1 for disqualification, even if the judge believes
2 that there is no basis for disqualification.

3 Therefore, I'm providing a full
4 disclosure. And in accordance with Rule 2.11(c) of
5 the Nevada Revised Code of Judicial Conduct, I just
6 want folks to know of that relationship. I don't
7 want there to be any question about this.

8 I do want to say this, though. This has
9 been a discussion among the District Court judges
10 and with the Supreme Court judges, recently returned
11 from the Nevada District Judges' Association. And
12 one of the subjects of discussion was when a judge
13 should or should not disqualify them, when they are
14 required to make disclosures, when they are not
15 required to disclose information and when they are
16 required to disqualify themselves.

17 Now, pursuant to Nevada Revised Statute
18 1.230 subsection (1), a District Court judge cannot
19 act in an action or proceeding if he or she
20 entertains actual bias or prejudice for or against
21 one of the parties to the action.

22 A judge cannot act in an action or
23 proceeding when implied bias exists as a result of
24 any of the following:

25 (1) the judge is a party to or interested

1 in the action or proceeding;

2 (2) the judge is related to either party
3 by consanguinity or affinity within the third
4 degree;

5 3rd, the judge has been an attorney or
6 counsel for either of the parties in the action or
7 proceeding; or

8 (4) the judge is related to an attorney
9 or counselor for either of the parties by
10 consanguinity or affinity within the third degree.

11 Similarly, Rule 2.11 of Canon 2 of the
12 Nevada Revised Code of Judicial Conduct provides
13 that a judge shall disqualify himself or herself in
14 any proceeding in which the judge's impartiality
15 might reasonably be questioned, including, but not
16 limited to the following terms:

17 (1) The judge has a personal bias or
18 prejudice concerning a party or a party's lawyer, or
19 personal knowledge of the facts that are in dispute
20 in the proceeding.

21 (2) The judge knows that the judge, the
22 judge's spouse or domestic partner, or a person
23 within the third degree of relationship to either of
24 them, or the spouse or domestic partner of such
25 person is:

1 (a) a party to the proceeding or an
2 officer, director, general partner, managing member
3 or trustee of the party;

4 (b) acting as lawyer in the proceeding;

5 (c) a person who has more than a
6 diminimous interest that could be substantially
7 affected by the proceeding; or

8 (d) likely to be a material witness in
9 the proceeding.

10 The judge --

11 Third, the judge knows that he or she,
12 individually or as a fiduciary, or the judge's
13 spouse, domestic partner, parent or child, or any
14 member of the judge's family residing in the judge's
15 household has an economic interest in the subject
16 matter in controversy, or in a party to the
17 proceeding.

18 (4) (sic) The judge, while a judge or a
19 judicial conduct -- candidate has made a public
20 statement other than in a court proceeding, judicial
21 decision or opinion, that commits or appears to
22 commit the judge to reach a particular result or
23 rule in a particular way in the proceeding or
24 controversy.

25 (5) (sic), the judge:

1 (a) served as a lawyer in the matter in
2 controversy or was associated with a lawyer who
3 participated substantially as a lawyer in the matter
4 during such association;

5 (b) served in governmental employment and
6 in such capacity... or opinion concerning the merits
7 of the particular matter in controversy;

8 (c) was a material witness concerning the
9 matter; or

10 (d) previously presided as a judge over
11 the matter in another court.

12 However, the explanation goes on to say:
13 A judge need not disqualify himself or herself
14 merely due to an acquaintance with the parties
15 appearing in the judge's court.

16 In fact, that's a Nevada Supreme Court
17 decision in Ray Varain, 114 Nevada 1271, 1276, 969
18 Pacific 2d, 305, 309, 1998.

19 In fact, disqualification must be based on
20 facts rather than mere speculation. That is from
21 the Nevada Supreme Court, People for the Ethical
22 Treatment of Animals versus Bobby Bersosini,
23 Limited, 111 Nevada 431, 437, 894 Pacific 2d 337,
24 341, it's a 1995 Nevada Supreme Court decision.
25 Rumor, speculation, beliefs, conclusions, innuendo,

1 suspicion, opinion and other similar nonfactual
2 matters do not ordinarily satisfy the requirement
3 for disqualification. Citation is Rippo, R-i-p-p-o
4 versus State, 113 Nevada, 1239, 1248, 946 Pacific 2d
5 1017, 1023, 1997 case. Quoting United States versus
6 Cooley, which is a 10th Circuit Court of Appeals
7 case, 1 F 3d, 895 -- I'm sorry, 985, 993. Again,
8 it's the 10th Circuit case from 1993 that the cert
9 was denied to the U.S. Supreme Court at 515 U.S.
10 1104, 1995.

11 Now, a judge has a great obligation not to
12 disqualify himself or herself where there is no
13 occasion to do so as he or she has to do so in the
14 presence of valid reasons. That's Miller versus
15 Eighth Judicial District Court ex rel County of
16 Clark, 122 Nevada 1245, 1253, 148 Pacific 3d, 694,
17 699. It's a 2006 Nevada Supreme Court decision that
18 held that a judge has a general duty to sit, absent
19 a judicial canon, statute or rule requiring
20 disqualification. City of Las Vegas Downtown
21 Redevelopment Agency versus Eighth Judicial District
22 Court ex rel County of Clark, 116 Nevada 640, 643 5
23 Pacific 3d 1059, 1061, 2000. Noting the general
24 rule that a judge has a duty to preside over cases
25 to their conclusion in the absence of a statute,

1 rule, ethical standard, or other compelling reason
2 to the contrary. A judge or justice is presumed not
3 to be biased, and the burden is on the party
4 asserting the challenge to establish sufficient
5 factual and legal grounds warranting
6 disqualification. City of Las Vegas Downtown
7 Redevelopment Agency, 116 Nevada, 643, 5 Pacific 3d
8 at 1061. Also Rivera versus Rivera, it's 195
9 Pacific 3d, 328, 338. It is a 2008 Nevada Supreme
10 Court decision. And Millen 122 Nevada at 1254, 1255
11 and 148 Pacific 3d at 701. Again, Nevada Supreme
12 Court decision holding that disqualification
13 requires an extreme showing of bias.

14 Obviously I considered whether or not I
15 was required to recuse myself in this case. And
16 based upon my review of the Nevada Revised Statutes,
17 the Nevada Code of Judicial Conduct and -- I believe
18 that my responsibilities and the Nevada Supreme
19 Court decisions in this area, I believe that my
20 obligation is to make that disclosure.

21 If -- I will be happy to continue this in
22 accordance with Rule 2.11(c) if one of the parties
23 wants to file a motion to disqualify me as the judge
24 in this case, and then we'll follow through with the
25 appropriate statutory requirements.

1 But one of the things that was discussed
2 with the Supreme Court justices and among the
3 district court judges is especially in the rural
4 communities, that you are going to have association
5 with folks in the community. And that, in and of
6 itself, while full disclosure is required, or is
7 highly recommended, and I think in this case the
8 rule requires that, it is not -- it does not mean
9 that one has an automatic obligation to recuse
10 themselves.

11 I will tell you that I -- I do not have
12 any personal bias or prejudice in this case. This
13 is no different than any other case. I do know
14 Mr. Mack from the community, and I want to make that
15 as a full disclosure.

16 So Counsel, would you like to proceed?
17 Would you like me to continue this arraignment for
18 two weeks and give the parties the opportunity to
19 file a motion to recuse me as the District Court
20 judge? What would you like to do?

21 MR. ARMSTRONG: Your Honor, from the
22 State's perspective, we appreciate the disclosure,
23 it's good to know the exact facts of the
24 relationship. We were aware there was some
25 knowledge between you and Mr. Mack.

1 We would reserve the right to file a
2 motion for recusal given those facts and doing some
3 research on our own. So if you'd like to continue
4 the arraignment to allow the State to do that,
5 that's fine. Also, if you'd like to just go forward
6 with the arraignment today and then give us an
7 opportunity in the next 30 days to file a motion if
8 we deem it --

9 THE COURT: Here's the deal --

10 MR. ARMSTRONG: -- necessary.

11 THE COURT: I'm not going to waste
12 everybody's time. I mean, if you want to file the
13 motion, I've looked at it, I don't believe that I --
14 I have a bias or prejudice or am required. But
15 nonetheless, you can follow the procedure but I'll
16 just continue it. And then I'll allow that.

17 Mr. Gibson, what's your client's --

18 MR. GIBSON: Your Honor, Mr. Mack is
19 comfortable with this Court hearing the matter and
20 we will be making no motion for any type of change.

21 MR. ARMSTRONG: The State may, Your Honor,
22 now that we have the full facts, we would just like
23 some time to think about that. I'm not saying that
24 we are, but we'd like to reserve the right to --

25 THE COURT: You definitely have -- you

1 know, you definitely have that opportunity to do
2 that if you'd like to do that.

3 So, Counsel, would you like to proceed
4 forward today or -- I think under rule 2.11(c), I
5 think I -- what I will do is, I think what I do is
6 reserve two weeks. I think you should be able to --
7 I don't have a calendar this Friday, the 24th, so
8 it -- we could place it back on the following
9 calendar. Would that give you sufficient time to
10 decide whether or not -- because I'm going to trail
11 the other -- I'm going to have to continue the
12 Quiroga case along with it.

13 MR. ARMSTRONG: Correct. We will be able
14 to make a decision in two weeks, Your Honor.

15 MR. GIBSON: Your Honor, I prefer that we
16 just go forward now, and if they want to file they
17 can. But they haven't even -- they're not even
18 committed yet. They're just -- it's an "if". And
19 all this is just going to be wasting judicial and
20 attorneys' time bringing this thing back if we don't
21 need to. So if they file it, fine; then we do come
22 back. But I'd just as soon go forward now.

23 THE COURT: Actually, if they file and do
24 it properly, the case then -- for the sole purpose
25 of deciding whether I'm biased or prejudiced, then

1 it goes to another judge who makes that
2 determination. If they find there's no bias or
3 prejudice the case comes back. So -- but I'm happy
4 to go forward. Is that what you would like to do,
5 Mr. Armstrong?

6 MR. ARMSTRONG: I don't have a problem
7 going forward with the arraignment at this point and
8 setting something. And then if we file something in
9 the next couple weeks we will.

10 THE COURT: All right. Then let's go
11 forward. We'll go ahead and do the arraignment. I
12 guarantee you, if you waive your right to a speedy
13 trial you're looking at a full -- at least a full
14 year before this case is going to get on with my
15 calendar.

16 MR. GIBSON: Do we know if it's not
17 speedy, I mean, if we invoke speedy trial when it's
18 going to be? Because I know 60 days, it's never 60
19 days.

20 THE COURT: It's never -- if we can
21 accommodate the 60 days it just has to then -- the
22 Nevada statute is 60 days, of course. What we're
23 concerned about is the constitutional right to a
24 speedy trial. But I -- it will depend on the number
25 of days. And I won't -- if you guys have an idea I

1 can give you an idea.

2 MR. GIBSON: We're talking -- looks like
3 about two weeks, roughly.

4 THE COURT: We're looking at 2014, I can
5 tell you. I mean, I have stuff quadruply set until
6 July of 2014. But we'll find out from Gerie. So we
7 need two weeks, approximately ten days for trial?

8 MR. GIBSON: Correct.

9 MR. ARMSTRONG: Correct, Your Honor.

10 THE COURT: And we're going to have a
11 change of counsel as well. Because Mr. Armstrong is
12 leaving at the end of the month.

13 MR. ARMSTRONG: Correct.

14 THE COURT: We'll find out, see what we've
15 got available. It's scary when you pull up your
16 calendar and it's already all orange. Because my
17 calendar colors for the days. And my calendar at
18 2014 is -- actually my calendar is colored clear out
19 to May of 2014.

20 You realize that you probably gave
21 Ms. Clifford a heart attack in Tonopah when you said
22 that you needed ten days. I know she's looking.

23 We have a big district. The Fifth
24 Judicial District is the third largest judicial
25 district in the country. And just for the folks in

1 the audience that don't know, we have courthouses in
2 Pahrump, Goldfield, Tonopah and Hawthorne.

3 And I have one scheduling secretary in
4 Tonopah, Gerie Clifford, that has happened to be
5 with the judicial department for over 20 years. And
6 she runs all of my calendaring for Nye, Mineral and
7 Esmeralda Counties. So we're on line with her
8 through instant messaging, through video and audio
9 equipment. So she sits in during all of the court
10 sessions that I have to give court dates. Because
11 if we tried to do it down here it just wouldn't
12 work. If every one of my courthouses tried to set
13 trial dates. So we have one person who handles my
14 entire calendar. And that in and of itself is quite
15 a chore.

16 THE CLERK: Booked until September of
17 2014.

18 THE COURT: We can't do it before
19 September of 2014, according to Gerie.

20 Can she give us dates in 2014?

21 THE CLERK: September 15 through 19 and
22 September 22 through 26, 2014.

23 THE COURT: September.

24 THE CLERK: 15 through 19.

25 THE COURT: Okay, that's a Monday through

1 Friday, September 15th to 19th, and then
2 September 22nd to 26th, that's the whole next
3 following week. We can set it for trial then.

