

1 CASE NO. DC-CV-21-68

2 DEPT. NO. 2

3 This document does not contain personal information of any person.

FILED

2021 NOV 22 AM 10:23

ELKO CO DISTRICT COURT
Electronically Filed
Dec 08 2021 09:22 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

4
5 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
6 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

7
8 KEVIN JOHN MENTABERRY,

9 Petitioner,

10 NOTICE OF APPEAL

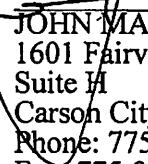
11 vs.

12 STATE OF NEVADA,

13 Respondent.
14

15 Defendant Kevin John Mentaberry, through his counsel, John Malone, files his notice of
16 appeal from the corrected judgment of conviction entered on November 2, 2021

17 Submitted this 19th day of Nov., 2021,

18
19 
20 JOHN MALONE, ESQ.
21 1601 Fairview Drive
22 Suite H
23 Carson City, NV 89701
24 Phone: 775-301-6414
25 Fax: 775-329-1103
26 jmalonelaw@gmail.com
27 Attorney for Appellant
28

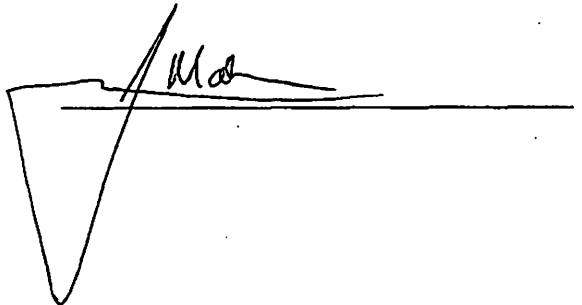
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify, pursuant to N.R.C.P. 5(b), that on this day, I served a true and correct copy of the foregoing Notice of Appeal by U.S. Mail ☒/Personal Service ☐/Electronic Service ☐ on:

Elko County District Attorney
540 Court St.
2nd floor
Elko, NV 89801

Attorney General
Heroes' Memorial Building
Capitol Complex
Carson City, NV 89701

Dated this 19th day of November, 2021.

A handwritten signature, possibly "Ma", is written over a horizontal line. To the left of the signature is a large, hand-drawn checkmark.

FILED

1 CASE NO. DC-CV-21-68

2021 NOV 22 AM 10:24

2 DEPT. NO. 2

ELKO CO DISTRICT COURT

3 This document does not contain personal information of any person.

CLERK _____ DEPUTY AM

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

8 KEVIN JOHN MENTABERRY,

9 Petitioner,

CASE APPEAL STATEMENT

10 vs.

12 STATE OF NEVADA,

13 Respondent.
14 _____ /

16 1. Name of appellant filing this case appeal statement:

17 Kevin John Mentaberry

18 2. Identify the judge issuing the decision, judgment, or order appealed from:

19 The Honorable Al Kacin, Fourth Judicial District Court, Elko County, Nevada.

20 3. Identify each appellant and the name and address of counsel for each appellant:

21 Kevin Mentaberry

22 Counsel: John Malone, Esq.
23 1601 Fairview Drive
24 Suite H
25 Carson City, NV 89701
26 Phone: 775-301-6414
27 Fax: 775-329-1103

jmalonelaw@gmail.com

1 4. Identify each respondent and the name and address of appellate counsel, if known,
2 for each respondent:

3 Elko County District Attorney
4 540 Court St.
5 2nd floor
6 Elko, NV 89801

7 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
8 licensed to practice law in Nevada and, if so, whether the district court granted that
9 attorney permission to appear under SCR 42 (attach a copy of any district court order
10 granting such permission):

11 N/A

12 6. Indicate whether appellant was represented by appointed or retained counsel in the
13 district court:

14 Appellant was represented by retained counsel at trial.

15 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

16 Appellant is currently represented by retained counsel for appeal.

17 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the
18 date of entry of the district court order granting such leave:

19 No, appellant has not filed for IFP.

20 9. Indicate the date the proceedings commenced in the district court (e.g., date
21 complaint, indictment, information, or petition was filed):

22
23 10. Provide a brief description of the nature of the action and result in the district court,
24 including the type of judgment or order being appealed and the relief granted by the
25 district court:

26 Appellant was convicted by a jury of one count of lewdness with a 14- or 15-year-old
27 child, a category B felony as defined by NRS 201.230. He was originally sentenced on June 19,
28 2020, to 28 to 72 months in prison, suspended for 60 months, 5 years of probation with 180

1 days served, and has been serving a term of supervised probation and is not in the physical
2 custody of the Department of Corrections. He filed a postconviction petition for a writ of
3 habeas corpus seeking an untimely appeal pursuant to NRAP 4(c). At that point the district
4 court determined that the original sentence was illegal, and he was resentenced on November 2,
5 2021. He appeals from the amended judgment of conviction.

6 11. Indicate whether the case has previously been the subject of an appeal to or original
7 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
8 number of the prior proceeding:
9

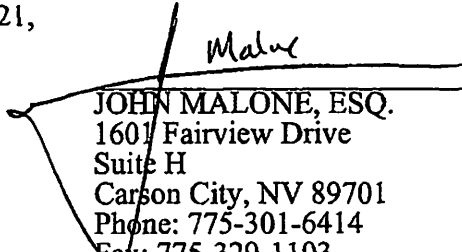
10 No

11 12. Indicate whether this appeal involves child custody or visitation: N.A

12 13. If this is a civil case, indicate whether this appeal involves the possibility of
13 settlement:

14 N/A

15 Dated this 19 day of November, 2021,

16 
17 JOHN MALONE, ESQ.
18 1601 Fairview Drive
19 Suite H
20 Carson City, NV 89701
21 Phone: 775-301-6414
22 Fax: 775-329-1103
23 jmalonelaw@gmail.com
24 Attorney for Appellant
25
26
27
28

CERTIFICATE OF SERVICE

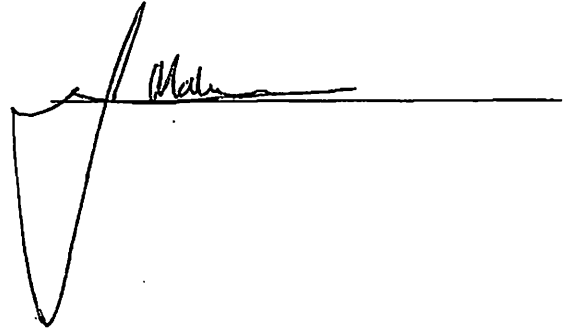
I, the undersigned, hereby certify, pursuant to N.R.C.P. 5(b), that on this day, I
mailed a true and correct copy of the foregoing Case Appeal Statement by U.S. Mail

☒ /Personal Service ____ /Electronic Service ____ on:

Elko County District Attorney
540 Court St.
2nd floor
Elko, NV 89801

Attorney General
Heroes' Memorial Building
Capitol Complex
Carson City, NV 89701

Dated this 19th day of November, 2021.



Case Summary

DC-CV-21-68 - MENTABERRY, KEVIN J VS. DANIELS CHARLES DIRECTOR, NEVADA DEPT OF CORRECTIONS ET AL

Court: DC-CV-21-68

Agency: Elko County Clerk's Office

Type: Civil

CaseID: 21-1133

Status: Reclosed

Received Date: 6/11/2021

Status Date: 11/3/2021

Age: 173 days Active Age: 173 days

Involvements

KACIN, ALVIN Judge -

MENTABERRY, KEVIN Petitioner -

MALONE, JOHN Petitioner 1 Attorney - MENTABERRY, KEVIN JOHN

DANIELS CHARLES DIRECTOR, NEVADA DEPT OF CORRECTIONS Respondent -

NEVADA, STATE OF Respondent, Inactive -

Name Attributes

For: DANIELS CHARLES DIRECTOR, NEVADA DEPT OF CORRECTIONS

Name Record Source - Name Record Converted from JALAN - Court

For: KEVIN JOHN MENTABERRY

Name Record Source - Name Record Converted from JALAN - Court

Place of Birth: BOISE, ID

For: STATE OF NEVADA

Name Record Source - Name Record Converted from JALAN - District Attorney

Issues

1. CVC42 ~ Civil Writ - Writ of Habeas Corpus Occurred: 6/11/2021

Civil Writ - Writ of Habeas Corpus

Related Cases

Companion Case

ECDC-CRFP-18-5030 - STATE OF NEVADA VS. MENTABERRY, KEVIN JOHN

Court: ECDC-CRFP-18-5030

Type: Criminal

Status: Closed

Agency: Elko County Clerk's Office

Status Date: 6/19/2020

Case History

Date	Event Type Desc	Status
	Awaiting Charging Decision - Case Status	
	Case Status Change	
	Pending - Case Status	
	Case Status Change	
	Closed - Case Status	
	Case Status Change	
	Reopened - Case Status	
	1ST AMENDED PETITION FILED	

