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2 IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown  
Clerk of Supreme Court

5 KEVIN JOHN MENTABERRY,

6 Appellant,

7 vs.

CASE NO.83878

8 THE STATE OF NEVADA,

9 Respondent.

10 Appeal From the Fourth Judicial District Court  
11 Of The State of Nevada  
In And for The County of Elko

12 **APPENDIX TO RESPONDENT'S BRIEF**

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Dated this   1   day of July, 2022.

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Case No. EL-JC-CR-F-18-5030

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IN THE ELKO TOWNSHIP JUSTICE COURT  
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO  
THE HONORABLE ELIAS D. GOICOECHEA, JUSTICE OF THE PEACE

-oOo-

STATE OF NEVADA,

Plaintiff,

V.

PRELIMINARY HEARING

KEVIN JOHN MENTABERRY,

Defendant.

**COPY**

TRANSCRIPT OF PROCEEDINGS

Friday, July 20, 2018  
Elko, Nevada

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2018 AUG 29 AM 10:27  
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1 THE COURT: Good morning. Court will be in  
2 session. You can be seated. All right, so we're going  
3 to be on the record this morning.

4 Today is, excuse me, July 20. It's 8:42 in  
5 the morning. The time was originally set for 8:30 for  
6 the preliminary hearing in Case No. EL-JC-CR-F-18-5030.  
7 This is the Elko Justice Court. I'm Elko Justice of the  
8 Peace Elias Goicoechea.

9 We're here on a criminal complaint filed in  
10 our office June 20th, which alleged that on or about the  
11 31st day of December, 2017, and/or the 1st day of  
12 January, 2018, at or near the location of the City of  
13 Elko, within the County of Elko, and the State of  
14 Nevada, that there was the following described criminal  
15 offense:

16 Count 1 was sexual assault on a child under  
17 the age of 16 years. That's a felony. In the  
18 alternative to Count 1, Count 2, statutory sexual  
19 seduction, a category B felony, or in the alternative to  
20 Counts 1 and 2, Count 3, lewdness with a 14 or  
21 15-year-old child, a category B felony.

22 And this is -- this case is the State of  
23 Nevada versus Kevin John Mentaberry. The record will  
24 reflect Mr. Mentaberry is present in court. He is in  
25 custody with his attorney, Gary Woodbury. And Mr. Slade

1 is present representing the State for the District  
2 Attorney's Office. So this is the time set for a  
3 preliminary hearing.

4 Are we ready to proceed?

5 MR. SLADE: The State is, Your Honor.

6 MR. WOODBURY: The Defense is.

7 THE COURT: And do we have any preliminary  
8 matters that we need to address before trial?

9 MR. SLADE: Your Honor, just a housekeeping  
10 thing that to date has worked without any issues. In  
11 cases where we have minor witnesses that will be taking  
12 the stand, typically, we run into the crossroads of  
13 trying to make sure the record uses their acronym to  
14 keep their full name off the record, but witnesses, of  
15 course, remember them by their full names.

16 The solution that has worked in several other  
17 cases, Your Honor, is to simply ask the Court to place  
18 an order on the record for the transcriptionist at any  
19 time those minors' names are said, in part or in full,  
20 that they be substituted, for purposes of transcription,  
21 with the acronyms. I can give you those specifically,  
22 but I just wanted to go over that idea with the Court  
23 and Defense counsel and then spell out those names and  
24 the acronyms if agreed upon.

25 THE COURT: All right, Mr. Slade.



1           Mr. Woodbury, do you have any issues with  
2     that?

3           MR. WOODBURY: I don't.

4           THE COURT: All right. So Mr. Slade, do you  
5     want to give me your witnesses.

6           MR. SLADE: Yes, Your Honor, so the first  
7     would be AP [name stated, initials inserted]. Any time  
8     AP [first name stated, initials inserted] or AP [first  
9     name stated, initials inserted] is used, the State would  
10    ask that the transcriptionist replace it with the  
11    acronym AP.

12           The second minor that the State anticipates  
13    calling, is AH [name stated and spelled, initials  
14    inserted], and the State would ask any time AH [first  
15    name stated, initials inserted] is used or her name  
16    together, that it be replaced, for transcription  
17    purposes, with AH.

18           And I think there's one more, if the Defense  
19    has another one, the State's willing to entertain that  
20    as well, but I believe we have one more minor whose time  
21    might be mentioned, and that would be AM [name stated,  
22    initials inserted], and the State would request that any  
23    time AM's [first name stated, initials inserted] name is  
24    mentioned, that, for transcription purposes, public  
25    record purposes, it be replaced with AM.



1 THE COURT: All right, Mr. Slade, do you have  
2 any other witnesses?

3 MR. SLADE: The State does, Your Honor. The  
4 witnesses that the State anticipates calling are  
5 Michael Marshowsky, M-A-R-S-H-O-W-S-K-Y; Shawna Eklund,  
6 E-K-L-U-N-D; AH; Josh Morrell. The State also has under  
7 subpoena and present in court, Kyle Craig, C-R-A-I-G,  
8 and I believe it's Diane --

9 Is it Diane?

10 MS. CRABTREE: Diane.

11 MR. SLADE: Sorry, Diane Crabtree,  
12 C-R-A-B-T-R-E-E. And that's it for the State.

13 THE COURT: All right. Mr. Woodbury, do you  
14 have any witnesses?

15 MR. WOODBURY: Yes, Your Honor, with respect  
16 -- there was an agreement between the State and the  
17 Defense regarding AP. They had originally indicated to  
18 me that they would be putting on AP's evidence through a  
19 videotape of a conversation she had with Mr. Marshowsky.  
20 I indicated that I would be calling AP. So I don't know  
21 if they're going to put her on. If they don't, that is  
22 a witness named for the State -- or for the Defense.

23 THE COURT: Okay. And I'm presuming we want  
24 the rule of exclusion?

25 MR. SLADE: Yes.

1 MR. WOODBURY: The Defense does.

2 THE COURT: So all of you who have been named  
3 as a witness, the rule of exclusion has been invoked,  
4 which that means you have to have a seat outside of the  
5 courtroom and that you cannot discuss your testimony  
6 and/or the facts or the details of this case with  
7 anybody except for Mr. Slade or Mr. Woodbury.

8 If Mr. Slade or Mr. Woodbury come out and  
9 wish to speak with you, then you need to be out of the  
10 hearing and/or talk quiet enough to where the other  
11 witnesses are not able to hear the conversation. You  
12 can have casual conversation. You can talk about  
13 whatever you want except for the testimony and details  
14 of the case. If, for some reason, you do get excused  
15 prior to the case being concluded, you still are not  
16 able to talk until the conclusion of the case. You're  
17 not able to talk about the case until then.

18 And then for the record, we'll go ahead and  
19 the Court will order that if AP [name stated, initials  
20 inserted], if her name is brought up anywhere, that the  
21 acronym for the transcriptionist will be AP. And for AH  
22 [name stated, initials inserted], the -- when her name  
23 is present in the recording, that it will be replaced  
24 with the acronym AH, and AM [name stated, initials  
25 inserted] will be replaced with AM. And the Court will

1 order that the transcriptionist use that in place of  
2 full or part name.

3 And Mr. Slade, who is our first witness this  
4 morning?

5 MR. SLADE: The State calls Mike Marshowsky.

6 THE COURT: All right. So the rest of you  
7 who have been named as witnesses, will you have a seat  
8 outside, please. Mr. Marshowsky, will you come forward.

9 Do you swear the testimony you're going to  
10 provide to the Court today will be the truth, the whole  
11 truth, and nothing but the truth, so help you God?

12 MR. MARSHOWSKY: Yes, Your Honor.

13 THE COURT: All right. Would you have a  
14 seat. State your name and spell your name for the  
15 record, please.

16 THE WITNESS: Michael James Marshowsky;  
17 M-I-C-H-A-E-L, J-A-M-E-S, M-A-R-S-H-O-W-S-K-Y.

18 THE COURT: Mr. Slade, go ahead.

19 MICHAEL MARSHOWSKY

20 (Sworn as a witness, testified as follows)

21 DIRECT EXAMINATION

22 BY MR. SLADE:

23 Q. Is it detective?

24 A. Yes.

25 Q. Detective Marshowsky, how long have you been

1 employed in law enforcement?

2 A. Since 2004.

3 Q. I'd like to draw your attention to earlier this  
4 year. I believe it was January 30th of 2018.

5 What did you do at that time?

6 A. I interviewed AP.

7 Q. How did you record that interview?

8 A. I used the interview recording system at the Elko  
9 Police Department. It's called StarWitness, the  
10 recording system is.

11 Q. And after you made that recording, did you check to  
12 see that it had recorded?

13 A. Yes.

14 Q. And did you provide a copy of it to the State?

15 A. Yes.

16 MR. SLADE: Your Honor, permission to  
17 approach the witness?

18 THE COURT: Yes.

19 MR. SLADE: May the record reflect I'm  
20 showing to Defense counsel what has been previously  
21 provided in discovery as discovery 24, marked and not  
22 yet admitted as State's Exhibit 1. And may the record  
23 reflect I'm handing to the witness what has been marked,  
24 but not yet admitted, as State's Exhibit 1.

25 BY MR. SLADE:

1 Q. Detective, what is that?

2 A. It's a DVD-R.

3 Q. Do you recognize it?

4 A. What do you mean recognize it?

5 Q. All right. Did you have an opportunity to review  
6 the contents of this?

7 A. Yes, I did.

8 Q. And was it a fair and accurate depiction of the  
9 interview which you had?

10 A. Yes, it was.

11 Q. Of AP?

12 A. Yes, it was.

13 MR. SLADE: Your Honor, at this time,  
14 pursuant to Nevada Revised Statute 171.196, the State is  
15 invoking the exception to the hearsay rule, which reads  
16 that a statement made by an alleged victim of an offense  
17 is admissible at the preliminary hearing -- or hearsay  
18 evidence of an alleged victim of an offense is  
19 admissible at a preliminary examination conducted  
20 pursuant to this section.

21 Your Honor, it specifically lists the crimes  
22 that are alleged in this case. It is sexual offenses.  
23 Pursuant to the statute, it is the State's understanding  
24 that the law allows for this interview to now be  
25 admitted into evidence.

1 THE COURT: Mr. Woodbury.

2 MR. WOODBURY: We have no objection to  
3 State's Exhibit No. 1 being played subject to the  
4 qualification that, from our point of view, if AP is  
5 prohibited from testifying, then we would object.

6 MR. SLADE: Your Honor, I can speak to that.

7 THE COURT: Go ahead.

8 MR. SLADE: The State understands that she  
9 has been retained as a witness for the Defense and  
10 doesn't have -- is not going to object to her coming and  
11 testifying in that regard. We've already hashed out  
12 that issue.

13 THE COURT: Okay. Mr. Woodbury.

14 MR. WOODBURY: That's fine.

15 THE COURT: Then State's No. 1 will be  
16 admitted for the purpose of this hearing.

17 (Whereupon, Plaintiff's Exhibit 1 admitted)

18 MR. SLADE: Thank you, Your Honor. May the  
19 State queue this video up?

20 THE COURT: Yes.

21 MR. SLADE: Thank you.

22 (Whereupon, Mr. Slade and the Bailiff confer)

23 (Whereupon, Plaintiff's Exhibit 1 played)

24 THE COURT: Mr. Woodbury, are you able to  
25 hear?



1 MR. WOODBURY: I need a slight increase in  
2 volume.

3 THE COURT: Does that help?

4 MR. WOODBURY: (No audible answer)

5 (Whereupon, Plaintiff's Exhibit 1 continued  
6 to play)

7 BY MR. SLADE:

8 Q. Detective, I'm just going to run you through the  
9 first couple of minutes of the interview, and then we'll  
10 fast-forward to the part where we get to issues that are  
11 relevant to this case. Before I do that, can you  
12 explain just an overview of how you typically go about  
13 doing these interviews.

14 A. Typically, I introduce myself. The second part is  
15 rapport-building where we just get to know each other.  
16 The third part would be the forensic interview. It's  
17 through the National Children's Advocacy Center.  
18 There's four rules. We review the rules with them. The  
19 next step in the process is narrative practice, where we  
20 have the child tell about a past event. Then if the --  
21 then we typically will go into the issue that we're  
22 investigating.

23 Q. And you followed those procedures in this case?

24 A. Yes.

25 Q. Are there any clues or signs or things you can look



1 for when you're interviewing someone in this context as  
2 far as body language?

3 A. Yes.

4 THE COURT: Mr. Slade, will you let that go  
5 and let's see. That way when it comes to the  
6 transcriptionist, it focuses in on you over there.

7 MR. SLADE: Okay.

8 BY MR. SLADE:

9 Q. And what are you typically looking for, if anything,  
10 in the body language of a person?

11 A. It's just a change of behavior. That's part of the  
12 rapport-building, narrative practice, we -- is get a  
13 baseline behavior of how people speak and their body  
14 language and so forth and so on. So during the  
15 interview -- during the rapport-building, narrative  
16 practice, AP was fairly talkative. She moved her hands.  
17 She seemed to speak freely. Once we got to the parts of  
18 the interview that she didn't want to talk about, her  
19 demeanor changed. She stopped making eye contact. She  
20 would put her hand on her head like she was hiding,  
21 things to that nature.

22 Q. Okay, thank you.

23 MR. SLADE: I'm just going to finish playing  
24 at about the first three minutes here just so we can  
25 have you help us see what you're referring to as far as

1 the body language goes.

2 (Whereupon, Plaintiff's Exhibit 1 continued  
3 to play)

4 BY MR. SLADE:

5 Q. Okay. So based on your training, how is her body  
6 language at this point?

7 A. She seems fairly open. She's smiling. She's  
8 giggling. She's making eye contact. Her hands are  
9 moving. She appears to be comfortable.

10 Q. And that's something you watch for during these  
11 interviews?

12 A. Yes.

13 MR. SLADE: I'm going to go ahead and  
14 fast-forward to what I believe is going to be at about  
15 18:45 into the video, which is where I understand we  
16 start getting on topic. Let's see if this works.

17 (Whereupon, Plaintiff's Exhibit 1 continued  
18 to play)

19 BY MR. SLADE:

20 Q. So the audio is a little bit low. Do you recall  
21 what she's talking about here?

22 A. It is low, but she's talking about when she went  
23 over to her friend AM's house.

24 Q. Okay. And approximately when did she say that  
25 happened; if you recall?

1 A. What time she got there?

2 Q. What time of year.

3 A. It was New Year's Eve.

4 Q. Okay, all right.

5 (Whereupon, Plaintiff's Exhibit 1 continued  
6 to play)

7 BY MR. SLADE:

8 Q. Now, just to make sure we're clear on where we're at  
9 in her interview.

10 What is she describing right now?

11 A. Sitting on the couch and petting -- and  
12 Mr. Mentaberry is petting the dog and rubbing her  
13 thigh --

14 Q. Okay.

15 A. -- actually rubbing her thigh.

16 Q. Okay, thank you.

17 (Whereupon, Plaintiff's Exhibit 1 continued  
18 to play)

19 BY MR. SLADE:

20 Q. She just said something and then covered up her  
21 mouth. What was that, if you recall?

22 A. I can't hear it. I don't recall.

23 Q. Okay.

24 A. I think she said it or something or...

25 Q. Okay. If I back up a little bit, would that help?

1 A. Yeah.

2 Q. Okay. We'll give it a try. I understand this is --  
3 is what it is. So we'll give it our best shot here.

4 MR. SLADE: Your Honor, can I try one of  
5 those sets of earphones just to see if it is or isn't.  
6 I don't want to --

7 THE COURT: Mr. Marshowsky, would you like a  
8 set?

9 THE WITNESS: Yeah, please. Thank you, Your  
10 Honor.

11 THE COURT: And just to make sure I  
12 understand how this works, you've got buttons on the  
13 bottom here. Is that for volume?

14 THE BAILIFF: Yes.

15 THE COURT: Ask the Bailiff.

16 MR. SLADE: So start at zero if you don't  
17 want to blow your ears and go from there?

18 THE BAILIFF: Absolutely.

19 MR. SLADE: Okay, all right. You've got --  
20 put yours on? Okay, let's see if this helps.

21 (Whereupon, Plaintiff's Exhibit 1 continued  
22 to play)

23 BY MR. SLADE:

24 Q. So that does sound better. What did she say about  
25 before she touched her mouth?

1 A. He started rubbing my stomach.

2 Q. Okay. You mentioned earlier about looking for any  
3 visual clues. Did you see any here based on your  
4 training?

5 A. She covered her mouth when she said it.

6 Q. Okay. So that's something significant for your --  
7 for your training?

8 A. Yes.

9 Q. Okay.

10 MR. SLADE: All right, let's continue on.

11 THE WITNESS: She hadn't covered her mouth at  
12 any other time during the interview.

13 MR. SLADE: Okay.

14 THE WITNESS: So it was a definite change in  
15 behavior.

16 MR. SLADE: Okay.

17 (Whereupon, Plaintiff's Exhibit 1 continued  
18 to play)

19 BY MR. SLADE:

20 Q. Okay. So she gets really quiet there again. What  
21 is she saying?

22 A. He put his hands in my pants.

23 Q. Okay, all right.

24 (Whereupon, Plaintiff's Exhibit 1 continued  
25 to play)

1 BY MR. SLADE:

2 Q. Did she say vagina? Did I hear that correctly?

3 A. Yes.

4 Q. Okay, thank you.

5 (Whereupon, Plaintiff's Exhibit 1 continued  
6 to play)

7 BY MR. SLADE:

8 Q. Did you make out what she just said?

9 A. No.

10 Q. Okay.

11 MR. SLADE: I'm going to back it up a little  
12 bit.

13 (Whereupon, Plaintiff's Exhibit 1 continued  
14 to play)

15 MR. SLADE: Okay. I'm going to go ahead and  
16 pause it there.

17 BY MR. SLADE:

18 Q. Did you create a report in association with doing  
19 this interview?

20 A. Yes, I did.

21 Q. And was it a reflection of what you heard while you  
22 were inside doing this interview?

23 A. Yes, it was.

24 Q. Would you please describe the extent to which she  
25 explained she was touched.

1 A. They were laying -- they were downstairs in the  
2 downstairs living room. There was an L-shaped couch.  
3 AH was on the long portion of the couch with her head to  
4 the end. She was on the short end of the leg with her  
5 head towards the middle of the L by AH's feet. There  
6 was a dog -- the pet dog came in.

7 Kevin Mentaberry was -- sat down in between AH and  
8 AP, started petting the pet dog. While he was petting  
9 the pet dog, his hand was also brushing her thigh. She  
10 was turned not facing him. He rubbed her stomach. She  
11 said he rubbed her stomach. She said she [sic] put his  
12 hands in her pants and touched her vagina.

13 Q. Was that under or over clothing?

14 A. It was under her clothing.

15 Q. And was this outside or inside?

16 A. Inside her clothing.

17 Q. Okay. And then what did she say happened after  
18 that?

19 A. That he inserted a finger into her vagina.

20 Q. Okay. And after that?

21 A. She said that she pulled his hands out of her pants.  
22 And about that time AH woke up, and they went into --  
23 Kevin left, and they went into AM's bedroom and locked  
24 the door.

25 Q. Okay. And once she reports going into, I believe



1 you said AM's room, does she report any additional  
2 contact between her and Kevin?

3 A. She said that Kevin came down and knocked on the  
4 door and that AM told him to go away. He was drunk.

5 Q. Okay. What happened after that?

6 A. The next morning, Mr. Mentaberry drove the two other  
7 girls home.

8 Q. Okay.

9 MR. SLADE: Okay, I'm going to go ahead and  
10 leave that at that, Your Honor. The audio does, of  
11 course, continue on, the testimony, and does provide  
12 additional detail, but given the audio challenges we're  
13 having, the State's going to go ahead and leave the  
14 exhibit at that for now.

15 BY MR. SLADE:

16 Q. Detective, when she described where she was when  
17 this occurred, where did you understand it to be?

18 A. At AM's house in the downstairs living room.

19 Q. And did you understand in what county and what state  
20 that occurred in?

21 A. That would be the City of Elko, the County of Elko.

22 Q. State of Nevada?

23 A. State of Nevada.

24 MR. SLADE: All right, Your Honor, at this  
25 time, I have no further questions for the witness.

1 THE COURT: All right, Mr. Slade.

2 Mr. Woodbury, cross-examination.

3 MR. WOODBURY: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. WOODBURY:

6 Q. Detective Marshowsky, have you had the interview  
7 that you had with AP transcribed?

8 A. I have not.

9 Q. Okay. And that would be the usual, is it wouldn't  
10 be transcribed?

11 A. Yes. We normally don't transcribe them.

12 Q. And then you had an opportunity to re-listen to the  
13 interview before court today?

14 A. Yes.

15 Q. When did you do that?

16 A. Two days ago.

17 Q. Okay. And this training and experience that you  
18 have with respect to interviewing children, when did you  
19 receive that training?

20 A. In 2016.

21 Q. Okay. And over what period of time did you receive  
22 it?

23 A. I went to a basic interview class in 2014. It was  
24 40 hours in Huntsville, Alabama. Later, in 2016, I went  
25 to a 12-hour course in Salt Lake City on forensic

1 interviewing of children. In 2017, I went to a 40-hour  
2 symposium in Huntsville, Alabama.

3 Q. On what subject?

4 A. Forensic interviewing of children.

5 Q. Okay. And when the prosecution asks you various  
6 questions about the characteristics of children during  
7 interviews and that, you have been specifically, I  
8 suppose, told that you can't comment on the truthfulness  
9 of the child?

10 A. That's correct.

11 Q. So the comments you're making about that are there  
12 certain characteristics of a child that take place when  
13 the subject matter changes, but you're not making any  
14 claim as to truthfulness, right?

15 A. That's correct.

16 Q. All right. And it is a typical and usual pattern,  
17 after you conduct these interviews, that either you or  
18 some other detective follows up on the questions and the  
19 answers that are suggested?

20 A. That's correct. We're supposed to corroborate what  
21 was said during the interview.

22 Q. All right. And, I guess, during the -- all the  
23 training you've had with interviewing, there tends to be  
24 a -- the trainers talk to you about the words that you  
25 are used and the meaning and how meanings change

1 depending on the strength of the word and so on like  
2 that?

3 A. Can --

4 Q. That didn't make any sense to you, right?

5 A. No.

6 Q. All right. Well, one of the things you just  
7 testified to was that AP told you in the interview that  
8 the Defendant came down after all of this happened and  
9 knocked on the door, right?

10 A. That's correct.

11 Q. All right. But that's bologna because the real word  
12 is -- she said he came down and banged on the door,  
13 right?

14 A. I don't recall the exact verbiage.

15 Q. Well, maybe you could re-listen to that again, but  
16 that kind of tends to explain some things, right, if he  
17 only knocked on the door and didn't bang on the door?

18 A. I don't know.

19 Q. Well, did you watch AH's interview?

20 A. No.

21 Q. And AM's interview was lost, right?

22 A. Josh Morrell did all the follow-up. My only  
23 involvement in this case is this interview.

24 Q. Yeah. And part of the -- part of the problem is  
25 there's no backup for the proposition that the Defendant

1 came down and banged on the door or even knocked on it,  
2 right?

3 A. I'm sorry, Mr. Woodbury, I'm not understanding.

4 Q. Well, is there any corroboration besides AP saying  
5 that?

6 A. I just did the interview. I didn't corroborate  
7 anything.

8 Q. Your investigative talents were used only for the  
9 interview. You did not do the follow-up work.

10 A. That's correct.

11 Q. Oh, okay. And then was there a conversation between  
12 you and the other detectives as to what kind of  
13 follow-up needed to be done?