4 Now, if you don't waive your right to a
5 speedy trial, I'm going to have to vacate some of my
6 calendar -- I'll just have to vacate my calendar for
7 a period of two weeks somewhere.

8 MR. GIBSON: All right. And then my
9 question is, Judge, even if we do that, can you give
10 us a general idea when that might be? Because I can
11 go -- I'm sure Mr. Gensler feels the same way. We
12 need about four to six months to be totally prepared
13 to go, depending on the circumstances. But I mean,
14 anything beyond that would be way beyond what we
15 need.

16 THE COURT: I'll be honest with you. My
17 calendar looks like -- when I look at it from up
18 here it looks like a Christmas tree. I mean, it's
19 all lit up. I don't know, would there be something
20 in December, maybe? December is the one month that
21 isn't -- doesn't look as bad as the others. Because
22 if we're looking about six months, that would be
23 about right. If you need about six months to get
24 ready.

25 Just so you all know, I don't believe -- I

1 know Judge Davis had -- if you ever talked to Rachel
2 in the clerk's office on December 24th at, like,
3 5:00, there's a jury here and they're hearing a case
4 and I won't do that.

5 Out of respect for the parties and the
6 jurors we won't be sitting here on December 24th.

7 THE CLERK: Still waiting.

8 THE COURT: We're working on it. We're
9 seeing what we can vacate.

10 THE CLERK: She's wondering about the
11 northern trip, if that could be vacated?

12 THE COURT: It could be. Tell her I could
13 vacate my northern calendar.

14 THE CLERK: And that would give December 9
15 through 13 and 16 through 20.

16 THE COURT: We could do December 9th
17 through the 13th and 16th through the 20th. I'll
18 vacate my northern rotation.

19 Ask Gerie if I can go up north on Tuesday,
20 December 3rd and Wednesday, December 4th.

21 THE CLERK: Gerie says we're double set
22 with trials.

23 THE COURT: Is there any time in December
24 I can go up north? I'm inclined to go ahead and set
25 the case in December. Let's get it done, rather

1 than wait until July of -- I'm sorry, rather than
2 waiting until September of 2014, I'm inclined to
3 just have Gerie vacate my law in motions and I'll
4 figure out, you know, some other time to get up
5 north. Because those are just law in motions.

6 So we can do it, according to Gerie, the
7 9th through the 13th and the 16th through the 20th
8 of December; is that right?

9 THE CLERK: Yes. 9 through 13, 16 through
10 20.

11 THE COURT: Okay. Why don't we go ahead
12 and -- I'm assuming your client's going to plead not
13 guilty. We need to go through the arraignment --

14 MR. GIBSON: Yes, yes.

15 THE COURT: -- but I would -- let's do
16 that. Let's get it set for December. Now, here's
17 the thing. If we set it for December, I hate --
18 here's -- do we want to secondarily set it for
19 September? Here's the thing. If you come in
20 December and tell me you guys aren't ready, by then
21 we're going to be looking at 2015, I can already
22 tell you that.

23 MR. GIBSON: Probably won't be ready in
24 September. I feel the State --

25 THE COURT: September of 2015.

1 MR. ARMSTRONG: We prefer if we can secure
2 that September 2014 date as a secondary, that would
3 be great.

4 THE COURT: We're going to hear it here in
5 December of this year, 2013. But if you're not
6 ready in December and you come in in December and
7 tell me, we're going to get a -- I can -- I will
8 virtually guarantee you we're going to get a 2015
9 date.

10 So, do you want me to hold those dates
11 right now for September of 2014 in case there's a
12 problem? Hopefully we'll be ready to go.

13 MR. GIBSON: Sure.

14 THE COURT: But we're looking at what,
15 September 14th through the -- to the -- we're
16 looking at September 15th through the 19th and the
17 22nd through the 26th; is that right?

18 THE CLERK: Correct.

19 THE COURT: I'm going to have Gerie hold
20 those as secondary trial dates, just -- we're going
21 to block those out now, just in case. Because like
22 I said, otherwise you're going to be looking at 2015
23 if you guys aren't ready in December.

24 So let's go forward. This is the time and
25 place set for arraignment in CR 7444A, State of

1 Nevada versus Michael Allen Mack. The record will
2 reflect the presence of Mr. Mack, his attorney, Tom
3 Gibson. We have Ross Armstrong on behalf of the Nye
4 County District Attorney's office.

5 Are we prepared to go forward?

6 MR. GIBSON: Yes, Judge.

7 THE COURT: Mr. Mack, I would advise you
8 that the information in this case reads State of
9 Nevada versus Michael Allen Mack. Is that your true
10 name?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And Mr. Mack how old are you?

13 THE DEFENDANT: 69.

14 THE COURT: Okay. And what is the extent
15 of your education?

16 THE DEFENDANT: Just basic education.

17 THE COURT: Do you have a high school
18 diploma?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. Do you read, write and
21 understand the English language?

22 THE DEFENDANT: Yes.

23 THE COURT: And have you ever been treated
24 for a mental disorder?

25 THE DEFENDANT: No.

1 THE COURT: Do you have a copy of the
2 information in this case?

3 THE DEFENDANT: Yes.

4 MR. GIBSON: Your Honor, we would waive
5 reading it in open court.

6 THE COURT: Okay. You've been provided a
7 true copy of the information wherein you've been
8 charged in Count I of sexual assault, a violation of
9 Nevada Revised Statute 200.366, a Category A felony;
10 Count II, sexual assault, it's a violation of Nevada
11 Revised Statute 200.366, a Category A felony; Count
12 III, preventing or dissuading victim from reporting
13 crime, permitting prosecution or causing arrest,
14 violation of Nevada Revised Statute 199.305, a
15 Category D felony; Count IV, unlawful contact with a
16 person with mental illness, it's a violation of
17 Nevada Revised Statute 207.260, it's a gross
18 misdemeanor; Count V, abuse of vulnerable person,
19 violation of Nevada Revised Statute 200.5099, a
20 gross misdemeanor.

21 Now, Mr. Mack, do you understand the
22 nature of the charges set forth in the five counts
23 of the information?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: Okay. And have you had a

1 chance to discuss these charges with your attorney,
2 Mr. Gibson?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And as to the charges set
5 forth in the information, Count I, sexual assault,
6 how do you -- a Category A felony; how do you plead?

7 THE DEFENDANT: Not guilty.

8 THE COURT: Count II, sexual assault, a
9 Category A felony; how do you plead?

10 THE DEFENDANT: Not guilty.

11 THE COURT: Count III, preventing or
12 dissuading victim from reporting crime, commencing
13 prosecution or causing arrest, it's a Category D
14 felony; how do you plead?

15 THE DEFENDANT: Not guilty.

16 THE COURT: Count IV, unlawful contact
17 with person with mental illness, a gross
18 misdemeanor; how do you plead?

19 THE DEFENDANT: Not guilty.

20 THE COURT: And Count V, abuse of
21 vulnerable person, a gross misdemeanor; how do you
22 plead?

23 THE DEFENDANT: Not guilty.

24 THE COURT: As to the counts -- and you're
25 entitled to a speedy trial within 60 days from the

1 date of arraignment. Do you wish to invoke the
2 60-day right or to waive it?

3 THE DEFENDANT: Yes, I'm going to invoke.

4 THE COURT: You're going to invoke it? Or
5 are you going to waive it? I'm going to set you as
6 a primary setting, just so you know, per our
7 discussions for December of 2013, for the days that
8 we've discussed.

9 MR. GIBSON: Those dates are firm dates,
10 and I'm sure they are --

11 THE COURT: Yes, they are firm dates.

12 MR. GIBSON: -- then we'll waive.

13 THE COURT: Okay. Those are firm dates,
14 9th through the 13th, 16th through 20th. You will
15 be the first setting during those two-week periods.
16 There will be nothing else that will -- which means
17 we're going to have a calendar call in this case on
18 Friday, November 8th. And what I'm going to do is,
19 I'm going to set the calendar call at 11:00 and hear
20 any pre-trial motions that we might have at that
21 time. But we'll set a trial order out when we come
22 here for the calendar call, and I'll advise you as
23 to when I want the jury instructions and how we're
24 going over those at that time. There's no need to
25 do it, you know, this far in advance. So we'll be

1 ready to go then.

2 So I'll see everybody back here on Friday,
3 November 8th at 11:00.

4 Will that work for everybody?

5 MR. ARMSTRONG: Yes.

6 MR. GIBSON: Yes, Judge.

7 THE COURT: Do we need to address anything
8 else?

9 MR. GIBSON: I know Mr. Gensler and I have
10 spoken about this. We will be submitting motions to
11 the Court for extraordinary fees for expert
12 witnesses and whatnot. But I don't know if that has
13 to be calendared. It can usually be ex parte.

14 THE COURT: Usually you just submit an ex
15 parte motion. If I have questions it will kick
16 back. My office will get hold of you.

17 But I'm sure that you're going to have
18 some -- these are serious allegations. They're two
19 Category A felonies. And so yes, you're going to
20 go -- I'm sure go above the statutory amount of
21 \$500. I'm sure that you will. So just get those to
22 me and tell me what -- explain to me who you're
23 looking for as an expert and the reason for it and
24 we'll get it.

25 MR. GIBSON: Thank you.

1 MR. ARMSTRONG: Your Honor, just to make
2 sure, those trial dates are for Mr. Quiroga as well.

3 THE COURT: They are. And we'll call his
4 case next.

5 Thank you, Mr. Mack.

6 THE DEFENDANT: Thank you.

7 THE COURT: See you back in November.

8 (Proceedings concluded at 10:42 a.m.)
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REPORTER'S CERTIFICATE

STATE OF NEVADA)
COUNTY OF CLARK)

I, Tracy A. Manning, a duly commissioned
Certified Court Reporter, Clark County, State of
Nevada, do hereby certify:

That I reported the taking of the proceedings,
at the time and place aforesaid;

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said proceeding is a complete, true and accurate record of statements provided by the parties at said time to the best of my ability.

I further certify that I am not a relative, employee, or independent contractor of counsel of any of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have hereunto set my hand
in the County of Clark, State of Nevada, this 22nd
day of May 2013.

Tracy Mary

Tracy A. Manning, CCR 785

Case No. CR 7444A

Dept. 1P

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF

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

NYE COUNTY CLERK
BY DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-v-

**ORDER FOR SECONDARY SETTING
OF JURY TRIAL**

MICHAEL ALLEN MACK,

Defendant,

IT IS SO ORDERED that the above-captioned case is hereby set for trial before a jury in Pahrump, Nevada, commencing at 9:00 o'clock a.m. on Monday the 15th of September, 2014. Ten (10) days have been set aside for the trial. The services of the District Court Reporter are required. Stock Instructions will be provided by the Court, any special instructions are to be submitted to the Court no later than two (2) days before trial is to begin.

IT IS FURTHER ORDERED that a calendar call is set for the 15th day of August, 2014, at the hour of 11:00 a.m. Counsel and the defendant must appear for the calendar call.

IT IS FURTHER ORDERED that the jury draw is set on the 15th day of August, 2014, whereas the Nye County Jury Commissioner will draw a regular panel of 140 jurors at 4:30 p.m. in the presence of all those who wish to attend.

IT IS FURTHER ORDERED that any pre-trial motions are to be heard on the 15th day of August 2014, at the hour of 11:00 a.m., with courtesy copies to the court by August 11, 2014, at the hour of 4:00 p.m.

DATED this 22 day of May 2013.

DISTRICT JUDGE



CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 22nd day of May 2013, she mailed (or hand delivered) copies of the foregoing ORDER to the following:

NYE COUNTY DISTRICT ATTORNEY'S OFFICE
PAHRUMP, NV

THOMAS GIBSON, ESQ.
PAHRUMP, NV


CARLA BEGIN, Secretary to
DISTRICT JUDGE



13 IT IS SO ORDERED that the above-captioned case is hereby set for trial before a jury in
14 Pahrump, Nevada, commencing at 9:00 o'clock a.m. on Monday the 9th of December, 2013. Ten
15 (10) days have been set aside for the trial. The services of the District Court Reporter are required.
16 Stock Instructions will be provided by the Court, any special instructions are to be submitted to the
17 Court no later than two (2) days before trial is to begin.

18 IT IS FURTHER ORDERED that a calendar call is set for the 1st day of November, 2013, at
19 the hour of 11:00 a.m. Counsel and the defendant must appear for the calendar call.

20 IT IS FURTHER ORDERED that the jury draw is set on the 1st day of November, 2013,
21 whereas the Nye County Jury Commissioner will draw a regular panel of 140 jurors at 4:30 p.m. in the
22 presence of all those who wish to attend.

23 IT IS FURTHER ORDERED that any pre-trial motions are to be heard on the 1st day of
24 November, 2013, at the hour of 11:00 a.m., with courtesy copies to the court by October 28, 2013, at
25 the hour of 4:00 p.m.

