IN THE SUPREME COURT OF THE STATE OF NEVADA

RAFAEL ROSAS CARDENAS,

Appellant,

VS.

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STATE OF NEVADA,

Respondent.

Electronically Filed Jun 10 2022 05:28 p.m. Docket Nizabell A. Brown District Clearly of Suppreme Court

RESPONDENT'S APPENDIX

ATTORNEY FOR RESPONDENT

Anthony R. Gordon Deputy District Attorney Nevada State Bar No. 2278 **Humboldt County** District Attorney's Office 501 S. Bridge Street PO Box 909 Winnemucca, NV 89446 (775) 623-6360 Phone (775) 623-6365 Fax

ATTORNEY FOR APPELLANT

Matt Stermitz Nevada State Bar No. 3610 Humboldt County Public Defender P.O. Box 309 Winnemucca, NV 89446 (775) 823-6550

HUMBOLDT COUNTY DISTRICT ATTORNEY P.O. Box 909 Winnemucca, Nevada 89446

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IN THE JUSTICE'S COURT OF UNION TOWNSHIP COUNTY OF HUMBOLDT, STATE OF NEVADA

-000-

STATE OF NEVADA,

Plaintiff,

vs.

FELONY COMPLAINT

RAFAEL CARDENAS AKA RAFAEL ROSAS 23871 IRON WOOD AVE MORENO VALLEY, CA 92557 DOB: 05/29/1966,

Defendant.

PERSONALLY APPEARED BEFORE ME, KEVIN PASQUALE, Chief Deputy District Attorney, who first being duly sworn, complains and says that the Defendant(s) above-named has within the County of Humboldt, State of Nevada, committed a certain crime which is described as follows:

COUNT I

LEWDNESS WITH CHILD UNDER 14 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 201,230(2)

the Defendant did knowingly, willfully, unlawfully and lewdly commit any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, in the following manner, to-wit:

HUMBOLDT COUNTY DISTRICT ATTORNEY
P.O. Box 909
Wignernucca, Nevada 89446

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That on or between the 1st day of July, 2018, and the 3rd day of July, 2019, at or near the location of 4200 Maslona Dr. #48, Winnemucca, County of Humboldt, State of Nevada, the Defendant rubbed the bare breasts of "O.R.", a known but unnamed female juvenile under the age of 14, with the intent of gratifying the lust or passions or sexual desires of the Defendant or "O.R.".

COUNT II

LEWDNESS WITH CHILD UNDER 14 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 201.230(2)

That the Defendant did knowingly, willfully, unlawfully and lewdly commit any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, in the following manner, to-wit: That on or between the 1st day of July, 2018, and the 3rd day of July, 2019, at or near the location of 4200 Maslona Dr. #48, Winnemucca, County of Humboldt, State of Nevada, the Defendant rubbed the bare breasts of "O.R.", a known but unnamed female juvenile under the age of 14, with the intent of gratifying the lust or passions or sexual desires of the Defendant or "O.R.".

COUNT III

A CATEGORY A FELONY AS DEFINED BY NRS 201.230(2)

That the Defendant did knowingly, willfully, unlawfully and lewdly commit any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or 'passions or sexual desires of that person or of that child, in the following manner, to-wit: That on or between the 1st day of July, 2018, and the 3rd day of July, 2019, at or near the location of 4200 Maslona Dr. #48, Winnemucca, County of Humboldt, State of Nevada, the Defendant rubbed the bare breasts of "O.R.", a known but unnamed female juvenile under the age of 14, with the intent of gratifying the lust or passions or sexual desires of the Defendant or "O.R.".

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COUNT IV

A CATEGORY A FELONY AS DEFINED BY NRS 201.230(2)

That the Defendant did knowingly. unlawfully and lewdly commit any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, in the following manner, to-wit: That on or between the 1st day of July, 2018, and the 3rd day of July, 2019, at or near the location of 4200 Maslona Dr. #48, Winnemucca, County of Humboldt, State of Nevada, the Defendant rubbed the bare vagina of "O.R.", a known but unnamed female juvenile under the age of 14, with the intent of gratifying the lust or passions or sexual desires of the Defendant or "O.R.".