14 A. Detective Morrell watched the interview through --  
15 during this process in the observation room. We're all  
16 trained that we need to corroborate what was said during  
17 the interviews for the children. So I don't  
18 specifically recall speaking with Mr. Morrell on what  
19 had to be done, but he knows that -- he watched the  
20 interview and he's been trained on what he's supposed to  
21 do.

22 Q. Okay.

23 MR. SLADE: Your Honor, could we pause for a  
24 moment just to sort out the sound? Just don't want to  
25 mess up the audio recording if you don't mind. Oh, is

1 that -- that's the AC. I thought it was a speaker.

2 THE COURT: No.

3 MR. SLADE: Thank you, sorry for the  
4 interruption.

5 THE COURT: Go ahead, Mr. Woodbury.

6 MR. SLADE: Thank you.

7 BY MR. WOODBURY:

8 Q. Okay. Another area where you talked about what she  
9 had said, when you summed it up, you said that during  
10 the time that the Defendant was petting his dog, he was  
11 quote, rubbing her thigh?

12 A. Yes.

13 Q. Yeah. Well, the real word wasn't rubbing. It was  
14 essentially that he was inadvertently -- appeared to be  
15 inadvertently touching her thigh while he was petting  
16 the dog?

17 A. Okay.

18 Q. Isn't that what the -- isn't that what the interview  
19 says?

20 A. I don't recall, but we just listened to it, so I'm  
21 assuming that you're correct, yes.

22 Q. All right. And she told you, did she not, that she  
23 didn't think he was intentionally doing it?

24 A. Yeah, I believe she did say she didn't think it was  
25 intentional.

1 Q. And it appeared that he was just petting the dog?

2 A. Yes.

3 Q. And she told you, quote, weirded her out, but she  
4 didn't think much about it?

5 A. I assume that's correct, yes.

6 Q. Okay. Is there a particular reason why you didn't  
7 -- you weren't involved in the follow-up detective work?

8 A. The case was assigned to Detective Morrell.

9 Q. Oh. And it just turns out that you have more  
10 experience and more training with respect to  
11 interviewing kids than Detective Morrell?

12 A. That's correct.

13 Q. Oh, okay. How was the interview arranged?

14 A. All I know is Detective Morrell asked when I was  
15 available, and I told him, and he set up the interview.  
16 I have no idea how it was arranged.

17 Q. Okay. And were you informed of the nature of the  
18 interview?

19 A. The basic -- basic, yeah.

20 Q. All right. And the basics were that, essentially,  
21 Mr. Mentaberry had sexually assaulted the child?

22 A. No, that the child went to a party and that she's  
23 claiming something had happened at a party on New Year's  
24 Eve.

25 Q. Okay. And are there -- is there a standard



1 detective follow up procedure that is supposed to take  
2 place when something like this happens?

3 A. Yes.

4 Q. All right. Well, one of the things that the child  
5 said in the interview -- did she tell you that  
6 Mr. Mentaberry had drunk two bottles of Vodka?

7 A. She told me that he was intoxicated and that he was  
8 --

9 Q. Didn't she tell you about two bottles of Vodka?

10 MR. SLADE: Objection, Your Honor, facts not  
11 in evidence.

12 MR. WOODBURY: Well, he's got himself a  
13 videotape there.

14 MR. SLADE: Your Honor, Defense counsel keeps  
15 saying something, and apparently, with the first two  
16 questions, knew that wasn't what the record was  
17 reflecting. And, again, this is clearly not facts in  
18 evidence. If it's in evidence, that's something you can  
19 ask about, but just throwing things out there, that's  
20 objectionable, Your Honor. The State asks that he be  
21 required not to -- to withdraw that question.

22 THE COURT: Mr. Woodbury.

23 MR. WOODBURY: I'm asking a question about  
24 what she told him in this interview. If it's not in the  
25 file, then okay, all he has to do is say it's not in the

1 file.

2 MR. SLADE: Your Honor, in that case, the  
3 objection is asked and answered.

4 THE COURT: It has been asked and answered.

5 MR. WOODBURY: Okay.

6 BY MR. WOODBURY:

7 Q. She told you he was drunk and passed out on the  
8 couch?

9 A. That's correct.

10 Q. How did -- did you ask her how she came to know he  
11 was passed out?

12 A. I don't recall.

13 Q. Okay. Should you have asked her about that?

14 MR. SLADE: Your Honor, I'm going to object  
15 to that being argumentative.

16 THE COURT: Mr. Woodbury.

17 MR. WOODBURY: It's not argumentative. It's  
18 a question of whether or not he's trained and knows his  
19 business and whether or not he's going to -- should be  
20 asking those kinds of questions.

21 THE COURT: Mr. Slade.

22 MR. SLADE: Your Honor, clearly, the tenor of  
23 the question was not as to whether or not this officer  
24 was doing his investigation, but rather to pose a  
25 question, which implies something of an argument as to

1 what the officer should or should not have done. Your  
2 Honor, that's an argumentative question. While the  
3 Defense can ask about the extent of his training,  
4 following the training, going one step further, to start  
5 throwing in these types of questions, goes into the  
6 realm of just being argumentative, Your Honor.

7 THE COURT: Sustained. Go ahead,  
8 Mr. Woodbury.

9 MR. WOODBURY: It is sustained?

10 THE COURT: Sustained.

11 MR. WOODBURY: I'm sorry, Judge, I'm going to  
12 have to ask for a continuance. I want to go to the  
13 District Court with a writ of habeas corpus. This is  
14 bizarre.

15 THE COURT: Mr. Slade.

16 MR. SLADE: Well, Your Honor, I'm a little  
17 bit confused by this, but if the Defense wishes to  
18 exercise the right to do a writ, that's up to Defense  
19 counsel to do. It does come with a waiver of the speedy  
20 trial right. Perhaps a break to consider this before --  
21 a full dedication might be something that the Defense  
22 might be given some time to consider.

23 THE COURT: Mr. Woodbury.

24 MR. WOODBURY: I didn't understand a word he  
25 said. What I want to do is he is entitled --

1 Mr. Mentaberry is entitled to a preliminary examination.  
2 He's entitled to cross-examine witnesses. He is not  
3 bound by the fact that the prosecution thinks a question  
4 is argumentative and the Court sustains it.

5 I cannot properly examine this witness based  
6 on the sustained objection to that question. I need to  
7 go to the District Court to find out so that we can have  
8 a ruling on whether or not I can ask him hard questions  
9 that, from my point of view, are not argumentative by  
10 any stretch of the imagination.

11 THE COURT: And the speedy trial?

12 Mr. Mentaberry, you --

13 MR. WOODBURY: That would be a problem. That  
14 creates all kinds of problems --

15 MR. SLADE: Your Honor --

16 MR. WOODBURY: -- but he's entitled to a fair  
17 preliminary examination.

18 MR. SLADE: Your Honor, if I may, the State  
19 was just getting at perhaps restating the question in a  
20 different way, not necessarily stopping  
21 cross-examination as to whether or not the officer was  
22 applying his training and experience in this matter. It  
23 was the tenor that -- the way in which the question was  
24 posed, not the content that the State was objecting to.

25 THE COURT: So Mr. Woodbury, are you going to

1 waive the speedy trial, or are you going to --

2 MR. WOODBURY: I am not waiving anything. I  
3 want to continuance on this so I can go to the District  
4 Court and get a straightforward ruling on my ability to  
5 ask questions. Mr. Slade has now essentially withdrawn  
6 his original objection, as I understand it. I want to  
7 be able to ask him questions about what he asked her,  
8 what she said, and whether he followed up on it, and why  
9 he didn't, if he didn't.

10 THE COURT: Okay. Then we will go ahead and  
11 continue this out. How long do you need?

12 MR. WOODBURY: I don't know. The time it  
13 takes me to write the writ and get a determination from  
14 upstairs.

15 THE COURT: So this will go into District  
16 Court II? Does it go by the case -- still everything  
17 goes by the case in order to go up there. So we can  
18 continue this out for -- I'm not sure, Mr. Woodbury.  
19 Would you like to -- your office set it with the  
20 calendaring clerk?

21 MR. WOODBURY: We would have to do something  
22 along that line, yes, Your Honor.

23 THE COURT: Because we have to re-subpoena  
24 all our witnesses.

25 MR. SLADE: Your Honor, would it be possible

1 to just take a brief recess? I'm not in any way  
2 objecting to what Defense counsel would like to do. If  
3 we could just get a moment to just kind of gather kind  
4 of a game plan on that and then bring it back on the  
5 record?

6 THE COURT: That will be good. We'll be back  
7 at 10:00 o'clock.

8 (Whereupon, court recessed)

9 THE COURT: You can be seated. Court will be  
10 back in session.

11 So during the break, Mr. Slade and  
12 Mr. Woodbury did have a conversation. We did go back  
13 into chambers and discussed a little more in detail, and  
14 we have come to an agreement that a continuance is being  
15 withdrawn by Mr. Woodbury.

16 MR. WOODBURY: That's correct.

17 THE COURT: Mr. Woodbury and Mr. Slade have  
18 agreed to work things out a little bit easier, lighter  
19 with one another. So we'll continue with questioning.  
20 Mr. Marshowsky, if you'll come have a seat.

21 All right, Mr. Woodbury, you're still on  
22 cross. Go ahead.

23 MR. WOODBURY: Thank you, Your Honor.

24 BY MR. WOODBURY:

25 Q. Detective Marshowsky, do you recall this person

1 telling you that the Defendant was drunk like when I got  
2 there and he was passed out on the couch upstairs?

3 A. Yes, I do.

4 Q. All right. Did you do any follow-up with respect to  
5 the truth or falsity of that statement?

6 A. That would not be my job.

7 Q. Okay. And there is no procedure that exists --  
8 well, maybe that's wrong. You have conversations  
9 between you and the lead detective on the case, right?

10 A. Yes.

11 Q. And that would be following the interview and maybe  
12 at other times as well?

13 A. Yeah.

14 Q. Okay. And did you then discuss with the lead  
15 detective whether or not there was a couch up there and  
16 questions about him being passed out?

17 A. No.

18 Q. Okay. And then there came a time, did there not,  
19 when AP told you that the entire Mentaberry family was  
20 -- were alcoholics?

21 A. That's correct.

22 Q. All right. And including her mother?

23 A. That's correct.

24 Q. Or excuse me, excluding Mr. Mentaberry's former  
25 wife. Did your training and experience tell you why she



1 would add that to the conversation?

2 A. No.

3 Q. Is there anything that -- did you all follow-up to  
4 see if there was -- let me ask it another way. Did you  
5 and the lead detective discuss whether or not you needed  
6 to follow up on that after the interview with AP to see  
7 if she was somehow angry, very angry with the entire  
8 Mentaberry family?

9 A. I didn't have any discussions in any regards to  
10 Detective Morrell about that.

11 Q. Okay. And there came a time, did there not, in the  
12 interview when AP told you that she had relayed her  
13 accusations to Mr. Mentaberry's daughter, AM, and the  
14 accusations to AH, and that they had both claimed she  
15 was lying about it?

16 A. I recall her saying that AM, the daughter, said she  
17 was lying. I don't remember the other ones. I  
18 apologize, I don't remember what she said about the  
19 other one.

20 Q. And in any event, you didn't have a conversation  
21 with the lead detective about whether or not that was  
22 true?

23 A. I did not.

24 Q. Okay. And you were told by AP, were you not, that  
25 she had consumed some alcohol?

1 A. That's correct.

2 Q. How much was that?

3 A. She said she had a glass of Malibu Rum and orange  
4 juice.

5 Q. All right. And did -- was there any follow-up  
6 interview questions concerning how she'd come by that  
7 alcohol?

8 A. There was not.

9 Q. Was there any follow-up interview question  
10 concerning whether her claim that she'd only had one  
11 drink was -- that the other two girls down there, AM and  
12 AH had had more to drink than that?

13 A. Not on my part, Mr. Woodbury. I don't know what  
14 Detective Morrell did.

15 Q. Okay. And you don't recall discussing it with  
16 Detective Morrell?

17 A. No.

18 Q. Okay. And then there was an allegation that AM's  
19 older sister, Maizie (phonetic), was smoking marijuana?

20 A. That's correct.

21 Q. Okay. And did you do any follow-up questions on  
22 that?

23 A. I did not.

24 Q. Okay. And did you ask any questions -- or let me  
25 ask it this way. There was an assertion by AP that

1 Maizie was downstairs with them all when this all  
2 occurred?

3 A. That's correct.

4 Q. And did you ask her where Maizie was and why she  
5 wouldn't have seen what happened?

6 A. I did not.

7 Q. To your knowledge, has there been any follow-up done  
8 on that particular question?

9 A. I don't know what Detective Morrell has done on the  
10 case.

11 Q. Okay. I think I may have asked this, but you didn't  
12 -- you didn't ask where the alcohol had come from?

13 A. I did not ask.

14 Q. She, at some point then -- AP, at some point in the  
15 interview, indicated what she was wearing, correct?

16 A. That's correct.

17 Q. And it was jeans and a t-shirt?

18 A. That's correct.

19 Q. Okay. And you asked some questions about whether or  
20 not she could identify the jeans or show them to the  
21 police, to law enforcement, the t-shirt?

22 A. Yes.

23 Q. Okay. And to your knowledge, has law enforcement  
24 ever followed up so that everybody knows what kind of  
25 jeans she was wearing and what kind of t-shirt?

1 A. To my knowledge, no.

2 Q. Okay. Did she describe the couch that the people  
3 were being occupied -- or were occupied?

4 A. She did.

5 Q. Okay. Did she also say when Mr. Mentaberry came  
6 down and first, quote, sat on the ground?

7 A. Yes.

8 Q. And did you ask any questions about where on the  
9 ground he sat?

10 A. I did not.

11 Q. Was any follow-up done by you or, to your knowledge,  
12 by law enforcement regarding whether there was any  
13 alcohol that was consistently downstairs in a container  
14 of --

15 A. Mr. Woodbury, all I did was interview the suspect.  
16 I did not do any follow-up to corroborate anything that  
17 she had said.

18 Q. Okay, all right. If I understand her interview  
19 statement and actually your testimony, AP was sitting on  
20 the small L or small part of the L that the couch was  
21 arranged in?

22 A. That's the way I understood it, yes.

23 Q. And did you understand whether or not the touching  
24 of her vagina had occurred before or after she went to  
25 the bathroom to get her contacts out?

1 A. I believed it was after. She said when she came  
2 back.

3 Q. And she also said she took off her makeup?

4 A. That's correct.

5 Q. Okay. Is that -- in your training and experience,  
6 is there anything about the -- that arrangement that  
7 should be of concern?

8 A. No.

9 Q. Did you learn in the interview that there had been a  
10 significant breakdown in the relationship after all of  
11 this between AP and AM and AH?

12 A. Briefly. It was -- I believe that they weren't  
13 talking anymore, yes.

14 Q. Okay.

15 A. We didn't go into detail.

16 Q. All right. This is kind of a follow-up to a  
17 previous question. She informed you that they had said  
18 -- claimed she was -- AP was lying about that?

19 A. Her friends?

20 Q. Yes.

21 A. I believe so, yes.

22 Q. And did you follow up and ask AP whether or not  
23 there was any delineation of why what she was saying was  
24 a lie?

25 A. I didn't ask.

1 Q. AP told you that -- or did she tell you that she was  
2 pretending to be asleep?

3 A. Yes.

4 Q. Okay. And did you ask any question -- and that  
5 would be on the couch?

6 A. That's correct.

7 Q. And did you ask any follow-up questions about why  
8 she didn't go in AM's room and go to bed?

9 A. I did not.

10 Q. And so far as you know, did anybody else?

11 A. Mr. Woodbury, all I did was interview the suspect.  
12 I didn't do any follow-up. I don't know what anybody  
13 did on anything else.

14 Q. Okay. And the -- and that would be the usual  
15 procedure is that you would simply interview the witness  
16 and then not ever look at the case again unless --

17 A. That's the standard -- the Center's standards, yes.

18 Q. Okay. And would that be part of your training and  
19 experience that there is no particular value to a person  
20 who's trained to interview like you are to go back and  
21 look to see what the actual outcome and the actual --  
22 well, what the actual outcome and the truth and falsity  
23 of everything the witness said? That wouldn't be --  
24 wouldn't -- maybe I can rephrase that.

25 There is no value, as far as you know, in going back

1 and seeing what -- how -- what the witness told you  
2 stacks up against what the truth ultimately is in your  
3 interviewing technique?

4 A. Well, I'll try to answer your question,  
5 Mr. Woodbury. I'm hoping this answers your question.  
6 I'm not sure it will. Based on our training, we're not  
7 supposed to believe or not believe the juvenile victim  
8 when we interview them. We're supposed to interview  
9 them. It's the follow-up investigation that will  
10 disprove or prove whether the person is telling the  
11 truth.

12 Q. Okay.

13 A. So as a forensic interviewer, I don't want to taint  
14 and start getting feelings whether I believe or not  
15 believe a person. So I do my interview, and it's up for  
16 law enforcement to corroborate or not corroborate what  
17 was said.

18 Q. Okay. And so when you told the -- AP at the  
19 beginning of the interview that you believed everything  
20 she said, that was just part of the interview technique.  
21 That didn't -- that wasn't a personal feeling on your  
22 part?

23 A. Yes.

24 Q. AP, in the interview, at one point, I'll suggest --  
25 maybe I'll ask it. Did AP in the interview suggest at



1 one point that Mr. Mentaberry had inserted a number of  
2 fingers into her vagina and at one point suggested it  
3 was a single finger?

4 A. I don't recall.

5 Q. Okay. Did Ms. Mentaberry -- you never looked at  
6 another document in the case other than your interview.  
7 Would that -- maybe that's too broad.

8 If Ms. Mentaberry [sic] significantly changed any  
9 portion of the activities that she outlined, you  
10 wouldn't -- to some other officer, you would be unaware  
11 of that?

12 A. Yes, I --

13 MR. SLADE: Your Honor, I apologize. If I  
14 could just have a little clarification. Are we talking  
15 about Ms. Mentaberry as in --

16 MR. WOODBURY: Oh, I mean AP.

17 MR. SLADE: AP. Thank you, Your Honor, just  
18 for the clarification on that.

19 THE COURT: Thank you, Mr. Slade.

20 Go ahead.

21 BY MR. WOODBURY:

22 Q. If she had significantly changed any of the  
23 behaviors or the activities that took place in the  
24 second or third description, you wouldn't necessarily  
25 know about that?

1 A. No.

2 Q. Okay. Are you aware of whether or not AP told other  
3 people that the touching had simply consisted of  
4 Mr. Mentaberry touching her stomach?

5 A. I've never heard -- I am unaware.

6 Q. Okay. Do you recall AP telling you in the interview  
7 that Mr. Mentaberry had a friend that was with him when  
8 she arrived?

9 A. I recall, yes.

10 Q. All right. Did you follow up and get his name?

11 A. I did not.

12 Q. Okay. And as far as you know, did law enforcement  
13 -- some other person in law enforcement --

14 A. I have no idea.

15 Q. Okay. I'll show you what's been marked as Defense  
16 Exhibit A.

17 Are you familiar with that document?

18 A. Yes.

19 Q. What is the document?

20 A. This is the couch in the living room in  
21 Mr. Mentaberry's residence.

22 Q. Okay. And how did you -- how did that document get  
23 prepared, the drawings on it?

24 A. AP drew them for me.

25 Q. Okay. During the interview?

1 A. Correct.

2 Q. Okay. And there -- the locations of people don't  
3 appear to be clearly marked. Did she talk about what  
4 she was -- who she was talking about when she drew  
5 certain portions?

6 A. Yes, she did.

7 Q. And this all concerns the events of the -- New  
8 Year's Eve and into early New Year's morning on  
9 2017/2018, right?

10 A. Okay.

11 MR. WOODBURY: We'd like to have Defense A  
12 admitted into evidence.

13 THE COURT: Any objection, Mr. Slade?

14 MR. SLADE: No, Your Honor.

15 THE COURT: So Defense A -- Defense Exhibit A  
16 will be admitted with no objection.

17 (Whereupon, Defendant's Exhibit A admitted)

18 BY MR. WOODBURY:

19 Q. Can you, on that drawing, indicate what the various  
20 configurations on there mean?

21 A. This is the long end of the couch. This would be  
22 AH, and this would be AP. This is the television. This  
23 is a window. There's a hallway going down here. This  
24 is supposed to be a bedroom. These are the stairs  
25 coming down into the living room.

1 Q. Okay. And when you've indicated the stairs coming  
2 down into the living room, it's on the top right of the  
3 document, and it's indicated by two parallel lines,  
4 roughly parallel lines?

5 A. Yes.

6 Q. Okay. And the figure depicting AH has a line going  
7 out from it, and it's pointed down the couch. Is that  
8 the direction of AH's feet as you understood it?

9 A. Yeah, the circle is supposed to be the heads.

10 Q. Okay. And to the right end of the couch on the  
11 document, there's another circle with a line going down.  
12 Who does that indicate?

13 A. That's supposed to be AP.

14 Q. Okay. And then next to AP, to the left of her on  
15 the document, appears to be a zero and roughly an eight.  
16 Do you know what that is?

17 A. I believe one was supposed to be the dog, and one  
18 was supposed to be Mr. Mentaberry.

19 Q. All right. Do you know which one was which?

20 A. I do not.

21 Q. All right. And there's no indication on either of  
22 those figures of the direction of the feet?

23 A. I'm sorry, Mr. Woodbury, can you repeat --

24 Q. There's no indication on either of the two figures,  
25 the dog or Mentaberry, which direction the feet are

1 facing?

2 A. No -- the feet of these people, or the feet of these  
3 people?

4 Q. Just those two, Mr. --

5 A. No. No, there's no feet.

6 Q. Okay. All right, thank you.

7 A. As far as my understanding of the drawing. I didn't  
8 draw it.

9 Q. You were present though.

10 Did you understand from AP that she was turned in  
11 some direction while she was lying on the couch?

12 A. Yes, I did.

13 Q. And what direction was she --

14 A. She would have been laying on -- well, a side with  
15 her -- her head facing away from the TV. I believe  
16 that's what we talked about in the interview.

17 Q. All right. And did you find out -- do you recall in  
18 the interview whether she said the TV was on or off?

19 A. We didn't discuss whether it was on or off.

20 Q. Okay. It was at a time -- did she describe for you,  
21 as you recall, how it came to be what -- let me start  
22 another way.

23 There was another girl on the couch that you've  
24 described as AH. And -- well, you didn't. She did.  
25 And AH was described by AP to have been asleep at some

1 point?

2 A. Yes.

3 Q. Okay. And did she describe -- did AP describe how  
4 it came to be that AH was awakened?

5 A. When she pulled her hand -- Mr. Mentaberry's hand  
6 out of her pants.

7 Q. And did she utter a word consistent with pulling her  
8 hand -- his hand out of her pants?

9 A. I don't recall. I think she -- if memory serves me  
10 correct, I think she said stop.

11 Q. Okay. And was there a -- did AP indicate to you, or  
12 did you ask, whether or not she had a cell phone?

13 A. I don't recall.

14 Q. Okay. And in any event, you would not recall  
15 whether or not any attempts were made by law enforcement  
16 to get -- to come into possession of a cell phone if she  
17 owned one?