26 DATED this 22 day of May 2013.

28


DISTRICT JUDGE

1 CASE NO. CR 7444

2 DEPT NO. 1

FILED

2013 NOV 19 P 3:41
Rebecca Ballantyne
NYE COUNTY CLERK
BY DEPUTY

3
4 IN AND FOR THE FIFTH JUDICIAL DISTRICT COURT
5 COUNTY OF NYE, STATE OF NEVADA
6

7 THE STATE OF NEVADA,
8 Plaintiff,
9 vs.
10 MICHAEL ALLEN MACK,
11 Defendant.
12

)
)
) TRANSCRIPT OF PROCEEDINGS
) MOTION FOR O/R RELEASE
)
)
)

13 BEFORE THE HONORABLE KIMBERLY WANKER,
14 DISTRICT COURT JUDGE
15 1520 EAST BASIN AVENUE, PAHRUMP, NEVADA 89060
16 ON FRIDAY, SEPTEMBER 20, 2013
17 AT 10:39 A.M.
18

19 APPEARANCES:

20 For the State: Tim Treffinger, Esq.
21 Nye County Deputy District Attorney
22

23 For the Defendant: Thomas Gibson, Esq.
24

25 Reported By: Tracy A. Manning, CCR No. 785

1 FRIDAY, SEPTEMBER 20, 2013

2 ---OOO---

3 THE COURT: Our next case, this is the
4 Michael Mack case. Case No. CR 7444, State of
5 Nevada versus Michael Allen Mack. Mr. Treffinger --
6 do I have your name pronounced correctly?

7 MR. TREFFINGER: Treffinger, Your Honor.

8 THE COURT: Treffinger, thank you.

9 Good morning, Mr. Mack.

10 THE DEFENDANT: Good morning.

11 THE COURT: This is the time and place set
12 for a hearing on a motion for an OR release, or in
13 the alternative a reduction in bail. I have read
14 the motion and the opposition.

15 Mr. Gibson, it's your motion. Is there
16 anything you'd like to add or --

17 MR. GIBSON: Only that my client informed
18 me that -- because the State's response was, gee,
19 they've got plenty of doctors that can see the
20 defendant in custody and they get fine care there.
21 And that's not necessarily true. Sometimes in
22 situations if it's not routine, there are problems.
23 And my client's situation is not routine. He has --
24 had -- eventually he was able to see his own
25 specialist that he -- was his prior doctor. And

1 that doctor has prescribed further testing for him.
2 And that was over a month ago and the testing has
3 not -- I think -- over a month ago?

4 THE DEFENDANT: Yeah, it was on August 9th
5 I went to my doctor. He had some additional blood
6 tests and also -- plus a blood workup. And four
7 different tests and also some in vitro ultrasound in
8 my left leg. Because I've developed as a new
9 condition starting July as my left leg is swelling
10 up. And it's just constantly inflamed and I got
11 pain 24/7 in my left leg as I -- continuously.

12 And also, because of my disk in my lower
13 back and my records -- I was taking therapy twice a
14 week prior to being incarcerated, plus I was seeing
15 two other doctors prior to my incarceration. In
16 fact, my doctor's appointment was April the 9th, the
17 day that I got picked up. I was supposed to see the
18 doctor that morning, my regular doctor, and I never
19 kept my appointment of last -- in April.

20 So I got incarcerated and I was here in
21 April and May, doing pretty good. June I started
22 feeling crummy because I started having a relapse of
23 my treatment that I had been under six months prior.
24 This had to do with the back injury, you know, in my
25 lower back.

1 And so, you know, as I said, I finally
2 went to my doctor and -- in August, and I've been
3 fighting -- I put a claim -- request in, to take me
4 to the hospital, my doctor somewhere in July. I
5 never got over to Urgent Care until sometime in late
6 July. And then he only told me -- he only confirmed
7 I did have a problem and I had to see a specialist.
8 And then from there I kept fighting to do something.
9 And with the system -- in the jail system. And they
10 finally contacted my doctor, made an appointment,
11 and he took me to my doctor. And that was on
12 August the 9th. So it took me from from July to
13 August the 9th to actually get -- to actually get to
14 a doctor to give me some treatment. Everybody just
15 looking at me or -- and doing nothing.

16 THE COURT: What's the -- I didn't see in
17 the paperwork that's filed, is there a recommended
18 course of treatment? You mentioned they wanted to
19 do an ultrasound --

20 THE DEFENDANT: Right now -- right now I
21 need some basic blood workup done during my --
22 because they had -- last week -- blood work was done
23 in April of early this year. And those tests done,
24 but then basically -- want to do an ultra- -- in
25 vitro ultrasound on my left leg to find out what's

1 happening with me. And also to see if they need to
2 do another nerve conductive study in my left leg.
3 I've been having a problem in my left leg,
4 inflammation and circulation and things.

5 THE COURT: So if I understand it
6 correctly, first they want to do some blood work.

7 THE DEFENDANT: Right.

8 THE COURT: And then go from there what --

9 THE DEFENDANT: Yeah, that's just --
10 that's just on that test. But I also -- I was also
11 recommended to go back to my doctor, my specialist,
12 which is William Smith, which is a neurosurgeon in
13 the -- Las Vegas who I went to in March. And he was
14 going to wait until he got my other tests in April.
15 And my -- for my April appointment. My other
16 doctor, which I never was able to keep,
17 understand to go back -- he still wants me to go
18 back to the neurosurgeon to get the evaluation of my
19 herniated disk, which is -- so I have -- I have
20 different issues going on.

21 And you know, they don't know -- they
22 don't want to do surgery just for the sake of doing
23 surgery. They want to find out hopefully, see if
24 they can do some other -- you know. And I've also
25 had epidural injections in my spine, three of those

1 last year. Or actually in the fall, the first of
2 the year. I had them done in November and January.

3 THE COURT: What -- is the issue that the
4 appointments aren't made? I mean, my experience is
5 that the jail is transporting. I mean, I get
6 requests. So I guess that's the question I have.
7 Are we not making -- where is the breakdown here? I
8 don't understand why you can't be -- why these
9 are --

10 THE DEFENDANT: Because --

11 THE COURT: -- if this is necessary --

12 THE DEFENDANT: -- they keep telling me
13 it's understaffed. They don't -- they said my
14 appointments are subject to availability.

15 THE COURT: I'm sorry, subject to --

16 THE DEFENDANT: They're subject to
17 transport availability and such. And then also,
18 Mark Hafens (ph) told me one time that -- I said,
19 well -- and he said I had -- one time earlier on he
20 said I had to be approved by Health and Human
21 Services. And I said I have my own insurance
22 coverage, I'm just asking to be taken to my doctor.
23 And then he said, well -- he said, even so, he said
24 that you'll be -- put you on the waiting list. He
25 said, I have 50 people on that list -- 50 people

1 need to be taken. And he said it's not fair that
2 you get on the top of the list, he said, just
3 because you have health insurance. And I said,
4 well -- so I said, when do you think you'll have the
5 50 people off the list? And he said it's all
6 subject to availability. That was his comment back
7 to me. That was back in July.

8 THE COURT: Okay. Mr. Treffinger.

9 MR. TREFFINGER: Your Honor, I understand
10 that he has health concerns and I'm not disputing
11 that. I do have some issues with the documents
12 attached to his motion as they have handwritten
13 comments on them that I have no idea where those are
14 from.

15 The fact of the matter is, he's
16 incarcerated. He's not at liberty to go see his
17 doctor when he wants to. If they're putting him on
18 the list and there's availability problems, he's
19 going to be seen in due course.

20 And while I respect the fact that he has
21 medical problems, again, as I have down in motion,
22 these are heinous charges. We have the possibility
23 of this defendant looking at, if sentenced on these
24 charges that he could -- he may die in prison. So
25 while I understand he has medical issues and we can

1 try to work out getting him some kind of medical
2 attention, I don't think that warrants an OR release
3 or a reduction in his bail.

4 MR. GIBSON: Judge, if I might, just
5 for --

6 THE COURT: Sure.

7 MR. GIBSON: Heinous charges. While
8 they're heinous charges against everybody else and
9 all three defendants are charged with basically the
10 same thing, although Mr. Mack has a couple other
11 charges that the others are not. However, the other
12 two defendants with those same type of heinous
13 charges are out of custody. One of them got a
14 medical OR and was out, and the other, I think,
15 bailed out. But --

16 THE COURT: He jumped off the second floor
17 of the Detention Center and I think suffered severe
18 injuries and I think he's hospitalized. That's my
19 understanding. I don't know.

20 MR. TREFFINGER: I don't know directly.
21 I've heard similar to what you've just said, Your
22 Honor.

23 THE COURT: I think one of them is under
24 dialysis treatment so that is the one that's out
25 because they have kidney dialysis treatment a few

1 times a week. That's my understanding. So we have
2 one that -- that's on dialysis treatment that is
3 out. And then I think the other one, my
4 understanding was that he suffered severe injuries
5 from jumping from the second floor railing or
6 something in the detention center.

7 MR. TREFFINGER: I believe that's correct,
8 Your Honor.

9 MR. GIBSON: I wasn't sure about that one.
10 I know somebody was injured and I -- from hurting
11 himself in the jail. But the other defendant is out
12 on bail or OR. And he hasn't fled the jurisdiction.
13 So again, I come full circle. That a person -- I
14 mean, my client doesn't -- his doctors are all here
15 locally. He's got the medical issues. And for him
16 to go on the lam would certainly be -- if not a
17 death sentence, a -- he would be so crippled up with
18 his medical issues because he couldn't surface to go
19 to a doctor because they would immediately identify
20 him and he'd be back here only in worse
21 circumstances.

22 THE COURT: Okay. Anything else?

23 MR. GIBSON: No, Judge.

24 THE COURT: Well, Nevada Revised -- I
25 think Nevada Revised Statute 178.4853 subsection (7)

1 is controlling a hearing. It says the Court should
2 look at the nature of the offense for which the
3 defendant is charged, the apparent probability of
4 conviction and the likely sentence.

5 In this case we've got two charges of
6 Category -- two Category A felonies, one Category D
7 felony and two gross misdemeanors. Taking those
8 factors into consideration, having read the entire
9 case file, including the police report, the evidence
10 suggests that there may be a likelihood of
11 conviction.

12 I have looked at the medical information
13 submitted. It's pretty much an explanation of
14 benefits. There's no indication that immediate
15 treatment is required. I will say this, though.
16 It's always disconcerting to me to hear what
17 Mr. Mack has said today. That the jail isn't
18 providing the treatment.

19 And so when I -- what I am going to do, I
20 think, is I'm going to deny the motion for an OR
21 release or -- and I am not going to reduce the
22 amount of bail. But I am going to order that --
23 that he be given the necessary -- the treatment
24 that's required. I mean, it seems crazy. If he
25 needs -- I understand that he's incarcerated. But I

1 also think that -- it sounds like Mr. Mack, if he's
2 requiring these appointments, then they need to in
3 due course get that done.

4 THE DEFENDANT: Yeah. My doctors, when I
5 saw him on the 9th told me to have the test and come
6 back in 30 days. Well, that was -- that would be
7 the 9th of September. I haven't even had the test
8 done yet. So how can I go back to my doctors for
9 the next evaluation for what type of treatment I
10 need?

11 THE COURT: Right.

12 THE DEFENDANT: Chicken, egg scenario
13 going on, and they won't take me -- they say they
14 don't have the staff to take me to my doctor.

15 THE COURT: They're going to -- I mean,
16 the requirement -- I think they're going to be --
17 have a lot of different issues if they aren't
18 transporting the folks who need treatment.

19 So I'm going to tell -- I'm going to order
20 that Mr. Mack be permitted to attend his
21 appointments. They need to get Mr. Mack.

22 But I -- Mr. Mack, I don't feel that
23 pursuant to the statutes I can release you on an OR
24 or I'm not going to reduce your bail, but I am
25 concerned about the treatment that you're getting

1 and I'm going to ask the jail to revisit that.
2 And -- that issue because it sounds like from what
3 you're telling me today that you have some
4 appointments that -- you have some matters that need
5 to be taken care of.

6 So is there anything else we need to
7 address?

8 MR. GIBSON: No, Judge.

9 MR. TREFFINGER: No, Your Honor.

10 THE COURT: Thank you.

11 (Proceedings concluded at 10:51 a.m.)
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REPORTER'S CERTIFICATE

STATE OF NEVADA)) ss
COUNTY OF CLARK)

I, Tracy A. Manning, a duly commissioned
Certified Court Reporter, Clark County, State of
Nevada, do hereby certify:

That I reported the taking of the proceedings,
at the time and place aforesaid;

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said proceeding is a complete, true and accurate record of statements provided by the parties at said time to the best of my ability.

I further certify that I am not a relative, employee, or independent contractor of counsel of any of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have hereunto set my hand
in the County of Clark, State of Nevada, this 15th
day of November 2013.

Tracy A. Manning, CCR 785

1 CASE NO. CR 7444

2 DEPT NO. 1

3
4 IN AND FOR THE FIFTH JUDICIAL DISTRICT COURT
5 COUNTY OF NYE, STATE OF NEVADA
6

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

10 MICHAEL ALLEN MACK and)
11 GEORGE QUIROGA,)

12 Defendants.)

TRANSCRIPT OF PROCEEDINGS

MOTION TO SEVER

MOTION FOR PSYCH.