COUNT V

A CATEGORY A FELONY AS DEFINED BY NRS 201.230(2)

That the Defendant did knowingly, willfully, unlawfully and lewdly commit any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, in the following manner, to-wit: That on or between the 1^{st} day of July, 2018, and the 3rd day of July, 2019, at or near the location of 4200 Maslona Dr. #48, Winnemucca, County of Humboldt, State of Nevada, the Defendant rubbed the bare vagina of "O.R.", a known but unnamed female juvenile under the age of 14, with the intent of gratifying the lust or passions or sexual desires of the Defendant or "O.R.".

COUNT VI

A CATEGORY A FELONY AS DEFINED BY NRS 201.230(2)

That the Defendant did knowingly, 'willfully,

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unlawfully and lewdly commit any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, in the following manner, to-wit: That on or between the 1st day of July, 2018, and the $3^{\rm rd}$ day of July, 2019, at or near the location of 4200 Maslona Dr. #48, Winnemucca, County of Humboldt, State of Nevada, the Defendant rubbed the bare vagina of "O.R.", a known but unnamed female juvenile under the age of 14, with the intent of gratifying the lust or passions or sexual desires of the Defendant or "O.R.".

COUNT VII

LEWDNESS WITH CHILD UNDER 14 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 201.230(2)

the Defendant did knowingly, willfully, unlawfully and lewdly commit any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, in the following manner, to-wit: That on or between the 1st day of July, 2018, and the 3rd day of July, 2019, at or near the location of 4200 Maslona Dr. #48, Winnemucca, County of Humboldt, State of Nevada, the Defendant rubbed the bare vagina of "O.R.", a known but unnamed female juvenile under the age of 14, with the intent of gratifying the lust or passions or sexual desires of the Defendant or "O.R.".

COUNT VIII

LEWDNESS WITH CHILD UNDER 14 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 201.230(2)

That the Defendant did knowingly, willfully, unlawfully and lewdly commit any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, in the following manner, to-wit:

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That on or between the 1st day of July, 2018, and the 3rd day of July, 2019, at or near the location of 4200 Maslona Dr. #48, Winnemucca, County of Humboldt, State of Nevada, the Defendant rubbed the bare buttocks of "O.R.", a known but unnamed female juvenile under the age of 14, with the intent of gratifying the lust or passions or sexual desires of the Defendant or "O.R.".

COUNT IX

LEWDNESS WITH CHILD UNDER 14 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 201.230(2)

That the Defendant did knowingly, willfully, unlawfully and lewdly commit any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, in the following manner, to-wit: That on or between the 1st day of July, 2018, and the 3rd day of July, 2019, at or near the location of 4200 Maslona Dr. #48, Winnemucca, County of Humboldt, State of Nevada, the Defendant rubbed the bare buttocks of "O.R.", a known but unnamed female juvenile under the age of 14, with the intent of gratifying the lust or passions or sexual desires of the Defendant or "O.R.".

COUNT X

LEWDNESS WITH CHILD UNDER 14 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 201.230(2)

That the Defendant did knowingly, willfully, unlawfully and lewdly commit any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, in the following manner, to-wit: That on or between the 1st day of July, 2018, and the 3rd day of July, 2019, at or near the location of 4200 Maslona Dr. #48, Winnemucca, County of Humboldt, State of Nevada, the Defendant rubbed the bare buttocks of "O.R.", a known but unnamed female juvenile under the age of 14, with the intent of gratifying the lust or passions or sexual desires of the Defendant or "O.R.".

HUMBOLDT COUNTY DISTRICT ATTORNEY P.O. Box 909 Winnemucca, Nevada 89446

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COUNT XI

A CATEGORY A FELONY AS DEFINED BY NRS 201.230(2)

That the Defendant did knowingly, willfully, unlawfully and lewdly commit any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, in the following manner, to-wit: That on or between the 1st day of July, 2018, and the 3rd day of July, 2019, at or near the location of 4200 Maslona Dr. #48, Winnemucca, County of Humboldt, State of Nevada, the Defendant had "O.R.", a known but unnamed female juvenile under the age of 14, grab his exposed penis, with the intent of gratifying the lust or passions or sexual desires of the Defendant or "O.R.".