18 A. I don't know. I don't believe so. I'm unaware of  
19 one if one was.

20 Q. Okay. Did AP indicate to you that there came a  
21 point in time when Mr. Mentaberry moved the dog?

22 A. Yes.

23 Q. Where did he move the dog to as you understood her  
24 to say?

25 A. I don't recall.

1 Q. Okay. Do you recall Ms. Mentaberry -- or excuse me,  
2 AP telling you that she did not notice the dog had been  
3 moved until he -- Mr. Mentaberry touched her stomach?

4 A. I don't recall, Mr. Woodbury.

5 Q. And do you recall whether she described being  
6 touched any place else other than the stomach and the  
7 vagina?

8 A. Towards the end of the interview, she said her  
9 breasts were touched.

10 Q. Okay. And did she describe for you how he had  
11 touched her breasts? That's a dumb question. Let me  
12 try again.

13 Did she describe for you the process that he had  
14 gone through to touch her breasts?

15 A. I don't recall if we discussed the process or not.  
16 I believe she told me it was under her shirt if that's  
17 what you're asking.

18 Q. Yes, uh-huh. And it actually was under her bra as  
19 well?

20 A. I believe so, yes.

21 Q. Okay. Do you recall asking the location during all  
22 of this of AM?

23 A. Yes.

24 Q. And what was --

25 A. She was in her bedroom.



1 Q. Okay. And do you recall whether or not you asked  
2 whether the door to the bedroom was closed or open?

3 A. I don't believe I asked about the door, but I did  
4 ask if AM could see her or hear her.

5 Q. Okay.

6 MR. WOODBURY: Thank you, I have nothing  
7 further.

8 THE COURT: Thank you, Mr. Woodbury.

9 Mr. Slade, redirect.

10 MR. SLADE: Yes, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. SLADE:

13 Q. Detective Marshowsky, if I understand you correctly,  
14 when you testified that -- you were asked some questions  
15 about the extent of follow-up and the type of  
16 corroborating evidence that was gathered or not. When  
17 you're saying I have no idea, that was because following  
18 -- if I understood you correctly, following the  
19 standards for conducting these types of interviews, it's  
20 your job to stay out of that part of it?

21 A. That's correct.

22 Q. Okay. You were also asked about different ways of  
23 describing an action regarding knocking versus banging  
24 on a door.

25 A. That's correct.

1 Q. In your experience in interviewing minors, how  
2 consistently do you see them able to use the same type  
3 of adjective when they are asked or describe something  
4 like that?

5 A. Each time a child will tell the story, it will be  
6 different adjectives, different chain of events. That's  
7 why it's best to only interview a child once. You know,  
8 they'll tell them out of order depending on who they're  
9 talking to. You know, it's best if they're only  
10 interviewed once.

11 Q. And in your training where you explained -- or have  
12 you been trained on whether or not that is at issue when  
13 it comes to investigations?

14 A. No. It's not an issue that they use different  
15 adjectives to describe.

16 MR. SLADE: I have no further questions for  
17 the witness at this time, Your Honor.

18 THE COURT: Thank you. Mr. Woodbury, do you  
19 have any follow-up on that?

20 MR. WOODBURY: I don't.

21 THE COURT: Would you like Mr. Marshowsky to  
22 be retained, or can he be excused?

23 MR. WOODBURY: He can be retained, but if  
24 he'd just give us his phone number, that would be  
25 sufficient.

1 MR. SLADE: That's more than sufficient for  
2 the State as well, Your Honor.

3 THE COURT: All right, Detective Marshowsky,  
4 if you can give us your phone number, please, or would  
5 you like to write it down?

6 MR. MARSHOWSKY: Your Honor, I would like to  
7 just stay if that would be all right.

8 THE COURT: That's fine by me. If you want  
9 to stay, that's good. Will you hand me those earphones,  
10 please. Thank you.

11 Mr. Slade, your next witness.

12 MR. SLADE: The State's -- oh, and before I  
13 call the next witness, if I can, just close the screen  
14 here on the display.

15 The State's next witness is Shawna Eklund.

16 THE COURT: Shawna Eklund.

17 Ms. Eklund, will you raise your right hand to  
18 be sworn. Do you swear the testimony and information  
19 you're going to provide to the Court today will be the  
20 truth, the whole truth, and nothing but the truth, so  
21 help you God?

22 MS. EKLUND: Yes, I do.

23 THE COURT: All right. Have a seat. State  
24 your name and spell your name for the record, please.

25 THE WITNESS: Shawna Eklund; S-H-A-W-N-A,

1 E-K-L-U-N-D.

2 THE COURT: Mr. Slade, go ahead.

3 MR. SLADE: Thank you.

4 SHAWNA EKLUND

5 (Sworn as a witness, testified as follows)

6 DIRECT EXAMINATION

7 BY MR. SLADE:

8 Q. Ms. Eklund, I'd like to draw your attention back to  
9 the New Year of this year, December 30th, 2017,  
10 January 1st, 2018.

11 Do you have children?

12 A. Yes.

13 Q. What are their names?

14 A. Aaron Pederson and AP.

15 Q. Do you recall what AP did on that Eve, on New Year's  
16 Eve?

17 A. She went to her friend's. I took her to her friend,  
18 AM's, in the evening.

19 Q. And just for purposes of identification, is AP also  
20 a witness in this case?

21 A. Yes.

22 Q. How old was she on New Year's Eve?

23 A. Fourteen.

24 MR. SLADE: Your Honor, I have no further  
25 questions for the witness at this time.

1 THE COURT: Thank you. Mr. Woodbury, do you  
2 have any questions on the cross-exam?

3 MR. WOODBURY: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. WOODBURY:

6 Q. Ms. Eklund, you were the person who took AP to a  
7 residence on New Year's night -- evening?

8 A. Yes.

9 Q. Do you know what time that was?

10 A. I don't remember, probably 7:00 maybe, 6:00 or 7:00.  
11 I'm not -- I can't remember the time.

12 Q. Okay. Do you remember where it was that you took  
13 her?

14 A. I can -- I know where it is, but I can't give you  
15 the street address.

16 Q. And did she have to direct you where to take her, or  
17 did you already know?

18 A. She did. She got the address from AM and directed  
19 me.

20 Q. I'm sorry, I didn't understand.

21 A. I'm sorry, she got the address from AM, and she  
22 directed me.

23 Q. And did she do that -- get the address via cell  
24 phone?

25 A. Yes.

1 Q. Okay. And did she have the cell phone with her when  
2 she left your car that night?

3 A. Yes.

4 Q. Do you recall how she was dressed?

5 A. No.

6 Q. Was there anything unusual about her behavior on the  
7 ride to AM's house?

8 A. No.

9 Q. And your understanding that -- was she was going to  
10 stay there all night?

11 A. Yes.

12 MR. WOODBURY: I have nothing further.

13 THE COURT: Mr. Slade, any redirect?

14 MR. SLADE: Nothing on that, Your Honor.

15 THE COURT: Would you like Ms. Eklund to be  
16 held, or can she be excused?

17 MR. WOODBURY: I would like her retained.

18 THE COURT: Okay. You're being retained. So  
19 you still have to wait outside, and you can't discuss  
20 your testimony about the case.

21 MS. EKLUND: Okay.

22 THE COURT: And you're good to go.

23 Mr. Slade, your next witness.

24 MR. SLADE: The State's next witness is AH.

25 THE COURT: Right up here, please. Will you



1 raise your right hand to be sworn. Do you swear the  
2 testimony you're going to provide to the Court today  
3 will be the truth, the whole truth, and nothing but the  
4 truth, so help you God?

5 AH: Yes.

6 THE COURT: All right, have a seat. I need  
7 you to state your name and spell your name for the  
8 record, okay.

9 THE WITNESS: Okay. My name is AH [name  
10 stated and spelled, initials inserted].

11 THE COURT: Mr. Slade, go ahead.

12 AH

13 (Sworn as a witness, testified as follows)

14 DIRECT EXAMINATION

15 BY MR. SLADE:

16 Q. AH, how old are you?

17 A. I'm 15 years old.

18 Q. Where do you live?

19 A. I live in Elko, Nevada.

20 Q. How long have you lived here?

21 A. My whole life.

22 Q. I'd like to direct your attention back to New Year's  
23 Eve. Where were you that night?

24 A. I was at my friend AM's house.

25 MR. WOODBURY: I wonder if you could ask her



1 to speak up a little bit, Judge.

2 THE WITNESS: Oh, I'm sorry.

3 THE COURT: I will. Mr. Woodbury, his  
4 hearing is getting a little faded. If you'd speak up,  
5 please.

6 THE WITNESS: Oh, okay, sorry.

7 BY MR. SLADE:

8 Q. Where were you that night?

9 A. I was at AM's house -- well, my friend's house.

10 Q. All right. And this is going to sound a little  
11 ridiculous, but what county and what state was that in?

12 A. It was in Elko, Nevada.

13 Q. Okay. I'd like you to walk me through that night,  
14 and we'll just start with -- let's start at the point  
15 where -- well, I'm not going to pinpoint you. Can you  
16 describe for us what was going on that night.

17 A. We were just celebrating New Year's, I guess you  
18 could say. I was just hanging out with my friends, and  
19 we were just doing stupid teenager stuff, I guess you  
20 could say.

21 Q. Who was there with you?

22 A. AM, my friend, Angela Tiner (phonetic), and her  
23 little sister, Chantel (phonetic), and my friend, Josh  
24 Salazar (phonetic), and AM's big sister, and one of AM's  
25 friend's -- I mean, AM's friend's sister's -- wait,

1    okay, I'm sorry.  It was one of AM's sister's friends  
2    was there as well, and yeah.

3    Q.    Okay.  And that was -- I realize we're asking you to  
4    go back a ways.

5    A.    Uh-huh.

6    Q.    And parties we usually don't have our clocks on us,  
7    but do you remember roughly what type of -- what part of  
8    the evening you were at at that point or day?

9    A.    It was about 5:00 o'clock when I showed up at their  
10   house, p.m.

11   Q.    Okay.  And how did the evening progress?

12   A.    Well, so I went downstairs -- well, I like got -- I  
13   went into the house, and then I just went downstairs,  
14   and I said hello to everybody.  And then they were like  
15   do you want to take a shot, and I was -- of alcohol, and  
16   I just -- I was like sure, why not.  So I did, and then  
17   the evening just started going with more and more  
18   drinking and more and more just hanging out with  
19   friends.

20   Q.    Okay.  You mentioned some particular friends being  
21   there.  Did those friends change, who was there or not,  
22   at any point in the evening?

23   A.    Yes.  Angela and her little sister left, I want to  
24   say around 8:00, but that's not very -- I'm not very  
25   sure about that.  And I think my friend Josh left around

1 like 10:00 or maybe 11:00. I'm not very sure about that  
2 as well.

3 Q. Okay. Roughly around that time?

4 A. Yeah.

5 Q. Okay. Did anybody else come?

6 A. AP did come around -- it was like 30 -- like 30  
7 minutes before Angela and her little sister left. So it  
8 was kind of like 7:30, 8:00 o'clock-ish.

9 Q. And what -- how did the party progress at that  
10 point? You had some friends leave it sounds like.

11 A. Yeah.

12 Q. AP -- you refer to her as AP?

13 A. Yes, that's what I --

14 Q. And it sounds like AP came. What did you guys do  
15 after that?

16 A. Well, after that, I think I had a couple more  
17 drinks. I'm not sure if anyone else did. I don't think  
18 -- all I know for sure is that I had some more drinks as  
19 like the night progressed, and it was just more of like  
20 hanging out. And then that was really it. We like just  
21 played like a board game or something, I think.

22 Q. Okay. Do you recall where you were at in the house  
23 when it was midnight?

24 A. I was in the downstairs like living area. I think  
25 that's what it was called.

1 Q. What's down there?

2 A. There's a couch, a TV. There's a -- there's like a  
3 foosball table, I think it's called. I'm not very sure.  
4 There's just like a little bar to like get some like  
5 soda or pop or anything, and then there is a laundry  
6 room, a bathroom, and then my friend AM's room and  
7 Maizie's room, my friend's older sister.

8 Q. Couches come in different shapes. How would you  
9 describe the shape of this couch?

10 A. It was like an L kind of shaped couch. Like there  
11 was a -- it was just an L, yeah.

12 Q. Okay. So that's where you were at when midnight  
13 came?

14 A. Uh-huh.

15 Q. Who was with you at that point?

16 A. I was with AM and AP just sitting in the living area  
17 when they -- well, I was asleep, but then they woke me  
18 up to be like Happy New Year's and all that stuff, so.

19 Q. All right. And what happened after that?

20 A. Well, Kevin came downstairs, I think, just because  
21 he was kind of -- like I would be bored if I was just  
22 sitting upstairs too. I think he was just coming  
23 downstairs to be like Happy New Year's too and then like  
24 --

25 Q. I got to ask you another dumb question.

1 A. Oh, I'm sorry.

2 Q. Who is Kevin?

3 A. AM's dad.

4 Q. Do you see him in court today?

5 A. Yes, I do.

6 Q. Will you identify for the Court an item of clothing  
7 he's wearing and where he is seated.

8 A. A red shirt and like on the left side of the room.

9 MR. SLADE: May the record reflect the  
10 witness has identified the Defendant.

11 THE COURT: The record will so show.

12 BY MR. SLADE:

13 Q. I interrupted you.

14 A. Oh, that's okay.

15 Q. You said he came down?

16 A. Yeah, he just came down to be like Happy New Year's  
17 too, and then he just sat on the couch, and then I fell  
18 back asleep around like -- I think it was 12:30 or 1:00.

19 Q. Okay. What were you guys doing down there before  
20 you fell asleep?

21 A. We were watching TV, and we were just talking.

22 Q. Okay.

23 MR. SLADE: Your Honor, if I may have  
24 Defense's Exhibit A.

25 BY MR. SLADE:

1 Q. AH, I'm showing you an exhibit that was entered into  
2 evidence --

3 A. Uh-huh.

4 Q. -- earlier. And I just need you to bear with me  
5 here. You mentioned the couch was L-shaped?

6 A. Yeah, like this.

7 Q. So is that similar to the L pattern we see in the  
8 middle of this exhibit?

9 A. Yeah.

10 Q. Okay. You mentioned you were sleeping?

11 A. Uh-huh.

12 Q. Was that on the couch?

13 A. Yeah, I was right here, like I was on the edge of  
14 the couch.

15 Q. Okay. So if I'm facing the paper, you're saying  
16 your head was on the far left side of the L?

17 A. Yes.

18 Q. And which way were your legs going?

19 A. The right side, like pointed towards like the curve  
20 or the edge of the couch.

21 Q. So they were staying on the couch --

22 A. Uh-huh.

23 Q. -- probably down towards -- okay.

24 You mentioned that the Defendant was there.

25 A. Uh-huh.



1 Q. Was he sitting on the couch, or where was he?

2 A. I think he was standing up for a little bit, but  
3 then he just sat down like kind of right there, I guess.

4 Q. So when you're saying "there," we pretend there's a  
5 blind person in the room. So when you're saying there,  
6 you're referring to --

7 A. Like --

8 Q. -- it would have been, I guess, to your right type  
9 of thing?

10 A. Yeah, yeah.

11 Q. Okay. But between you and where the couch switches  
12 direction?

13 A. Yeah.

14 Q. Okay. You mentioned that AP was there?

15 A. Yeah.

16 Q. Where was she?

17 A. She was on the edge. So she was like in the --  
18 where the couch starts to like part ways (indicating), I  
19 guess you could say, she was like in the middle of that.

20 Q. Okay. So where it juts out?

21 A. Yeah.

22 Q. Where it does the windy turn?

23 A. Yeah.

24 Q. Okay. So on this diagram, where would her head have  
25 been?



- 1 A. On the corner of the -- like in the corner kind of.
- 2 Q. So this general direction here?
- 3 A. Yeah, I --
- 4 Q. Towards the bottom of where the couch starts to
- 5 turn?
- 6 A. I think so. That's how it was.
- 7 Q. Take your time.
- 8 A. I'm pretty sure it was where the couch like jets out
- 9 was where her head was laying, but --
- 10 Q. And which way were her legs going?
- 11 A. Facing where the couch jets out.
- 12 Q. Okay. Did the Defendant have anyone or anything
- 13 with him?
- 14 A. His friend was there for a little bit, but he wasn't
- 15 -- his friend wasn't downstairs. His friend left before
- 16 he came downstairs.
- 17 Q. Okay. Did he have anyone or anything with him else?
- 18 A. I don't think he did. I don't remember. I think --
- 19 I remember him just coming downstairs. I don't remember
- 20 him holding anything.
- 21 Q. Okay.
- 22 A. Oh, wait, he had his dog, Raven, sorry. I just
- 23 remembered that.
- 24 Q. Okay. So he has a dog named Raven?
- 25 A. Yeah, was just with him.

1 Q. You motioned on this L where the Defendant was  
2 sitting.

3 A. Uh-huh.

4 Q. It looks like it was between you and AP; is that  
5 correct?

6 A. Uh-huh.

7 Q. And --

8 THE COURT: You have to say yes or no  
9 because we're recording the conversation.

10 THE WITNESS: Yes. Oh, sorry, my bad, yes.

11 MR. SLADE: Thank you.

12 BY MR. SLADE:

13 Q. Where was this dog?

14 A. She was kind of next to me. Like my legs were  
15 curled up, and she was -- I think she was curled up next  
16 to me. I remember a dog being there.

17 Q. Okay.

18 A. Yeah.

19 Q. And I've asked you about where your legs were and  
20 where AP's legs were. Do you recall, and I realize  
21 people move, but do you recall where the Defendant's  
22 legs were?

23 A. I think they were on the -- like laying on the  
24 coffee table. I can't remember. I'm really sorry.

25 Q. Okay. So you mentioned a coffee table, and based on

1 your recollection and looking at this L shape, which  
2 represents the couch --

3 A. Uh-huh.

4 Q. -- approximately where would the coffee table have  
5 been?

6 A. Like right -- like right -- right where the edge is  
7 kind of, but like spaced out. So like you can put your  
8 feet on it kind of.

9 Q. Okay. So I'm not going to mark the exhibit, but I'm  
10 just going to use a pen to point to where you're  
11 referring to. Are you referring to out in this  
12 direction?

13 A. Yeah, kind of. Like it was like -- like a  
14 rectangle.

15 Q. It was a rectangle --

16 A. Yeah.

17 Q. -- coffee table?

18 A. Yeah.

19 Q. Okay. So it would have been kind of coming down  
20 this way --

21 A. Yeah.

22 Q. -- and out this way?

23 A. Yeah.

24 Q. Okay. So what I'm doing -- I'll describe it, as I'm  
25 putting -- roughly outlining without marking the

1 exhibit, a rectangle that runs parallel to the part of  
2 the L that you were laying on.

3 A. Uh-huh.

4 Q. Okay, all right. I'll leave that there.

5 A. Okay.

6 Q. So the three of you were there.

7 A. Uh-huh.

8 Q. Do you recall if anyone else was?

9 A. AM was there for just a little bit to be like Happy  
10 New Year's, but she left to go to bed, I think. Yeah,  
11 like a couple minutes later, she was like all right,  
12 guys, I'm going to go to sleep. Do you guys want to  
13 come with me? And then AP was like I think I might just  
14 stay out here and watch TV.

15 Q. Okay.

16 A. But that was before Kevin came downstairs, I think.

17 Q. So at the point that we're describing, that you  
18 described on the map or on this diagram, AM was where?

19 A. In her room.

20 Q. In her room?

21 A. I think she was asleep.

22 Q. Okay. What happened at that point?

23 A. We were just watching TV. I was asleep, and then I  
24 just woke up, and I saw like AP -- because there was  
25 like a guy she didn't know like kind of sleeping next to

1 her, and so I was like all right, do -- then I suggested  
2 to Kevin, do you want to go upstairs and go to sleep in  
3 your room. And he was like, yeah, yeah. And so he  
4 called Raven, and they both went upstairs. And I shut  
5 the gate behind him so Raven couldn't come down and like  
6 tear something up.

7 Q. Okay. Let me back you up a little bit. You  
8 mentioned early on that you were consuming alcohol?

9 A. Uh-huh.

10 Q. Do you recall anyone else consuming alcohol that  
11 evening of the three of you that were sitting at the  
12 couch?

13 A. Yeah, I think -- well, Kevin had quite a bit to  
14 drink.

15 Q. Okay. And you mentioned that you had been friends  
16 of AM and the family there. Had you seen him on other  
17 occasions?

18 A. Yeah, I've seen them before. Like I've been to  
19 their house before.

20 Q. Okay. Had you seen him on other occasions when he  
21 had consumed alcohol?

22 A. Yes, but not like a lot. Like it's kind of just  
23 having a beer after work kind of thing.

24 Q. Okay. So based on your experience with him, what  
25 was his level of intoxication at that time compared to



1 prior experiences?

2 A. Like that was the most I've seen him like  
3 intoxicated before. Like it was like -- I don't know  
4 how to explain it. Like it was the most that I've seen  
5 him like drink, I guess.

6 Q. Okay. And this is going to sound like it's given,  
7 but we've got to kind of spell it out a little bit. How  
8 was his movement? How was his coordination?

9 A. It was kind of like not very well, like, you know,  
10 like kind of tripping, like not --

11 Q. Not very coordinated, I guess.

12 A. Yeah, not very coordinated.

13 Q. Okay, all right. Okay, you mentioned that you were  
14 asleep on the couch?

15 A. Uh-huh.

16 Q. And at some point, you saw that AP was  
17 uncomfortable?

18 A. Yes, but I truly think that it was because there was  
19 just a guy she didn't know sleeping next to her.

20 Q. Do you recall, and if you don't, it's okay, do you  
21 recall what woke you up?

22 A. No. I think it was because Raven like moved or  
23 something, like she like got up or something and then  
24 like moved her position.

25 Q. Okay. And when you woke up, you saw AP, and what

1 was her expression?

2 A. I can't really recall what her expression was. She  
3 just like was on her phone, and she was just like  
4 leaning against the couch, and that was really it. I  
5 don't really remember what like her face exactly looked  
6 like. I just remember her looking at her phone with  
7 like a blank stare, I guess.

8 Q. Okay. And as a result of what you saw, you asked  
9 the Defendant to go upstairs?

10 A. Yeah, I just saw that he was like very sleepy. So I  
11 was like maybe he should just go upstairs into his room.  
12 So I just suggested that he goes upstairs.

13 Q. Okay. Do you recall talking to AP after he left?

14 A. Yes, I -- like she was sitting up, and I was like --  
15 like she looked like she was just -- I don't know how to  
16 explain it. Like she was just sitting up straight, and  
17 I was like are you good? And like I was just -- because  
18 I -- and then she just was like he touched my stomach,  
19 and then that was really it. And then I asked if she  
20 wanted to go into AM's room and go to sleep in there.

21 Q. Okay. Did she, after this, ever go into more detail  
22 of what had happened or what she explained what had  
23 happened?

24 A. Not to me, but I don't know if she went into detail  
25 with other people.



1 Q. Okay. No, that's all I'm asking. Do you recall  
2 being interviewed about what you saw?

3 A. Yes.

4 Q. Do you recall, and if you don't it's okay,  
5 describing AP as crying?

6 A. Yes, but not for very long. Like it was kind of  
7 just a tear, and then --

8 Q. Was this before or after you asked Kevin to leave?

9 A. After.

10 Q. Okay.

11 MR. SLADE: Your Honor, at this time, the  
12 State has no further questions for the witness.

13 THE COURT: Thank you, Mr. Slade.

14 Mr. Woodbury, cross-examination.

15 MR. WOODBURY: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. WOODBURY:

18 Q. AH, when did you have the first alcohol that you  
19 drank that night? Do you remember approximately the  
20 time?