13 BEFORE THE HONORABLE KIMBERLY WANKER,

14 DISTRICT COURT JUDGE

15 1520 EAST BASIN AVENUE, PAHRUMP, NEVADA 89060

16 ON FRIDAY, OCTOBER 18, 2013

17 AT 9:53 A.M.

18
19 APPEARANCES:

20 For the State: Tim Treffinger, Esq.
21 Nye County Deputy District Attorney

22 For Defendant Mack: Thomas Gibson, Esq.

23 For Defendant Quiroga: Harry R. Gensler, Esq.
24

25 Reported By: Tracy A. Manning, CCR No. 785

1 FRIDAY, OCTOBER 18, 2013

2 ---oOo---

3 THE COURT: I'm glad you guys are up on
4 this. This case is going to take more than the five
5 to ten minutes set on a criminal law and motion.
6 Because this is really twofold. One is a motion to
7 sever the trials, which I just got. In fact, I just
8 got the State's response. And I think that was
9 because the motion was filed in August by
10 Mr. Gensler, but then we had a change of -- Ross had
11 left, Ross Armstrong had left and getting new
12 counsel to take his place, so I just got that.

13 But what I'd like to do is give the
14 parties ample opportunity to argue in that case. So
15 what I was thinking if counsel are available, I'd
16 like to hear that by itself on Wednesday.

17 Counsel available on the 23rd?

18 MR. GIBSON: Judge, I did not bring my
19 calendar with me. I assume I will be able to do it
20 then.

21 THE COURT: Otherwise, I can do it -- let
22 me see; is that right? I could do it the 23rd or
23 the 30th, your choice.

24 MR. GENSLER: I didn't hear that.

25 THE COURT: I have two dates available.

1 That way I can set out and I'll give everybody the
2 opportunity to argue, we'll discuss the issues,
3 either on the 23rd or the 30th.

4 MR. GIBSON: I'm good with either date,
5 Judge. Just let the Court know that we don't want
6 to upset the Justice Court, though, and calendar
7 anything and interfere with --

8 THE COURT: That's why -- do you guys have
9 your calendars with you?

10 MR. GENSLER: I have -- the 23rd I'm here
11 all day, and I have Justice Court at 9:00 and 1:30.
12 That would be a fine date, other than those
13 commitments.

14 THE COURT: Okay. What about you,
15 Mr. Gibson? Do you know?

16 MR. GIBSON: I would say that either day
17 is fine. I'll make it fit.

18 THE COURT: Is it Mr. --

19 MR. TREFFINGER: Treffinger, Your Honor.
20 I'm available either day.

21 THE COURT: Okay. How about -- what's a
22 good time so I don't interfere with your Justice
23 Court appearances?

24 MR. GENSLER: Morning or afternoon?

25 THE COURT: It's up to you guys.

1 MR. GENSLER: Morning maybe 10:30, 11:00;
2 afternoon, 2:30, 3:00.

3 MR. GIBSON: I would agree with that.

4 THE COURT: Would you guys rather wait
5 until the afternoon or do you want to do it at
6 11:00?

7 MR. GENSLER: I'd rather do it in the
8 morning.

9 MR. GIBSON: I would prefer the morning,
10 Judge. You never can tell what's going on over
11 there.

12 THE COURT: All right. So let's set it
13 for 11:00. And that I can give you more than just a
14 few minutes and we can go through the issues.

15 We do need a court reporter. Can you make
16 it, Tracy?

17 THE REPORTER: Yes.

18 THE COURT: Excellent. All right, we've
19 got the court reporter. That's the most important
20 person for -- but I do want to -- I want to address
21 these issues.

22 Because -- and the other thing is, please
23 bring your calendar that day because if I do sever
24 the trials we'll need to pick a new trial date.

25 MR. GENSLER: Yes, Your Honor.

1 And Your Honor, for the record, my client
2 is present in the courtroom.

3 MR. GIBSON: And my client, I assume, is
4 present in custody, but they didn't bring him out.
5 But if we're going to move it to next Wednesday --

6 THE COURT: Just moving it to next
7 Wednesday. I don't know if it's necessary to bring
8 him out. I just want to give everybody the ample
9 opportunity to present their positions here. And I
10 don't think five or ten minutes -- and this -- these
11 really are questions that are of magnitude that
12 affect the trial in this case. So I think giving it
13 the appropriate amount of time is proper.

14 MR. GIBSON: Thank you, Judge.

15 MR. TREFFINGER: Thank you, Your Honor.

16 (Proceedings concluded at 9:57 a.m.)
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CASE NO. CR 7444A

DEPT NO. 1

IN AND FOR THE FIFTH JUDICIAL DISTRICT COURT
COUNTY OF NYE, STATE OF NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	TRANSCRIPT OF PROCEEDINGS
)	
vs.)	MOTIONS HEARING
)	
MICHAEL ALLEN MACK and)	
GEORGE QUIROGA,)	
)	
Defendants.)	

BEFORE THE HONORABLE KIMBERLY WANKER,
DISTRICT COURT JUDGE
1520 EAST BASIN AVENUE, PAHRUMP, NEVADA 89060
ON WEDNESDAY, OCTOBER 23, 2013
AT 11:13 A.M.

APPEARANCES:

For the State: Tim Treffinger, Esq.
Nye County Deputy District Attorney

For the Defendant Mack: Thomas Gibson, Esq.

For the Defendant Quiroga: Harry R. Gensler, Esq.

Reported By: Tracy A. Manning, CCR No. 785

1 WEDNESDAY, OCTOBER 23, 2013

2 ---oOo---

3 THE COURT: We are here on Case No. CR
4 7444A. State of Nevada versus Michael Mack and
5 George Quiroga. This is the time and place set for
6 a hearing on a couple of motions filed by
7 Mr. Quiroga's attorney, Harry Gensler. It's a
8 motion for psychological or medical evaluation and a
9 motion to sever the defendants for separate trials.

10 We have a joinder in the motion for a
11 psychological, medical examination filed by
12 Mr. Michael -- Mack -- on behalf of Mr. Michael Mack
13 by his attorney, Tom Gibson.

14 And I'd like to address the motion for
15 psychological, medical evaluation first. The
16 standard for determining whether or not it is --
17 legal standard for determining whether or not a
18 psychological evaluation is proper is set forth in
19 Koerschner, K-o-e-r-s-c-h-n-e-r, versus State, 116
20 Nevada 1111, 13th Pacific 3d, 451, it's a 2000
21 Nevada Supreme Court decision.

22 And it is whether the State has culled or
23 obtained some benefit from a psychological or
24 psychiatric expert; two, whether the evidence of the
25 crime is supported by little or no corroboration

1 beyond the testimony of the victim; and three,
2 whether a reasonable basis exists to believe that
3 the mental or emotional state of the victim may have
4 affected his or her veracity. And that was also --
5 the test was reaffirmed in Abbott versus State, 122
6 Nevada 715, 138 Pacific 3d 462, it's a 2006 Nevada
7 Supreme Court decision.

8 So we know what the standard is. It's
9 Mr. Gensler and Mr. Gibson's motion. So I will --
10 in light of that standard I will allow you to argue.

11 MR. GENSLER: Thank you, Your Honor.

12 The standard you indicated is what I cited
13 in my brief. And it basically relates to child
14 witnesses.

15 THE COURT: Exactly.

16 MR. GENSLER: And in this case, the State,
17 at least in some part, is proceeding on the basis
18 that this child, this person, adult person, has a
19 diminished capacity. And you see throughout the
20 transcript and the reports childlike and unable to
21 make decisions and things of that nature. And
22 that's why we filed this motion.

23 When the State is in a -- in a theory
24 where they're basing it on this diminished capacity,
25 I would think they'd have to employ an expert.

1 Mr. Treffinger in his opposition indicated that they
2 have not employed an expert at this time. And
3 perhaps they did not intend to do so. At least that
4 was my reading between the lines of it.

5 And if they're not going to do that, then
6 that would eliminate that theory. And if it
7 eliminates that theory, perhaps it would eliminate
8 that motion as well.

9 But the cases also say that whether or not
10 the State employs an expert as a factor to consider,
11 it's not the sole -- it's not a threshold. They
12 employ an expert. Okay, now we go to the next one.
13 They didn't employ an expert, that takes care of it
14 all.

15 So we have the situation, particularly in
16 Mr. Quiroga's situation, where you have this
17 child -- childlike witness who the testimony has
18 indicated at the preliminary hearing from the
19 person, Ms. Kallaher -- I don't know if she's a
20 person that knows her best, but certainly a person
21 who's dealt with her most, as far as we could tell
22 on a professional basis that indicated that she has
23 been caught in lies a lot of times and it kind of --
24 I think her words were it waxes and wanes. If they
25 catch her in a lie they address it and then she's

1 okay for a little while. And then she makes these
2 other outrageous statements and then they address it
3 and then she's okay for a while.

4 So I certainly think with that kind of
5 testimony, an expert would be necessary for
6 Mr. Quiroga's standpoint.

7 Also Kallaher testified -- I believe she
8 testified, or it was in a document or something in
9 the preliminary hearing that the last time that
10 Miss -- let's call her Courtney had been evaluated
11 for an IQ or psychological type examination was in
12 1996. And all of their treatment, if you will, all
13 of their plan was based upon that as being the
14 latest eval of her. And then, of course, they're
15 dealing with her, you know, adjusts her plan and her
16 treatment certainly. But the last formal
17 examination was in 1996.

18 So Mr. Quiroga's benefit, it would be very
19 difficult for him to mount a case to fight any of
20 those allegations without any type of evaluation
21 that was more current. And an independent person.
22 So it's fairly simple from our end that that's their
23 theory and we have to -- we have to address their
24 theory. And the only way I feel we can do that is
25 by the employment of an expert.

1 THE COURT: Thank you, Mr. Gensler.

2 Mr. Gibson, do you have anything you'd
3 like to add?

4 MR. GIBSON: I agree with Mr. Gensler's
5 statements to the Court. And the one thing, though,
6 that I -- was very curious to me during the
7 preliminary hearing is, it came out that she had --
8 the alleged victim had been married and divorced
9 three or four times.

10 THE COURT: Four times, according to the
11 transcript.

12 MR. GIBSON: And that to me flies in the
13 face with a diminished capacity. Not that a person
14 can't be diminished being married three or four
15 times. Sometimes being married once would show a
16 lack of common sense.

17 However, the thing I'm trying to show the
18 Court is that the fact that she's been married and
19 divorced shows that she's got some -- at least some
20 level of sophistication. Otherwise, either someone
21 wouldn't have married her or she wouldn't have been
22 married four times. And if she was -- we don't know
23 all the facts regarding the marriage and divorces.
24 But those are certainly factors that a jury would
25 need to consider. And showing her mental capacity.

1 And so that -- that flies in the face of the -- of
2 the fact that she's -- if she has a diminished
3 capacity or she's, you know, childlike, then why is
4 she getting married and who's -- who's allowing
5 this, these marriages to progress or proceed. So
6 that's just the only additional factor that I wanted
7 to bring forth for the Court, that that was one of
8 my main concerns.

9 And then, as a matter of fact, we intend
10 to have an investigator find these ex-husbands, find
11 the -- speak with them and get their statements and
12 perhaps even subpoena them to the trial, if
13 necessary.

14 THE COURT: Okay. Mr. Treffinger.

15 MR. TREFFINGER: Your Honor, the State's
16 position is that they need to demonstrate a
17 compelling need for this expert. We're not planning
18 on using an expert at this time. I came on to the
19 case a little later. My predecessor, Ross Armstrong
20 had been dealing with the case, along with Kirk
21 Vitto. I discussed the situation with them, and we
22 still have no plans on using an expert in this case.

23 The victim is -- has been granted -- I'm
24 sorry, the victim is a ward of a guardian, and the
25 Court has already found that she has diminished

1 capacity. I'm not sure what further we need to show
2 on that. Mr. Mack was her guardian and that
3 guardianship has been in place for an extended
4 period of time. And it's because she has diminished
5 capacity. And those findings were found in that
6 guardianship order.

7 Her veracity. I understand there's been
8 issues with her lying about breast cancer and things
9 like that. We went -- that was gone through in the
10 preliminary hearing. But I don't see any other
11 accusations being made against other people where
12 we've been put in the same situation of, is this
13 person making these accusations, and later them
14 being found false. So I don't see an issue with the
15 victim's veracity here. She testified at a
16 preliminary hearing. She was interviewed by law
17 enforcement. She was interviewed by a forensic
18 interviewer. All those times the stories were --
19 with a few minor details, pretty much consistent.
20 So I think her veracity is there.

21 And we have corroborating evidence. There
22 is partial or full confessions by several of the
23 defendants upon sexual activity with this person. I
24 think that that's consistent with what she's told
25 us. And with those three things being met, I don't

1 think they demonstrate a compelling need for an
2 expert in this case. And we aren't using one. We
3 may be forced to employ one if they are granted an
4 expert to confront the expert's testimony, but at
5 this time we have no plans on using an expert.

6 THE COURT: Thank you. Any --

7 MR. GIBSON: Judge, just briefly.

8 Counsel said that we have partial or full
9 confessions. But those confessions would not amount
10 to culpability if the -- if the trier of fact were
11 to find that she had the requisite capacity to
12 consent to sexual activity. At least it would
13 minimize, if not negate entirely, culpability on
14 part of the co-defendant and my client.