COUNT XII

A CATEGORY A FELONY AS DEFINED BY NRS 201.230(2)

That the Defendant did knowingly, unlawfully and lewdly commit any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, in the following manner, to-wit: That on or between the 1st day of July, 2018, and the 3rd day of July, 2019, at or near the location of 4200 Maslona Dr. #48, Winnemucca, County of Humboldt, State the Defendant had "O.R.", a known but of Nevada, unnamed female juvenile under the age of 14, grab his exposed penis, with the intent of gratifying the lust or passions or sexual desires of the Defendant or "O.R.".

COUNT XIII

A CATEGORY A FELONY AS DEFINED BY NRS 201.230(2)

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That complainant knows that said crime occurred and that the Defendant, RAFAEL CARDENAS AKA RAFAEL ROSAS, committed the same based upon the following: because complainant is the Deputy District Attorney, and is in possession of a crime report or report investigation TTAM written MORGAN, by known to complainant to be a DETECTIVE with the WINNEMUCCA POLICE DEPARTMENT.

All of which is contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Nevada. Said Complainant, therefore, prays that a warrant and/or summons may be issued in the name of said Defendant(s) above-named and dealt with according to law.

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

KEVIN PASQUALE Chief Deputy District Attorney

SUBSCRIBED AND SWORN to before me this 23rd day of July, 2019, State of Nevada, County of Humboldt.

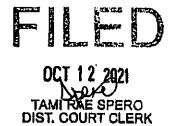




HUMBOLDT COUNTY DISTRICT ATTORNEY
P.O. Box 909
Winnemucca, Nevada 89446

Case No. CR19-7109

Dept. No. 2



IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF HUMBOLDT.

-000-

THE STATE OF NEVADA,

Plaintiff,

vs. Rosts

RAFAEIACARDENAS,

Defendant. /

GUILTY PLEA AGREEMENT

I, Rafael Cardenas, Defendant, hereby agree to plead guilty to: <u>CHILD ABUSE</u>, <u>NEGLECT. OR ENDANGERMENT, INVOLVING SEXUAL EXPLOITATION</u>, Category B Felony, in violation of NRS 200.508(1)(a)(2) and 179D.097(1)(g).

My decision to plead guilty is based upon the plea agreement in this case which is as follows:

The State will not prosecute the Defendant for any other criminal offence involving O.R. a known female juvenile, known by the State to have been committed by the Defendant between the 1st day of July, 2017 through the summer of 2019. The Parties agree to jointly recommend a minimum term of ninety-six (96) months and a maximum term of two hundred forty (240)

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months in the Nevada Department of Corrections.

The State explicitly reserves the right to present facts and/or argument through witnesses and/or victims at time of sentencing. Further, the State retains the right to comment on Defendant's crimes, past conduct and/or present evidence in any form.

I understand that if the State of Nevada has agreed to recommend or stipulate to a particular sentence or has agreed not to present argument regarding the sentence, or agreed not to oppose a particular sentence, such agreement is contingent upon my appearance in Court on the initial sentencing date (and any subsequent date if the sentencing is continued). I understand that if I fail to appear for any future scheduled court date in regards to this case or I commit a new criminal offense prior to sentencing, the State of Nevada is released from any agreement as to sentence and would regain the full right to argue for any lawful sentence.

I have entered into these negotiations and have signed this document of my own free will without threat or promise on the part of anyone other than expressed herein.

CONSEQUENCES OF THE PLEA

I understand that by pleading guilty I admit the facts which support all the elements of the offenses to which I now plead. Also, that the State must prove the following elements beyond a reasonable doubt:

COUNT I

- That between the 1st day of July, 2017 and the 3rd day of July, 2019, in 1. Humboldt County, Nevada;
- 2. I did knowingly, willfully and unlawfully;
- d the bear breast and vagina and inserted his penis in the anus and 3. vagina of "O.R.", a known but unnamed female juvenile;
- 4. Causing "O.R." to suffer substantial mental injury.