Case Summary

Status Hearing - Event

For: 9/10/2021 2:00 PM

Hearing Held

Reclosed - Case Status

Case Status Date Change

Reclosed - Case Status

Case Status Change

6/11/2021 POST CONVICTION PETITION FOR WRIT OF
HABEAS CORPUS AND REQUEST FOR
EVIDENTIARY HEARING - Document

COPY PLACED IN DA'S BOX, COPIES MAILED TO MALONE LAW IN SASE

6/11/2021 AFFIDAVIT OF PETITIONER KEVIN
MENTABERRY IN SUPPORT OF PETITION
FOR POST CONVICTION WRIT OF BABEAS
CORPUS - Document

COPY PLACED IN DA'S BOX, COPIES MAILED TO MALONE LAW IN SASE

6/11/2021 AFFIDAVIT OF JOHN MENTABERRY IN
SUPPORT OF PETITION FOR POST
CONVICTION WRIT OF BABEAS CORPUS -
Document

COPY PLACED IN DA'S BOX, COPIES MAILED TO MALONE LAW IN SASE

6/18/2021 ORDER CHANGING CAPTION - Document

6/18/2021 ORDER DENYING HABEAS RELIEF -
Document

ORDER GRANTING LEAVE TO FILE AMENDED POST-CONVICTION PETITION FOR WRIT OF HABEAS
CORPUS

6/21/2021 NOTICE OF ENTRY OF ORDER - Document
ORDER DENYING HABEAS RELIEF

7/7/2021 FIRST AMENDED PETITION FOR WRIT OF
HC (POST CONVICTION) AND REQUEST FOR
EVIDENTIARY HEARING - Document

FILE STMAPED COPY MAILED BACK IN SASE TO JOHN MALONE LAW OFFICE 1662 US HWY 395
STE 202, MINDEN, NV 89423
AND 1 FILE STAMPED COPY HANDED TO ECDA RUNNER @10:45

7/20/2021 ORDER - Document

7/22/2021 RETURN TO PETITION FOR WRIT OF
HABEAS CORPUS - Document

8/23/2021 ORDER SETTING STATUS HEARING 9.10.21
- Document
AT 2:00PM.

9/10/2021 09.10.21 HRG - STATUS - Document

Case Summary

11/3/2021	ORDER OF DISMISSAL - Document ORDER CLOSING CASE
11/4/2021	DC Habeas Corpus Notice (2) - Document
11/4/2021	NOTICE OF ENTRY OF DECISION OR ORDER (2) - Document
11/22/2021	NOTICE OF APPEAL - Document
11/22/2021	CASE APPEAL STATEMENT- Document
12/1/2021	CLERK'S CERTIFICATION - Document SIGNED, SEALED, AND FILED WITH THE SUPREME COURT.

FILED

CASE NO. CR-FP-18-5030

2021 NOV -2 PM 4:19

DEPT. NO. 2

4th JUDICIAL DISTRICT COURT
CLERK _____ DEPUTY HL

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

* * * * *

THE STATE OF NEVADA,

Plaintiff,

vs.

CORRECTED
JUDGMENT OF CONVICTION

KEVIN JOHN MENTABERRY,

Defendant.

On January 27, 2020, a jury found Defendant KEVIN JOHN MENTABERRY (date of birth: December 22, 1977; place of birth: Boise, ID) guilty of **COUNT 3: LEWDNESS WITH A 14 OR 15 YEAR OLD CHILD A CATEGORY B FELONY AS DEFINED BY NRS 201.230 (NOC 60336)**, which crime occurred on or about December 31, 2017. The court held a sentencing hearing on June 19, 2020, and subsequently entered a judgement of conviction setting forth an illegal sentence.

On November 2, 2021, the Court held a resentencing hearing and sentenced the Defendant as follows.

IT IS ORDERED that Defendant shall submit to a test to determine his genetic markers, and shall pay the genetic testing fee of \$150.00. In addition, Defendant shall pay a genetic administrative assessment of \$3.00.

1 IT IS FURTHER ORDERED Defendant shall pay an administrative
2 assessment of \$25.00.

3 For Count 1, Defendant shall serve a maximum term of 72 months and
4 a minimum term of 28 months in prison. Defendant shall have credit
5 for 116 days served as of November 2, 2021.

6 IT IS FURTHER ORDERED that Defendant shall pay restitution in the
7 amount of \$1,470.00. Defendant shall have credit for payment of
8 restitution in the amount of \$1,470.00.

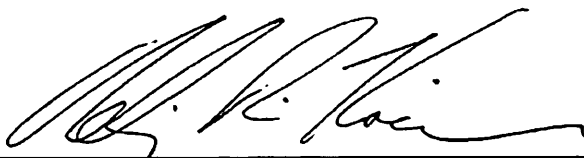
9 IT IS FURTHER ORDERED that defendant is sentenced to lifetime supervision after
10 any period of probation or any term of imprisonment and any period of release on parole.

11 IT IS FURTHER ORDERED that the AAwsome Bail Bond No. SS10003470 posted in
12 the amount of \$100,000.00, is exonerated.

13
14 Throughout these proceedings, Defendant was represented by Gary D. Woodbury,
15 Esq.

16 THEREFORE, the Clerk of the Court is directed to enter this Judgment of Conviction
17 as part of the record in this matter.

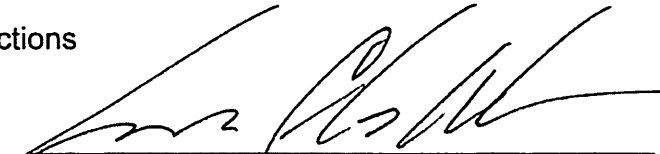
18
19 DATED this 2 day of November 2021.

20
21 
22 ALVIN R. (AL) KACIN
23 District Court Judge
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District
3 Court, Department 2, and that on this 2 day of November 2021, I served by hand delivery
4 by placing a copy of said document in the agency box located in the Elko County Clerk's Office,
5 a true copy of the foregoing document to:

6
7 Elko County District Attorney
8 Gary D. Woodbury Esq.
9 State of Nevada, Division of Parole & Probation
10 Elko County Sheriff
11 Director, Nevada Department of Corrections


12 
13 Luiz Carlos Nunes
14

15 **CERTIFICATE OF SERVICE**

16 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District
17 Court, Department 2, and that on this 2 day of November 2021, I served by regular
18 U.S. Mail, a true copy of the foregoing document to:

19 Nevada Department of Corrections
20 Offender Management Division,
21 Sentence Management
22 PO Box 7011
23 Carson City, NV 89702

24 John E. Malone, Esq.
25 1662 US Highway 395, Suite 202
26 Minden, Nevada 89423

27 
28 Luiz Carlos Nunes

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

RECORD OF COURT PROCEEDINGS

Present - Honorable ALVIN R. KACIN, District Judge,
and Officers of the Court.

STATE OF NEVADA,

Plaintiff,

Date: 10/01/18

VS.

Case No.: CR-FP-18-5030

Dept: 2

KEVIN JOHN MENTABERRY,

Defendant.

State of Nevada represented by Tyler J. Ingram, Esq.

Defendant present, not in custody, and represented by

Gary D. Woodbury, Esq.

Division of Parole and Probation represented by Sara Macias.

Court Clerk, Darla Malotte, present.

Lisa Manley present as Court Reporter.

ARRAIGNMENT – NOT GUILTY

Court convened at 10:54 a.m.

The Court noted the presence of the parties.

This was the date and time set for an arraignment on the Criminal Information filed July 26, 2018 charging COUNT 1: SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 16 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 200.336. (NOC 50106); OR, IN THE ALTERNATIVE TO COUNT 1, COUNT 2: STATUTORY SEXUAL SEDUCTION, A CATEGORY B FELONY AS DEFINED BY NRS 200.368(1) AND NRS 200.364(6). (NOC 60323); OR, IN THE ALTERNATIVE TO COUNTS 1 AND 2, COUNT 3: LEWDNESS WITH A 14 OR 15 YEAR OLD CHILD, A CATEGORY B FELONY AS DEFINED BY NRS 201.230. (NOC 60336).

A certified copy of the Criminal Information was presented to the Defendant.

The Defendant advised that he reviewed the Criminal Information with his attorney, and was satisfied with legal representation to date.

Defense Counsel advised the Defendant would be entering a plea of not guilty and would be waiving his right to a trial within 60 days.

The name of the Defendant was correctly stated.

Defense counsel waived the formal reading of the Criminal Information.

The Court read the charging portion of the Criminal Information and asked the Defendant to enter a plea.

The Defendant entered a plea of not guilty to the charges.

The Court advised the Defendant of the right to be tried within 60 days from today's date.

The Defendant waived the sixty-day rule.

The Court advised that it would set a 4-day trial and call 120 prospective jurors with jury selection to take place in the Elko County Commissioner's room.

The Court advised the Defendant to remain in contact with his attorney regarding all future appearance dates.