21 A. It might have been like 6:30, 6:00 o'clock.

22 Q. Okay. And where did you get it from?

23 A. I'm not quite sure about that. Like I went into her  
24 older sister's room, and it was just there.

25 Q. It was there?

1 A. Yeah.

2 Q. Okay. And her older sister is who?

3 A. Maizie Mentaberry.

4 Q. Okay. And Maizie had a friend there?

5 A. Yeah.

6 Q. And who -- what's the friend's name, or do you know?

7 A. It was -- I know her first name, Cassidy, but I  
8 don't know her last name.

9 Q. Okay. And there was a -- came a time when Maizie  
10 was smoking marijuana?

11 A. Yes, she was.

12 Q. All right. Do you remember when that was?

13 A. I don't. I'm sorry.

14 Q. Do you remember how long Maizie stayed there?

15 A. I think she was there the whole night, but I -- I  
16 don't remember her leaving, but I wasn't very much  
17 paying attention to that.

18 Q. Okay. And her room, Maizie's room, is down the hall  
19 and across from AM's room?

20 A. Yeah, it's just across the hallway from AM's room.

21 Q. Yeah, okay. And did the friend stay, or do you  
22 know?

23 A. I don't know. I'm sorry.

24 Q. Okay. And the room, AM's room, has a bed in it?

25 A. Yes.

1 Q. And is it a little bed or a big bed or what?

2 A. It's like an average size bed, like just a queen  
3 size bed.

4 Q. Okay. And how did -- you had intended to stay the  
5 whole night and actually did, right?

6 A. Yes.

7 Q. And how did it come up that AP got invited to stay  
8 the whole night?

9 A. Well, she was going to go hang out with her other  
10 friend. I'm not quite sure who it was, but her friend  
11 cancelled and said she couldn't. So AP was texting us  
12 being like can I come over to your guy's -- to this  
13 house instead.

14 Q. Okay. I'm going to have to repeat that to make sure  
15 I got that. It wasn't that you or AM called her or  
16 texted her to come over, it was she requested to be  
17 allowed to come over?

18 A. Yes.

19 Q. She had not been originally invited?

20 A. Yes.

21 Q. All right. Is there some reason for that?

22 A. No. It's just -- well -- well, actually, we did  
23 invite her, like do you want to come over to the house  
24 for New Year's, and then she said, oh, I already have  
25 other plans to go with someone else.

1 Q. Okay.

2 A. But once those plans got cancelled, then she was  
3 asking.

4 Q. And do you know who the -- what the other plans  
5 were? Were you informed about that?

6 A. No, I was not.

7 Q. Okay. Do you know how much alcohol you drank that  
8 night?

9 A. I don't. It was like the most that I've like ever  
10 had in a night kind of. So I don't really remember.

11 Q. Were you intoxicated?

12 A. Yes.

13 Q. Throughout the night?

14 A. Yes.

15 Q. All right. And that would be from when you had the  
16 first -- from the time you had the first drink at 6:00,  
17 6:30 --

18 A. Oh, well, from 6:00 to 6:30, I was like -- it was my  
19 first drink. So I kind of -- I think I started getting  
20 like really bad around like 9:00 -- no, like  
21 8:00 o'clock, 7:00 o'clock kind of.

22 Q. Okay. And were the other -- I guess your answer on  
23 direct examination was that you didn't know if anybody  
24 else was consuming alcohol?

25 A. Well, I'm pretty sure others were, but I think the

1 people that had to go, like Angela and her little  
2 sister, I don't think they had any. And my friend Josh,  
3 I don't think he drinks at all.

4 Q. And AP, did she have any alcohol?

5 A. I think she did, yes.

6 Q. Okay. And what -- what facts do you have that says  
7 that she did?

8 A. I -- I think I like -- I can't really remember.  
9 Like I see her like holding a bottle, but then I like  
10 don't remember anything else after that.

11 Q. Were you drinking out of the bottle?

12 A. I think I did once, but the other times, it was just  
13 out of glasses.

14 Q. And this alcohol, how did it get there?

15 A. It was just there. Like I just -- I think that they  
16 might have like snuck a bottle downstairs, but I'm not  
17 very sure about that.

18 Q. Okay. You've known Mr. Mentaberry for quite a  
19 while?

20 A. Well, I've known his daughter for -- I met her in  
21 like eighth grade. So that was like two years ago -- no  
22 -- yeah, it was like two -- one and a half years ago, I  
23 guess. And -- yeah, I kind of just went over to her  
24 house so I knew him for --

25 Q. Okay. You knew him as her father?

1 A. Yes, yes.

2 Q. All right. And how long have you known AP?

3 A. Like the beginning of my freshman year so only like  
4 -- I only knew her for like a couple of months I want to  
5 say.

6 Q. You hadn't known her previously?

7 A. Well, I've like known her because like I've just  
8 like known -- like she's been in my classes before, but  
9 we never like hung out or anything before then.

10 Q. And she is a close friend of yours?

11 A. I wouldn't have said we were like close friends. I  
12 would have said we were like just kind of -- we talked  
13 to each other a couple times, and like whenever we would  
14 hang out with like -- whenever we hung out, it was in a  
15 group, and we would just talk to each other then and  
16 stuff.

17 Q. And were you close friends with AM?

18 A. Yeah, I would say we were close friends.

19 Q. I'm sorry?

20 A. Yes, I would say we were close friends.

21 Q. Okay. And have been for a significant period of  
22 time?

23 A. Yeah.

24 Q. Okay. Do you recall whether AP brought some alcohol  
25 with her when she arrived?



- 1 A. Yeah, she brought alcohol with her.
- 2 Q. Do you know what it was?
- 3 A. It was Malibu, I think.
- 4 Q. Okay. And how did she get it in the house?
- 5 A. I'm not sure. She just had it with her, and I was
- 6 like oh, that's cool.
- 7 Q. I'm sorry?
- 8 A. She just had it with her when she came in.
- 9 Q. Okay. And was it in her purse, or do you know?
- 10 A. I think it was like -- I don't know. She just like
- 11 had it with her like...
- 12 Q. And did Mr. -- did the fact that there was
- 13 alcohol-drinking by teenagers come to Mr. Mentaberry's
- 14 attention that night?
- 15 A. I don't think it did when he was like not
- 16 intoxicated. Like I think that he realized that there
- 17 were people drinking when he was like already like
- 18 intoxicated and stuff.
- 19 Q. Did he come down and confiscate some alcohol from
- 20 you guys?
- 21 A. I think he did take the bottle and was like you guys
- 22 shouldn't and then -- I think I -- I remember him coming
- 23 downstairs, and I think he took the bottle away, but I
- 24 can't remember that. I'm very sorry.
- 25 Q. Okay. And was AM having anything to drink?



1 A. Yes, I think she had a couple.

2 Q. Did she appear to be intoxicated?

3 A. I think she was like kind of like just feeling --  
4 feeling it a little bit, but I don't think she was like  
5 gone all the way.

6 Q. Okay. Now, if I recall correctly, you said that the  
7 party mostly consisted of playing board games, watching  
8 television, and that kind of thing?

9 A. Well, it wasn't like a board game. It was kind of  
10 like a card game. It was Cards Against Humanity, and  
11 like that's kind of just -- it's pretty much just a  
12 board game.

13 Q. Okay. Is that a game that several people can  
14 participate in or --

15 A. Yes, a lot of people can play it.

16 Q. Okay. And how long do you think that went on?

17 A. Maybe like an hour, an hour and a half, I think.

18 Q. Okay. And what time do you think it ended?

19 A. I don't remember that.

20 Q. Do you have any notion of what time Mr. Mentaberry's  
21 friend upstairs left?

22 A. I don't remember. I just remember him being there  
23 one time, and then -- then he was just gone.

24 Q. Do you recall a time when you saw Mr. Mentaberry  
25 passed out upstairs?

1 A. Yes, I -- I'm not sure what time it was, but I do  
2 remember that he was asleep.

3 Q. He was asleep?

4 A. Yeah.

5 Q. All right, I said passed out?

6 A. Oh, well, passed out, yeah.

7 Q. For all you know, he was asleep?

8 A. Yes.

9 Q. And was his friend there when that was going on?

10 A. I don't think so.

11 Q. And where was he -- where was he sleeping?

12 A. I think he was on the couch or -- well, upstairs  
13 there's a like couch, but I'm pretty sure it was on the  
14 couch.

15 Q. How did you know that?

16 A. Because I went upstairs just for a second to grab  
17 some water, I think, or grab some food.

18 Q. Some water or food?

19 A. Yeah.

20 Q. There's water downstairs?

21 A. Wait, what?

22 Q. Is there water downstairs?

23 A. Oh, yeah, there -- well, there was like a fridge  
24 with like -- to grab some water.

25 Q. And was there a sink and faucet down there?

1 A. Well, that was -- in the bathroom there is.

2 Q. Okay, all right. Then there came a time when, I  
3 guess, the board game or whatever you would call it  
4 ended, and you were sitting on the couch in the location  
5 that's described in --

6 A. Yes.

7 Q. When do you think you got into that location?

8 A. Well, I remember I fell asleep around like 11:00 or  
9 10:30 on the couch, so.

10 Q. How do you recall that?

11 A. I just -- I just remember falling -- like looking at  
12 my phone, and it was like 10-like-30, 11:00, and I just  
13 fell asleep.

14 Q. And you were laying on the couch as it's depicted in  
15 that document in front of you?

16 A. Yes.

17 Q. Okay. Your head was essentially toward the area  
18 where the television was, and your feet were pointing  
19 away from it?

20 A. Yes.

21 Q. And there was a coffee table there, right?

22 A. Yes.

23 Q. Do you remember what time AM left your company?

24 A. I don't remember that. It was kind of hazy during  
25 that moment.

1 Q. All right. And it was before you went to sleep,  
2 though?

3 A. Yeah -- well, I fell asleep, and then I just  
4 remember waking up, and everyone being like Happy New  
5 Year's.

6 Q. All right. And AM was out there for that?

7 A. Yes.

8 Q. Okay. And for all you know, she had not gone to bed  
9 prior to that time?

10 A. Yeah.

11 Q. At some point, AM invited you all to come into her  
12 bedroom and go to sleep?

13 A. Yes.

14 Q. When was that?

15 A. It was after the Happy New Year's.

16 Q. After the Happy New Year?

17 A. Yeah.

18 Q. You had a cell phone?

19 A. Yes.

20 Q. And that's how you know what time it was?

21 A. Yes.

22 Q. Okay. When you woke up, were waking up, I guess,  
23 for the Happy New Year, where was AP at?

24 A. She was in the -- how I described her, that position  
25 on the couch.

1 Q. All right. And since I wasn't standing up there,  
2 I'm not a hundred percent sure what you were saying.

3 A. I'm sorry. So she was like curled up kind of in the  
4 corner of the L couch.

5 Q. Okay. About where this circle with the line going  
6 from it is showing there?

7 A. Yes.

8 Q. Okay. And was she sitting up?

9 A. Yeah, I think her back was like -- she was kind of  
10 leaning on the couch, like the pillow part of the couch.

11 Q. Okay. And was Mr. Mentaberry down there at that  
12 time?

13 A. I think that's when he came down after -- well,  
14 during like the Happy New Year's.

15 Q. It was after the Happy New Year?

16 A. Yeah.

17 Q. All right. Did he bring alcohol down with him?

18 A. I don't remember that. If he did, I wouldn't be  
19 able to --

20 Q. You don't know if he had anything more to drink  
21 after that or not?

22 A. I don't. I'm sorry.

23 Q. All right. Did there come a time when  
24 Mr. Mentaberry sat on the floor?

25 A. I think so. I'm not -- I can't remember that, but I

1 think he like fell once, and that's the one thing I  
2 remember of him being on the floor.

3 Q. He fell to the floor?

4 A. I think so. Like he tripped over something, and  
5 then he kind of just sat on the floor for a couple of  
6 seconds. But I don't remember if that's what you're  
7 talking about.

8 Q. And was there a time there was some bottles of  
9 alcohol laying on the coffee table?

10 A. Yeah, I think it was the Malibu that AP brought.

11 Q. Okay. And Mr. Mentaberry took that alcohol and took  
12 it upstairs?

13 A. I think so.

14 Q. Okay. All right. There came a time after the Happy  
15 New Year event when you woke up. You went back to sleep  
16 and then you woke up again, right?

17 A. Uh-huh, yes.

18 Q. When was that?

19 A. I would say like 2:30, 3:00, 3:30, I'm not very sure  
20 about that. I just remember it was late at night, early  
21 in the morning.

22 Q. All right. How -- what's your memory of that based  
23 on?

24 A. I don't really have a memory of that. That's just  
25 what I think -- that's just the time that I think I woke

1 up at.

2 Q. Okay. The truth is that you don't know when you  
3 woke up?

4 A. Yes.

5 Q. Okay. And it was still nighttime is what you really  
6 remember, right?

7 A. Yes.

8 Q. Okay. I assume by that time, that you had -- some  
9 of the effects of the alcohol had worn off?

10 A. My vision was still kind of like (indicating), and  
11 like I was half asleep, half awake kind of, so.

12 Q. And that had to do with alcohol or just waking up  
13 from sleeping?

14 A. I think it was a little of both.

15 Q. Okay. All right. You don't know what woke you up?

16 A. I think -- I'm pretty sure it was because the dog  
17 was moving, and she was next -- she was like laying  
18 against me, so.

19 Q. All right. And by laying against you, you were  
20 still in the same configuration as depicted on that  
21 exhibit?

22 A. Yes.

23 Q. And he was -- how was he laying against you?

24 A. The dog was -- I don't -- well, my legs were kind of  
25 -- I don't know how to describe the position. Like I



1 was kind of like in a fetal position, I guess you could  
2 say.

3 Q. Your legs were curled up --

4 A. Yeah.

5 Q. -- they weren't straight out, right?

6 A. Yeah. And the dog was curled up like in between my  
7 legs.

8 Q. And the dog had been there the whole time as far as  
9 you know?

10 A. I think so. As far as I know, yeah.

11 Q. He hadn't been in a different position earlier?

12 A. The dog?

13 Q. Yeah.

14 A. Yeah, well, the dog was like curled up, and then she  
15 started like turn -- like she sat up and turned her  
16 position, I think, and that's what woke me up.

17 Q. Okay. Was the television on or off when you woke  
18 up?

19 A. It was on.

20 Q. Okay. Was it loud?

21 A. It was kind of just like faint music playing. So it  
22 wasn't very loud.

23 Q. Had you heard any conversation between the time you  
24 went to sleep after the New Year -- Happy New Year  
25 event, and then when you woke up again, did you hear any

1 conversation?

2 A. No, I don't remember hearing anyone talking.

3 Q. And but -- all right. When you woke up, what did  
4 you see --

5 A. I saw --

6 Q. -- through your blurry vision?

7 A. I saw AP. She was looking at her phone, like she  
8 would sit up like this (indicating). And I saw that  
9 Kevin was kind -- I'm not sure if he was asleep or  
10 awake, but I just figured he'll probably want to go to  
11 sleep in his bedroom, so.

12 Q. Okay. Well, I'm not asking that.

13 A. Oh.

14 Q. I guess I'm asking what you saw.

15 A. I didn't really see anything. I just saw them  
16 laying there.

17 Q. And by laying there, AP was in the same  
18 configuration she had been in?

19 A. Yes.

20 Q. Was her clothing intact as far as you could tell?

21 A. Yes.

22 Q. Her pants were buttoned up?

23 A. Yes.

24 Q. And her -- do you remember what kind of pants she  
25 was wearing, anything about them?

1 A. I don't remember the kind of pants she was wearing.  
2 Q. Do you remember the shirt she was wearing?  
3 A. No, I don't.  
4 Q. Okay. But you didn't notice anything out of --  
5 A. No.  
6 Q. Okay. I guess I better finish that sentence. You  
7 didn't notice any --  
8 A. I didn't --  
9 Q. Wait a minute.  
10 A. Oh, sorry.  
11 Q. You didn't notice that her pants were twisted or  
12 turned or her shirt was twisted or turned or out of the  
13 ordinary?  
14 A. No, I didn't notice anything like that.  
15 Q. And you had indicated in the statement, had you not,  
16 that she was kind of -- looked funny while she was  
17 looking at her phone, somehow out of the ordinary. That  
18 was --  
19 A. I think it was just because like there was a man she  
20 didn't know like sleeping next to her.  
21 Q. Okay. Well, what would cause you to know such a  
22 thing?  
23 A. Nothing really, just like a feeling.  
24 Q. As far as you know, she did not know Mr. Mentaberry?  
25 A. Yes.

1 Q. Okay. And had you seen any interaction between  
2 them?

3 A. No.

4 Q. Had you heard any conversation between them?

5 A. No.

6 Q. Mr. Mentaberry has a son as well, right?

7 A. Yes.

8 Q. And he's ten or so years old?

9 A. Yes.

10 Q. Was he around that night?

11 A. I think he was in his room mostly, but --

12 Q. He was -- go ahead.

13 A. -- he would come downstairs and like just talk to us  
14 because he was bored.

15 Q. And when was the last time you saw him?

16 A. The last time I saw him was when I was in Maizie's  
17 room, and he was just talking to me about like this  
18 (indicating).

19 Q. Okay.

20 A. And then he went upstairs.

21 Q. Did you see Maizie after the New Year's or during  
22 the New Year celebration?

23 A. No.

24 Q. Where was she?

25 A. I think she was in her room.

1 Q. Do you know what she was doing in there?

2 A. No, I don't.

3 Q. Okay. Was she sleeping?

4 A. I'm not sure.

5 Q. Okay. And Maizie's friend, did you see the friend  
6 there during the New Year's celebration?

7 A. No.

8 Q. Okay. When you woke up after the New Year  
9 celebration and you saw AP with her cell phone, looking  
10 at her cell phone, tell me what happened exactly then.

11 A. I just asked Kevin if he wanted to go upstairs, and  
12 he grabbed Raven, and they both went upstairs, and then  
13 --

14 Q. When you say "grabbed Raven," did he pack him?

15 A. Oh, no, he was just like come on Raven, and then  
16 they went upstairs.

17 Q. Okay. And the locking the gate, you locking the  
18 gate had to do with making sure Raven didn't come back  
19 downstairs, right?

20 A. Yes.

21 Q. Is there any doubt in your mind?

22 A. No, I just didn't want Raven to like -- I thought  
23 that he'd want her upstairs, so.

24 Q. Okay. Did you have to ask Mr. Mentaberry more than  
25 one time, make demands of him, to get upstairs?

1 A. No, I don't -- I just asked him once, and he went  
2 up.

3 Q. All right. You didn't even ask him, you simply  
4 suggested it?

5 A. I kind of was like, hey, do you want to go upstairs,  
6 and then he had some struggle getting up because he was  
7 intoxicated.

8 Q. He was still intoxicated?

9 A. I believe he was.

10 Q. Okay. And did you -- you followed him up the stairs  
11 for the purpose of closing the gate, right?

12 A. Yes.

13 Q. There wasn't any other reason for that?

14 A. No.

15 Q. Okay. Did you engage in any other conversation with  
16 Mr. Mentaberry at that time?

17 A. No.

18 Q. Okay. Then you came back downstairs?

19 A. Yes.

20 Q. And what happened?

21 A. Then AP was just sitting up, and I was like are you  
22 good? And then she just -- she just said he touched my  
23 stomach and then --

24 Q. And I take it that the phrase or the question are  
25 you good is --

1 A. Oh, well, are you okay.  
2 Q. -- kind of a standard question?  
3 A. Yeah, sorry. I asked her, are you okay, and --  
4 Q. And she said, he touched my stomach?  
5 A. Yes, that's --  
6 Q. And how did you respond?  
7 A. I was just like, oh, gosh, are you -- like are you  
8 sure? Like are you okay, and like -- just like are you  
9 sure that he like -- maybe his hand just plopped over  
10 there, like I don't know.  
11 Q. Did you have some reason to believe that he had gone  
12 farther than touching her stomach?  
13 A. No, I didn't.  
14 Q. All right. And did you ask whether the touching had  
15 been inadvertent or deliberate?  
16 A. No, I didn't.  
17 Q. Did you know, or did she say?  
18 A. No. I didn't really think anything of it really.  
19 Q. Okay. Why not?  
20 A. I just thought like -- I don't really know. I just  
21 -- that's how my mind was I guess.  
22 Q. And you had indicated that there was a tear in her  
23 eye at some point.  
24 A. Yeah, like she just -- when she was like he touched  
25 my stomach, she like -- it looked like she like had like



1 a sad expression on her face. And then that's really  
2 it.

3 Q. Did you have some reason to believe that more had  
4 been involved than that?

5 A. No.

6 Q. Is the nature of the relationship between you and AP  
7 such that she wouldn't tell you if there was more?

8 A. Well, we weren't very close as friends so I don't  
9 know if she would tell me that.

10 Q. Why would she keep it from you?

11 A. Well, I don't really see why she would have -- like  
12 if that would have happened, I think she would have told  
13 me at that moment.

14 Q. Okay. So after this conversation with her, what did  
15 you guys do?

16 A. I suggested -- well, I asked her, I was like do you  
17 want to go to sleep in AM's room, and she was like yeah.  
18 So we went and slept in there.

19 Q. You had been previously both invited to go to sleep  
20 in AM's room, right?

21 A. Yes.

22 Q. Okay. So you went to AM's room?

23 A. Yes.

24 Q. Okay. Was AM awake?

25 A. No, she was asleep.

1 Q. All right. So what did you do when you got to AM's  
2 room?

3 A. We just -- well, I fell asleep on the floor, like  
4 because there wasn't any room for me on the bed. And AP  
5 went to sleep on the bed.

6 Q. Okay. Is the door closed?

7 A. Yes.

8 Q. How come?

9 A. AM just usually sleeps with her door closed.

10 Q. I'm sorry?

11 A. AM just usually sleeps with her door closed.

12 Q. Is there a lock on that door?

13 A. Yes.

14 Q. How do you know that?

15 A. Because she's locked her door before.

16 Q. Was the door locked?

17 A. I think it was.

18 Q. Why?

19 A. I don't know. She just was like -- she just -- I  
20 closed it and then locked it. I don't know --

21 Q. And that was AM that closed and locked it?

22 A. I think so, yes.

23 Q. But you don't know?

24 A. I don't know, I'm sorry.

25 Q. Was there any further discussion about

1 Mr. Mentaberry having touched somebody?

2 A. No.

3 Q. Was AM -- did AM wake up when you and AP went in  
4 that room?

5 A. Yes, I think to open up the door.

6 Q. Huh?

7 A. Yeah, she like woke up to open up the door.

8 Q. The door had been previously locked?

9 A. I don't remember that. I just know that I knocked  
10 so she would --

11 Q. Did you tell AM that her -- that AP was accusing her  
12 father of touching her stomach?

13 A. No, I --

14 Q. There was no conversation about that?

15 A. No, I just went to sleep.

16 Q. How come there was no conversation about that?

17 A. I don't know, I thought it'd be a conversation  
18 between AP and AM. Like I feel like that wouldn't be  
19 something for me to share.