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I understand that as a consequence of my plea of guilty I may be imprisoned a minimum term of not less than two (2) years and a maximum term of not more than twenty (20) years in the Nevada Department of Corrections and I am eligible for probation depending on a psychosexual evaluation. I understand that the law requires me to pay an administrative assessment fee in the amount of \$25.00, a DNA assessment fee in the amount of \$3.00, and a DNA fee in the amount of \$150.00. Furthermore, I understand that pursuant to NRS 176A,100 if I was on probation at the time I committed this offense, probation is not mandatory for any Category E offense to which I plead guilty. I understand that, if appropriate, I will be ordered to make restitution to the victim of the offenses to which I am pleading guilty and to the victim of any related offense which is being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the State of Nevada for expenses related to my extradition, if any.

I understand that, except as otherwise provided by statute, the question of whether I receive probation is in the discretion of the sentencing judge.

I understand that there is a collateral consequence of deportation if I am not a citizen of the United States of America, I have been advised that conviction of the offense for which I have been charged may have the consequences of deportation, exclusion from admission to the United States of America, or denial of naturalization pursuant to the laws of the United States of America.

I understand that the District Attorney's Office shall not be bound by any oral negotiations preceding the actual execution of this Agreement until such time as this Agreement has been actually executed, that is, signed, by the District Attorney or one of his authorized deputies and I have entered my plea before the court.

Further, should I, subsequent to the entry of a plea of guilty, as provided for herein, make application for Civil Commitment and/or treatment as an Alcoholic, pursuant to the provisions of

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NRS 458,290 to NRS 458,350, or if I make a Motion to Suspend or Reduce my sentence pursuant to NRS 453.3363 to NRS 453.3405, the District Attorney shall have the absolute right to withdraw from this Agreement and to proceed against me upon the original charge or charges pending against me, as if this Agreement had never been entered into, or executed by the parties.

I represent to the State that I have ____ prior felonies. The state and county where my prior felonies occurred and type of felony is as follows:

Α.,	 	·	 	
В.	 			
C.				

Any misrepresentation of my prior criminal record will allow the State to withdraw from this plea agreement.

I further understand as a consequence of my guilty plea to the above charges I will be required to register as a sex offender, and I will be subject to a term of lifetime supervision pursuant to NRS 176.0931(2), NRS 176.0931(c)(1), and NRS 176.0931(c)(2).

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 is to 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 any specific punishment to the court, the court is not obligated to accept the recommendation.

I understand that the Division of Parole and Probation of the Department of Motor

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Vehicles and Public Safety may or will prepare a report for the sentencing judge before sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. I understand that this report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing.

WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I have waived the following rights and privileges:

- 1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.
- 2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial, the state would bear the burden of proving beyond a reasonable doubt each element of the offense charged.
- 3. The constitutional right to confront and cross-examine any witnesses who would testify against me.
 - 4. The constitutional right to subpoena witnesses to testify on my behalf.
 - 5. The constitutional right to testify in my own defense.
- 6. The right to appeal the conviction, with the assistance of an attorney, either appointed or retained, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035. I understand that if I wish to appeal, I must notify my attorney, in writing, as soon as possible, because the notice of appeal must be filed within thirty (30) days

from the judgment of conviction.

VOLUNTARINESS OF PLEA

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

I understand that the state would have to prove each element of the charge against me at trial.

I have discussed with my attorney any possible defenses and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea bargain is in my best interest and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

DATED this 12 day of October, 2021

DEFENDANT

Furthermore, pursuant to NRS 239B.030, the undersigned hereby affirms this document does not

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contain the social security number of any person.

Agreed to on this 12 day of 6 do , 2021.

CHIEF DEPUTY DISTRICT ATTORNEY

CERTIFICATE OF COUNSEL

- I, the undersigned, as the attorney for the defendant named herein and as an officer of the court hereby certify that:
- 1. I have fully explained to the defendant the allegations contained in the charges to which guilty pleas are being entered.
- 2. I have advised the defendant of the penalties for each charge and the restitution that the defendant may be ordered to pay.
- 3. All pleas of 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 charges and the consequences of pleading guilty as provided in this agreement.
 - b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily.
 - 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 12 day of October, 2021.

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of the Humboldt County District Attorney's Office, and that on the ______ day of June, 2022, I mailed/delivered a copy of the RESPONDENT'S APPENDIX to:

> Matt Stermitz Humboldt County Public Defender Drawer 909 Winnemucca, Nevada 89445

Aaron Ford Attorney General 100 N. Carson Street Carson City, Nevada 89701

> Employee, Humboldt County District Attorney's Office