The Court noted the preliminary hearing transcript was filed August 29, 2018

The Court **ORDERED** the Defendant be continued released on his previously posted bail bond in the amount of \$100,000.00.

Court adjourned at 11:00 a.m.

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

RECORD OF COURT PROCEEDINGS

Present - Honorable ALVIN R. KACIN, District Judge,
and Officers of the Court.

STATE OF NEVADA,

Plaintiff,

Date: 01/14/19

VS.

Case No.: CR-FP-18-5030

Dept: 2

KEVIN JOHN MENTABERRY,

Defendant.

State of Nevada represented by Chad B. Thompson, Esq.
Defendant not present, not in custody, and represented by
Gary D. Woodbury, Esq.
Court Clerk, Darla Malotte, present.
Lisa Manley present as Court Reporter.

EARLY CASE CONFERENCE

Court convened at 10:39 a.m.

The Court noted the presence of the parties.

This was the date and time set by the Court for an Early Case Conference hearing on a Criminal Information filed July 26, 2018 charging COUNT 1: SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 16 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 200.336. (NOC 50106); OR, IN THE ALTERNATIVE TO COUNT 1, COUNT 2: STATUTORY SEXUAL SEDUCTION, A CATEGORY B FELONY AS DEFINED BY NRS 200.368(1) AND NRS 200.364(6). (NOC 60323); OR, IN THE ALTERNATIVE TO COUNTS 1 AND 2, COUNT 3: LEWDNESS WITH A 14 OR 15 YEAR OLD CHILD, A CATEGORY B FELONY AS DEFINED BY NRS 201.230. (NOC 60336. The Court advised that this matter was scheduled for jury trial to begin March 26, 2019 through March 29, 2019 and was a priority 2 setting and further advised that a

Pretrial Motion hearing was scheduled for February 22, 2019. The Court noted that the preliminary hearing transcript had been received and inquired if there were any offers made in this matter.

The State advised that no offers of settlement had been extended and there were no outstanding offers that were ever made. The State advised that an expert report was anticipated.

Defense counsel confirmed that there were no outstanding offers.

The State advised that it did not have any Motions or Offers of Proof to be filed.

Court adjourned at 10:41 a.m.

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

RECORD OF COURT PROCEEDINGS

Present - Honorable ALVIN R. KACIN, District Judge,
and Officers of the Court.

STATE OF NEVADA,

VS.

Plaintiff,

Date: 02/07/19

Case No.: CR-FP-18-5030

Dept: 2

KEVIN JOHN MENTABERRY,

Defendant.

State of Nevada represented by Chad B. Thompson, Esq.

Defendant present, not in custody, and represented by

Gary D. Woodbury, Esq.

Court Clerk, Darla Malotte, present.

Lisa Manley present as Court Reporter.

HEARING ON MOTION FOR DISCOVERY

Court convened at 11:31 a.m.

The Court noted the presence of the parties.

This was the date and time set by the Court for a hearing on a Motion for Discovery filed January 31, 2019.

The Court noted that the State filed a Non-Opposition to the Motion on February 4, 2019 and inquired of Counsel if they wished a written order be entered.

Defense counsel presented a statement regarding the report that was requested by the doctor.

The State advised that the family was declining to release medical records of Dr. Akhurana from Las Vegas Nevada and Leslie Rangel of Elko. The State presented further statement regarding an order needed to obtain medical records.

The Court advised Counsel to submit a proposed order.

The State presented an oral motion to continue due to a witness that was not available for trial and advised that the matter had been discussed and agreed upon by Defense counsel.

Defense counsel had no objection to a continuance and confirmed that the Defendant waived his right to a trial within 60 days.

The Court **GRANTED** the Oral Motion to Continue.

The Court advised that the Hearing on Motions scheduled for February 22, 2019 would be continued.

The Court advised Counsel that they would be contacted by the Judicial Assistant to reschedule a jury trial date and a pretrial motions hearing date.

The Court advised the Defendant to remain in contact with his attorney and his presence was mandatory for trial.

The Court **ORDERED** the trial scheduled to begin March 26, 2019 be vacated.

The Defendant was continued released on his previously posted bail bond in the amount of \$100,000.00.

Court adjourned at 11:38 a.m.

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

RECORD OF COURT PROCEEDINGS

Present - Honorable ALVIN R. KACIN, District Judge,
and Officers of the Court.

STATE OF NEVADA,

VS.

Plaintiff,

Date: 03/14/19

Case No.: CR-FP-18-5030

Dept: 2

KEVIN JOHN MENTABERRY,

Defendant.

State of Nevada represented by Chad B. Thompson, Esq.

Defendant present, not in custody, and represented by

Gary D. Woodbury, Esq.

Court Clerk, Darla Malotte, present.

Lisa Manley present as Court Reporter.

STATUS HEARING

Court convened at 2:12 p.m.

The Court noted the presence of the parties.

This was the date and time set by the Court for a status hearing.

The State advised that the Ms. Rangel and the doctor were objecting to the medical records being disclosed. The State advised that the victim's mother was present in the audience today.

The Court advised that Counsel had stipulated that the records be provided for in camera review and noted that they had not been disclosed. The Court made a record of the reports and inquired if Counsel wished to submit briefs regarding the issue or present oral argument.

The State presented a statement regarding the victim and possibly appointing representation for the victim and advised that it may be appropriate to brief the matter.

Defense counsel submitted the matter.

The Court and Counsel discussed the matter further regarding appoint of counsel for the victim.

The Court inquired if there were any objection to the Court storing the records in chambers.

The State had no objection.

Defense counsel had no objection.

The Court noted that the mother of the victim, Ms. Eklund, objected to the records being provided. The Court discussed appointment of counsel to the victim and advised that it would not appoint representation for the psychiatrist.

Ms. Eklund advised that she had not considered representation for the victim.

The Court advised Ms. Eklund that a decision had not been made regarding disclosing the records to the Defense and discussed appointment of an attorney further with Ms. Eklund.

Ms. Eklund advised that she did not oppose the Court appointing an attorney for the victim regarding the victim's privilege regarding her medical and mental health reports.

Defense counsel requested to submit a brief first and the State submit a brief and it be allowed to submit a reply brief.

The Court **ORDERED** Defense counsel to submit a brief by March 22, 2019 and to State submit a brief by April 5, 2019 and Defense counsel to submit a reply brief by April 12, 2019.

The Court **FURTHER ORDERED** an attorney be appointed to represent the victim.

The Court advised that a copy of the order appointing attorney would be provided to the victim's mother, Ms. Eklund.

Court adjourned at 2:30 p.m.

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

RECORD OF COURT PROCEEDINGS

Present - Honorable ALVIN R. KACIN, District Judge,
and Officers of the Court.

STATE OF NEVADA,

VS.

Plaintiff,

Date: 06/03/19

Case No.: CR-FP-18-5030

Dept: 2

KEVIN JOHN MENTABERRY,

Defendant.

State of Nevada represented by Mark S. Mills, Esq.
Defendant not present, not in custody, and represented by
Gary D. Woodbury, Esq.
Court Clerk, Darla Malotte, present.
Lisa Manley present as Court Reporter.

EARLY CASE CONFERENCE

Court convened at 10:31 a.m.

The Court noted the presence of the parties.

This was the date and time set by the Court for an Early Case Conference hearing on a Criminal Information filed July 26, 2018 charging COUNT 1: SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 16 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 200.336. (NOC 50106); OR, IN THE ALTERNATIVE TO COUNT 1, COUNT 2: STATUTORY SEXUAL SEDUCTION, A CATEGORY B FELONY AS DEFINED BY NRS 200.368(1) AND NRS 200.364(6). (NOC 60323); OR, IN THE ALTERNATIVE TO COUNTS 1 AND 2, COUNT 3: LEWDNESS WITH A 14 OR 15 YEAR OLD CHILD, A CATEGORY B FELONY AS DEFINED BY NRS 201.230. (NOC 60336. The Court advised that this matter was scheduled for jury trial to begin August 20, 2019 through August 23, 2019 and was a priority 2 setting and further advised that a

Pretrial Motion hearing was scheduled for July 30, 2019 and inquired if there were any offers made in this matter.

Defense counsel advised that no offers had been made and this matter would proceed with trial.

The Court inquired if all motions had been disposed.

Defense counsel advised that it had not filed any motions.

The State advised that there were no pending unresolved motions.

Court adjourned at 10:33 a.m.

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

RECORD OF COURT PROCEEDINGS

Present - Honorable ALVIN R. KACIN, District Judge,
and Officers of the Court.

STATE OF NEVADA,

VS.

Plaintiff,

Date: 01/21/20 – 01/27/20

Case No.: CR-FP-18-5030

Dept: 2

KEVIN JOHN MENTABERRY,

Defendant.

State of Nevada represented by Chad B. Thompson, Esq.
Defendant present, not in custody, and represented by
Gary D. Woodbury, Esq.
Court Clerk, Darla Malotte, present.
Lisa Manley present as Court Reporter.