20 Q. And then did Mr. Mentaberry come back downstairs?

21 A. I don't remember any of that.

22 Q. You don't remember that?

23 A. Yeah, I don't think he did anyway.

24 Q. Well, if AP said he came down and was banging on the  
25 locked door, do you recall hearing that?

1 A. I don't remember hearing that.

2 Q. Were you in a position where you would have heard it  
3 had it been happening?

4 A. I don't -- I was kind of like asleep on the like  
5 farthest wall from the door.

6 Q. I'm not talking about just tapping on the door. I'm  
7 talking about, quote, banging on the door.

8 A. Oh, I don't recall any of that.

9 Q. I know you don't recall it, but you were in a  
10 position to hear if it had been happening?

11 A. I think so, yes.

12 Q. Okay. So what time did you get up the following  
13 morning?

14 A. I don't remember that, what time I got up.

15 Q. How did you get home?

16 A. My mom came and picked me up.

17 Q. Really? Are you sure?

18 A. Yes, I -- yes.

19 Q. Mr. Mentaberry didn't haul you home?

20 A. No, he took AP home, I think, but my mom --

21 Q. How do you know that?

22 A. I don't know. That's just how I assumed she got  
23 home.

24 Q. Okay. And -- okay. And then you heard at a  
25 subsequent time -- AP told you that the stomach touching

1 had gone quite a lot further?

2 A. Yes, that was like a couple days after when she like  
3 told our other two friends.

4 Q. Who's the other two friends?

5 A. AM and my friend, Angela.

6 Q. Okay. And did she tell you?

7 A. I heard it from my friend, Angela. She was like is  
8 that true, and I was like I --

9 Q. Did you ever discuss this with AP?

10 A. I didn't.

11 Q. You have not?

12 A. I have not.

13 Q. Okay.

14 MR. WOODBURY: Okay, I have nothing further.

15 THE COURT: Thank you, Mr. Woodbury.

16 Mr. Slade, give me just a minute.

17 REDIRECT EXAMINATION

18 BY MR. SLADE:

19 Q. AH, you testified about -- on cross-examination, you  
20 were asked about how long you've known both of your  
21 friends here, referring to AM and referring to AP.

22 A. Yes.

23 Q. And which one have you known longer?

24 A. AM.

25 Q. Okay. And I think, if I understood your testimony

1 correctly, you're up to about two and a half years now?

2 A. It was like one and a half years, like almost three  
3 years.

4 Q. Okay. And AP, you've just kind of known her as like  
5 you knew who she was, but you hadn't hung out with her  
6 very much?

7 A. Yes.

8 Q. Okay. Since this occurred, how is your friendship  
9 or your relationship with AM?

10 A. Just how it usually is, just hanging out and like  
11 just being friends and stuff.

12 Q. Have you been over to her home since this occurred?

13 A. Yes, I have.

14 Q. And this is the same one we're describing?

15 A. Yes.

16 Q. Okay. What kind of things have you gone back over  
17 for?

18 A. Just to hang out with friends and like just to --  
19 you know, whenever we're bored, we'll be like hey, do  
20 you guys all want to get together and hang out, and then  
21 we just go over.

22 Q. Okay. And been invited to any events or parties or  
23 anything like that since then?

24 A. No, I haven't.

25 Q. And how many times have you spent time with, hung

1 out with AP since then?

2 A. Not -- we haven't at all since then.

3 Q. Okay. And just to make sure I understood your  
4 testimony today. It was after you told Kevin to go  
5 upstairs that you saw AP crying, you described as not  
6 sobbing, but that she looked tearful?

7 A. Well, it was like she was kind of just sitting, and  
8 then when I sat next to her and I was like are you okay,  
9 she was like he touched my stomach, and then she was  
10 like tearful.

11 Q. Okay. And that was after you told him to go  
12 upstairs?

13 A. Yes.

14 Q. And if I understood the sequence correctly, you  
15 mentioned you closed the gate, you came back downstairs,  
16 and you talked about deciding to go sleep in AM's room?

17 A. Yes.

18 Q. And that was a discussion you and AP had?

19 A. No, it wasn't really a discussion. It was more like  
20 let's go to sleep in AM's room, and then we were just  
21 like okay.

22 Q. Okay. And after you went into AM's room, the door  
23 was locked?

24 A. Yes, I think -- I believe it was, yeah.

25 Q. And your memory today, as far as where you were



1 sleeping in the room, was that you were on the wall  
2 furthest away from the door?

3 A. Yes.

4 Q. You were asked on cross-examination if you had  
5 reason to believe that the touching by the Defendant was  
6 deliberate, and I believe your answer was no?

7 A. Yes.

8 Q. If I understand correctly, you did see that AP was  
9 uncomfortable, right?

10 A. Yes.

11 Q. And she did appear tearful and upset?

12 A. I would say more just like -- I don't really know  
13 how to like explain her like emotion. Like it was kind  
14 of just blank. Like it was like she was tearful, but  
15 that's all I really remember.

16 Q. Okay.

17 MR. SLADE: Your Honor, I have no further  
18 questions for the witness at this time.

19 THE COURT: Thank you, Mr. Slade.

20 Mr. Woodbury, do you have any recross?

21 MR. WOODBURY: I do not.

22 THE COURT: May this witness be -- would you  
23 like her retained, or can she be excused?

24 MR. WOODBURY: I'd like her retained, please.

25 THE COURT: All right. So you're being

1 retained. You have to have a seat outside again. You  
2 can't discuss your testimony or the case with anybody  
3 until the conclusion of the case.

4 AH: Okay.

5 THE COURT: If you'll hand me that exhibit,  
6 please.

7 Deputy Unruh, what is the standard time for  
8 lunch at the jail?

9 MR. UNRUH: Well, they should be getting  
10 ready to serve right about now.

11 THE COURT: Right about now?

12 MR. UNRUH: That would be my guess. I don't  
13 normally work back there, so.

14 MR. WOODBURY: It would be convenient, Your  
15 Honor, for the Defense to have a recess.

16 THE COURT: Mr. Mentaberry --

17 THE DEFENDANT: Yes, sir.

18 THE COURT: -- what time is lunch typically?

19 THE DEFENDANT: I believe 12:00 o'clock, Your  
20 Honor.

21 THE COURT: Is it usually 12:00?

22 MR. UNRUH: Yeah, my understanding it's  
23 usually 12:00, so.

24 THE COURT: So let's take -- can we be back  
25 at 12:30 before we call our next witness? We'll just

1 take a lunch break from here to there.

2 MR. SLADE: The State would stipulate to as  
3 late as 1:00 if we need to get him back, and he won't be  
4 able to eat until -- well, I don't know if  
5 transportation would get him back that quickly. The  
6 State can be back at 12:30.

7 THE COURT: Deputy Unruh will make sure --

8 MR. UNRUH: I am dedicated to the Court today  
9 so I can have him back here by 12:30.

10 THE COURT: He will make sure we're back in  
11 time. So 12:30 we'll reconvene.

12 MR. SLADE: Thank you.

13 (Whereupon, court recessed)

14 THE COURT: Good afternoon, you can be  
15 seated. So we'll be back on the record, July 20. It's  
16 12:31 in the afternoon. The case number is  
17 EL-JC-CR-F-18-5030, State of Nevada versus Kevin John  
18 Mentaberry. We just took an hour recess for lunch.

19 And Mr. Slade, your next witness.

20 MR. SLADE: The State calls Joshua Morrell.

21 THE COURT: Mr. Morrell, come forward, raise  
22 your hand to be sworn. Do you swear the testimony  
23 you're going to provide to the Court today will be  
24 truth, the whole truth, and nothing but the truth, so  
25 help you God?

1 MR. MORRELL: I do.

2 THE COURT: Have a seat. State your name and  
3 spell your full name for the record, please.

4 THE WITNESS: Joshua Morrell; J-O-S-H-U-A,  
5 M-O-R-R-E-L-L.

6 THE COURT: Mr. Slade, go ahead.

7 MR. SLADE: Thank you.

8 JOSHUA MORRELL

9 (Sworn as a witness, testified as follows)

10 DIRECT EXAMINATION

11 BY MR. SLADE:

12 Q. Mr. Morrell, what is your title?

13 A. Detective Corporal Morrell.

14 Q. All right. So do you go by corporal, detective, or  
15 both?

16 A. Either one is fine, sir.

17 Q. Either one, okay. Corporal, I'd like to draw your  
18 attention to the 30th of June -- excuse me, the 30th of  
19 January of this year. Do you recall what you were doing  
20 relevant to this case?

21 A. I believe I was watching an interview, a forensic  
22 interview of -- I don't know if we're using the full  
23 name or the acronyms.

24 Q. Either/or, the transcriptionist will --

25 A. -- of AP.

1 Q. Thank you. How were you involved in this case?

2 A. I was assigned the case. So I believe I set up or  
3 Detective Marshowsky set up the forensic interview with  
4 AP.

5 Q. When you say you're assigned a case, what does that  
6 entail?

7 A. Usually -- I'm not sure if this is how I received it  
8 here, but we usually get an e-mail or some type like  
9 that saying that you've been assigned specific cases  
10 from our detective sergeant.

11 Q. When you were assigned this case, did you make  
12 efforts to reach out to witnesses?

13 A. Yes.

14 Q. Who did you reach out to?

15 A. I believe AH.

16 Q. Okay. Anyone else?

17 A. Witnesses?

18 Q. Yeah, parties involved.

19 A. Parties involved, I attempted to reach out to  
20 Mr. Mentaberry.

21 Q. And when you say "Mr. Mentaberry," are you referring  
22 to the Defendant?

23 A. Yes, sir.

24 Q. Why did you do that?

25 A. I attempted to set up an interview with him.

1 Q. What was the purpose of that?

2 A. He's a suspect in this matter.

3 Q. What was the result?

4 MR. WOODBURY: I'm going to object to that,  
5 Your Honor. He has a right to remain silent, and this  
6 is improper.

7 THE COURT: Mr. Slade.

8 MR. SLADE: Permission to respond, Your  
9 Honor.

10 THE COURT: Yes.

11 MR. SLADE: Your Honor, I'd ask the objection  
12 be overruled. In court proceedings, a Defendant's right  
13 to remain silent cannot be commented on by the State in  
14 any way, shape, or form. However, the Fifth Amendment  
15 right to remain silent does not mean that it's a right  
16 to not have that fact brought into evidence. That's the  
17 State's understanding of the law, Your Honor.

18 THE COURT: Mr. Woodbury.

19 MR. WOODBURY: I have nothing further.

20 THE COURT: Your objection again?

21 MR. WOODBURY: My objection is he has a Fifth  
22 Amendment right to remain silent, and the State can't  
23 comment on it or bring it into evidence, that he didn't  
24 remain -- that he did exercise that right.

25 THE COURT: Sustained. Go ahead, Mr. Slade.

1 MR. SLADE: I have no further questions for  
2 the witness at this time.

3 THE COURT: Mr. Woodbury.

4 MR. WOODBURY: Nothing.

5 THE COURT: Would you like Detective Morrell  
6 retained, or he can be excused?

7 MR. SLADE: He can be excused for the State,  
8 Your Honor.

9 MR. WOODBURY: I'd like him retained.

10 THE COURT: You can have a seat outside,  
11 Mr. Morrell.

12 MR. MORRELL: You're killing me.

13 MR. WOODBURY: Just to punish him, Your  
14 Honor.

15 MR. MORRELL: Yeah, I believe you too.

16 THE COURT: Mr. Slade, your next witness.

17 MR. SLADE: Just a moment, Your Honor. The  
18 State has no further witnesses to call in its  
19 case-in-chief, Your Honor.

20 THE COURT: All right, Mr. Slade. So you're  
21 resting?

22 MR. SLADE: Yes.

23 THE COURT: Mr. Woodbury.

24 MR. WOODBURY: Yes, Your Honor, we'd like to  
25 call AP, please.



1 THE COURT: AP.

2 Come up here, please. Please raise your  
3 right hand. No, you have to face me.

4 AP: Okay.

5 THE COURT: You have to step back here and  
6 face me.

7 AP: Okay.

8 THE COURT: Do you swear the testimony you're  
9 going to provide to the Court today will be the truth,  
10 the whole truth, and nothing but the truth, so help you  
11 God?

12 AP: Yes.

13 THE COURT: All right. Have a seat, and I  
14 need you to state your name and spell your name for the  
15 record, please.

16 THE WITNESS: AP [name stated and spelled,  
17 initials inserted].

18 THE COURT: Mr. Woodbury, go ahead.

19 MR. WOODBURY: Thank you, Your Honor. I  
20 wonder if the Court could advise her to speak up a  
21 little bit so I can hear her.

22 THE COURT: Okay.

23 THE WITNESS: Okay.

24 THE COURT: So you have to speak up just a  
25 little bit. Mr. Woodbury's hearing has faded a little

1 bit.

2 Go ahead, Mr. Woodbury.

3 AP

4 (Sworn as a witness, testified as follows)

5 DIRECT EXAMINATION

6 BY MR. WOODBURY:

7 Q. AP, what is your date of birth?

8 A. February 24th, 2003.

9 Q. Okay. And did you do anything in order to be  
10 prepared to testify here today?

11 A. Yeah. Yesterday I watched my -- just watched my  
12 interview, video.

13 Q. Okay. And did you read any statements?

14 A. Just mine.

15 Q. Okay. And what statement was that, the one you  
16 wrote?

17 A. Yeah.

18 Q. Okay. And did you see anything either in the  
19 statement that you wrote or in the interview of you by  
20 Detective Marshowsky that you stated but that you would  
21 now like to change?

22 A. No.

23 Q. Okay. Drawing your attention now to December 31st,  
24 2017, at approximately -- well, in the evening, did you  
25 have an opportunity or did you have an occasion to go to

1 the house of AM?

2 A. Yeah.

3 Q. And where was that located at?

4 A. It was by Mountain View, but I'm not sure what the  
5 address is.

6 Q. Okay. About what time did you go there?

7 A. Maybe 10:00, like --

8 Q. Maybe 10:00?

9 A. Yeah, I'm not exactly sure.

10 Q. And do you realize that on a prior occasion in the  
11 interview with Detective Marshowsky, you'd indicated it  
12 was around 9:00 o'clock?

13 MR. SLADE: Your Honor, I'm going to have to  
14 object to leading.

15 THE COURT: Mr. Woodbury.

16 MR. WOODBURY: We'd ask you to declare her a  
17 hostile witness, Your Honor, where I represent the  
18 Defendant, and she is the alleged victim.

19 MR. SLADE: Your Honor, I --

20 THE COURT: The objection was leading.  
21 You're saying a hostile witness.

22 MR. WOODBURY: And I'm saying, I guess, that  
23 under the statute, if I have a hostile witness, I'm  
24 allowed to ask leading questions.

25 MR. SLADE: If I can elaborate, Your Honor, I

1 think we're talking about Nevada Revised Statute 50.115.  
2 The State's objection is based on 3, subsection (a),  
3 leading questions may not be used on direct examination  
4 of a witness.

5 If I understand Mr. Woodbury correctly, he's  
6 referring to subsection 4(b), a witness identified with  
7 an adverse party is a situation in which the person who  
8 called them can interrogate by leading questions. So  
9 the State's response would be that there needs to be  
10 foundation laid if that's what the Defense is going to  
11 say is its basis for switching to leading questions on a  
12 direct exam.

13 THE COURT: Mr. Woodbury.

14 MR. WOODBURY: I've laid the foundation. I  
15 represent the Defendant, and she is the alleged victim.

16 THE COURT: Go ahead, overruled.

17 BY MR. WOODBURY:

18 Q. Do you recall telling Detective Marshowsky that you  
19 got to the house at 9:00 o'clock?

20 A. Yeah.

21 Q. Do you have an actual memory of when you did get to  
22 the house?

23 A. Yeah, but I thought -- I didn't really -- I wasn't  
24 really sure what time so I just guessed maybe 9:00.

25 Q. Okay. When you got to the house, who was there?

1 A. Kevin, AM, Angela, AH, and her -- AM's sister.

2 Q. Okay. And was a young man named Josh there?

3 A. I think so. I didn't know his name, so.

4 Q. All right. When you went in the house, did you have  
5 occasion to look in the living room?

6 A. Yeah.

7 Q. And what did you see?

8 A. Kevin was passed out on the couch.

9 Q. All right. How did you know he was passed out?

10 A. Because he was like sleeping, and AM said that he  
11 drank a lot so he was like --

12 Q. I'm sorry?

13 A. AM said he drank a lot.

14 Q. Okay. And so you assumed he was passed out rather  
15 than just sleeping?

16 A. Yeah.

17 Q. Okay. Are you enrolled in school?

18 A. Yes.

19 Q. What school is that?

20 A. Elko High School.

21 Q. Okay. Have you been going to Elko High School for a  
22 year or two now?

23 A. Yeah.

24 Q. Okay. And were you being home-schooled for a while?

25 A. Yeah, just for six months.

1 Q. And when was that?

2 A. This past semester.

3 Q. Past semester?

4 A. Like the semester like...

5 Q. Okay. That would be in the fall of 2017?

6 A. No, the -- like January to June.

7 Q. I'm sorry, January to June of what year?

8 A. 2018.

9 Q. So you're not presently enrolled in high school?

10 A. I am now. I'm going back to high school like -- I'm  
11 not doing on-line anymore.

12 Q. Okay. I'm confused. Please tell me when you did  
13 on-line school?

14 A. The second semester, from January to June until  
15 school was out.

16 Q. Okay. Do you know whether or not AM has a sister?

17 A. Yes.

18 Q. And who is that sister?

19 A. Her name's Maizie.

20 Q. Okay. And was she present on the evening of January  
21 -- or --

22 A. Yes.

23 Q. -- December 31st?

24 A. Yes.

25 Q. Was she present throughout the evening?

- 1 A. Yes, she was in her room.
- 2 Q. I'm sorry?
- 3 A. She was in her room.
- 4 Q. Okay. Did her room have a door on it; do you know?
- 5 A. I don't think it did.
- 6 Q. Okay. And did she have a friend there as well?
- 7 A. Yes, but I don't know her name.
- 8 Q. Okay. Was the friend there throughout the period
- 9 too?
- 10 A. Yes, she stayed the night.
- 11 Q. How long did you stay overnight -- or how long did
- 12 you stay after you got there?
- 13 A. Well, I stayed overnight, and then I left early in
- 14 the morning.
- 15 Q. What time did you leave in the morning?
- 16 A. I'm not sure.
- 17 Q. How did you go?
- 18 A. Kevin took me home.
- 19 Q. Okay. This person to my immediate right, you are,
- 20 at least, aware of?
- 21 A. (No audible answer)
- 22 Q. Yes?
- 23 A. Yes.
- 24 Q. Who is that person?
- 25 A. Kevin Mentaberry.



1 Q. Okay. When did you first come to know  
2 Mr. Mentaberry?

3 A. That was the first time I ever met him.

4 Q. What was?

5 A. When I went to his house on New Year's Eve.

6 Q. And when did you first talk to him?

7 A. When he woke up and came downstairs.

8 Q. And do you know when that was?

9 A. Probably after midnight.

10 Q. Okay. Do you have any events that you're basing  
11 that on?

12 A. Well, me and my friend, AH, we were watching Pretty  
13 Little Liars on the TV. So he came down there while we  
14 were watching that.

15 Q. Okay. And had you been previously asleep?

16 A. No.

17 Q. Okay. And was there a -- an event when the time  
18 changed from midnight to 2018? Did something happen  
19 down there?

20 A. No.

21 Q. There was no celebration --

22 A. Well, yeah.

23 Q. -- or no saying Happy New Year or stuff like that?

24 A. Yeah.

25 Q. Can you tell -- describe for the Court what that

1 was?

2 A. I did drink alcohol.

3 Q. Excuse me?

4 A. I did drink some alcohol.

5 Q. Okay. I'm not asking about that. I'm asking about  
6 the -- when the time changed from 2017 to 2018, did  
7 anything extraordinary happen downstairs?

8 A. No.

9 Q. Nobody said Happy New Year or --

10 A. No.

11 Q. Really?

12 A. Yeah.

13 Q. Okay. Who all was downstairs when the time -- when  
14 it went over -- the time changed?

15 A. Maizie and her friend were in her room, and AM was  
16 in her room, and me and AH were on the couch, and he --  
17 Kevin came downstairs.

18 Q. Okay. And did you happen to see any friends that  
19 Mr. Mentaberry had with him that evening?

20 A. Yeah.

21 Q. Do you know who that was?

22 A. I don't know his name.

23 Q. All right. When did you see him?

24 A. He was downstairs. There's a little bar area  
25 downstairs, and he was sitting at the bar by himself.

- 1 Q. And when -- was that before or after the New Year?
- 2 A. Before.
- 3 Q. Okay. How long did he stay down there?
- 4 A. A while. I'm not sure exactly how long, but he was
- 5 there for a while, and then he left later.
- 6 Q. Okay. And during the whole time that he was down
- 7 there, you were on the couch?
- 8 A. No, I was in Maizie's room.
- 9 Q. Was Maizie -- are you familiar with marijuana?
- 10 A. Yes.
- 11 Q. Did you see any marijuana being used that night?
- 12 A. Yes.
- 13 Q. Who did you see using it?
- 14 A. Maizie and all of us did.
- 15 Q. All of you did?
- 16 A. Yes.
- 17 Q. And how much did you ingest?
- 18 A. Only -- it wasn't that much.
- 19 Q. All right. Okay, I'm not sure how much is not that
- 20 much.
- 21 A. I don't know how to like measure it, like a bowl
- 22 maybe.
- 23 Q. And when did you use that?
- 24 A. Right -- kind of right when I got there, like 9:00
- 25 or whatever, whenever I got there.

1 Q. And do the effects of marijuana -- what was the  
2 effect of the marijuana on you?

3 A. It just calms me down, but it wore off pretty fast.

4 Q. And how fast is pretty fast?

5 A. Well, it wore -- wear -- wore off before 12:00, so.

6 Q. Did you bring any alcohol with you to the --

7 A. No.

8 Q. -- to the home?

9 A. From home?

10 Q. Well, did you bring any alcohol --

11 A. Yes.

12 Q. -- with you to the Mentaberry residence?

13 A. Yes.

14 Q. What did you bring?

15 A. Malibu.

16 Q. All right. Where did you get that?

17 A. From my house.

18 Q. How did you get it in the house, in the Mentaberry  
19 house?

20 A. I just -- it was in my bag, and I just took it in.

21 Q. Okay. So you brought a bag with you?

22 A. Yeah.

23 Q. And how -- what else did you bring with you?

24 A. Just like pajamas and my toothbrush and stuff like

25 --

1 Q. You're going to have to speak up. I can't hear you.

2 A. Just like pajamas and like a toothbrush and my  
3 contact case.

4 Q. You brought pajamas?

5 A. Yes.

6 Q. Okay.

7 A. No. No, I didn't.

8 THE COURT: Mr. Woodbury, those ears may help  
9 you, assist you in this.

10 MR. WOODBURY: Oh, all right.

11 THE COURT: Because they come through the  
12 recording system.

13 MR. WOODBURY: Okay.

14 BY MR. WOODBURY:

15 Q. And how much of the Malibu did you drink?

16 A. We drank orange juice with it, so there was probably  
17 a shot in the glass of orange juice. So it wasn't a  
18 lot.