15 And in addition to that, Judge, is that
16 the -- counsel's talked about the -- a Court found
17 in a prior guardianship that she had diminished
18 capacity. But as you're aware, that not all judges
19 are created equal and not all judges actually go
20 through the -- an entire litany. They'll just take
21 counsel's or the moving party's word that a person
22 is -- is -- requires a guardian.

23 And there's not usually a -- or not always
24 a doctor's opinion or professional opinion. It's
25 just the family members come -- get together and say

1 we want a guardianship and it's done. And there --
2 quite often it's -- you know, there isn't a finding
3 of fact beyond what's just stated by one or two of
4 the people moving for guardianship.

5 So the State just can't assume that --
6 that that one order is effective or appropriate to
7 find -- make a finding that the -- that there was
8 diminished capacity and should have been -- it
9 should be done by an expert and that's what we're
10 asking for.

11 THE COURT: Okay.

12 Mr. Gensler, do you have anything you'd
13 like to add?

14 MR. GENSLER: Just briefly, following on
15 that -- that theme. You have the guardianship that
16 Mr. Treffinger referred to. And as you know, it's
17 often a family member coming in and saying, well,
18 this person needs help.

19 THE COURT: Well, I'm going to stop you
20 both right there. There's a Nevada Revised Statute.
21 And before I ever grant an adult guardianship, it
22 requires a finding -- there must be a medical
23 opinion attached. So the Court is not supposed to,
24 in the course of granting guardianship, without --
25 in fact, they have to make a determination as to

1 whether or not the ward should actually attend the
2 guardianship hearing or whether they're of such
3 diminished capacity that they would not be able to
4 understand the guardian -- there are requirements
5 that the ward be specifically advised by the Nevada
6 Revised Statutes of the hearing, that they have the
7 right to separate counsel at the hearing. There's a
8 complete section of the Nevada Revised Statutes on
9 guardianships. And I can tell you, there are a
10 number of statutes.

11 Every time I grant a guardianship I go
12 back and look at those statutes. And the hoops that
13 somebody must jump through before they become a
14 guardian. And they either become a guardian of the
15 person, a guardian of the estate, or a guardian of
16 the person and the estate.

17 So there -- the judges are supposed to,
18 pursuant to the Nevada Revised Statutes, jump
19 through certain hoops. They just don't
20 automatically see a petition for guardianship and a
21 family member or other stand up and say I want to be
22 so-and-so's guardian and grant the guardianship.
23 That's not how it works pursuant to the Nevada
24 Revised Statute.

25 MR. GENSLER: Given that, I'm not sure

1 when they were amended and how they were amended or
2 whatever, but this guardianship has evidently been
3 going on for a long time. Because it was Mr. Mack
4 that obtained the guardianship, I believe it was
5 after the parents died.

6 DEFENDANT MACK: No, by my mother when she
7 was alive, Your Honor. My mother was -- my mother
8 was alive.

9 MR. GIBSON: What year?

10 DEFENDANT MACK: Going back -- has to be
11 going back -- oh, well, check the date of the
12 document. But it had to be about year 2000.

13 MR. GIBSON: Which judge?

14 DEFENDANT MACK: It was -- I think it was
15 a man. I think it might have been Judge Lane or
16 something.

17 MR. GIBSON: Actually --

18 DEFENDANT MACK: My --

19 MR. GIBSON: -- help us to go back and
20 look at those records, to --

21 THE COURT: I don't think it's really
22 relevant here, on this particular motion. I mean, I
23 do know that recently Judge Lane affirmed the
24 guardianship. Actually, he appointed the public
25 guardian, Shirley Trummel, after Mr. Mack was

1 arrested. So obviously Judge Lane thought it was --
2 that guardianship was appropriate and that would
3 have been recently, between -- since the arrest in
4 this case.

5 MR. GIBSON: Your Honor, one example,
6 though, of a case I had a few years ago where a
7 district court judge granted guardianship over my
8 client. My client came to my office and said he
9 found out that his children had gotten a
10 guardianship over him and -- in an effort to keep
11 him from marrying his fiance. And he wanted them
12 all disinherited. And I spoke with him at length,
13 asked him all -- the litany of questions and -- to
14 determine whether or not he was competent. And
15 he -- the man was sharp. And I asked him how he
16 felt about the president and he went on and on about
17 how incompetent the president is. So -- and giving
18 examples. So when I approached the attorney on the
19 other side about why he got a guardianship on a guy
20 that was completely competent, he was kind of beside
21 himself and said, well, the family told me and I was
22 relying on, you know, this letter from a doctor.
23 And so that -- that is a true example of what
24 happened in this district.

25 THE COURT: Well, we have two things here.

1 I think we need to overlook. And I did read the
2 entire preliminary hearing transcript. Although
3 Mr. Gensler, you did a nice summary of it. But I
4 did read the entire transcript before I came in.

5 Look, we have testimony from a witness
6 that has her Master's in -- I can't remember what
7 her degree -- I remember it was from Emporia State,
8 both her Bachelor's of Science and her Master's of
9 Science. She says that this person was tested by an
10 agency of the State of Nevada, found to have
11 diminished capacity.

12 You've offered nothing, other than, you
13 know, some speculation that a guardian is not
14 required. I -- I'm not going into that area, okay?
15 There's been a finding and she's received services
16 since at least 1996 or so from the State. So
17 obviously there's some belief. She was evaluated
18 then and there was a belief that she was of
19 diminished capacity.

20 And I have to tell you, when we were
21 talking about whether folks are -- can marry or not.
22 It's like a minor can't marry unless they have the
23 consent of the parents. So I would assume that -- I
24 mean, without looking at the -- at the specific
25 marriage statute, that there's probably a provision

1 in there about -- about a guardian consenting. I
2 mean, because a parent or guardian has to consent
3 when somebody is underage to get married. They
4 don't -- they aren't considered to have the capacity
5 to marry. So I just think that, you know, we need
6 to put this into the -- in the context.

7 Is there anything you want to add? And
8 then I think I'm ready to rule on this issue.

9 MR. GENSLER: Well, on the Koerschner
10 points that are cited in that case. You have the
11 the State employing an expert, which they're
12 indicating they're not going to. The victim is not
13 shown by compelling reasons to be in need of
14 protection. Evidence of the crime is little or no
15 corroboration beyond the testimony of the victim.

16 THE COURT: I disagree with you on that.
17 There are two -- there are -- both -- and I looked
18 at what was in the court file. But both the
19 affidavits to obtain the arrest warrants in this
20 case indicated both for Mr. Mack and Mr. Quiroga,
21 that they both admitted to engaging in acts that --
22 directly corroborate the statements and the
23 testimony of the -- of the victim at the preliminary
24 hearing. They both admitted to the very things that
25 the victim claims occurred.

1 MR. GENSLER: I would respectfully
2 disagree with that, Your Honor, as to Mr. Quiroga.
3 When the victim testified, she said that he raped
4 her. And that he used medical instruments upon her.
5 She indicated that he did not digitally penetrate
6 her. The declaration of arrest, I believe, is done
7 by Detective Boruchowitz, who took some latitudes
8 with what Mr. Quiroga told him after he had just
9 gotten out of dialysis.

10 When Detective Boruchowitz interviewed
11 Mr. Quiroga, he kept trying to get him to say that
12 he fingered her. And the one point where he kind of
13 got that was, he said so, you -- something to the
14 effect of, so you fingered her. And he said, yeah,
15 I touched her. And then Detective Boruchowitz took
16 that and went with it. And in his declarations
17 indicated that the defendant admitted fingering her.

18 And then when he testified at the
19 preliminary hearing, he said that the defendant
20 admitted that he penetrated her. So he took a
21 little bit of liberties with what the defendant was
22 trying to tell him.

23 Throughout the interview Mr. Quiroga later
24 on disputes that every time Detective Boruchowitz
25 brought it up. So that's the corroboration.

1 THE COURT: Well, I haven't seen the
2 interview. The interviews were video and audio
3 recorded. It's my understanding that nobody
4 provided those for my review. But I will tell you
5 this. This is her testimony at the preliminary
6 hearing beginning on page 19: Other than hitting
7 you with a belt, is there anything else George would
8 do to you that you didn't like?

9 Answer: He stuck his penis in my pussy.

10 Question: Okay. Where would he do that?

11 Answer: In his bedroom.

12 Question: The same bedroom where he beat
13 you with the belt?

14 Answer: Yes.

15 Question: Has he done that since you
16 turned 45?

17 Answer: Yes, sir.

18 Question: How many times has he done
19 that?

20 Answer: More than once.

21 Question: Would he put his penis anywhere
22 else?

23 Answer: Yes, in my mouth.

24 Question: And would he put anything else
25 in your pussy or your mouth?

1 Answer: Yes. He put these instruments up
2 my pussy.

3 Question: Can you describe what one of
4 those might look like?

5 Answer: They were silver instruments,
6 looked like a -- like a doctor would use.

7 Question: And did he do that more than
8 once -- do that once or more than once?

9 Answer: More than once.

10 And then it goes on to say: Would you
11 tell him anything when this would happen?

12 Answer: I would tell him to stop and he
13 wouldn't.

14 Question: Did you -- do you remember what
15 exact words you used to tell him to stop?

16 Answer: I'd say stop, stop, stop and he
17 would say no.

18 And then, I look at Detective
19 Boruchowitz's -- and I -- and I have to tell you,
20 your cross-examination of Detective Boruchowitz was
21 a bit confusing in the preliminary -- in the -- at
22 the preliminary hearing. Although Boruchowitz says
23 in the declaration arrest for Mr. Quiroga: I
24 conducted an interview of Mr. Quiroga. During that
25 interview, Quiroga admitted that he had been having

1 a sexual relationship with Courtney. He stated that
2 he had fingered her at his apartment on North Black
3 Street but he did not have sex with her because he
4 cannot get an erection. He stated it has been
5 ongoing for over ten years and has happened
6 regularly. Most recently approximately three months
7 ago.

8 So I can tell you that something went on.
9 It may not be the -- but something of an improper
10 character went on. Whether, you know, he had actual
11 sex with her, whether he had oral sex with her,
12 whether he stuck an instrument up there, I don't
13 know. But what I do know is there's some
14 corroboration where he indicated that he had done
15 something that was inappropriate, okay?

16 So I do think that there -- that the
17 second -- that whether there is little or no --
18 whether evidence of the crime is supported by little
19 or no corroboration beyond the testimony of the
20 victim.

21 And with regard to Mr. Mack, Mr. Mack's
22 declaration of arrest is very similar in the sense
23 that Detective Boruchowitz indicated to the
24 following. Subsequently in the interview he stated
25 that he often would give Courtney massages and he

1 would give -- and she would give him massages as
2 well. He stated that often these massages would
3 turn into genital touching. He stated that he would
4 rub her vagina and that there were times when she
5 had touched his penis. He stated that there were
6 several occasions where she had been rubbing his
7 penis and he had ejaculated. He additionally stated
8 that Courtney had given him blow jobs and that he
9 had ejaculated in her mouth. He stated that
10 additionally he rubbed his penis inside of the
11 vagina lips of Courtney.

12 So I think that there's sufficient
13 corroborating evidence to suggest that -- the State
14 indicates that they're not calling a psychological
15 or psychiatric expert. Whether there's evidence of
16 the crime is supported by little or no corroboration
17 beyond the testimony of the victim, I think there is
18 testimony or evidence. If nothing else, I'm
19 assuming that Detective Boruchowitz took the stand
20 during the preliminary hearing and he'll take the
21 stand during trial and say what he was informed when
22 he -- when he interviewed the witnesses. And then
23 whether a reasonable basis exists to believe that
24 the mental or emotional state of the victim may have
25 affected her veracity.

1 It's true that the -- there was testimony
2 at the preliminary hearing by an individual by the
3 name of Susan Kallaher. She's the one who has the
4 Master's degree. She's the one who had worked with
5 the particular victim in this case. And she said
6 that while the victim had -- had not been truthful,
7 claimed that she had -- she had been treated for
8 breast cancer and different things. At no point in
9 the testimony did she ever indicate that she had
10 ever lied about anything sexual in nature.

11 And I think that the statute requires that
12 there be a compelling reason. And I don't think
13 that you've demonstrated the factor set forth in
14 Koerschner, that there's a compelling reason to
15 subject her to a psychological evaluation and I'm
16 going to deny that request.

17 Now let's move on to the second issue, and
18 that is whether or not -- and this is strictly
19 Mr. Quiroga's motion, and that is the motion to
20 sever the trial. And let's look first at what the
21 standard is on the motion to sever trial.

22 The first statute that falls into play is
23 Nevada Revised Statute 173.115, joinder of offenses.
24 Two or more offenses may being charged in the same
25 indictment or information in a separate count for

1 each offense. If the offenses charged, whether
2 felonies or misdemeanors or both are one, based on
3 the same act or transaction; or two, based on two or
4 more acts or transactions connected together or
5 constituting parts of a common scheme or plan.

6 And then, assuming that those tests are
7 met, the next statute that comes into play is Nevada
8 Revised Statute 174.165. Subsection (1) says, if it
9 appears that a defendant or the State of Nevada is
10 prejudiced by a joinder of offenses, or of
11 defendants in an indictment or information, or by
12 joinder for trial together, the Court may order an
13 election or separate trials of counts, grant a
14 severance of defendants, or provide whatever other
15 relief justice requires.