JURY TRIAL

Day One – January 21, 2020

Jury selection at the Elko County Commissioner's Room

Court convened at 9:21 a.m.

This was the date and time set for a jury trial on the Criminal Information filed July 26, 2018 charging COUNT 1: SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 16 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 200.336. (NOC 50106); OR, IN THE ALTERNATIVE TO COUNT 1, COUNT 2: STATUTORY SEXUAL SEDUCTION, A CATEGORY B FELONY AS DEFINED BY NRS 200.368(1) AND NRS 200.364(6). (NOC 60323); OR, IN THE ALTERNATIVE TO COUNTS 1 AND 2, COUNT 3: LEWDNESS WITH A 14 OR 15 YEAR OLD CHILD, A CATEGORY B FELONY AS DEFINED BY NRS 201.230. (NOC 60336).

The Court introduced Counsel to the prospective jurors and Defense counsel introduced the Defendant.

All prospective jurors were present except as follows: Marquise Carney, Joseph Carl Carpenter, Lauren Chesnut, Jennifer Dubbs, Jared Henry Duke, Ana Maria Espinoza, Thomas Ross Finch, Tiffany Lind, Daniel Joseph Miller, Daniel Scott Roberson, Alejandro Jose Ruiz, Deborah Lynn Shannon, Shirley L. Spencer, Cagen Clyde Sperry, and Terrance James Stephenson.

The Court instructed the Jury Commissioner to send a letter to all the prospective jurors who failed to appear.

The Clerk read the Criminal Information.

The Court informed the jury venire of the presumption of innocence pursuant to NRS 175.191 and of the definition of a reasonable doubt pursuant to NRS 175.211.

The Court made a statement to the jury venire describing the importance of their service as prospective jurors.

All prospective jurors were sworn on their voir dire.

The Clerk called the following 32 names: June M. Johnson, Kalob Tracy, Sonya Scott, Jennifer Ballard, April Dawnann Kelly, Douglas Edward Smouse, Tiffany Lynn Foster, Randy Q. Hesterlee, Lani Deloy Stradling, Shyra Smith, Marvin R. Orr, Tina Louise Breithaupt, Susan W. Ballew, Sandy Dann, Richard D. Gillespie, Larry Paul Bradshaw, Steven Blaine Parry, Alfred L. Koch, Jamie Nicole Stoddard, Steven Douglas Lohman, Ruby Leighanne Uhart, Karla R. Hartsell, Richard Timothy Bulmer, Jenave Jo Demick, Cindy Lou Fuller, Stacey Beeson-Wolters, Tabatha Lynn Rowe, Stephen V. Garcia, Cody Douglas Spring, Sylvia G. Soto, Nathan Wilkinson and Jeremy Wayne Armstrong.

The Court explained the jury selection process and asked general questions of the potential jurors.

Douglas E. Smouse was excused for cause and replaced by Kaitlin Ballew.

Steven D. Lohman was excused for cause and replaced by Yerenia Montalvo.

The Court admonished the potential jurors pursuant to NRS 175.121.

Court recessed for morning break at 10:15 a.m.

Court reconvened at 10:32 a.m.

The Court noted the presence of the parties.

Counsel approached the bench for a sidebar.

The Court advised that Counsel stipulated to release Yerenia Montalvo.

Yerenia Montalvo was excused for cause and replaced by Rachel Sanders.

The Court advised that Counsel had stipulated to release prospective juror seated in the audience, Carolyn R. Greenburg.

The Court continued asking general questions of the potential jurors.

Cody D. Spring was excused for cause and replaced by Mary T. Hess.

Ruby L. Uhart was excused for cause and replaced by Sean Stanton.

Jennifer Ballard was excused for cause and replaced by Dean E. Robertson.

Tiffani L. Foster was excused for cause and replaced by Katrina Huston.

Shyra Smith was excused for cause and replaced by Jennifer Dominguez.

Tina L. Breithaupt was excused for cause and replaced by Jessica Yvonne Herzog.

Jamie N. Stoddard was excused for cause and replaced by Montana Rae Robinson.

Karla R. Hartsell was excused for cause and replaced by Fermin J. Martinez.

Katrina Huston was excused for cause and replaced by Matt Howard Davis.

Jennifer Dominguez was excused for cause and replaced by Steven Eugene Cook.

Jessica Yvonne Herzog was excused for cause and replaced by Thomas K. Knudsen.

Richard T. Bulmer was excused for cause and replaced by Addison Anthony.

Stacey Beeson-Wolter was excused for cause and replaced by Robert J. Pierce.

Tabatha L. Rowe was excused for cause and replaced by Fred O. Baumgartner.

Fred O. Baumgartner was excused for cause and replaced by Rashay Lewis.

Thomas K. Knudsen was excused for cause and replaced by Debbie Lynn Dimattia.

Larry Paul Bradshaw was excused for cause and replaced by Jessie Jackson.

Rashay Lewis was excused for cause and replaced by Dane Miller.

Lani D. Stradling was excused for cause and replaced by Jonathan James Grijalva.

Alfred L. Koch was excused for cause and replaced by Suzanne Windous.

Suzanne Windous was excused for cause and replaced by Jorey R. Schroeder.

The Court admonished the potential jurors pursuant to NRS 175.121.

Court recessed for lunch break at 12:01 p.m.

Court reconvened at 1:24 p.m.

The Court noted the presence of the parties and further noted the presence of the prospective jurors.

The Court continued asking general questions of the potential jurors.

The Court concluded general questions.

The potential jurors introduced themselves.

The State examined the potential jurors on supplemental examination.

Defense counsel examined the potential jurors on supplemental examination.

The State passed the panel for cause.

Defense counsel passed the panel for cause.

The Court explained the peremptory challenge process to the prospective jury panel, and admonished and excused the panel so that Counsel could exercise their peremptory challenges.

The Court recessed at 2:48 p.m.

Court reconvened at 3:13 p.m. with Counsel and the Defendant present outside the presence of the jury for the purpose of exercising peremptory challenges.

The State's first peremptory challenge was juror number 15, Richard D. Gillespie.

Defense counsel's first peremptory challenge was juror number 1, June M. Johnson.

The State's second peremptory challenge was juror number 18, Debbie Lynn Dimattia.

Defense counsel's second peremptory challenge was juror number 6, Nathan Wilkinson.

The State's third peremptory challenge was juror number 14, Sandy Dann.

Defense counsel's third peremptory challenge was juror number 26, Matt Howard Davis.

The State's fourth peremptory challenge was juror number 13, Susan W. Ballew.

Defense counsel's fourth peremptory challenge was juror number 10, Mary Tedman Hess.

The State's fifth peremptory challenge was juror number 21, Jeremy Wayne Armstrong.

Defense counsel's fifth peremptory challenge was juror number 27, Steven Eugene Cook.

The State's sixth peremptory challenge was juror number 3, Sonya Scott.

Defense counsel's sixth peremptory challenge was juror number 12, Sean Stanton.

The State's seventh peremptory challenge was juror number 11, Marvin R. Orr.

Defense counsel's seventh peremptory challenge was juror number 23, Fermin Junior Martinez.

The State's eighth peremptory challenge was juror number 16, Addison Anthony.

Defense counsel waived its eighth peremptory challenge.

The State's alternate peremptory challenge was juror number 31, Jonathan James Grijalva.

Defense counsel's alternate peremptory challenge was juror number 29, Jessie Jackson.

The Court advised that it would read Jury Instructions No. 1 and No. 2 once the trial began.

Counsel concurred, and stipulated that the Court Reporter would not report the reading of Jury Instruction No. 1 and No. 2.

Court recessed at 3:25 p.m.

Court reconvened at 3:28 p.m.

The Court noted the presence of the parties.

The Clerk called the names of the 12 trial Jurors and the 2 Alternates, to wit: Kalob Tracy, Kaitlin Ballew, April Dawnann Kelly, Rachel Sanders, Randy Q. Hesterlee, Robert J. Pierce, Steven Blaine Parry, Dean E. Robertson, Sylvia G. Soto, Montana Rae Robinson, Jenave Jo Demick, Cindy Lou Fuller, Stephen V. Garcia and Dane Miller.

The Court thanked and excused those not called to serve as jurors.

The 12 Jurors and the 2 Alternates were sworn by the Clerk to try the case.

The Court admonished the Jury and the Alternates pursuant to NRS 175.121 and informed them of their right to take notes pursuant to NRS 175.131.

The Court advised that it would read Jury Instructions No. 1 and No. 2 at this time.

Counsel concurred, and stipulated that the Court Reporter would not report the reading of Jury Instruction No. 1 and No. 2.

The Court read Jury Instruction No. 1 and No. 2.

The Court admonished the Jury and the Alternates pursuant to NRS 175.121.

The Court advised the Jury and the Alternates that this matter would resume in the Department 2 Courtroom.

Court recessed for afternoon break at 3:57 p.m.