19 Q. All right. Did you drink any other alcohol that  
20 night?

21 A. No.

22 Q. Okay. You saw AH there. Did she drink some  
23 alcohol?

24 A. I think she did.

25 Q. Okay. Did she drink more than you did --

- 1 A. No.
- 2 Q. -- or less?
- 3 A. Probably less, I think.
- 4 Q. And what makes you think she drank less?
- 5 A. She probably drank the same amount, but I'm not  
6 exactly sure. Like I didn't watch her like drink.
- 7 Q. Okay. Are you good friends with AH?
- 8 A. Not really anymore after --
- 9 Q. Not anymore, but were you at that time?
- 10 A. Yes.
- 11 Q. And how would -- describe how the friendship  
12 started.
- 13 A. Well, I used to be best friends with Angela and AM,  
14 and then we stopped talking. And then a few years  
15 later, we became friends again. And AH was like friends  
16 with them so then I became friends with AH too.
- 17 Q. Okay. So that -- your friendship with AH took place  
18 relatively recently?
- 19 A. Yeah, like at the beginning of the year.
- 20 Q. Okay. But your friendship with AM, that had gone on  
21 for quite a while?
- 22 A. Yeah, we started being friends in fifth grade, and  
23 then we stopped being friends for a while. Then in the  
24 beginning of freshman year, we became friends again.
- 25 Q. And the stopping of the friendship, that was because

1 of some reason or --

2 A. Yeah, I can't remember. It was a long time ago, so.

3 Q. And now you're not friends with AM any longer?

4 A. No.

5 Q. And you're not friends with AH any longer?

6 A. I don't really know. Like we're not friends, but

7 like we're like -- I don't like hate her or anything.

8 Q. I'm sorry?

9 A. I don't like hate her or anything like...

10 Q. Okay. Did Mr. Mentaberry confiscate the Malibu Rum

11 from you?

12 A. No.

13 Q. Okay.

14 A. Actually, he did later and then drank it.

15 Q. He took it and drank it?

16 A. Yeah.

17 Q. And when was that?

18 A. After midnight.

19 Q. Okay. How did you come to go to the Mentaberry

20 house?

21 A. My mom took me.

22 Q. Okay. But did you get invited, or did you ask --

23 A. Yeah, AM texted me and said she wanted me to come

24 over.

25 Q. Had you made previous arrangements that had fallen



1 through and then you -- this was a --

2 A. No. I was just with my family, and she texted me  
3 and asked if I could come over.

4 Q. Okay. All right, and -- all right. Is your memory  
5 of that evening pretty clear now?

6 A. Yeah.

7 Q. Okay. You said that Mr. Mentaberry came downstairs?

8 A. Yes.

9 Q. And his friend was already down there?

10 A. I think he left by the time that he came downstairs.

11 Q. Okay. So the friend -- his friend was down there,  
12 but Mr. Mentaberry wasn't?

13 A. Yeah.

14 Q. All right. And then there came a time when  
15 Mr. Mentaberry -- did he sit on the ground when he came  
16 down?

17 A. Yes.

18 Q. Tell me how that happened?

19 A. He just came down and asked if he could like sit and  
20 talk with us, and he -- AH was like okay. And he sat on  
21 the ground. And their dog, Raven, was right by me. And  
22 then he came and sit by Raven, the dog.

23 Q. All right. And then at some point Mr. Mentaberry  
24 moved up onto the couch?

25 A. He was on the couch. He asked to go on there, and

1 we were like okay because Raven was like in between us.

2 Q. Okay, okay. And so Mr. Mentaberry came -- can you  
3 describe the couch?

4 A. It was kind of like one of those L-shaped couches.  
5 It was big, like --

6 Q. Okay.

7 MR. WOODBURY: Defense A, please.

8 BY MR. WOODBURY:

9 Q. Have you ever seen this document before?

10 A. Yes, I drew that.

11 Q. Okay. Do you recall when you drew it?

12 A. Yes.

13 Q. When was that?

14 A. January --

15 Q. Never mind. I'll withdraw the question. You  
16 probably don't remember.

17 A. Oh, wait, it's right here, January 30th.

18 Q. Okay. What's depicted on that?

19 A. I just -- this is the couch. It's kind of big, but  
20 like you can lay down right here, and there's seat  
21 cushions on that side.

22 Q. And there's a figure off to the left of the document  
23 --

24 A. And that's where --

25 Q. -- with a circle and a line.

1           What's that?

2     A.    That's where AH was.

3     Q.    That's where AH was?

4     A.    Yes.

5     Q.    Okay. And where were you?

6     A.    Right here.

7     Q.    Okay. And is the television depicted in that?

8     A.    Yeah, it was right here.

9     Q.    Okay. And then there's a zero and what looks kind  
10    of like an eight, and what's that?

11    A.    Well, I drew the -- I'm not a very good drawer. But  
12    I -- Kevin was right here, and then the dog was right  
13    here at first.

14    Q.    Okay.

15                 THE COURT: Show me one more time.

16    BY MR. WOODBURY:

17    Q.    This is Kevin first and the dog?

18    A.    (Nods)

19                 THE COURT: You have to say yes.

20                 THE WITNESS: Yes.

21                 THE COURT: Okay, thank you.

22    BY MR. WOODBURY:

23    Q.    And that was at first?

24    A.    Yeah, yes.

25    Q.    Okay. And you're depicted here. Were you sitting

1 up, or were you laying down?

2 A. I was laying down.

3 Q. Okay. And this is -- when you say "at first," when  
4 is that? When is at first?

5 A. Well, when he sat on the couch, that was -- that's  
6 what -- yeah, sorry.

7 Q. Do you remember what you were wearing?

8 A. Just a t-shirt and jeans.

9 Q. Okay. And can you describe the jeans a little  
10 further?

11 A. I think they were just ripped like skinny jeans.

12 Q. Like a button-up jean?

13 A. Yes.

14 Q. Okay. And the t-shirt?

15 A. I can't remember what the t-shirt was.

16 Q. Did law enforcement ever ask you to -- for the  
17 t-shirt and the jeans?

18 A. For them to take it?

19 Q. Yeah.

20 A. No.

21 Q. Okay. And did you have any photographs of yourself  
22 that night so that you could identify your shirt and  
23 your jeans?

24 A. Yes.

25 Q. And are those photographs still available?

- 1 A. Yes. I think it's just of my shirt.
- 2 Q. I'm sorry?
- 3 A. I think it's just of my shirt. I don't think the  
4 jeans are in the picture.
- 5 Q. Okay. All right. So after Mr. Mentaberry sat on  
6 the couch, what happened?
- 7 A. After a while, he was like petting the dog, and then  
8 he moved the dog, and scooted closer to me.
- 9 Q. And he did what?
- 10 A. He scooted closer to me after he moved the dog.
- 11 Q. And where was AH at this time?
- 12 A. She was sleeping on the other side of the couch.
- 13 Q. Okay. And where was Maizie?
- 14 A. In her room.
- 15 Q. And where were her friend?
- 16 A. In her room with her.
- 17 Q. Okay. Was there some way that you would be able to  
18 tell if Maizie was going to come out of her room?
- 19 A. No. I think she fell asleep.
- 20 Q. But that's only thinking, right?
- 21 A. Yeah. I didn't -- I wasn't sure.
- 22 Q. Okay. And her friend was still there?
- 23 A. Yes.
- 24 Q. And you thought maybe both of them were asleep?
- 25 A. I was just thinking -- I'm not exactly sure if they

1 were or not.

2 Q. Okay. And do you know about what time it was that  
3 Mr. Mentaberry moved the dog and moved closer to you?

4 A. Either 12:00 or 1:00.

5 Q. Okay.

6 A. After midnight probably.

7 Q. After midnight probably?

8 A. I can't exactly remember what time.

9 Q. Okay. And you don't even know if it was after  
10 midnight?

11 A. It was. I know it was after midnight.

12 Q. Okay. And when he moved next to you, what happened?

13 A. Sorry, he like -- sorry. I'm sorry.

14 Q. Did Mr. Mentaberry talk to you before he moved  
15 closer to you?

16 A. No.

17 Q. Okay. He didn't -- he didn't discuss -- you had  
18 never met him before, right?

19 A. Huh-huh.

20 Q. And was there any discussion about whether you were  
21 AH's older sister or anything like that?

22 A. He thought I was. Like when he was sitting on the  
23 ground, he asked if I was AH's older sister, and I said  
24 no, we're just friends.

25 Q. Okay. Was there any other conversation that you

1 remember?

2 A. No.

3 Q. Okay. Was there any conversation between  
4 Mr. Mentaberry and AH?

5 A. She just -- he -- the only conversation they had was  
6 when he asked to sit on the couch, and she was like, oh,  
7 yeah, it's okay.

8 Q. Okay. And just nothing else was said?

9 A. And after it happened, like what happened, after I  
10 said stop, she told him to go upstairs, and it took him  
11 like a few -- we had to tell him a few -- or a few times  
12 to go upstairs.

13 Q. And she had to tell him more than once to get  
14 upstairs?

15 A. Yes.

16 Q. How many times do you think that happened?

17 A. Maybe three times. I really don't know.

18 Q. Okay. And did Mr. Mentaberry then go upstairs?

19 A. Yeah, after we asked him a few times.

20 Q. After she told him?

21 A. Yeah.

22 Q. Well, you didn't tell him to go upstairs?

23 A. No, AH did.

24 Q. Yeah, okay. Do you recall telling the officer that  
25 Mr. Mentaberry was rubbing or scratching his dog that



1 was sitting next to you?

2 A. No.

3 Q. You don't remember telling him that?

4 A. No.

5 Q. All right. Do you remember telling the detective,  
6 Marshowsky, that Mr. Mentaberry might have been  
7 inadvertently touching your leg as he was scratching the  
8 dog?

9 A. I am not sure if he -- I can't remember if he was  
10 doing that, but he was touching me.

11 Q. Okay. And then do you recall -- did Mr. Mentaberry  
12 ever ask you how old you were?

13 A. Yes.

14 Q. And when was that?

15 A. Like I was trying -- like I was pretending to be  
16 asleep when he was doing that, and then he woke me up.  
17 He's like how old are you? And I told him, and he's  
18 like --

19 Q. Let me stop you for a second. How did he wake you  
20 up?

21 A. Well, I was just pretending to be asleep because I  
22 was like I didn't know what to do. And so he nudged me,  
23 and I looked at him, and he was like, how old are you?

24 Q. And how did he nudge you?

25 A. Like just like -- I don't know like --

1 Q. He touched you someplace with his hand?

2 A. Yes.

3 Q. And do you remember where he touched you?

4 A. I think it was my breast.

5 Q. He touched your breast and then asked how old you  
6 were?

7 A. Yes.

8 Q. Okay. And had he touched you in other places before  
9 that?

10 A. Yes.

11 Q. Okay. Did the touching start with being touched on  
12 the stomach?

13 A. Yes.

14 Q. Can you describe that a little further for the  
15 Court.

16 A. After he moved the dog, he like -- his hand like  
17 brushed against my side, and I didn't think he did it on  
18 purpose, but then he kept like moving in. And then he  
19 went down into my pants.

20 Q. Okay. And your pants were unbuttoned?

21 A. No, I just took my belt off.

22 Q. When did you do that?

23 A. Before I went to sleep.

24 Q. On the couch?

25 A. Yeah.

1 Q. At some point -- you wore contact lenses?

2 A. Yes.

3 Q. And did you -- is there a period of time when you're  
4 supposed to take them out?

5 A. Before I go to sleep I'm supposed to take them out.  
6 I'm not supposed to sleep with them.

7 Q. Okay. Did you take them out that night?

8 A. Yes, I did -- I took them out before I sat on the  
9 couch and watched the show.

10 Q. Okay. And where did you do that?

11 A. In the bathroom downstairs.

12 Q. And did you have some makeup on?

13 A. Yes, and I cleaned it off.

14 Q. Okay. And did you decide to sleep on the couch?

15 A. Well, we were going to go into AM's room like later,  
16 but we wanted to watch TV first.

17 Q. Then after -- what were you watching on TV?

18 A. Pretty Little Liars.

19 Q. Okay. And there came a time when you didn't want to  
20 watch TV anymore?

21 A. Well, when he sat by me, I was just pretending to be  
22 asleep when he started to touch me.

23 Q. Why did you pretend to be asleep when he merely sat  
24 by you?

25 A. No, when he started to touch me.

1 Q. You were watching TV up until he started to touch  
2 you?

3 A. Yeah.

4 Q. Okay. And the touching started with what?

5 A. He brushed his hand on my side.

6 Q. Okay. And did you realize that that was a -- some  
7 kind of intentional act on his part?

8 A. At first, when he first touched me, I thought he  
9 might have did it on accident, and then he kept doing it  
10 and moved like more to the middle of my stomach.

11 Q. Excuse me, more --

12 A. More to the middle of my stomach.

13 Q. Okay. And he did that for a while?

14 A. Yeah.

15 Q. And then what?

16 A. He went in my pants.

17 Q. Okay. Okay, and then when was it that you pretended  
18 to be asleep, started to pretend --

19 A. After -- when he was touching my stomach, and I like  
20 felt it, and it like -- I pretended to fall asleep. I  
21 thought maybe he would stop if I was asleep.

22 Q. And you could have gone to AH's [sic] room or  
23 anything like that?

24 A. AM's room?

25 Q. AM's room.

1 A. Yes, I could have.

2 Q. But didn't?

3 A. Yeah. Yes, I didn't.

4 Q. And how come was that?

5 A. Well, I thought he would leave me alone after I go  
6 to sleep or pretended to go to sleep, but he didn't.

7 Q. And he was rubbing your stomach, and you thought if  
8 you just rolled over --

9 A. Yes.

10 Q. -- while he was rubbing your stomach, he would think  
11 you were going to sleep?

12 A. Yes.

13 Q. Okay. And what steps did Mr. Mentaberry take to  
14 make sure that AH didn't wake up?

15 A. She was already asleep, and he was like whispering  
16 when he like asked me if I -- what my age was.

17 Q. And you could have -- when you told him 14, did you  
18 whisper that to him?

19 A. No, I said 14.

20 Q. I know what you said, but did you whisper it --

21 A. No.

22 Q. -- or did you say it --

23 And that didn't wake AH up?

24 A. Nope.

25 Q. And then was there other conversation that he

1 engaged in with you?

2 A. Yeah.

3 Q. What was that?

4 A. He asked me if -- sorry, he asked me if he can --

5 Q. Well, I'll help you out here. He asked you, I  
6 guess, to -- if he could use his mouth on you; is that  
7 correct?

8 A. Yes.

9 Q. And did he whisper that?

10 A. Yes.

11 Q. And what did you say?

12 A. No.

13 Q. And did you say it loudly?

14 A. Yes. Well, I didn't yell it, but I said in a normal  
15 voice.

16 Q. Okay. And that didn't wake AH up?

17 A. Nope.

18 Q. Okay. And did you make any other effort to --

19 A. Yes.

20 Q. -- touch her foot to wake her up or anything?

21 A. She was all the way across the couch so I couldn't  
22 touch her to wake her up.

23 Q. Okay. And then he asked you, I guess, to spread  
24 your legs?

25 A. Yes.

1 Q. And you said?

2 A. No.

3 Q. Did you say that in a loud voice?

4 A. I said it in a normal voice.

5 Q. All right. Why didn't you yell it out?

6 A. I don't know. I was scared.

7 Q. Okay.

8 A. I didn't know what to do.

9 Q. I'm sorry?

10 A. I didn't know what to do.

11 Q. And did the alcohol consumption or the marijuana

12 consumption have any effect on your reasoning power?

13 A. No. It already wore off by then.

14 Q. The alcohol and the marijuana --

15 A. Yeah.

16 Q. -- were both gone by then?

17 A. Yes.

18 Q. Okay. And this is all after 12:30, 1:00 o'clock?

19 A. Yes.

20 Q. Okay. And how long did the touching go on?

21 A. Maybe a few minutes, and then he tried to stick his

22 hand in my pants again. I kept pulling it out.

23 Q. Uh-huh.

24 A. And I told him to stop. I yelled stop, and then AH

25 woke up and told him to go upstairs.



1 Q. Okay. And what hand was he using to do that?

2 A. His right hand, I think.

3 Q. I'm sorry?

4 A. I think his right hand.

5 Q. But you were turned away from him?

6 A. I was sitting like that, and then he was right by  
7 me, and he was using it like --

8 Q. Oh, you weren't laying down with your face turned  
9 away from him?

10 A. Yes, but he was still using his right hand because  
11 his left hand was on the other side.

12 Q. Okay. Then there came a time, I guess, when AH woke  
13 up. And then you described earlier that she told him --

14 A. To go upstairs.

15 Q. -- a few times to go upstairs --

16 A. Yes.

17 Q. -- and he finally did?

18 A. Yes.

19 Q. Okay. Then what did you do?

20 A. I ran -- I told AH what happened, and I was crying.

21 Q. What did you tell her?

22 A. Everything that happened.

23 Q. Everything?

24 A. Yes.

25 Q. And that included the insertion of his fingers into

1 your vagina?

2 A. Yes.

3 Q. Okay. And what did AH say to that?

4 A. She just said she was sorry and like --

5 Q. Okay. And then after you told her that, what  
6 happened?

7 A. We went into AM's room and locked the door.

8 Q. Okay. And then what happened?

9 A. He came back downstairs and tried to get in, and  
10 then he was knocking on the door, and AM told him to go  
11 away.

12 Q. AM did?

13 A. Yeah. She didn't know, but she -- he was drunk so  
14 she didn't want to deal with him.

15 Q. How do you know that?

16 A. Because he drank.

17 Q. I'm sorry, how did you know what AM's point of view  
18 was?

19 A. She told me.

20 Q. Oh, she told you he was drunk, and I don't want to  
21 deal him?

22 A. Yes.

23 Q. Okay. And then did -- was there any conversation at  
24 that time about what had just happened to you?

25 A. No.

1 Q. Okay. And when you say he knocked on the door, is  
2 that the word that you used before on what he did?

3 A. Well, he like banged on the door and then kept  
4 trying to open it.

5 Q. Okay. And AM was clearly aware that he was banging  
6 on the door?

7 A. Yes.

8 Q. And so was AH?

9 A. Yes.

10 Q. Okay. Then the next -- then you slept in AM's room  
11 the rest of night?

12 A. Yes.

13 Q. All right. And you don't remember what time you got  
14 up and went home?

15 A. Maybe 10:00. I really don't remember.

16 Q. Okay. You had your cell phone with you?

17 A. Yes.

18 Q. And you had taken that into the -- AM's room with  
19 you?

20 A. Yes.

21 Q. Okay. So you -- while you were laying there and he  
22 was -- had his hands on you, you had your cell phone  
23 available?

24 A. It wasn't on me when he was -- it was charging  
25 across the room when he was --

1 Q. Okay. So after he went upstairs, then you went and  
2 got it off the charger?

3 A. Yes.

4 Q. Okay. Then the next morning, he -- how did you get  
5 home?

6 A. He took me home.

7 Q. All right. And who all did he take?

8 A. He took AM to her mom's house, and he took AH home.  
9 And Maizie road with him in the front seat.

10 Q. Maizie did?

11 A. Yeah.

12 Q. And where did he leave her?

13 A. I don't know. He dropped me off before he did  
14 anything with her.

15 Q. Thank you.

16 MR. WOODBURY: I have no further questions.

17 THE COURT: Thank you, Mr. Woodbury.

18 Mr. Slade, cross.

19 MR. SLADE: No, Your Honor, nothing on that.

20 THE COURT: Would you like this witness  
21 retained, Mr. Woodbury?

22 MR. WOODBURY: No, that's fine.

23 THE COURT: Mr. Slade.

24 MR. SLADE: She can be released for the  
25 State.

1 THE COURT: So you're excused. However, you  
2 still cannot discuss your testimony and/or the case  
3 until the conclusion of today's hearing.

4 AP: Okay.

5 THE COURT: You can have a seat outside.

6 Mr. Woodbury, do you rest, or are you calling  
7 another witness?

8 MR. WOODBURY: No, I think I'm going to call  
9 Detective Morrell back.

10 THE COURT: Detective Morrell.

11 Detective Morrell, you're still under oath.  
12 Mr. Woodbury is going to have some questions for you.

13 THE WITNESS: Sure.

14 THE COURT: Go ahead, Mr. Woodbury.

15 MR. WOODBURY: Thank you, Your Honor.

16 JOSHUA MORRELL

17 (Recalled and previously sworn as a witness,  
18 testified as follows)

19 DIRECT EXAMINATION

20 BY MR. WOODBURY:

21 Q. Detective Morrell, the -- after you learned about  
22 the alleged touching of AP by Mr. Mentaberry, you were  
23 the lead detective, right?

24 A. Yes, sir.

25 Q. And you did a series, I suppose, of follow-up

1 investigations?

2 A. Not --

3 Q. Well, you did follow-up, I guess.

4 A. I did some -- I spoke with AH -- I'm sorry, AH.

5 Q. Did you ever talk with Maizie?

6 A. With who?

7 Q. With the older --

8 A. No.

9 Q. Mr. Mentaberry's older daughter.

10 A. I understand your question. No.

11 Q. And did you ever find out who -- the friend that was

12 also there with Maizie, did you ever talk to her?

13 A. Which one?

14 Q. The friend of Maizie. I don't know who she is.

15 A. I don't know which friend you're talking about.

16 Q. Her name is Cassidy?

17 A. I never heard the name Cassidy.

18 Q. Okay. Did you interview Mr. Mentaberry's

19 10-year-old son?

20 A. I never heard about him as well.

21 Q. All right. Did you interview Mr. Vincent, who was

22 the Elko Blacksmith employee that was there?

23 A. No.

24 Q. Okay. Did you ever get AP's cell phone at all?

25 A. No.

1 Q. Do you have any of the investigation that was done  
2 by you that -- in which a report was written that you  
3 have not yet provided to the prosecution?

4 A. I'm sorry, I don't understand.

5 Q. I'll try to do a little bit better.

6 A. Okay.

7 Q. Did you write any reports about this or have any  
8 other physical evidence that you have not prepared and  
9 have not yet passed on to the prosecution?

10 A. I don't believe so.

11 Q. Okay.

12 MR. WOODBURY: Thank you, I have no further  
13 questions for the detective.

14 THE COURT: Thank you, Mr. Woodbury.

15 Mr. Slade, do you have any cross?

16 MR. SLADE: No, Your Honor.

17 THE COURT: Can Mr. Morrell be excused at  
18 this time?

19 MR. WOODBURY: He may.

20 THE COURT: All right, you're excused,  
21 Mr. Morrell. Don't discuss your testimony until the  
22 conclusion of the case, please.

23 MR. MORRELL: Yes, sir.

24 MR. WOODBURY: The Defense rests.

25 THE COURT: Mr. Slade, any rebuttal



1 witnesses?

2 MR. SLADE: Not on that, Your Honor.

3 THE COURT: Then are we going to move to  
4 closing?

5 MR. SLADE: The State is prepared to, Your  
6 Honor. If we could just let the witnesses know they're  
7 released, and they'll be able to --

8 THE COURT: That will work. All right,  
9 Mr. Slade, go ahead.

10 MR. SLADE: Your Honor, the State submits on  
11 initial argument.

12 THE COURT: Mr. Woodbury.

13 MR. WOODBURY: The Defense will submit it on  
14 -- without argument.

15 THE COURT: Mr. Slade, you have no argument,  
16 no initial, Defense submitted.

17 MR. SLADE: Yes. Nothing further to present  
18 as far as the argument goes, Your Honor.

19 THE COURT: All right, Mr. Mentaberry, do you  
20 want to stand, please.

21 MR. WOODBURY: Your Honor, if it's  
22 appropriate, we have a bail motion pending, and before  
23 the Court binds him over, we would -- or gets rid of  
24 jurisdiction, we would like to argue on the bail motion  
25 if we can, please.