16 Subsection (2) says, in ruling on a motion
17 by a defendant for severance, the Court may order
18 the District Attorney to deliver to the Court for
19 inspection in chambers any statements or confessions
20 made by the defendants which the State intends to
21 introduce in evidence at the trial.

22 Now, there is a Nevada Supreme Court
23 decision that talks about the relationship of these
24 two statutes. And it says, thus, even if joinder is
25 permissible under Nevada Revised Statute 173.115,

1 the trial Court should sever the offenses if the
2 joinder is unfairly prejudicial; i.e., required by
3 justice. Although joinder of the charges against
4 multiple defendants was proper under Nevada Revised
5 Statute 173.135, Court considered whether joinder
6 prejudiced defendants and required severance under
7 NRS 174.165, it was citing to the Drew case,
8 Nevada -- or Federal, U.S. versus Drew, final
9 decision. And it goes on to quote Drew as saying,
10 even though joinder is permissible under Rule 8(a),
11 which is similar to these statutes, if the defendant
12 makes a timely motion under Rule 14 and shows
13 prejudice, the Court should either order an election
14 by the government or grant separate trials. And
15 that's from the Middleton versus State case, Nevada
16 Supreme Court decision, 114 Nevada 1089, 968 Pacific
17 2d, 296, 1998 Supreme Court decision.

18 So the point of that is, it appears to me
19 that the standard is, first of all, we look under
20 Nevada Revised Statute 173.115 to see if the
21 standard for joinder has been met. And even if it
22 has been met. Then we still have to look at
23 174.165.

24 So Mr. Gensler, I've read your pleading,
25 it's your motion. Let's discuss first whether the

1 requirements of Nevada Revised Statute 173.115 have
2 been satisfied.

3 MR. GENSLER: I actually thought you
4 summarized my argument very well. Those are the
5 statutes I cited, and then I followed it with my
6 argument. You have the 173.115, which authorizes
7 joinder under the following circumstances, whether
8 it's based upon the same act or transaction. These
9 were all -- although they're accusing the same types
10 of conduct, they're not the same act or transaction;
11 totally different. Two people, two different times,
12 there were multiple different times, however you
13 want to look at it, that were not the same act or
14 transaction.

15 And then so that takes you to the second
16 one based upon two or more acts or transactions
17 connected together or constituting part of a common
18 plan or scheme. The only thing I could find in the
19 discovery or in the preliminary hearing transcript
20 or any of the materials or conversations or anything
21 of that nature was that Courtney was alleging that
22 Mr. Mack at one point drove Mr. Quiroga over to her
23 place.

24 THE COURT: She drove Courtney over to
25 Mr. Quiroga's place.

1 MR. GENSLER: Right, I'm sorry. I'm
2 sorry. It was flipped. And that's -- there's
3 another allegation that they both used a belt.

4 THE COURT: The same belt, the flowery
5 belt.

6 MR. GENSLER: Her only belt.

7 THE COURT: Right.

8 MR. GENSLER: Right. And so that kind of
9 takes us to the other issue that you already ruled
10 on. You know, is she just using the -- and
11 something we can deal with when the time comes. But
12 is she kind of taking one transaction and shifting
13 it to another and implying that to Mr. Quiroga when
14 that was something that may have been occurring with
15 Mr. Mack? We don't know that. But that's certainly
16 something that is prejudicial if that is the case.

17 But other than that I didn't see anything
18 in there that -- that there was any kind of a plan
19 or scheme or that Mr. Mack was pimping her out or
20 that they were conspiring or anything of that
21 nature. So you have two -- two separate events or
22 two separate sets of events. One set of events
23 allegedly involving Mr. Mack, one set of events
24 allegedly involving Mr. Quiroga. But although the
25 descriptions of them are similar, there's nothing to

1 indicate that they were done in conjunction or part
2 of a common plan or anything of that nature.

3 THE COURT: Okay.

4 MR. GENSLER: That's my simple version.

5 THE COURT: Mr. Treffinger.

6 MR. TREFFINGER: I don't have much to add
7 to this, Your Honor. You can probably tell by my
8 response to his motion that I'm pretty much
9 submitting this matter to you with some additional
10 considerations that you don't want addressed at this
11 particular time.

12 He summed it up perfectly, I think. There
13 is some -- there is some suggestion here of a common
14 scheme or plan because the same belt was used, the
15 same acts are alleged, and because he, Mr. Mack that
16 is, delivered allegedly the victim to Mr. Quiroga
17 for one of these events that have the exact same
18 details laid out by the victim.

19 I -- I'm against severance in this case.
20 I think the judicial economy definitely would be
21 hindered by these cases being severed.

22 THE COURT: Do we get to the judicial
23 economy issue? Do we -- do -- so your argument, if
24 I read your brief, you're saying it's based on the
25 same act or transaction. That's the --

1 MR. TREFFINGER: Common scheme or plan,
2 yes, Your Honor.

3 THE COURT: Common scheme or plan. And
4 that's the sole basis for your belief that these
5 cases should be combined.

6 MR. TREFFINGER: At that point of the
7 argument, that's correct, Your Honor.

8 THE COURT: Okay. Because would you agree
9 with me that we don't get to the arguments about
10 judicial economy, et cetera, if -- if I find that
11 the requirements of Nevada Revised Statute 173.115
12 have not been satisfied?

13 MR. TREFFINGER: I do definitely agree,
14 Your Honor.

15 THE COURT: Okay, all right. Anything
16 else?

17 MR. GENSLER: On that statute?

18 THE COURT: On --

19 MR. GENSLER: Do you want me to move on to
20 the other --

21 THE COURT: Let's just talk about 173.
22 Because I think if we address 173.115, we'll address
23 that first and then I'll address the second statute.

24 MR. GENSLER: Nothing to add, other than
25 if we do get to the judicial economy, they're -- all

1 the case law -- not all the case law, but a lot of
2 the case law says that judicial economy alone is not
3 sufficient. That if there's prejudice it doesn't
4 matter how inconvenient it is. And if we get to
5 there -- that I would submit that.

6 THE COURT: Well, I think first we have to
7 look at what is -- you know, for me, when I sat down
8 and looked at this, and I will tell you, you cited a
9 number of cases, Mr. Gensler, and I read every
10 single one of them.

11 So this -- Weaver versus State I thought
12 was very instructive on what is meant, what do they
13 mean by common plan or scheme? What do they mean by
14 two or more acts connected together?

15 And what that case says, and I thought
16 this was pretty interesting. It goes on to say --
17 the case goes on to say, determining whether a
18 common scheme or plan existed in this or any case
19 requires fact-specific analysis. And such analysis
20 depends on the meaning of the pertinent statutory
21 language, scheme or plan.

22 According to Black's Law Dictionary, a
23 scheme is a design or plan formed to accomplish some
24 purpose. A system. A plan is a method of design or
25 action, procedure or arrangement for accomplishment

1 of a particular act or object; method of putting
2 into effect and intention or proposal. We conclude
3 that these definitions pertain to scheme or plan as
4 used in Nevada Revised Statute 173.115, subsection
5 (2).

6 Thus, purposeful design is central to a
7 scheme or plan. Though this does not mean that
8 every scheme or plan must exhibit rigid consistency
9 or coherency. We recognize that a person who forms
10 or follows a scheme or plan may have to contend with
11 contingencies; and therefore, a scheme or plan can
12 in practice reflect some flexibility in variation
13 but still fall within an overall intended design.

14 Nevertheless, we conclude that in this
15 case, the facts fail to show that Weber had a single
16 scheme or plan that encompassed his ongoing sexual
17 misconduct because we had violence on April 4th and
18 against violence on April 14th in that particular
19 case.

20 Then the Court goes on to discuss the
21 question about what does connected together mean?
22 And it says, however, the question remains, were the
23 three groups of acts necessarily connected together
24 under NRS 173.115, subsection (2)? We have not
25 addressed the connected together language in the

1 statute, and it is a term that calls for a more
2 precise definition.

3 We hold that for two charged crimes to be
4 connected together under Nevada Revised Statute
5 173.115, subsection (2), a Court must determine that
6 evidence of either crime would be admissible in a
7 separate trial regarding the other crime. We have
8 recognized this cross-admissibility as a basis for
9 joinder of charges in some of our prior decisions.
10 We now expressly employ it to define connected
11 together under Nevada Revised Statute 173.115,
12 subsection (2).

13 We conclude that the groups of crimes
14 charged and proven in this case are connected
15 together because evidence of each group would have
16 been relevant and admissible at separate trials of
17 the other crimes.

18 So the question would be, is if Mr. -- in
19 Mr. Mack's trial, would evidence -- if that case was
20 tried by itself, would -- would Mr. Quiroga's acts
21 be admissible as a separate part of that. That's
22 how I read this case.

23 And flip side in Mr. Quiroga's case.
24 Would Mr. Mack's alleged actions be admissible in
25 that case? I think that's how you're to view this.

1 If I understand what the Nevada Supreme Court was
2 saying in Weber V State, and that's 121 Nevada 554
3 119 Pacific 3d 107. It's a 2005 Nevada Supreme
4 Court decision.

5 So I think that's the -- that's the issue
6 that we look at first. Is there a common scheme or
7 plan?

8 Now, there is a Nevada Supreme Court
9 decision. It's a Mitchell versus State. It's a
10 1989 Nevada Supreme Court decision. It's 105 Nevada
11 735, 782 Pac 2d 1340. And in that case, this was --
12 it was prosecution for grand larceny and sexual
13 assault of one victim, and it was joined with the
14 prosecution of sexual assault and murder of another
15 victim.

16 And in that case, the Nevada Supreme Court
17 found that those -- that the -- that these charges
18 were improperly combined in the same trial. And
19 what the Court said in that case was that there --
20 first it addressed the issue of whether or not they
21 were a common scheme or plan. And the Court said
22 that based on the -- it says NRS 173.115 permits
23 joinder of criminal counts only if the counts are
24 based on the same transaction or constitute part of
25 a common scheme or plan.

1 Being 45 days apart, these separate
2 incidents cannot be considered part of the same
3 transaction. Nor can taking two different women
4 dancing and later attempting intercourse be
5 considered part of a common plan just because the
6 women are taken to -- in part to the same bar. And
7 they cited a Nevada Supreme Court decision.

8 If, however, evidence of one charge would
9 be cross-admissible in evidence at a separate trial
10 in another charge, then both charges may be tried
11 together and that need not be severed.

12 In this case, the Court found the charges
13 were not cross-admissible and ordered that trying
14 them together was improper.

15 And I have to look at -- the only argument
16 that we have for the common scheme or plan from the
17 State is that the -- a belt was used. The acts
18 aren't the same. She's -- necessarily arguing that
19 they were the same type of acts. But in her
20 testimony, the victim's testimony at the preliminary
21 hearing was the incidents with Mr. Mack had occurred
22 over -- over years. First incident occurred when
23 the parents were alive in El Paso, Texas.

24 The victim testified at the preliminary
25 hearing that there were two acts that occurred at

1 Mr. Quiroga's. One of the acts she said that
2 Mr. Mack had driven her to. I don't know how she
3 got there the second time because there's not any
4 testimony. The record is devoid of that.

5 But I looked at the issue, and I -- I'll
6 hear argument from you. If you -- from both counsel
7 here. If you think that these -- that if these
8 cases were tried separately the evidence would come
9 in of the other -- of the other alleged perpetrator.

10 MR. GENSLER: The only evidence that I
11 would see would come in would be that possibly
12 Mr. Mack drove Courtney to Mr. Quiroga's.

13 THE COURT: That would be part of
14 Mr. Quiroga's. How did you get there? I was driven
15 by my guardian.

16 MR. GENSLER: Right. I don't see how any
17 of the other allegations -- the allegations against
18 Mr. Mack, I don't see how any of that would be
19 admissible against Mr. Quiroga.

20 THE COURT: Mr. Treffinger?

21 MR. TREFFINGER: I'm inclined to agree,
22 Your Honor.

23 THE COURT: That's exactly what the Court
24 believes as well. That there isn't a -- I can't see
25 a common scheme or plan. And I -- I've -- or that

1 these separate acts would somehow come in in these
2 other cases.

3 In fact, I will tell you that I pulled up
4 the Nevada rule of evidence on other -- NRS 48.045,
5 subsection (2) and looked at the cases on common
6 scheme or plan. And -- and to just give a flavor,
7 what do they mean by common scheme or plan? How has
8 the Court ruled in previous cases?

9 And quite frankly, I have difficulty
10 finding -- I'll be honest with you, when I looked at
11 the transcript, based upon the evidence that's in
12 the court file, and that's what I have to rely on,
13 the preliminary hearing transcripts, the statements
14 that are in the affidavits for arrest. I don't -- I
15 don't have the interviews. But based upon what I
16 have, I have difficulty believing that the
17 requirements of Nevada Revised Statute 173.135
18 are -- or .115 are met. That where two or more
19 offenses may be charged in the same indictment or
20 information in a separate count breach offense. If
21 the offense is charged, whether felonies or
22 misdemeanors or both are based on the same act or
23 transaction, or based on two or more acts or
24 transactions connected together.