Court reconvened at 4:22 p.m. in the Department 2 Courtroom.

The Court noted the presence of the parties.

Counsel stipulated to the presence of the Jury and the Alternates.

The Clerk read the Criminal Information omitting the formal parts.

Mr. Thompson presented an opening statement on behalf of the State.

Mr. Woodbury presented an opening statement on behalf of the Defendant.

The Court admonished the Jury and the Alternates pursuant to NRS 175.121.

Court recessed for evening break at 5:03 p.m.

JURY TRIAL
Day Two – January 22, 2020

Court reconvened at 8:49 a.m. outside the presence of the Jury and the Alternates for the purpose of speaking with a juror per their request.

The Court noted the presence of the parties.

Juror, Kalob Tracy, entered the courtroom and addressed the Court regarding having knowledge of one of the witnesses.

The Court asked follow up questions.

The State presented follow up questions. Defense counsel presented follow up questions.

Juror, Kalob Tracy, was excused from the courtroom.

The Court inquired if Counsel had any motions.

The State had no motions. Defense counsel had no motions.

The Court advised that Kalob Tracy would remain as a juror.

The Court advised that the Bailiff had indicated that juror Jenave Demick wished to address the Court.

The State requested that if a transcript was produced that the victim's name be redacted to her initials A.P.

The State and Defense counsel stipulated to the victims initials being used in the transcript instead of the victims full name.

Juror, Jenave Demick, entered the courtroom and presented a statement.

The State presented follow up questions. Defense counsel no questions.

The Court excused Jenave Demick as a juror and she exited the courtroom.

The Court advised that juror No. 13, Stephen Garcia, would be moved to seat 11 to replace juror Jenave Demick and Juror No. 14, Dane Miller, would be moved to seat 13.

Court recessed at 8:59 a.m.

Court reconvened at 9:11 a.m.

The Court noted the presence of the parties.

Counsel stipulated to the presence of the Jury and the Alternate.

The Court advised that one juror had been released.

The State presented a Stipulation of Fact as to the date of the event being December 31, 2017 and January 1, 2018 and the Defendant was 40 years of age and December 31, 2017 was a Sunday and the preliminary hearing was held July 20, 2018.

The Court inquired if Defense counsel agreed.

Defense counsel concurred.

The Court discussed the Stipulation of Fact to the Jury.

The Court directed the State to call its first witness.

A.P. was sworn and examined on direct by the State. The Witness identified the Defendant. The State continued direct examination of the Witness.

The Court admonished the Jury and the Alternate pursuant to NRS 175.121.

The Court invoked the rule of exclusion.

Court recessed for morning break at 10:32 a.m.

Court reconvened at 1:18 p.m.

The Court noted the presence of the parties.

Counsel stipulated to the presence of the Jury and the Alternate.

A.P. resumed the stand and was reminded by the Court that she was still under oath.

Defense counsel examined the Witness on cross.

The Witness requested to take a break and exited the courtroom.

The Court admonished the Jury and the Alternate pursuant to NRS 175.121.

Court recessed for afternoon break at 2:17 p.m.

Court reconvened at 2:40 p.m.

The Court noted the presence of the parties.

Counsel stipulated to the presence of the Jury and the Alternate.

A.P. resumed the stand and was reminded by the Court that she was still under oath.

Defense counsel continued cross examination. Defense counsel requested a recess be taken due the witness being upset.

The Court presented a statement.

The Court admonished the Jury and the Alternate pursuant to NRS 175.121.

Court recessed for afternoon break at 3:21 p.m.

Court reconvened at 3:50 p.m.

The Court noted the presence of the parties.

Counsel stipulated to the presence of the Jury and the Alternate.

A.P. resumed the stand and was reminded by the Court that she was still under oath.

Defense counsel requested to read page 128 line 17 through 21 of the Preliminary Hearing Transcript. The State had no objection. Defense counsel read page 128 line 17 through 21 of the Preliminary Hearing Transcript.

Defense counsel continued cross examination. The State examined the Witness on redirect. Recross by Defense counsel.

The Court inquired if there were any jury questions.

No questions were submitted by the Jury.

The Court advised A.P. of the rule of exclusion and advised her that she would be retained subject to recall.

Witness excused.

The Court admonished the Jury and the Alternate pursuant to NRS 175.121.

Court recessed for evening break at 4:57 p.m.

JURY TRIAL
Day Three – January 23, 2020

Court reconvened at 8:53 a.m.

The Court noted the presence of the parties.

Counsel stipulated to the presence of the Jury and the Alternate.

Annie Holt was sworn and examined on direct by the State. The Witness identified the Defendant. The State continued direct examination of the Witness. The State offered Plaintiff's Exhibit 10, Photograph, for admission.

There being no objection, the Court **ORDERED** Plaintiff's Exhibit 10, Photograph, admitted.

The State continued direct examination of the Witness. The State offered 11, Photograph, for admission.

There being no objection, the Court **ORDERED** Plaintiff's Exhibit 11, Photograph, admitted.

The State continued direct examination of the Witness. The State offered 12, Photograph, for admission.

There being no objection, the Court **ORDERED** Plaintiff's Exhibit 12, Photograph, admitted.

The State continued direct examination of the Witness. The State offered 13, Photograph, for admission.

There being no objection, the Court **ORDERED** Plaintiff's Exhibit 13, Photograph, admitted.

The State continued direct examination of the Witness. Witness examined on cross by Defense counsel.

The Court advised that a break would be taken and advised the Witness of the Rule of Exclusion.

The Court admonished the Jury and the Alternate pursuant to NRS 175.121.

Court recessed for morning break at 10:33 a.m.

Court reconvened at 10:56 a.m.

The Court noted the presence of the parties.

Counsel stipulated to the presence of the Jury and the Alternate.

Annie Holt resumed the stand and she was reminded by the Court that she was still under oath.

Defense counsel continued cross examination of the Witness. No redirect.

The Court inquired if there were any jury questions.

One question was submitted by Juror No. 13

One question was submitted by Juror No. 3.

Counsel approached the bench for a sidebar.

One question submitted by Juror No. 13 was asked by the Court.

One question submitted by Juror No. 3 was not asked at this time.

The State presented follow up questions. No follow up by Defense counsel.

The Witness was excused subject to recall.

Leslie Rangel was sworn and examined on direct by the State. Witness examined on cross by Defense counsel. Defense offered Plaintiff's Exhibit 3, Leslie Rangel's Statement, for admission.

The State offered Plaintiff's Exhibit 2, A.P.'s Statement, for admission.

There being no objection, the Court **ORDERED** Plaintiff's Exhibit 2, A.P.'s Statement, and Plaintiff's Exhibit 3, Leslie Rangel's Statement, admitted.

Defense counsel continued direct examination of the Witness.

The Court advised that a break would be taken and advised the Witness of the rule of exclusion.

The Court admonished the Jury and the Alternate pursuant to NRS 175.121.

Court recessed for lunch break at 12:06 p.m.

Court reconvened at 1:50 p.m.

The Court noted the presence of the parties.

Counsel stipulated to the presence of the Jury and the Alternate.

Leslie Rangel resumed the stand and was reminded by the Court that she was still under oath.

Defense counsel continued direct examination of the Witness. Redirect by the State. Recross by Defense counsel.

The Court inquired if there were any jury questions.

One question was submitted by Juror No. 5.

Counsel approached the bench for a sidebar.

One question submitted by Juror No. 5 was not asked due to the rules of evidence.

Witness excused.

Melissa Piasecki was sworn and examined on direct by the State. The State requested the Witness be recognized as an expert in forensic psychiatry.

Defense counsel had no voir dire.

The Court advised that the Witness would not be recognized as an expert and would be allowed to give her opinion in forensic psychiatry.

The State continued direct examination of the Witness. Witness examined on cross by Defense counsel.

The Court admonished the Jury and the Alternate pursuant to NRS 175.121.

Court recessed for afternoon break at 3:34 p.m.

Court reconvened at 3:46 p.m.

The Court noted the presence of the parties.

Counsel stipulated to the presence of the Jury and the Alternate.

Melissa Piasecki resumed the stand and was reminded by the Court that she was still under oath.

The State examined the Witness on redirect. Recross by Defense counsel.

The Court inquired if there were any jury questions.

One question was submitted by Juror No. 6.

Counsel approached the bench for a sidebar.

One question submitted by Juror No. 6 was not asked due to the rules of evidence.

The Witness was advised of the rule of exclusion.

Defense counsel requested that the witness, Melissa Plasecki, be retained and she available for telephonic testimony.

The Court advised Ms. Plasecki that she was retained subject to recall and she was excused from the courtroom.

Shawna Eklund was sworn and examined on direct by the State.

Juror No. 11, Stephen Garcia, requested to address the Court.

The Court admonished the Jury and the Alternate pursuant to NRS 175.121.

Court recessed for break at 3:59 p.m.

Court reconvened at 4:00 p.m. outside the presence of the Jury and the Alternate to speak with Juror No. 11.