1 THE COURT: All right, Mr. Woodbury. I  
2 apologize for that. It is in here, and I overlooked it.  
3 Go ahead with the bail motion.

4 MR. WOODBURY: Okay. We have submitted to  
5 you the affidavit. The bail is presently set in the  
6 amount of \$500,000, which means that Mr. Mentaberry has  
7 to come up with about \$65,000 simply to meet the initial  
8 cost of getting a bail bond. He has a very limited  
9 prior record, and it is of some time ago. He has a job.  
10 He has a house. He has automobiles. He has -- I -- it  
11 asserted that he had custody of his children, and he  
12 does, but it's half custody. It's split between he and  
13 his wife. He has a long standing Elko business that he  
14 is the manager of, and it's a family-owned business by  
15 the Mentaberry family.

16 And we have asked to have the bail lowered to  
17 \$20,000, and I -- the State has objected to that. But  
18 Mr. Mentaberry has a lot of responsibilities, and we  
19 delayed the -- this motion on the bail hearing until the  
20 Court had an opportunity to hear the evidence in the  
21 case. It doesn't take much to bind a defendant over,  
22 but the Court knows there is some considerable  
23 differences in the testimony of AH and AP that suggests  
24 that AP is substantially exaggerating what happened.

25 And I would be -- it begins with the

1   assertion by AH that AP first said that this was stomach  
2   touching, nothing further. It is only AP later  
3   identifying it as a vaginal touching, and that counts.  
4   That's going to count for a lot. It gives a reasonable  
5   opportunity for Mr. Mentaberry to provide a defense at  
6   the time of trial.

7                   And there is -- the reason that the  
8   possibility of conviction, as a part of the bail  
9   consideration, exists is that if it's a hopeless case,  
10   you might have some worries about him leaving and never  
11   coming back. If it stands a reasonable possibility of  
12   an acquittal, that is a significantly less dangerous  
13   situation.

14                   So we're asking that if you would reduce the  
15   bail to something more manageable, even if it isn't  
16   \$20,000, something more manageable so he doesn't have to  
17   try to find \$65,000 to pay the bond. I mean, he could  
18   probably come up with a collateral that the bail bonds  
19   people need, but that's -- that humongous amount of  
20   money, that \$65,000 just goes out the window. He is --  
21   there's no reason to think that he would run. He stands  
22   a reasonable chance to get an acquittal. If he runs, he  
23   knows the consequences of that.

24                   So we're asking that the Court lower the bail  
25   to some more reasonable amount so that he can have an

1 opportunity to get out and do all the things he's  
2 supposed to be doing.

3 THE COURT: Thank you, Mr. Woodbury.  
4 Mr. Slade.

5 MR. SLADE: Your Honor, the State did file  
6 its opposition, as was noted by Defense counsel. Some  
7 of the things which the State was able to address was in  
8 regards to the Defendant's prior criminal record  
9 regarding a 2006 domestic battery arrest. That appears  
10 that it was pled to misdemeanor battery in October of  
11 2006, 2006 September.

12 An arrest for petty larceny, disturbing the  
13 peace, it appears that he was convicted in 2007 of petty  
14 theft in that case. September 2008, again, arrested in  
15 the same county for domestic assault, battery, injury  
16 child, and paraphernalia, which pled out to drug  
17 paraphernalia. And then the May of 2010, arrested again  
18 for domestic battery, a no contest -- a no contact order  
19 violation, which later that year was pled to domestic  
20 assault. 2010, he also had a violation of a no-contact  
21 order and was convicted of that as well.

22 Your Honor, regarding the nature of the  
23 offense itself and the probability of conviction, the  
24 State is very cognizant of what the burden of proof is  
25 at this level, and the emotional burden that it is on

1 the witnesses to push things further than they need to  
2 go. Clearly, with the evidence that was adduced today,  
3 Your Honor, the State feels that while there is, of  
4 course, sufficient, from the State's perspective, the  
5 bindover, also the merits itself, Your Honor, are still  
6 there.

7           These cases are always a he said/she said.  
8 It's the nature of these types of charges. They don't  
9 happen out in the open. They don't happen when there's  
10 cameras around. They happen in private areas with  
11 people who almost in all cases are experiencing some  
12 level of intoxication. Your Honor, that's the way all  
13 these cases are. So to speak to that as being part of  
14 the merits of this case is to speak to all the cases of  
15 a similar grade.

16           Your Honor, the State further notes that  
17 while AH had some bias that she pointed out with her  
18 friendship and trying to divide herself between the two,  
19 she still did agree with much of the testimony that was  
20 heard by the victim in this case. Your Honor, we don't  
21 expect people to have perfect memory of every detail  
22 exactly when something happened on a particular evening,  
23 but obviously, the -- the more impactful things were  
24 remembered and were testified to. So the State is still  
25 confident that this case still has just as much merit as

1 it did before this hearing.

2 Your Honor, the other thing that concerns the  
3 State and the State wishes the Court to consider is the  
4 seriousness of these crimes. Your Honor, if the  
5 Defendant is convicted of Count 1, that comes with life  
6 with a possibility of parole after 25 years. That is a  
7 lot of incentive to leave this jurisdiction to avoid  
8 that consequence.

9 Your Honor, these are just a brief highlight  
10 of some of the things that were -- made mention of in  
11 the State's opposition. The other issue that's of deep  
12 concern to the State is, of course, witness tampering.  
13 With the seriousness of these charges comes an upward  
14 motivation to try to push against those who can lean  
15 this case one way or the other, for example, AH and the  
16 victim.

17 The State's deeply concerned about their not  
18 being in contact with discussion regarding this case  
19 regardless of whether or not the bail has changed, that  
20 the State wants that condition added. The other issue  
21 that was brought up in the State's motion, opposition to  
22 the Defense's motion, is that clearly, alcohol played a  
23 big role in this, and, thus, the State, regardless of  
24 whether or not bail is changed or not, wants a no  
25 alcohol clause, alcohol monitoring to be a part of any



1 kind of bail in this case.

2 They have -- again, that's a summary of the  
3 main points made in the opposition itself, Your Honor.  
4 And with that, the State will submit.

5 THE COURT: Thank you, Mr. Slade.

6 Mr. Woodbury, do you have anything else?

7 MR. WOODBURY: Thank you, Your Honor.

8 Mr. Mentaberry has no problem with a no alcohol. If you  
9 want alcohol monitoring, that's fine. We're not asking  
10 to have him released on his recognizance. We're asking  
11 -- you can have a substantial amount of bail. We're  
12 just trying to make it more reasonable. I have --  
13 there, of course, is always an argument about  
14 believability of witnesses and so on, and that's very  
15 usual, and I'm sure the Court knows it, but it also  
16 knows that there are some problems with the State's  
17 case, whether they're insurmountable for Mr. Mentaberry  
18 or insurmountable for the State, the Court can't know.

19 The point of it is is to establish that in  
20 Mr. Mentaberry's head, he understands that he has some  
21 possibility of escaping a conviction in this case at  
22 that level. That's all. And it has to do with the  
23 impetus for him to run away. And Mr. Mentaberry has a  
24 substantial investment in the community and all of that  
25 and is being advised right now, as I speak, that there



1 are problems with the State's case, and it would be the  
2 stupidest thing on the planet for him to run away from  
3 it. Number one, because if his bail is adversely any  
4 level, there's enough money for law enforcement to find  
5 him.

6 So all we're asking for is a reduction in  
7 bail. Witness tampering, it would be ridiculous to do  
8 that. You can't tamper with a witness too good,  
9 particularly one that's a teenager. And so it's kind of  
10 a -- in any event, if the Court could see fit to lower  
11 the bail a significant amount, something more  
12 reasonable.

13 There's a presumption of innocence, and I  
14 realize that's just a presumption, but he has a lot of  
15 things going on in his life outside of this case and  
16 that he's not able to attend it if he can't get out on  
17 bail.

18 THE COURT: Thank you, Mr. Woodbury.

19 So due to the evidence that was -- that's  
20 been provided today to the Court through the preliminary  
21 hearing, the crimes are substantial, the alleged crimes.  
22 The alleged incidences that take place are substantial.  
23 Mr. Woodbury, Mr. Slade, you have given both good  
24 arguments. The Court will go ahead and reduce bail to  
25 \$100,000 bondable.

1           And as far as the -- for the evidence that  
2 was produced at the preliminary hearing, on Count 1, or  
3 in the alternative, Count 2, or in the alternative to  
4 Counts 1 and 2, Count 3, Mr. Mentaberry, you're going to  
5 be bound over to the Fourth Judicial District court for  
6 further proceedings.

7           Is there anything else in this preliminary  
8 matter we need to address?

9           MR. WOODBURY: No, thank you.

10          THE COURT: Then we'll be adjourned.

11          MR. SLADE: Not for the State, Your Honor.

12          (Whereupon, proceeding concluded).  
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STATE OF NEVADA       )  
                              ) ss.  
COUNTY OF CARSON     )

I, Julie Rowan, Transcriptionist for the Elko Township Justice Court of the State of Nevada, in and for the County of Elko, have transcribed the proceedings held in the above-entitled Court on July 20, 2018.

The foregoing is a true and correct transcript, to the best of my ability, from the electronic sound recording of the proceedings held in the above-entitled matter.

DATED: This 22nd day of August, 2018.

  
Julie Rowan

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## 2018-00897 statements

2022 JUN -7 AM 11:49

## ELKO POLICE DEPARTMENT WORKSHEET / STATEMENT

Incident# 2017-06897

RECEIVED

Page # of

Name: (Last, First, Middle) Pederson, Alexandria, Dawn		Ethnicity: <input type="checkbox"/> F <input type="checkbox"/> M	Sex: <input type="checkbox"/> M <input type="checkbox"/> F	Age: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17 <input type="checkbox"/> 18 <input type="checkbox"/> 19 <input type="checkbox"/> 20 <input type="checkbox"/> 21 <input type="checkbox"/> 22 <input type="checkbox"/> 23 <input type="checkbox"/> 24 <input type="checkbox"/> 25 <input type="checkbox"/> 26 <input type="checkbox"/> 27 <input type="checkbox"/> 28 <input type="checkbox"/> 29 <input type="checkbox"/> 30 <input type="checkbox"/> 31 <input type="checkbox"/> 32 <input type="checkbox"/> 33 <input type="checkbox"/> 34 <input type="checkbox"/> 35 <input type="checkbox"/> 36 <input type="checkbox"/> 37 <input type="checkbox"/> 38 <input type="checkbox"/> 39 <input type="checkbox"/> 40 <input type="checkbox"/> 41 <input type="checkbox"/> 42 <input type="checkbox"/> 43 <input type="checkbox"/> 44 <input type="checkbox"/> 45 <input type="checkbox"/> 46 <input type="checkbox"/> 47 <input type="checkbox"/> 48 <input type="checkbox"/> 49 <input type="checkbox"/> 50 <input type="checkbox"/> 51 <input type="checkbox"/> 52 <input type="checkbox"/> 53 <input type="checkbox"/> 54 <input type="checkbox"/> 55 <input type="checkbox"/> 56 <input type="checkbox"/> 57 <input type="checkbox"/> 58 <input type="checkbox"/> 59 <input type="checkbox"/> 60 <input type="checkbox"/> 61 <input type="checkbox"/> 62 <input type="checkbox"/> 63 <input type="checkbox"/> 64 <input type="checkbox"/> 65 <input type="checkbox"/> 66 <input type="checkbox"/> 67 <input type="checkbox"/> 68 <input type="checkbox"/> 69 <input type="checkbox"/> 70 <input type="checkbox"/> 71 <input type="checkbox"/> 72 <input type="checkbox"/> 73 <input type="checkbox"/> 74 <input type="checkbox"/> 75 <input type="checkbox"/> 76 <input type="checkbox"/> 77 <input type="checkbox"/> 78 <input type="checkbox"/> 79 <input type="checkbox"/> 80 <input type="checkbox"/> 81 <input type="checkbox"/> 82 <input type="checkbox"/> 83 <input type="checkbox"/> 84 <input type="checkbox"/> 85 <input type="checkbox"/> 86 <input type="checkbox"/> 87 <input type="checkbox"/> 88 <input type="checkbox"/> 89 <input type="checkbox"/> 90 <input type="checkbox"/> 91 <input type="checkbox"/> 92 <input type="checkbox"/> 93 <input type="checkbox"/> 94 <input type="checkbox"/> 95 <input type="checkbox"/> 96 <input type="checkbox"/> 97 <input type="checkbox"/> 98 <input type="checkbox"/> 99 <input type="checkbox"/> 100	DOB: 02/24/03
Street Address: 117 Seward Dr		City: ELKO	State: NV	Zip: 89301	
Home Phone: 775-738-8322	Work Phone:	Cell Phone: 775-385-8324	SSN:		
Height: 65054	Weight: 140	Hair: Brown	Eyes: Hazel	DL Number/State:	
Place of Birth: Billings, Montana		Occupation / Place of Work:		Statement <input type="checkbox"/> (optional)	
Citizen's Arrest					
<p>Because the laws of Nevada (NRS 171.124) prohibit the arrest of a person by a peace officer for a misdemeanor act not committed in the presence of the peace officer without an arrest warrant signed by a magistrate, and because a private citizen, is authorized to make a citizen's arrest of a person for a misdemeanor which is committed in the presence of the citizen, I hereby state that I am the arresting citizen described above and that I do hereby arrest that person for the crime listed below. I further state that I understand that as a alternative to a citizen's arrest, I may file a crime report with a peace officer who would forward it to the prosecutor's office to be considered for a formal complaint and warrant.</p> <p>However, I prefer to make a citizen's arrest at this time and not wait for a formal complaint and warrant. By doing so I realize that I am assuming ALL LIABILITY for the arrest of said person and do hereby hold all public agencies and their employees harmless, and do hereby promise to indemnify any public agency and / or public employee for any liability incurred for the citizen's arrest. I further realize that a person can be arrested without a warrant only when the citizen making the arrest is aware of facts and circumstances which occur in his presence and which indicate probable cause exists to believe 1) That a crime has occurred, and 2) that the arrested person committed said crime. Those facts and circumstances, which occurred in my presence, together with the names and addresses of other witnesses known to me, as set forth on the reverse side.</p>					
Name of Person Arrested		Name of Crime:			
Location of Crime		Date and Time of Crime			
Missing Vehicle					
Embezzled <input type="checkbox"/> Stolen <input type="checkbox"/> Missing <input type="checkbox"/>					
Date and Time Reported	Date and Time Occurred	Location of Occurrence			
Keys in Vehicle? Yes / No	Steering Locked? Yes / No	Did you give anyone permission to drive vehicle? Yes / No			
Doors Locked? Yes / No	Payments Current? Yes / No	Are you willing to prosecute the person(s) responsible? Yes / No			
Insurance Policy		Insurance Policy Number:			
Last Driver		Persons with Keys to Vehicle		Number of Keys:	
Year	Make	Model	Body Type	VIN Number	
Exterior Color		Transmission Type	Hub Cap Type	Fuel Amount	
Other Marks or Identifiers					
<p>I _____ of _____ do hereby release any Peace Officer from any claim or demand of any kind that I may make or have by reason of his recovering or storing the above described vehicle and hereby agree to indemnify any such officer(s) from any demand whatsoever that may be placed against him by other parties as a result of his recovering or storing the above described vehicle. This agreement is to remain in effect until such time as the said vehicle is recovered and again in the owner's possession. I also hereby certify to the best of my knowledge, the information in this report is true and accurate.</p>					
Signed _____		Date / Time _____			

See other side for written statement

Received from \_\_\_\_\_ Date and Time \_\_\_\_\_

By \_\_\_\_\_

7

## WITNESS STATEMENT

[illegible]

PLAINTIFF EXHIBIT NO: 2  
CASE NO.: CR-PP-18-5030 MENTABERRY, KEVIN  
DISTRICT COURT: JUDGE ALVIN R. KACIN  
DATE MARKED: 08/16/19  
DATE ADMITTED: 01/23/20  
ENTER: DM



## ELKO POLICE DEPARTMENT WORKSHEET / STATEMENT

Incident# 2018-0847

Page # of

Name: (Last, First, Middle) Rangel, Leslie Marie		Ethnicity: Caucasian	Sex: Female	Age: 31	DOB: 02-10-1987
Street Address: 1250 Louisville Hwy Ste 100		City: Elko	State: NV	Zip: 89801	
Home Phone:		Work Phone: 702-271-3942	Cell Phone:		
Height: 5'8"	Weight: 170	Hair: Brown	Eyes: Blue	DL Number/State:	
Place of Birth: Las Vegas		Occupation / Place of Work: Therapist & Client reported work			Statement Citizen's Arrest

**Citizen's Misdemeanor Arrest**

Because the laws of Nevada (NRS 171.124) prohibit the arrest of a person by a peace officer for a misdemeanor act not committed in the presence of the peace officer without an arrest warrant signed by a magistrate, and because a private citizen is authorized to make a citizen's arrest of a person for a misdemeanor which is committed in the presence of the citizen, I hereby state that I am the arresting citizen described above and that I do hereby arrest that person for the crime listed below. I further state that I understand that as an alternative to a citizen's arrest, I may file a crime report with a peace officer who would forward it to the prosecutor's office to be considered for a formal complaint and warrant.

However, I prefer to make a citizen's arrest at this time and not wait for a formal complaint and warrant. By doing so I realize that I am assuming ALL LIABILITY for the arrest of said person and do hereby hold all public agencies and their employees harmless, and do hereby promise to indemnify any public agency and/or public employee for any liability incurred for the citizen's arrest. I further realize that a person can be arrested without a warrant only when the citizen making the arrest is aware of facts and circumstances which occur in his presence and which indicate probable cause exists to believe: 1) that a crime has occurred, and 2) that the arrested person committed said crime. Those facts and circumstances, which occurred in my presence, together with the names and addresses of other witnesses known to me, as set forth on the reverse side.

Name of Person Arrested	Name of Crime
Location of Crime	Date and Time of Crime

**Missing Vehicle**      Embzzled ☐      Stolen ☐      Missing ☐

Date and Time Reported	Date and Time Occurred	Location of Occurrence
Keys in Vehicle? Yes/No	Steering Locked? Yes/No	Did you give anyone permission to drive vehicle? Yes/No
Doors Locked? Yes/No	Payments Current? Yes/No	Are you willing to prosecute the person(s) responsible? Yes/No
Insurance Policy		Insurance Policy Number
Last Driver		Persons with Keys to Vehicle
Year	Make	Model
Body Type	VIN Number	License State
Exterior Color	Transmission Type	Hub Cap Type
Fuel Amount		

Other Marks or Identifiers

I \_\_\_\_\_ of \_\_\_\_\_ do hereby release any Peace Officer from any claim or demand of any kind that I may make or have by reason of his recovering or storing the above described vehicle and hereby agree to indemnify any such officer(s) from any demand whatsoever that may be placed against him by other parties as a result of his recovering or storing the above described vehicle. This agreement is to remain in effect until such time as the said vehicle is recovered and again in the owner's possession. I also hereby certify to the best of my knowledge, the information in this report is true and accurate.

Signed \_\_\_\_\_ Date/Time \_\_\_\_\_

See other side for written statement

Received from \_\_\_\_\_

Date and Time \_\_\_\_\_

By \_\_\_\_\_

## WITNESS STATEMENT

INCIDENT #:	NAME: (Last, First, Middle)	PAGE# OF PAGES
<p>On today, 01-12-2018, your client Alexandria Pederson reported that she was molested by her friend's father named Kevin molested her. The therapist explained that Client to further explained that Kevin was drinking, then put his hand in her and she asked him to stop. Then her friend Annie noticed or woke up the Kevin's as usual. Kevin said "No I'll stay down here with you guys." per Client report. Client's explanation that Annie "pinned" a sexual organ into his rectum then they ran into her friend's room &amp; locked the door. Client reports that woman kept trying to get into the room but since it was a deep sleep, she told her grandmother. But when Annie asked a question about it, she was angry to her. "I'm fine" she said. This therapist apologized &amp; explained in a mandated report that were to report this to local law enforcement &amp; her parents.</p>		
<p>I hereby certify that the above statements are true and correct to the best of my knowledge. I understand that making a false report to a public officer is a misdemeanor under Nevada state law; NRS 197.190, 207.280. A person commits the crime of making a false report if he/she willfully makes any untrue, misleading, or exaggerated statement in any report to a police or fire department.</p>		
SIGNATURE: <i>Jessie M. Kugel</i>		DATE/TIME: 01/12/2018 @ 5:41

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PLAINTIFF EXHIBIT NO: 3  
CASE NO.: CR-PP-18-5030 MENTABERRY, KEVIN  
DISTRICT COURT: JUDGE ALVIN R. KACIN  
DATE MARKED: 08/16/19  
DATE ADMITTED: 01/23/20  
CLERK: DM

CASE NO. CR-FP-18-5030

DEPT. NO. 2

FOURTH JUDICIAL DISTRICT COURT  
**FILED IN OPEN COURT**Date: 01/27/20Time: 9:13 A.M.Clerk: JMIN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

---

THE STATE OF NEVADA,

Plaintiff,

vs.

KEVIN JOHN MENTABERRY,

Defendant.  

---

INSTRUCTION NO. 1

LADIES AND GENTLEMEN:

This instruction is intended to serve as an introduction to the trial of this case. It is not a substitute for the detailed instructions on the law and the evidence that I will give you at the close of the case and before you retire to consider your verdicts.

This is a criminal case commenced by the State of Nevada, which I may sometimes refer to as "the State," against Kevin John Mentaberry. The case is based on a criminal information, which has been read to you.

You should distinctly understand that the criminal information simply contains charges. It is not, in any sense, evidence of the allegations it contains. Nor is it a substitute for the instructions containing the elements of the crimes charged that I will give you at the close of this case.

The Defendant has pled "not guilty" to the crimes charged in the criminal information. Therefore, the State has the burden of proving every element of the crimes charged beyond a reasonable doubt. The purpose of the trial is to determine whether the State can meet this burden.

The trial will proceed in the following order.

First: The parties have the opportunity to make opening statements. The State may make an opening statement at the beginning of the trial. The Defendant may make an opening statement following the opening statement for the State, or may defer the making of an opening statement until the close of the State's case. Neither party is obliged to make an opening statement. What is said in the opening statements is not evidence. The statement simply serves the purpose of discussing the evidence that the party making the statement expects to be admitted.

Second: The State will introduce evidence in support of the charges in the Criminal Information.

Third: After the State has presented its evidence, the Defendant may present evidence; however, he is not obliged to do so. The burden is always on the State to prove every element of the crimes charged beyond a reasonable doubt. The law never imposes on the defendant in a criminal case the burden of calling any witnesses or introducing any evidence.

Fourth: I will instruct you on the applicable law. Your verdicts must be unanimous.



Fifth: After the reading of the instructions, each party has the opportunity to present oral argument in support of their respective cases. What is said in closing argument is not evidence, just as what is said in the opening statements is not evidence. The arguments are designed to present to you the contentions of the parties as to what the evidence has shown, and what inferences may be drawn from the evidence. The State has the right to open and close the argument.