25 I think we agree they're -- they're not

1 connected together. Do they constitute parts of a
2 common scheme or plan? I think they're pretty
3 tangential to do that. To say that they're part of
4 a common scheme or plan.

5 And I'm inclined to agree with the
6 defense, that the trial should be severed in this
7 case. I really am. I don't think we ever get to
8 whether or not it's prejudicial under NRS 174.165
9 and we go into the issues of judicial economy
10 because we can't -- if I read the case authority
11 correctly, and the case that I cited, I believe it's
12 the Middleton case from 1998 from the Nevada Supreme
13 Court, it's after that we determine the joinder
14 is -- joinder has been met under 173.115. Then we
15 look to whether or not they should still be joined
16 under 174.165. Whether or not there's prejudicial
17 joinder.

18 So I do believe that Mr. Gensler is
19 correct and I believe these trials should be
20 severed. So I'm going -- I'm going to order that
21 the trials be severed in this case.

22 Now, with that order, let's talk about --
23 we have this case set on my calendar for trial
24 for -- let me take a look. It's in December. I
25 just want to be sure I've got the dates correct.

1 MS. BEGIN: December 9, Your Honor.

2 THE COURT: It starts -- let's see, I'm in
3 January now. December 9th through December 20th.
4 We've set the trial for those two weeks.

5 My question is, is the Mack trial going to
6 take two weeks? Can we try both of these cases, my
7 question is, during this period? First try one case
8 and then try the other case. Because I would --
9 I've got two weeks blocked out and I'd just as soon
10 try both cases if I could, one trial after the
11 other.

12 MR. GIBSON: Your Honor, we have submitted
13 an ex parte motion for extraordinary fees. So when
14 you get --

15 THE COURT: I've already signed the order
16 for that.

17 MR. GIBSON: Good. But that said, we have
18 not had -- sent our investigator yet out on --

19 THE COURT: You need to get on to that.

20 MR. GIBSON: I understand. That's -- but
21 I wanted to wait and see how this motion to -- for
22 psychological evaluation was going to come out.
23 That would have obviated, if it was granted,
24 extending the trial date.

25 THE COURT: I just want to point something

1 out, and I said this in law and motion. And I'm
2 tired of counsel manipulating my calendar around.
3 And we have continuance after continuance. Because
4 it's not only my calendar that it affects, it
5 affects the clerk's office. Because we don't have
6 separate clerks here at the District Court. So they
7 plan out when they've got to have clerks in the
8 courtroom away handling this thing -- things. And
9 constantly people just make a decision that, we set
10 a trial date but we're not going. And my attitude
11 is, we're going but for the death of counsel or the
12 judge. And for the judge, it's easy. They can
13 bring a senior judge in.

14 But absent compelling circumstances, you
15 know -- we've known back in May I set this trial for
16 these first two weeks in December. So, you know, we
17 can't wait until November 1st to start -- well, we
18 can if you want, but you're going to work as hard as
19 you can to get these cases ready to go to trial.
20 But I expect them to be ready. And when I block out
21 that much time on my calendar for that, to free up
22 that time means it is such wasted time here for the
23 court. And I -- I expect these cases are going.
24 I'm going to tell you that right now.

25 If you haven't gotten your investigator, I

1 signed the order just as soon as it came in. I
2 needed some clarification because you asked for an
3 order -- it looked like you were asking for an
4 expert -- or for an investigator. You asked for an
5 expert, but in reading it, it was for Henry
6 Investigations. I had my staff call your office to
7 clarify that and then I signed the order. So we're
8 ready to go. I mean, Court's ready. I expect you
9 guys to be ready to go.

10 MR. GIBSON: I will be ready, Judge.

11 THE COURT: Okay. I just want to point
12 that out. This may be your only case between now
13 and December 9th, but I want the case to go. Absent
14 extraordinary circumstances these cases should be
15 ready to go. And I believe that -- we did not
16 invoke the -- did we invoke the 60-day? I can't
17 remember on this case. If I look at the minutes
18 I'll know.

19 MR. GENSLER: Mr. Quiroga waived because
20 he's out of custody.

21 THE COURT: Right. But I think -- I don't
22 think Mr. Mack did. Let me look.

23 MR. GIBSON: My recollection is that I
24 would have probably, since he was in custody, not
25 waived.

1 THE COURT: That's my -- that's my
2 recollection. But you know what? I want to be
3 sure. You know, I can look at the transcript.

4 MR. GIBSON: Although, Judge, if we're
5 going on the 9th, or between the 9th and 20th, I
6 don't think it matters anyway. Looks like that's a
7 firm date for the Court.

8 THE COURT: I'm not sure I have the
9 transcript. I'm got the preliminary hearing
10 transcript and I have a transcript from May 17th,
11 but that was when I gave the parties time to decide
12 whether or not they wanted to recuse me as a
13 District Court Judge. I don't have the minutes.
14 Can you pull the minutes up for me, please, Rachel?
15 Oh, yes, I do. Here we go. The defendant -- it
16 says the defendant waived his right to a speedy
17 trial.

18 MR. GIBSON: Okay.

19 THE COURT: But I want to be sure that
20 that's on Mack.

21 THE CLERK: That one was the only one we
22 heard that day.

23 THE COURT: Okay. So he would have waived
24 his right. But I would like to go, because I've got
25 two weeks blocked out on my calendar. So if --

1 we're going to be ready to go. I mean, like I said,
2 the investigator is going to have to get busy.

3 MR. GENSLER: The question you asked was
4 how many days.

5 THE COURT: How many days are you going to
6 need?

7 MR. GIBSON: I don't know how long the
8 State's going to take.

9 THE COURT: Mr. Treffinger, how long do
10 you think your case is going to take? I think we
11 better plan a day for selection of the jury and I'll
12 tell you why. These kind of cases, you'll get all
13 kinds of people who do not want to serve. They've
14 either been assaulted and never reported it or
15 whatever. But I guarantee you that it's going to
16 take all day to choose the jury. There's no doubt
17 in my mind about that. We start at 9:00, hopefully
18 by 5:00 we'll have the jury seated.

19 MR. TREFFINGER: Your Honor, I can't see
20 either of these cases going beyond a day for jury
21 selection, four days for trial. So I think that
22 your scheme of one per week works out just fine.

23 Additionally, that helps with the victim.
24 One of my arguments had we gotten to it is she is
25 somewhere else. They need to bring her here and

1 kind of disrupt her routine. And she does have
2 these mental illnesses. So doing it those two weeks
3 in a row lets us knock these out without causing too
4 much more disruption to her life.

5 THE COURT: Do you --

6 MR. GIBSON: Your Honor, if he says it's
7 going to go four days and I expect that that's
8 accurate, I can't see the defense going over -- I
9 mean, on the safe side two days. But probably, if
10 we started sharp at 9:00 or thereabouts and didn't
11 have unnecessary breaks, I think I can get it done
12 in one day. The defense, anyway.

13 THE COURT: Okay.

14 MR. GIBSON: All I ask is that -- and it
15 may sound a little selfish, but if we could go on
16 the second week and Mr. Gensler go first, only
17 because I could use the extra time and I don't think
18 Mr. Gensler has the same issues that I have with the
19 investigators.

20 THE COURT: I -- Mr. Gensler?

21 MR. GENSLER: I got my investigator in
22 May. So --

23 THE COURT: Are you ready to go?

24 MR. GENSLER: Yeah.

25 THE COURT: So would you be willing to go

1 the week of the -- of the 9th through the 13th?

2 MR. GENSLER: I would. But I have a bunch
3 of things scheduled that week where I really have
4 nothing scheduled the following week. So I'd be
5 better off the second week as well. Whatever the
6 Court decides is fine.

7 THE COURT: One of you is going one week
8 and one of you is going the other week. It doesn't
9 make any difference to me who goes when. It's just
10 that somebody's going to have to step up and take
11 the first week. You know, they're just going to
12 have to. So either you guys decide among yourself
13 or the Court will decide for you.

14 MR. GENSLER: It sounds like we both want
15 the second week so we'll leave it up to your
16 discretion.

17 THE COURT: I have to tell you, I'm
18 inclined to try the Mack case first because I think
19 that there's going to be -- that that is -- there
20 are more allegations in that case and in the event
21 that it bleeds over, I'm going to start Quiroga
22 right after the Mack case. And the reason for that
23 is, I have free December 23rd and 24th. And you
24 guys don't want to hear this. But I will go -- I
25 want to get these two cases done and then I'm going

1 to start another trial on January 2nd, a murder
2 trial, up in Tonopah for two weeks. That's why I'm
3 so pushing -- I don't like to have a jury come in
4 and then hear all this evidence and then come back
5 two or three weeks later or four or five days later.
6 I want the cases to be tried and done.

7 Do you think you can be ready on the 9th?

8 MR. GIBSON: Yes.

9 THE COURT: The flip side of that is I can
10 put Mr. Gensler on -- I can put you on the 16th, but
11 we may go the 23rd and the 24th. Because I'm going
12 to -- we're going to go until this case is done.

13 MR. GENSLER: I'll take the 16th.

14 THE COURT: So it's up to you, Mr. Gibson.
15 You're the one who said you needed additional time.
16 But know that I will go 23rd and 24th if we have to.

17 MR. GIBSON: I would prefer the second
18 half.

19 MR. GENSLER: I'm actually clear the 23rd
20 and 24th. I hate to say that as well, but --

21 THE COURT: Well, you know what we could
22 do? We could -- I guess -- I don't --
23 Mr. Treffinger, since they don't know what -- they
24 don't know, which case do you prefer to try first?

25 MR. TREFFINGER: Honestly, Your Honor, I

1 don't really have a preference. In fact, with these
2 cases being separated, there's another attorney
3 going to handle the case that's set for the 9th and
4 then I'm going to take the second week. So I really
5 don't have a preference, either.

6 THE COURT: What about the other attorney?
7 Did they have a preference?

8 MR. TREFFINGER: I don't think he has a
9 preference. I would personally rather try the Mack
10 case myself if I can, which would make it better for
11 me to have it the second week. But again, I'll
12 leave it up to the discretion of the Court.

13 THE COURT: Mr. Gensler, what do you have
14 that you need to move?

15 MR. GENSLER: It's a bunch of Justice
16 Court that I have. 12 cases there and a couple with
17 Judge Lane. DCFS cases.

18 THE COURT: Well, this is what I'm
19 inclined to do. Because like I said, if this case
20 doesn't finish on the 20th, we're back on the 23rd.
21 I'll cancel drug court on the 23rd or -- or take a
22 break and handle drug court in the other courtroom
23 and come back. But I intend to go the 23rd and the
24 24th. And if need be I'll come back the 27th. I
25 mean -- so you need to be aware of that. Because I

1 want to get this -- 26th -- is the 26th a holiday?

2 MS. BEGIN: No.

3 THE COURT: We have the 26th and 27th free
4 on my calendar, too. We're going to get these cases
5 done. So if anybody has a problem, because I know
6 that that's traditionally -- I don't like to have
7 cases the week of Christmas, just in fairness to
8 jurors and in fairness to attorneys. A lot of
9 people travel, they go out of town, it's Christmas.
10 So I try to be respectful of that. But sometimes we
11 have to.

12 And Rachel, you're kind of used to sitting
13 here with Judge Davis, aren't you, late on
14 Christmas Eve? But I really try not to do that.

15 So it's -- if Mr. Gibson, and you're not
16 opposed to being here the 23rd and the 24th and
17 possibly the 26th and 27th, I'll give you the second
18 week.

19 MR. GIBSON: That's fine, Judge. I'm used
20 to going without vacations.

21 THE COURT: All right. And I will place
22 Mr. Gensler the 9th through the 13th.

23 MR. GENSLER: Thank you, Your Honor.

24 THE COURT: Okay, thank you.

25 MR. GENSLER: And I had in my calendar two

1 calendar call dates, actually November 1st and
2 November 8th. They'll both -- they'll both be
3 vacated. We don't need to come back since we've
4 already done this.

5 THE COURT: Do we have any pre-trial
6 motions? We don't have any pre-trial motions?
7 Because I'll want to hear those beforehand.

8 MR. GENSLER: If I file any I'll set them
9 for whatever date you tell me to.

10 THE COURT: Okay. So you're telling me --
11 you guys are declaring ready, both sides are
12 declaring ready on --

13 MR. GENSLER: Yes.

14 THE COURT: -- on the Quiroga case and
15 likewise on the Mack case; is that right?

16 MR. TREFFINGER: That's correct, Your
17 Honor.

18 MR. GENSLER: Yes.

19 THE COURT: Mr. Gibson?

20 MR. GIBSON: Yes. I'm sorry, Judge.

21 THE COURT: So then what we'll do is, if
22 any pretrial motions come in I will set them for
23 hearing. And I have to be honest with you. I kind
24 of like to set the motions -- I have to tell you,
25 all those cases took me a long time to read,

1 Mr. Gensler. It's bad enough trying -- I took --
2 first I had to pull them up and then I had to read
3 them and then I had to digest them.