Stephen Garcia addressed the Court.

The State had no follow up questions. Defense counsel had no follow up questions.

The Jury and Alternate entered the Courtroom at 4:01 p.m.

The Court noted the presence of the parties.

Counsel stipulated to the presence of the Jury and the Alternate.

Witness, Shawna Eklund, resumed the stand and was reminded by the Court that she was still under oath.

The State continued direct examination of the Witness. Witness examined on cross by Defense counsel. Redirect by the State. No recross by Defense counsel.

The Court inquired if there were any jury questions.

The Court advised the Witness of the rule of exclusion.

There being no jury questions, the Witness was excused subject to recall.

The Court admonished the Jury and the Alternate pursuant to NRS 175.121.

Court recessed for evening break at 5:00 p.m.

JURY TRIAL
Day Four – January 24, 2020

Court reconvened at 8:23 a.m.

The Court noted the presence of the parties.

Counsel stipulated to the presence of the Jury and the Alternate.

Officer Kyle Craig was sworn and examined on direct by the State. Witness examined on cross by Defense counsel. Redirect by the State. Recross by Defense counsel.

The Court inquired if there were any jury questions.

The Court advised the Witness of the rule of exclusion.

There being no jury questions, the Witness was excused subject to recall.

Detective Michael Marshowsky was sworn and examined on direct by the State. The State offered Plaintiff's Exhibit 14, CD Video, for admission.

Defense counsel requested the Court withhold its ruling on the admissibility of Plaintiff's Exhibit 14 until after cross examination was concluded.

The Court advised that it would make a decision on the admissibility of Plaintiff's Exhibit 14 until after cross examination.

The State continued direct examination of the Witness. The State offered Plaintiff's Exhibit 1, Diagram drawing, for admission.

There being no objection, the Court **ORDERED** Plaintiff's Exhibit 1, Diagram Drawing, admitted.

The State continued direct examination of the Witness. The Witness examined on cross by Defense counsel.

The State offered Plaintiff's Exhibit 14, CD Video for admission.

Defense counsel presented objection to Plaintiff's Exhibit 14.

The State presented argument.

The Court overruled the objection and **ORDERED** Plaintiff's Exhibit 14, CD Video, admitted.

The State examined the Witness on redirect. No recross by Defense counsel.

The State requested the Court take judicial notice that during the preliminary hearing the victim was only called by Defense counsel to testify.

The Court inquired if there were any jury questions.

There being no jury questions, the Witness was advised of the rule of exclusion and was excused.

The Court admonished the Jury and the Alternate pursuant to NRS 175.121.

Court recessed at 10:23 a.m.

Court reconvened at 10:23 a.m. outside the presence of the Jury and the Alternate.

The Court noted the presence of the parties.

The State requested the Court take judicial notice that during the preliminary hearing the victim A.P. was only asked to testify by Defense counsel and was not questioned by the State.

Defense counsel presented a statement.

The State presented argument.

The Court denied the request and advised that it would not take judicial notice.

The State advised that it would be resting its case-in-chief.

The Court canvassed the Defendant regarding his right to testify.

The Defendant advised that he had had sufficient time to discuss the matter with his attorney and was comfortable with his decision.

Defense counsel advised that he had three witnesses, Ava Mentaberry, Mazy Mentaberry, and Kevin Mentaberry.

Court recessed at 10:31 a.m.

Court reconvened at 10:46 a.m.

The Court noted the presence of the parties.

Counsel stipulated to the presence of the Jury and the Alternate.

The State rested its case-in-chief at 10:46 a.m.

Defense counsel called his first witness.

Ava Mentaberry was sworn and examined on direct by Defense counsel. Witness examined on cross by the State. No redirect.

The Court inquired if there were any jury questions.

The Court advised the Witness of the rule of exclusion.

There being no jury questions, the Witness was excused subject to recall.

Mazy Mentaberry was sworn and examined on direct by Defense counsel. Witness examined on cross by the State. No redirect by Defense counsel.

The Court inquired if there were any jury questions.

The Court advised the Witness of the rule of exclusion.

There being no jury questions, the Witness was excused.

The Court admonished the Jury and the Alternate pursuant to NRS 175.121.

Court recessed for lunch break at 11:58 a.m.

Court reconvened at 1:27 p.m.

The Court noted the presence of the parties.

Counsel stipulated to the presence of the Jury and the Alternate.

Kevin Mentaberry was sworn and examined on direct by Defense counsel. Witness examined on cross by the State. No redirect.

The Court inquired if there were any jury questions.

There being no jury questions, the Witness was excused.

Defense counsel rested its case-in-chief at 2:22 p.m.

The Court advised that the evidentiary portion of the trial was closed and further advised that a recess would be taken in order for the Court and Counsel to finalize the Jury Instructions.

The Court admonished the Jury and the Alternate pursuant to NRS 175.121.

Court recessed at 2:23 p.m.

Court reconvened at 3:54 p.m.

The Court noted the presence of the parties.

Counsel stipulated to the presence of the Jury and the Alternate.

The Court advised the Jury and the Alternate regarding the timeline of the jury trial and advised that jury instructions still needed to be settled. The Court discussed possibly continuing the trial to Monday January 27, 2020.

Juror No. 10 Montana Robinson advised that she needed to confirm with her employer regarding returning Monday.

The Court advised Ms. Robinson to contact her employer and notify the Bailiff by the end today.

The remaining jurors indicated that they would be available to return on Monday.

The Court advised the Jury and Alternate to return Monday, January 27, 2020 at 8:30 a.m.

The Court admonished the Jury and the Alternate pursuant to NRS 175.121.

Court recessed for evening break at 4:01 p.m.

JURY TRIAL
Day Five – January 27, 2020

Court reconvened at 8:22 a.m. with Counsel and the Defendant present outside the presence of the Jury and the Alternate for the purpose of settling the Jury Instructions and Verdict Forms.

The Court noted it had a packet of Jury Instructions numbered 1 through 34.

Counsel advised that they had received and reviewed the jury instructions.

The Court inquired if Counsel had any objection to the jury instructions.

The State had no objection.

Defense counsel presented objection to Jury Instruction No. 16, No. 18 and No. 24.

The State presented argument.

The Court overruled Defense counsel's objection to Jury Instruction No. 16, No. 18, and No. 24.

The Court inquired if Counsel had any proposed forms of jury instructions.

The State had no proposed jury instructions.

Defense counsel had no proposed jury instruction.

The Court noted it had 1 Form of Verdict and inquired if Counsel had any proposed forms of verdict.

The State had no proposed forms of verdict.

Defense counsel had no proposed forms of verdict.

Court recessed at 8:29 a.m.

Court convened at 8:44 a.m.

The Court noted the presence of the parties.

Counsel stipulated to the presence of the Jury and the Alternate.

The Court advised that the Jury Instructions and Forms of Verdict had been settled in Open Court. The Court advised that it would not read Jury Instructions No. 1 and No. 2, as they had been previously read.

Counsel stipulated that the reading of the Instructions need not be reported.

The Court read Jury Instructions No. 3 through No. 34.

Mr. Thompson presented closing argument on behalf of the State.

Mr. Woodbury presented closing argument on behalf of the Defendant.

Mr. Thompson gave rebuttal argument.

The Bailiff was sworn.

The Court disclosed that Dane Miller was the Alternate Juror and instructed him to remain available via telephone and he was admonished pursuant to NRS 175.121.

The Jury was released to begin deliberation.

Court recessed at 10:38 a.m. subject to the call of the Jury.

A call was received at 1:40 p.m. that the Jury had reached a verdict.

Court reconvened at 1:55 p.m.

The Court noted the presence of the parties.

The Jury entered the courtroom at 1:57 p.m.

The Court noted the presence of the parties.

The Clerk called the roll of the Jury.

The Court asked the Jury if they had reached a verdict.

The foreperson, Stephen Garcia, advised that a verdict had been reached and provided the Form of Verdict for the Court's review.

The Court requested that the Clerk read the Verdict into the record.

The Clerk read the Verdict: **Guilty of COUNT 3: LEWDNESS WITH A 14 OR 15 YEAR OLD CHILD, A CATEGORY B FELONY.**

Both the State and Defense counsel waived the polling of the jury.

The Court thanked and excused the Jury at 2:04 p.m.

The Court discussed the Defendant obtaining a psychosexual evaluation and advised the parties that they would be contacted by the Judicial Assistant to schedule a sentencing date.

The State advised that it expected some victim impact testimony at the time of sentencing.

The Court **ORDERED** the Defendant be continued released on his previously posted bail in the amount of \$100,000.00.

Court adjourned at 2:06 p.m.

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

RECORD OF COURT PROCEEDINGS

Present - Honorable ALVIN R. KACIN, District Judge,
and Officers of the Court.

STATE OF NEVADA,

Plaintiff,

Date: 06/19/20

VS.