4 So when I have motions like that I do like
5 to -- that's why I like to have you on a separate
6 day. Because it gives me the opportunity to spend
7 some time, not only making sure that I'm fully
8 prepared when I come in the courtroom, but so
9 that -- you know, if this were on a law in motion
10 calendar, people would be jumping up and down and
11 walking in and out of the courtroom and that's very
12 distracting. So I like to have the -- enough time.

13 So what we'll probably do is, if there are
14 any pre-trial motions, we'll set them on a day that
15 is not a law in motion day, okay?

16 MR. GENSLER: Okay. And if I file any
17 I'll check with the court and get a date --

18 THE COURT: Get a date from us and we'll
19 get it set.

20 Anything else we need to address?

21 MR. GIBSON: Just, Judge, a follow up on
22 that. If I -- motions in limine would be heard on
23 just the day of trial, anyway, right?

24 THE COURT: No. I hear them before trial.

25 MR. GIBSON: Okay.

1 THE COURT: I -- you know what? I don't
2 like this, you have to prepare for things that may
3 or may not go forward. So if we decide them ahead
4 of time you know exactly what you're preparing for.
5 So if you have some motions in limine, get them -- I
6 should file a deadline -- I should set a deadline,
7 then, for the motions, I think. And so what I'm
8 going to do is, if you have any motions, I want them
9 filed no later than the 15th.

10 MR. GIBSON: The 16th?

11 THE COURT: I show that -- Friday,
12 November 15th.

13 MR. GENSLER: Okay. Thank you.

14 THE COURT: That would give everybody the
15 time to respond and I can get it set for hearing.
16 5:00 on the 15th is the deadline for any pre-trial
17 motions.

18 MR. GENSLER: So I can tell Mr. Mack he
19 doesn't need to be here on the 1st or 8th. If we
20 get a new date I'll let him know what it is.

21 THE COURT: Right. Anything else?

22 THE CLERK: Are we vacating the secondary
23 set for September of next year?

24 THE COURT: I think I have something set
25 behind it. Yes. So that means the Villa case, if

1 anybody is counsel for the Villa case, will be going
2 on --

3 THE CLERK: September 14th of next year.

4 THE COURT: September 14th of next year.

5 I'm going to vacate the secondary setting.

6 MR. GENSLER: Okay. Thank you.

7 THE COURT: Thank you, very much.

8 MS. BEGIN: Your Honor, draw the juries on
9 November 1st?

10 THE COURT: November 1st we will draw the
11 jury. How many jurors are we going --

12 MS. BEGIN: I believe we had 120 for --
13 well, we had 120 for --

14 THE COURT: Probably 120 for each trial.
15 Anything else?

16 MR. GENSLER: No, Your Honor.

17 THE COURT: Great. Thank you, very much.

18 (Proceedings concluded at 12:09 p.m.)
19
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21
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24
25

STATE OF NEVADA)

55

Tracy A. Manning, CCR 785

Case No. CR7444A

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

FILED
Tami Dora
2013 NOV 26 P 4 53

NYE COUNTY CLERK
BY DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

AMENDED INFORMATION

MICHAEL ALLEN MACK,

Defendant. /

BRIAN T. KUNZI, District Attorney within and for the County of Nye, State of Nevada, informs the Court that MICHAEL ALLEN MACK, before the filing of this Amended Information, did then and there, in Nye County, Nevada, commit the following offense, to wit:

ATTEMPTED SEXUAL ASSAULT, in violation of **NRS 200.366, A CATEGORY 'B' FELONY**, committed in the following manner, to wit: That **ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND APRIL 9, 2013**, in Pahrump Township, Nye County, Nevada, said Defendant **MICHAEL ALLEN MACK** did willfully and unlawfully attempt to subject another person, to wit: NCSO pseudonym "**COURTNEY**", to sexual penetration, against the victim's will, or under conditions in which said Defendant knew or should have known that the victim was mentally or physically incapable of resisting or understanding the nature of her conduct, by attempting to penetrate the victim's vagina;

///
///
///
///

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

3 Witnesses and their addresses known to the District Attorney of Nye County,
4 State of Nevada, at the time of the filing of this Amended Information:

5 SERGEANT KELLY JACKSON
6 NYE COUNTY SHERIFF'S OFFICE
7 PAHRUMP, NEVADA

EMILY SMITH
621 S. BLAGG
PAHRUMP, NEVADA

8 DEPUTY ROBIN BECHT
9 NYE COUNTY SHERIFF'S OFFICE
10 PAHRUMP, NEVADA

JANE DOE
c/o NYE COUNTY DISTRICT
ATTORNEY'S OFFICE
PAHRUMP, NEVADA

11 DETECTIVE DAVID BORUCHOWITZ
12 NYE COUNTY SHERIFF'S OFFICE
13 PAHRUMP, NEVADA

SUSAN KALLAHER
3100 W. SAHARA AVENUE, SUITE
204
LAS VEGAS, NEVADA

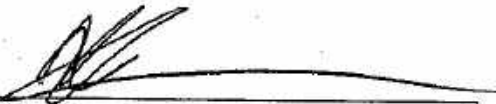
14 DEPUTY JOHN KAKAVULIAS
15 NYE COUNTY SHERIFF'S OFFICE
16 PAHRUMP, NEVADA

17 DETECTIVE MICHAEL EISENLOFFEL
18 NYE COUNTY SHERIFF'S OFFICE
19 PAHRUMP, NEVADA

20 DATED this 26th day of November, 2013.

21 BRIAN T. KUNZI
22 NYE COUNTY DISTRICT ATTORNEY

23 By

24 
TIMOTHY R. TREFFINGER
Deputy District Attorney

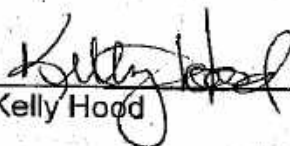
CERTIFICATE OF SERVICE

I, Kelly Hood, Executive Legal Secretary, Office of the Nye County District Attorney, P. O. Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

**AMENDED INFORMATION in
5TH JDC Case No(s). CR7444A
STATE v. MICHAEL ALLEN MACK**

upon said Defendant herein by delivering a true and correct copy thereof, on November 26, 2013 to the following:

Thomas Gibson, Esquire
at the Nye County District Attorney's office
in Pahrump, Nevada



Kelly Hood

Case No. CR7444A

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

FILED
FIFTH JUDICIAL DISTRICT
DEC 03 2013
Nye County Clerk
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

GUILTY PLEA AGREEMENT

MICHAEL ALLEN MACK,

Defendant. /

COMES NOW THE STATE OF NEVADA ("Plaintiff"), by and through BRIAN T. KUNZI, Nye County District Attorney, by TIMOTHY R. TREFFINGER, Deputy Attorney General, and MICHAEL ALLEN MACK ("Defendant"), and file this Guilty Plea Agreement in the above-entitled case.

I, MICHAEL ALLEN MACK, hereby agree to plead guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970) (hereinafter referred to as *Alford*), to **ATTEMPTED SEXUAL ASSAULT**, a category B felony, in violation of NRS 200.366, NRS 193.330 as more fully alleged in Count One of the charging document attached hereto as Exhibit 1. My decision to plead guilty is based upon the plea agreement in this case, which is as follows:

1. In exchange for my plea of guilty, pursuant to *Alford*, all other charges arising out of this incident will be dismissed.

2. At the time of sentencing, both parties, retain the right to argue for any lawful sentence.

CONSEQUENCES OF THE PLEA

I understand that by pleading guilty pursuant to *Alford*, I authorize the court, for purposes of this case, to treat me as if I had admitted the facts that support all the elements of the offense to which I now plead as set forth in Exhibit 1.

I understand that as a consequence of my plea of guilty to ATTEMPTED SEXUAL ASSAULT, a category B felony, I may be imprisoned for a period of not more than twenty (20) years and not less than two (2) years. I understand that the law requires me to pay an administrative assessment fee of \$25. I also understand that the law requires me to provide a biological specimen to be used for an analysis to determine genetic markers and to pay the associated fee of \$150.

I understand that I am eligible for probation for the offense to which I am pleading guilty, and I understand that, except as otherwise provided by statute, the decision to grant or deny probation is in the sole discretion of the sentencing judge.

I understand that if more than one sentence of imprisonment is imposed and I am eligible to serve the sentences concurrently, the sentencing judge has the discretion to order the sentences served concurrently or consecutively.

I understand that information regarding charges not filed, dismissed charges or charges to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence will be determined by the Court within the limits prescribed by statute. I understand that if my attorney or the State of Nevada or both recommend

1 any specific punishment to the court, the court is not obligated to accept the
2 recommendation.

3 I understand that the Division of Parole and Probation of the Department of
4 Public Safety may prepare a written report for the sentencing judge before sentencing.
5 This report will include matters relevant to the issue of sentencing, including my
6 criminal history. I understand that this report may contain hearsay information
7 regarding my background and criminal history. My attorney and I will each have the
8 opportunity to comment on the information contained in the report, if any, at the time of
9 sentencing.

10 I understand that, as a consequence of my plea of guilty, if I am not a citizen of
11 the United States, I will, in addition to other consequences provided by law, be
12 removed, deported and/or excluded from entry into the United States or denied
13 naturalization.

14 **WAIVER OF RIGHTS**

15 By entering my plea of guilty, I understand that I have waived the following
16 rights and privileges:

17 1. The constitutional privilege against self-incrimination, including the right
18 to refuse to testify at trial, in which event the State would not be allowed to comment to
19 the jury about my refusal to testify.

20 2. The constitutional right to a speedy and public trial by an impartial jury,
21 free of excessive pretrial publicity prejudicial to the defense, at which trial I would be
22 entitled to the assistance of an attorney, either appointed or retained. At trial, the
23 State would bear the burden of proving beyond a reasonable doubt each element of
24 each offense charged, in this case:

1 i. That ON OR ABOUT OR BETWEEN SEPTEMBER 10, 2012 AND
2 APRIL 9, 2013, in Pahrump Township, Nye County, Nevada;

3 ii. The Defendant, MICHAEL ALLEN MACK, did willfully and unlawfully;

4 iii. attempt to subject another person, to wit: NCSO pseudonym
5 "COURTNEY", to sexual penetration;

6 iv. against the victim's will;

7 v. or under conditions in which said Defendant knew or should
8 have known that the victim was mentally or physically incapable of
9 resisting or understanding the nature of her conduct;

10 vi. by attempting to penetrating the victim's vagina;

11 3. The constitutional right to confront and cross-examine any witnesses
12 who would testify against me.

13 4. The constitutional right to subpoena witnesses to testify on my behalf.

14 5. The constitutional right to testify in my own defense.

15 6. The right to appeal the conviction, with the assistance of an attorney,
16 either appointed or retained, unless the appeal is based upon reasonable
17 constitutional, jurisdictional or other grounds that challenge the legality of the
18 proceedings and except as otherwise provided by subsection 3 of NRS 174.035.

19 CONSEQUENCES OF SEX OFFENSE

20 I agree to plead guilty to a sex offense, and will be considered a Tier II
21 offender. As a result, I understand that I AM subject to sex-offender registration
22 requirements as provided for in NRS 179D.450, and that I AM also subject to the
23 lifetime supervision requirements of NRS 176.0931.
24

1 I understand that as a result of my guilty plea, I will be required to register with
2 local law enforcement in the city or county in which I reside or where I am present for
3 more than forty-eight hours, and that failure to comply with the registration
4 requirement is a separate category "D" felony. I understand I may also be subject to
5 community notification provisions designed to reach members of the public who are
6 likely to encounter me.

7 **VOLUNTARINESS OF PLEA**

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

10 I understand that the State would have to prove each element of each charge
11 against me at trial.

12 I have discussed with my attorney any possible defenses and circumstances
13 that might be in my favor.

14 All of the foregoing elements, consequences, rights and waiver of rights have
15 been thoroughly explained to me by my attorney.

16 I believe that pleading guilty and accepting this plea bargain is in my best
17 interest and that a trial would be contrary to my best interest.

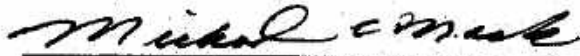
18 I am signing this agreement voluntarily after consultation with my attorney and
19 am not acting under duress or coercion or by virtue of any promises of leniency,
20 except for those set forth in this agreement.

21 I am not now under the influence of intoxicating liquor, a controlled substance
22 or other drug(s) that would in any manner impair my ability to comprehend or
23 understand this agreement or the proceedings surrounding my entry of this plea.

24 ////

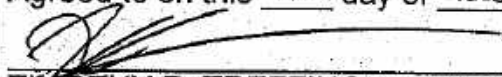
1 My attorney has answered to my satisfaction all of my questions regarding this
2 Guilty Plea Agreement and its consequences, and I am satisfied with the services
3 provided by my attorney.

4 Dated this 5 of December 2013.

5
6 

MICHAEL ALLEN MACK
Defendant

7
8 Agreed to on this 6th day of December, 2013.

9 
TIMOTHY R. TREFFINGER, ESQ.
Deputy Attorney General

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 charge(s) to which the guilty plea(s) is/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 guilty offered by the defendant pursuant to this agreement are consistent with all 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 charge(s) and the consequences of pleading guilty as provided in this agreement;

(b) Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily; and

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

DATED this 5 day of December, 2013.



THOMAS GIBSON, ESQ.

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

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NYE COUNTY DISTRICT ATTORNEY
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