Case No.: CR-FP-18-5030

Dept: 2 – Commissioner's Room

KEVIN JOHN MENTABERRY,

Defendant.

State of Nevada represented by Chad B. Thompson, Esq.

Defendant present, not in custody, and represented by

Gary D. Woodbury, Esq.

Division of Parole and Probation represented by Michelle Gavorsky.

Court Clerk, Darla Malotte, present.

Lisa Manley present as Court Reporter.

SENTENCING HEARING

Court convened at 9:45 a.m.

The Court noted the presence of the parties.

This was the date and time set for sentencing.

The Court noted the Defendant had been found guilty at trial on January 27, 2020 of Count 3 Lewdness with a 14 or 15 Year Old Child, a Category B Felony. The Court advised that the Presentence Investigation report had been received along with the hand written statement of the Defendant and the Nevada licensed psychologist report of Sheri Hixon-Brenenstall that indicates that the Defendant was a low risk to reoffend. The Court noted the State filed a Notice of Restitution Claim.

The State advised that restitution was in the total amount of \$1,470.00 and the matter had been discussed with Defense counsel.

Defense counsel had no objection to restitution.

All parties advised they were in receipt of the Presentence Investigation Report.

The State did not make any corrections to the report.

Defense counsel made a correction to the report.

The Court noted the correction to the report by interlineation.

The Court inquired if either party had evidence to present for sentencing.

The State advised that it had two witnesses to present for testimony and requested they present their testimony last.

Defense counsel had no objection to the witness testimony being presented last. Defense counsel advised that it did not have any evidence or witnesses to present.

The State presented its position for sentencing.

Defense counsel presented a recommendation on behalf of the Defendant.

The Court advised the Defendant of his right to make a statement on his own behalf.

The Defendant addressed the Court.

Shawna Eklund was sworn and examined on direct by the State. Witness examined on cross by Defense counsel. No redirect. Witness excused.

Earl Chad Eklund was sworn and examined on direct by the State. Witness examined on cross by Defense counsel. No redirect. Witness excused.

The Court noted that it had been provided the scoring sheet by the Division of Parole and Probation.

All parties advised that they received copies.

The Court advised that the Notification of Conviction and the Notification of Requirements of Registration for a sex offender had been provided to Defense counsel to review with the Defendant for signature. The Court advised that a recess would be taken before sentence was imposed.

Court recessed for break at 10:39 a.m.

Court reconvened at 11:35 a.m.

The Court noted the presence of the parties.

The Court presented a statement and noted it received the Notification of Conviction and Notice of Requirement for Registration which were signed by the Defendant.

The Court **ORDERED** a Judgment of Conviction be entered against the Defendant finding the Defendant guilty of COUNT 3: LEWDNESS WITH A 14 OR 15 YEAR OLD CHILD, A CATEGORY B FELONY AS DEFINED BY NRS 201.230. (NOC 60336), by jury verdict entered January 27, 2020.

The matter being submitted;

The Court **ORDERED** the Defendant to pay a \$25.00 administrative assessment fee, \$3.00 genetic administrative assessment fee, \$150.00 genetic testing fee, submit to testing to determine his genetic markers, pay restitution in the amount of \$1,470.00, and be sentenced to serve a maximum of 72 months in the Nevada Department of Corrections with minimum parole eligibility after 28 months. Said sentence was suspended and the Defendant was placed on probation for 60 months under the standard terms and conditions of probation with the following special conditions:

1. The Defendant to serve 180 days in the Elko County Jail with credit for 23 days previously served, to be taken into custody immediately.
2. The Defendant to obtain a substance abuse evaluation within 30 days from release from custody and if deemed necessary by the Division enter and complete a program at his own expense.
3. The Defendant to abstain from gambling or being present in any gaming establishment.
4. The Defendant to abstain from the use of alcohol or being present in any establishment that serves alcohol.
5. The Defendant to submit all digital media storage devices to the Division of Parole and Probation with or without a search warrant.
6. The Defendant to pay restitution at a monthly rate to be determined by the Division of Parole and Probation commencing upon his release from custody.
7. The Defendant to sign a Civil Confession of Judgment and pay the filing fee in the amount of \$28.00.
8. The Defendant to comply with the required terms and conditions of a sex offender pursuant to NRS 176a.410.
9. The Defendant to abstain from any contact with the victim and the victim's family.
10. The Defendant to abstain from the use of marijuana and marijuana products.

The Court and Counsel discussed if lifetime supervision as a sex offender was required. The Court advised that the matter would be researched further and if required it would be included in the Judgement of Conviction.

The Defendant was remanded to the custody of the Elko County Sheriff's Department.

Court adjourned at 12:09 p.m.

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

RECORD OF COURT PROCEEDINGS

Present - Honorable ALVIN R. KACIN, District Judge,
and Officers of the Court.

STATE OF NEVADA,

Plaintiff,

Date: 09/10/21

VS.

Case No.: CRFP-18-5030

Dept: 2

KEVIN JOHN MENTABERRY,

Defendant.

State of Nevada represented by Chad B. Thompson, Esq.

Defendant present, not in custody, and represented by

John Malone, Esq.

Court Clerk, Darla Malotte, present.

Peggy Isom present as Court Reporter.

ORDER TO SHOW CAUSE

Court convened at 2:05 p.m.

The Court noted the presence of the parties.

This was the date and time set by the Court for a hearing on an Order to Show Cause.

The Court noted that the Defendant was found guilty by a jury on January 27, 2020 and a judgment of conviction was entered on June 19, 2020 to one count of Lewdness with a 14 or 15 Year Old Child, a category B felony and the Defendant was sentenced to serve a minimum term of 28 months in prison and a maximum term of 72 months and was placed on probation for 60 months.

The Court advised that after reviewing the statute it questioned the legality of the suspension of the execution of sentence and advised that it could correct any sentence. The Court discussed the matter further and inquired if there were any reasons not to correct the sentence.

The State advised that after researching the matter it agrees that probation was not an option. The State advised that the issue has been explained to the victim and family and requested to schedule a new sentencing hearing.

The Court noted that the victim's family were present.

The State presented further statement and advised that sentencing could proceed today since the victim's family was present.

Defense counsel advised that sentencing occurred over a year ago and the Defendant had served the ordered 6 months in custody and he was being supervised by parole and probation. Defense counsel advised that the Defendant submitted to an evaluation and was found not a high risk not to reoffend and further advised that a writ of habeas corpus had been filed due to the prior defense counsel informing the Defendant that he could not appeal. Defense requested that sentencing not proceed today and the Defendant remain under supervision of Parole and Probation until the details and errors were corrected.

Counsel approached the bench for a sidebar off the record.

Defense counsel presented further statement regarding continuing sentence and requested that if the writ was granted then the appeal would proceed and requested the Defendant remain released on bond.

The Court discussed correcting the sentencing in criminal matter, the appeal, and the habeas corpus. The Court further discussed the request for release on bond pending resolution of an appeal.

Defense counsel advised that it would research the matter further and requested two weeks to provide any pleadings regarding the issue.

The State presented further statement.

The Court advised that it needed to determine the criminal matter regarding execution of the sentence.

Defense counsel advised that he was hired to address the Writ of Habeas and inquired if he needed to advise his client to be prepared to post a bond at sentencing.

The Court advised that he could brief the matter.

The Court advised that sentencing would be scheduled in approximately 30 days.

The Court and Counsel discussed a possible sentencing date.

The Court advised the parties that would like to schedule sentencing the first week of November 2021.

Court recessed for break at 2:33 p.m.

Court reconvened at 2:48 p.m.

Court noted the presence of the parties.

Counsel advised that a possible sentencing date had been discussed and all parties including the victims agreed to a sentencing date on November 2, 2021.

The Court **ORDERED** sentencing be scheduled for November 2, 2021 at 2:00 p.m.

The Court advised that any further arguments regarding the legality of the sentence would be heard at the time of sentencing including any statement of the Defendant and the victims. The Court advised that it would reuse the Presentence Investigation Report that had previously been prepared and ask the parties to verify with the Division of Parole and Probation regarding credit time served.

Court adjourned at 2:52 p.m.

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

RECORD OF COURT PROCEEDINGS

Present - Honorable ALVIN R. KACIN, District Judge,
and Officers of the Court.

STATE OF NEVADA,

Plaintiff,

Date: 11/02/21

VS.

Case No.: CR-FP-18-5030

Dept: 2

KEVIN JOHN MENTABERRY,

Defendant.

State of Nevada represented by Chad B. Thompson, Esq.
Defendant present, not in custody, and represented by
John Malone, Esq.
Court Clerk, Darla Malotte, present.
Peggy Isom present as Court Reporter.

SENTENCING HEARING

Court convened at 2:00 p.m.

The Court noted the presence of the parties.

This was the date and time set for re-sentencing.

The Court advised that this was scheduled for resentencing of the Defendant due to an error in the last sentence. The Court inquired if there were any victim impact testimony.

The State advised that testimony would not be presented since victim testimony had been presented at the last sentencing hearing.

The Court advised that it had re-reviewed the Presentence Investigation Report including attachments.

The Court inquired if either party had evidence to present for sentencing.

The State advised that the Defendant had credit for 116 days previously served.

Defense counsel agreed with credit time served of 116 days.

The State advised that restitution had been paid in full.

The Court advised that the amended judgment of conviction would reflect credit for \$1,470.00 paid towards restitution.

The Court advised that the State would present argument last including any possible victim testimony.

Defense counsel offered Defendant's Exhibit A, Letter from Life Quest; Defendant's Exhibit B, Payment for Quest Counseling; and Defendant's Exhibit C, Payment of Probation Supervision Fees and Restitution, for admission.

There being no objection, the Court **ORDERED** Defendant's Exhibit A, Letter from Life Quest; Defendant's Exhibit B, Payment for Quest Counseling; and Defendant's Exhibit C, Payment of Probation Supervision Fees and Restitution, admitted.

The State agreed that restitution had been paid in full and presented its position for sentencing.

The Court noted that probation had been granted illegally and presented a statement regarding correcting the sentence.

The State advised that it would not be asking the original sentence of a maximum of 72 months and a minimum sentence of 28 months be increased.

Defense counsel presented argument and advised that it did not receive a copy of the Presentence Investigation Report.

The Court advised that a copy of the Presentence Investigation Report would be made and a brief recess would be taken to allow Defense counsel to review with the Defendant.

Court recessed at 2:17 p.m.

Court reconvened at 2:34 p.m.

The Court noted the presence of the parties.

Defense counsel confirmed that it received a copy of the Presentence Investigation Report including attachments and had sufficient time to review the copies.

Defense counsel presented further argument opposing the sentence be increased and presented a recommendation of imposing a lower sentence. Defense counsel advised that it had two witnesses to call.

Tina Snow was sworn and examined on direct by Defense counsel. No cross examination by the State. Witness excused.

Heather Mentaberry was sworn and examined on direct Defense counsel. No cross examination by the State. Witness excused.

Defense counsel presented further recommendation on behalf of the Defendant.

The Court advised the Defendant of his right to make a statement on his own behalf.

The Defendant addressed the Court.

The Court noted that the victim's family was present and inquired if any wished to present testimony.

The State advised that the victim's family would rely upon their previous testimony.

The Court advised that it would enter a corrected Judgment of Conviction and noted that during the first sentence, the recommendation by the Division of Parole and Probation was for probation. The Court advised that pursuant to Nevada Statute, probation could not be granted and was entered in error and advised that it would be correcting an illegal sentence and presented further statement.

The Court advised that this was not a revocation of probation but a correction of the legality of probation.

The Court **ORDERED** a Judgment of Conviction be entered against the Defendant finding the Defendant guilty of COUNT 3: LEWDNESS WITH A 14 OR 15 YEAR OLD CHILD, A CATEGORY B FELONY AS DEFINED BY NRS 201.230. (NOC 60336), by jury verdict entered January 27, 2020.

The Court **ORDERED** the Defendant to pay a \$25.00 administrative assessment fee, \$3.00 genetic administrative assessment fee, \$150.00 genetic testing fee, submit to testing to determine his genetic markers, and be sentenced to serve a maximum of 72 months in the Nevada Department of Corrections with minimum parole eligibility after 28 months with credit for 116 days previously served and be subject to lifetime supervision.

The Court **FURTHER ORDERED** the Defendant be given credit for restitution paid in full in the amount of \$1,470.00.

The Court noted the Defendant filed a post-conviction writ of appeal in case DC-CV-21-68.

Defense counsel advised that it had not reviewed the transcript of the trial and had not discussed the matter with trial counsel, Gary Woodbury. Defense counsel requested the Defendant be released on bail pending appeal and be equipped with an ankle monitor and requested bail be set at \$10,000.00.

The Court inquired regarding the writ of habeas corpus.

Defense counsel agreed to dismiss the habeas corpus case without prejudice and advised that it had a notice of appeal and case appeal statement which was ready to be filed.

The Court advised that an amended judgment of conviction would be entered so that the notice of appeal could be filed.

The State presented argument opposing the Defendant remaining out of custody pending an appeal.

Defense counsel presented further argument.

The State presented further argument.

The Court presented a statement and denied the Motion to remain out of custody on bond pending appeal.

The Court **ORDERED** the writ of habeas corpus case dismissed without prejudice.

The Defendant was remanded to the custody of the Elko County Sheriff's Department.

Court adjourned at 3:46 p.m.

NEVADA, STATE OF

CRFP180005030-001

EXHIBIT #	EXHIBIT DESCRIPTION	LOCATE	LOGGED	BY	DISP
1- HRG 07/20/18	CD	ENV V	7/24/18	AS	E
2- HRG 07/20/18	SUPPLEMENTAL REPORT FROM DETECTIVE MA	ENV V	7/24/18	AS	
3- HRG 07/20/18	ONE PAGE REPORT	ENV V	7/24/18	AS	
4- HRG 07/20/18	REPORT FROM DETECTIVE MORRELL	ENV V	7/24/18	AS	
5- HRG 07/20/18	WITNESS STATEMENT FROM AP	ENV V	7/24/18	AS	
6- HRG 07/20/18	INTIAL REPORT FROM OFFICER KYLE CRAIG	ENV V	7/24/18	AS	
7- HRG 07/20/18	CD	ENV V	7/24/18	AS	
1- TRL 01/21/20	COUCH DRAWING BY A.P.	ENV V	8/16/19	AS	E
2- TRL 01/21/20	A.P.'S STATEMENT	ENV V	8/16/19	AS	E
3- TRL 01/21/20	LESLIE RANGEL'S STATEMENT	ENV V	8/16/19	AS	E
4- TRL 01/21/20	KYLE CRAIG REPORTS	ENV V	8/16/19	AS	
5- TRL 01/21/20	MIKE MARSHOWSKY REPORT	ENV V	8/16/19	AS	
6- TRL 01/21/20	JOSH MORRELL REPORTS	ENV V	8/16/19	AS	
7- TRL 01/21/20	A.H. TRANSCRIPT	ENV V	8/16/19	AS	
8- TRL 01/21/20	DR. MELISSA PIASECKI REPORT	ENV V	8/16/19	AS	
9- TRL 01/21/20	PRELIMINARY HEARING TRANSCRIPT	ENV V	8/16/19	AS	
10- TRL 1/23/20	PHOTO	ENV V	1/23/20	AS	E
11- TRL 1/23/20	PHOTO	ENV V	1/23/20	DM	E
12- TRL 1/23/20	PHOTO	ENV V	1/23/20	DM	E
13- TRL 1/23/20	PHOTO	ENV V	1/23/20	DM	E
14- TRL 1/24/20	CD	ENV V	1/24/20	DM	E

PGM ID-EXEXIPS
DATE 12/01/2021

ELKO COUNTY COURT SYSTEM
EXHIBIT DATA FOR:

PAGE 1

MENTABERRY, KEVIN JOHN CRFP180005030-002

EXHIBIT #	EXHIBIT DESCRIPTION	LOCATE	LOGGED	BY	DISP
A- HRG 07/20/18	LARGE DRAWING	ENV V	7/24/18	ADE	E

Case No. DC-CV-21-68

Dept. No. 2

FILED

2021 DEC -1 PM 2:29

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

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY *am*

KEVIN JOHN MENTABERRY,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent,
_____ /

CLERK'S CERTIFICATION

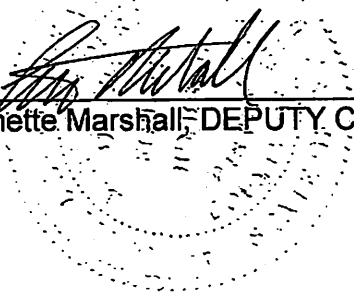
I, KRISTINE JAKEMAN, the duly elected, acting and qualified County Clerk and Ex-Officio Clerk of the District Court of the Fourth Judicial District of the State of Nevada, in and for the County of Elko, do hereby certify that the annexed are true, full and correct copies of certain documents in Case No. DC-CV-21-68 Dept. 2, KEVIN JOHN MENTABERRY, Appellant, vs. STATE OF NEVADA, Respondent, as appears on file and of record in my office.

WITNESS My Hand and Seal of said Court on December 1, 2021.

KRISTINE JAKEMAN, ELKO COUNTY CLERK

By *Annette Marshall*

Annette Marshall, DEPUTY CLERK



CERTIFICATE OF SERVICE

I hereby certify that I caused to be sent electronically and/or mailed a certified copy of the annexed documents in Case No. DC-CV-21-68 Dept. 2, KEVIN JOHN MENTABERRY, Appellant, vs. STATE OF NEVADA Respondent, as appears on file and of record in this Court, to the following:

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Carson City, NV 89701-4717

DATED this 1st, day of December, 2021.



Annette Marshall, Deputy Clerk