Your purpose as jurors is to find and determine the facts. Under our system of criminal procedure you are the sole judges of the facts. If, at any time, I should make any comment regarding the facts, you are admonished to disregard it. It is especially important that you perform your duty of determining the facts diligently and conscientiously, for ordinarily there is no means of correcting an erroneous determination of the facts by a jury.

On the other hand, and with equal emphasis, I instruct you that the law as given by the court constitutes the only law for your guidance. It is your duty to accept and follow it. It is your duty to follow the law as I give it to you even though you may disagree with the law.

You are to determine the facts in the case solely from the evidence produced at trial, which consists of the testimony of witnesses and exhibits received in evidence. Questions asked by the lawyers are not evidence, for the evidence consists of answers given by witnesses to questions posed by the lawyers. Again, statements and arguments of counsel are not evidence. Counsel, however, may enter into agreements or stipulations to facts which are not in dispute. When they do so, you are to accept the facts as stipulated by counsel. On occasion, I may tell you that I am taking judicial notice of certain facts. You then may accept those facts as true, but are not required to. It is up to you to decide what inferences are to be drawn from the evidence, and what facts are established by the evidence.



The parties may sometimes present objections to some of the testimony or other evidence. It is the duty of a lawyer to object to evidence that he or she believes may not properly be offered, and you should not be prejudiced in any way against a lawyer who makes objections or against the party he or she represents. At times I may sustain objections, or direct that you disregard certain testimony or exhibits. You must not consider any evidence to which an objection has been sustained, or that I have instructed you to disregard.

In considering the weight and value of the testimony of any witness, you may take into consideration the appearance, attitude and behavior of the witness; the extent of his or her opportunity and ability to see or hear or otherwise become aware, and to remember and communicate; the interest of the witness in the outcome of the case, if any; the existence or non-existence of a bias or other motive; the inclination of the witness to speak truthfully or not; the probability or improbability of the statements of the witness; a statement previously made by him or her that is inconsistent with his or her testimony; evidence of the existence or non-existence of any fact testified to by him or her; and all other facts and circumstances in evidence.

No statement, ruling, remark or comment that I may make during the course of the trial is intended to indicate my opinion as to how you should decide the case, or to influence you in any way in your determination of the facts. At times I may ask questions of witnesses. If I do so, it is for the purpose of bringing out matters that I feel should be brought out, and not in any way to indicate my opinion about the evidence or to indicate the weight I feel you should give the testimony of the witnesses. I may also find it necessary to admonish the lawyers. If I do, you should not show prejudice toward a lawyer or his client because I have found it necessary to admonish him or her.

It is the duty of an attorney to present to you his client's case in the most favorable light consistent with the truth and the law. During the trial, I ask you not to communicate with the attorneys, even on matters having no connection whatsoever with this case. The attorneys are officers of the court, and they are aware of their responsibilities as such. Even if you are acquainted with the attorney, you will observe that he or she will avoid any contact with you during the trial, and you should not be offended by that. The lawyer will be attempting merely to comply with the rules of professional conduct in avoiding any appearance of impropriety.

Not only must your conduct as jurors be above reproach, but you must avoid the appearance of any improper conduct. Do not talk to the parties, attorneys or witnesses during the trial, even upon matters unconnected with the case. In the event that anyone should attempt to improperly influence you in any manner, you should promptly report the matter to me or to the bailiff. If you notice anything out of the ordinary, you should promptly report the matter to me or to the bailiff.

You must not consider anything you may have read or heard about the case outside the courtroom, whether before or during the trial.

Under our system of criminal procedure you are not to concern yourself in any way with the sentence or sentences that the Defendant might receive if you should find him guilty. Your function is solely to decide whether he is guilty or not guilty of the charges against him. If, and only if, you find him guilty of a charge or charges in this case, then it becomes the duty of the court to pronounce sentence.

Until this case is submitted to you, you must not discuss it with anyone, even with your fellow jurors. After it is submitted to you, you must discuss it only in the jury room with your

fellow jurors. It is important that you keep an open mind and not decide any issue in the case until the entire case has been submitted to you under instructions of the court.

INSTRUCTION NO. 2

You will be given the opportunity to ask written questions of the witnesses called to testify in this case. However, I caution that you are not to consider yourselves advocates, and you are not encouraged to ask large numbers of questions because it is the primary responsibility of each lawyer to present his or her client's case and evidence. You may ask a question that you want to have answered in order to obtain all of the evidence necessary for your deliberations.

Questions may be asked only in the following manner.

After both lawyers have finished questioning a witness, I will ask the jury if it has any questions. Your questions must be written. In order to ask a question, simply raise your hand, and the bailiff will deliver your written question to the court. Questions must be directed to the witness instead of the lawyers or the judge. After consulting with the lawyers at a sidebar conference, the court will determine if your written question is legally proper. If it is, I will ask it. Only questions permissible under the rules of evidence will be asked. No adverse inference should be drawn if the court does not allow a particular question to be asked. After the question has been answered, the court may ask follow-up questions and will permit the lawyers to ask follow-up questions. The jury must not place undue weight on the responses to its questions.

It is not necessary that you spell each word in a given jury question correctly. Please try to be specific with your questions, and cover only one subject with each question. Phonetic spelling is acceptable. Do not concern yourselves with the form of the question because I will reword it so that it is presented to the witness in the proper manner.



INSTRUCTION NO. 3

This is a prosecution by the State of Nevada against the Defendant, KEVIN JOHN MENTABERRY. The criminal information, omitting formal parts, reads as follows.

COUNT 1

**SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 16 YEARS, A CATEGORY A FELONY**

That the Defendant willfully and unlawfully subjected another person, to-wit: AP, who is a child under the age of 16 years, to sexual penetration, to-wit: by placing his finger into her vagina, against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his/her conduct.

OR, IN THE ALTERNATIVE TO COUNT 1,

COUNT 2

**STATUTORY SEXUAL SEDUCTION, A CATEGORY B FELONY**

That the Defendant did willfully and unlawfully commit sexual penetration with a child under the age of sixteen (16), one AP, in the following manner: by putting his finger in AP's vagina, at which time the Defendant was twenty-one (21) years of age or older.

OR, IN THE ALTERNATIVE TO COUNTS 1 AND 2,

COUNT 3

**LEWDNESS WITH A 14 OR 15 YEAR OLD CHILD, A CATEGORY B FELONY**

That the Defendant, who at the time of the act was 18 years of age or older, did willfully, unlawfully, and lewdly commit a 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, one AP, who at the time of the act(s) was 14 or 15 years of age, and that said Defendant committed said act with the intent of arousing, appealing to, or gratifying the lust or passion or sexual desire of either the Defendant or the child in the following manner: by touching or rubbing her stomach and/or vaginal area and/or breasts and/or some other manner or means as yet unknown.

The Defendant has entered pleas of not guilty to the charges. Therefore, the burden is on the State of Nevada to prove him guilty of the crimes charged beyond a reasonable doubt.

INSTRUCTION NO. 4

To warrant a conviction of any crime, the Defendant must be proven guilty beyond a reasonable doubt of every element of the crime. The failure to prove any element of a crime beyond a reasonable doubt must result in a verdict of not guilty of that crime.



INSTRUCTION NO. 5

A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

INSTRUCTION NO. 6

In order to find the Defendant guilty of Count 1, SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 16 YEARS, the jury must conclude that every one of the following elements has been proven beyond a reasonable doubt:

1. That the Defendant;
2. willfully and unlawfully;
3. subjected a child under the age of 16 years to a sexual penetration;
4. and that the sexual penetration was:
  - a. against the child's will; or
  - b. under conditions in which the Defendant knew or should have known that the child was mentally or physically incapable of resisting or understanding the nature of the Defendant's conduct.

The failure to prove any one of these elements beyond a reasonable doubt must result in a verdict of not guilty of this charge.

If after fully and carefully considering Count 1, SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 16 YEARS, you either

1. Find that the State has not proven the Defendant guilty of Count 1, SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 16 YEARS, beyond a reasonable doubt; or
2. Are unable to agree whether to acquit or convict on that charge,

the Defendant may be found guilty of Count 2, STATUTORY SEXUAL SEDUCTION, if the evidence establishes that the Defendant is guilty of that charge beyond a reasonable doubt.

In order to find the Defendant guilty of Count 2, STATUTORY SEXUAL SEDUCTION, the jury must conclude that every one of the following elements has been proven beyond a reasonable doubt:

1. That the Defendant;
2. willfully and unlawfully;
3. subjected a 14 or 15 year-old child to a sexual penetration;
4. and at the time of the sexual penetration, the Defendant was 21 years of age or older.

The failure to prove any one of these elements beyond a reasonable doubt must result in a verdict of not guilty of this charge.

If after fully and carefully considering Count 2, STATUTORY SEXUAL SEDUCTION, you either

1. Find that the State has not proven the Defendant guilty of Count 2, STATUTORY SEXUAL SEDUCTION, beyond a reasonable doubt; or
2. Are unable to agree whether to acquit or convict on that charge,

the Defendant may be found guilty of Count 3, LEWDNESS WITH A 14 OR 15 YEAR OLD CHILD, if the evidence establishes that the Defendant is guilty of that charge beyond a reasonable doubt.

In order to find the Defendant guilty of Count 3, LEWDNESS WITH A 14 OR 15 YEAR OLD CHILD, the jury must conclude that every one of the following elements has been proven beyond a reasonable doubt:

1. That while he was 18 years of age or older, the Defendant;
2. willfully and lewdly;

3. committed a lewd or lascivious act;
4. upon the body, or any part or member thereof, of a 14 or 15 year-old child;
5. and that the Defendant committed the act with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of either himself or the child, or both.

The failure to prove any one of these elements beyond a reasonable doubt must result in a verdict of not guilty of this charge.

INSTRUCTION NO. 7

In every crime or public offense there must exist a union, or joint operation of act and intention.

INSTRUCTION NO. 8

Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused.



INSTRUCTION NO. 9

When applied to the intent with which an act of sexual penetration or a lewd or lascivious act is performed, the word "willfully" relates to an act that is done intentionally, deliberately or designedly, as distinguished from an act done accidentally, inadvertently, or innocently.

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INSTRUCTION NO. 10

“Sexual penetration” means any intrusion, however slight, of any part of a person’s body or any object manipulated or inserted by a person into the genital opening of the body of another person.

INSTRUCTION NO. 11

The phrase “against the child’s will” means without the consent of the child subjected to a sexual penetration.

Whether a child subjected to a sexual penetration consented to that penetration depends on the facts that the jury finds in a particular case.

While consent to a sexual penetration inevitably involves submission to that penetration, submission does not inevitably equate to consent. The degree of resistance or protest by a child subjected to a sexual penetration is simply among the totality of circumstances that the jury must consider in deciding whether lack of consent to a sexual penetration has been proven beyond a reasonable doubt.

A sexual penetration may be against the will of a child even though the person committing the act of penetration did not otherwise use physical force against the child or threaten the child with the use of such physical force at the time of the act.

INSTRUCTION NO. 12

A defendant may commit a lewd or lascivious act by touching the bare skin of the body of a child, or a part or member thereof. A defendant may also commit a lewd or lascivious act by touching clothes being worn on the body of a child, or any part or member thereof.

Although an essential element of Count 3, LEWDNESS WITH A 14 OR 15 YEAR OLD CHILD, is an intent to arouse, appeal to or gratify the lust, passions, or sexual desires of either the person committing the act or the child, or both, the law does not require as an essential element of the crime that the lust, passions or sexual desires of either of such persons actually be aroused, appealed to, or gratified.

INSTRUCTION NO. 13

Every person charged with the commission of a crime shall be presumed innocent until the contrary is proven by competent evidence beyond a reasonable doubt. This is a presumption of law with which the Defendant is clothed, and it abides with the Defendant throughout the entire trial of this case until it is overcome by competent evidence sufficient in your minds to establish the Defendant is guilty of a crime beyond a reasonable doubt. In determining whether the Defendant is guilty or not guilty of a crime, it is not necessary that he establish his innocence, but it is sufficient in order to warrant an acquittal if a reasonable doubt exists in your minds as to his guilt, and it makes no difference whether the reasonable doubt thus created exists or is established from the evidence produced on the part of the State, or that produced on the part of the Defendant, or from the lack of evidence, or its unreliability or weight.

INSTRUCTION NO. 14

There are two types of evidence that a jury may properly consider. One is direct evidence, such as the testimony of an eyewitness. The other is circumstantial evidence, proof of a chain of circumstances pointing to the commission of a crime.

As a general rule, the law makes no distinction between direct and circumstantial evidence. It simply requires that, before convicting a defendant, the jury be satisfied of his guilt beyond a reasonable doubt after a consideration of all the evidence in the case. Facts may be proven by direct evidence or circumstantial evidence. Both direct evidence and circumstantial evidence are acceptable as a means of proof. Neither is necessarily entitled to a greater weight than the other.



INSTRUCTION NO. 15

Intent may be proven by circumstantial evidence. It rarely can be proven by any other means. While witnesses may see and hear, and thus be able to give direct evidence of what a defendant does or fails to do, there can be no eyewitness account of a state of mind with which an act was done or omitted, but what a defendant does or fails to do may indicate intent or lack of intent to commit a crime.

In determining whether a defendant had or lacked a particular intent, the jury is entitled to consider any statements made and acts done or omitted by the accused, and all facts and circumstances in evidence that may aid determination of state of mind.

INSTRUCTION NO. 16

A defendant's voluntary intoxication is not a defense to SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 16 YEARS, and STATUTORY SEXUAL SEDUCTION.

INSTRUCTION NO. 17

A 14 or 15 year-old child's actual consent to a defendant's sexual penetration of the child is not a defense to STATUTORY SEXUAL SEDUCTION.

INSTRUCTION NO. 18

A defendant's reasonable and good faith belief that a child whom he subjected to a sexual penetration was 16 years of age or older is not a defense to STATUTORY SEXUAL SEDUCTION.

INSTRUCTION NO. 19

A defendant's voluntary intoxication can be raised as a defense to LEWDNESS WITH A 14 OR 15 YEAR OLD CHILD. However, a defendant's voluntary intoxication cannot be a successful defense to LEWDNESS WITH A 14 OR 15 YEAR OLD CHILD if the jury finds beyond a reasonable doubt that the voluntary intoxication did not prevent the defendant from forming an intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of either himself or the child.

INSTRUCTION NO. 20

Motive is not an element of the crimes charged, and need not be shown. However, you may consider motive or lack of motive as a circumstance in this case. Presence of motive may tend to establish guilt. Absence of motive may tend to establish a lack of guilt. You will therefore give the presence or absence of motive, as the case may be, the weight to which you find it to be entitled.



INSTRUCTION NO. 21

There is no requirement that the testimony of a victim of a sexual offense be corroborated, and her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.

INSTRUCTION NO. 22

If you find that a witness made earlier statements that conflict with his or her trial testimony, you may consider that fact in deciding how much of his or her trial testimony, if any, to believe.

In making this decision, you may consider whether the witness purposely made a false statement, or whether it was an innocent mistake; whether the inconsistency concerns an important fact, or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency, and whether that explanation appealed to your common sense.

It is exclusively your duty, based upon your consideration of all the evidence and your own good judgment, to determine whether the prior statements were inconsistent. If you find that a witness made prior inconsistent statements, it is your duty to determine how much, if any, weight to be given to the inconsistent statements.

Evidence that at some other time a witness made a statement or statements that is or are inconsistent with his or her trial testimony may be considered by you for not only the purpose of testing the credibility of the witness, but also as evidence of the truth of the facts as stated by the witness on that prior occasion.

INSTRUCTION NO. 23

A witness willfully false in one material part of his or her testimony is to be distrusted in others. You may reject the whole testimony of a witness who willfully has testified falsely as to a material point unless you believe the probability of truth favors his or her testimony in other particulars. However, discrepancies in the testimony of a witness or between his or her testimony and that of others, if there were any, do not necessarily mean that the witness should be discredited. Failure of recollection is not uncommon. It is a fact also that two persons witnessing an incident or a transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

INSTRUCTION NO. 24

A statement made by the Defendant other than at this trial may be an admission. An admission is a statement by the Defendant which, by itself, is not sufficient to warrant an inference of guilt, but which tends to prove guilt when considered with the rest of the evidence.

You are the exclusive judges as to whether an admission was made by the Defendant, and, if so, whether such statement is true, in whole or in part. If you should find that any such statement is entirely untrue, you must reject it. If you find it is true in part, you may consider the part that you find to be true.

INSTRUCTION NO. 25

A person is qualified to testify as a forensic psychiatrist if she has special knowledge, skill, experience, training, or education sufficient to qualify her to testify as such.

A person so qualified may give her opinions on questions put to her at a trial. To decide issues on which the witness has given her opinions, you may consider the opinions with the reasons given for them, if any. You may also consider the qualifications and credibility of the witness.

You are not bound to accept such opinions as conclusive, but should give them the weight to which you find them to be entitled. You may disregard any such opinions if you find them to be unreasonable.

INSTRUCTION NO. 26

It is not necessary to call as witnesses all persons who may have been present at any of the events disclosed by the evidence or who may appear to have some knowledge of these events, or to produce all objects or documents mentioned or suggested by the evidence.



INSTRUCTION NO. 27

Jurors shall not conduct any form of independent research, investigations, or experiments prior to or during jury deliberations. This prohibition includes, but is not limited to:

1. Communicating with anyone in any way regarding the case or its merits, by phone, email, text, the internet, or other means;
2. reading, watching, or listening to any news or media accounts or commentary about the case;
3. doing any research, such as consulting dictionaries, using the internet, or using reference materials; and
4. making any investigation, testing a theory of the case, re-creating any aspect of the case, or in any other way investigating or learning about the case on one's own.

INSTRUCTION NO. 28

Every member of the jury has been permitted to take notes during the trial. However, you are cautioned not to rely upon your respective notes in the case of a conflict among those notes because the court reporter's notes contain the complete authentic record of the trial.

INSTRUCTION NO. 29

It is your duty as jurors to consult with one another and to deliberate with a desire to reach an agreement, if you can do so without violence to your individual judgment. You each must decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion if you become convinced that it is erroneous. However, you should not be influenced to vote, in any way, on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors.

INSTRUCTION NO. 30

You should also keep in mind that the results of your deliberations are important to both parties, and that you must be fair to the Defendant as well as to the State. Both the State and the Defendant demand and expect that you will carefully and dispassionately consider and weigh the evidence and follow the law as instructed by the court, and give each your conscientious judgment, and that you will reach a just verdict regardless of what the consequences may be.

INSTRUCTION NO. 31

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The bailiff will then return you to the courtroom where the information sought will be given to you in the presence of, and after notice to, the State and the Defendant and his attorney.

Read backs of testimony are time consuming and are not encouraged unless you deem it a necessity. Should you require a read back, you must carefully describe the testimony to be read back so that the court reporter can locate and report that testimony. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 32

The court has already instructed you that you are the sole judges of the testimony and other evidence, and of the weight to be given the same. In determining questions of fact presented in this case, you shall consider only the evidence introduced and admitted before you. You are to bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women.



INSTRUCTION NO. 33

In this case there are four possible verdicts. These possible verdicts are listed on the verdict form that you will receive. You will choose your own foreperson, and when all of your number have agreed upon your verdict, you will have the foreperson check the box that corresponds to the verdict you have reached, and sign and date the verdict form.

INSTRUCTION NO. 34

LADIES AND GENTLEMEN, it takes all twelve of you to agree upon your verdict in this matter. In determining whether the Defendant is guilty or not guilty of a crime, you must follow the law as instructed by the court and consider only the evidence admitted at this trial. And when you have agreed upon your verdict and the verdict form is signed and dated by your foreperson, you shall return the verdict form to the court.

Instructions 1 through 34, given by the court.



ALVIN R. (AL) KACIN  
DISTRICT COURT JUDGE

01/27/2020

FILED

2022 JUN 22 AM 11:03

2022 JUN 21 PM 3:16

4TH JUDICIAL DISTRICT COURT

CLERK DEPUTY  
COUNTY ATTORNEY

CLERK DEPUTY

18

Case No. CR-FP-18-5030

Dept. II

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

ooOoo

THE STATE OF NEVADA

:

Plaintiff,

:

v.

:

JURY TRIAL

KEVIN JOHN MENTABERRY,

:

DEFENSE OPENING STATEMENT

Defendant.

:

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter  
came on for hearing on January 21, 2020, at the hour of  
4:34 p.m. of said day, in Elko, Nevada, before the  
HONORABLE ALVIN R. KACIN, District Judge.

Stenographically Reported by Lisa M. Manley, CCR No. 271

COPY

A P P E A R A N C E S

For the Plaintiff:

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P R O C E E D I N G S

THE COURT: Mr. Woodbury, did the defense wish to make an opening statement at this time?

MR. WOODBURY: We do.

THE COURT: All right. Please proceed.

MR. WOODBURY: We spent a considerable amount of time deciding who would be the jurors who heard this case.

The determination obviously between the defense and the prosecution is that you are. You made some promises in voir dire that we're sure you will keep. We've looked at your questionnaires that you filled out. You may not remember those. From all of that, we have determined that you are reasonable people and you will carefully listen to everything.

Okay. The two most important witnesses you will hear from are -- I gather is A.P. And I inform you now that you will also hear from Kevin Mentaberry, who will testify.

As the judge has previously informed you, when he testifies you are entitled to ask questions. If you think we are feeding you a line or somehow tricking you into something, you are entitled to ask questions.

And he will also be subject to cross-examination by Mr. Thompson. We will refrain, to the extent we can reasonably do so, from limiting that cross-examination so that you can hear Kevin Mentaberry from start to finish.

Because one of the things we want to make sure is that we're going to try to prove through Kevin Mentaberry's testimony a whole bunch of things, only one of which I'm going to mention in opening statement, and that he is a normal, ordinary, reasonable guy with ordinary mental intelligence. That's the conclusion that we are trying to show you at one point in his testimony.

The events took place on December 31 or January 1. You will hear no evidence that anybody definitively knows at what time all of this happened. In part because it was -- it will be shown that it was a substantially long time between the time that A.P. was required to talk to the police officers and tell them about what happened. It was a long time before Mr. Mentaberry came to understand what he was up against.

And the young woman who has been described by the prosecution as A.H. will testify to you and tell you she had consumed some alcohol and some marijuana and things were not a hundred percent clear to her.

So A.P. -- well, excuse me. There was a party, I guess.

A.M., who is, evidence will show, Kevin Mentaberry's 15-year-old daughter at the time, told Kevin in the afternoon of December 31 she was going to invite some friends over and cleared it with him.

You will hear testimony that A.M. lives with Kevin Mentaberry as does her sister Mazy. And there is a 10-year-old boy as well, Kevin's son Z.M.

You won't hear much from Z.M. He was around, but he didn't ever get interviewed by the police officers. He was there, however.

The testimony from A.M. and A.H. -- I didn't say that yet, but A.M. will be testifying as well. And the testimony of A.M. and A.H. will be that A.H. came over to the residence at 5:30, six o'clock on New Year's Eve.

There were two other girls there, another friend of A.M.'s and her younger sister. And the testimony will also be, and this will be from Mazy, that her -- she also had a friend there, a friend named Cassidy.

You will find that Mazy didn't get interviewed by the Elko Police Department. Cassidy didn't get interviewed by the Elko Police Department.

A.M. did. And they lost her initial interview, lost the tape of it, so they went back and interviewed her a second time.

A.H. will testify that there came a time when A.P. came over to the residence. A.P. will be asked on cross-examination how she came to come to the party, came to be invited to the party, and she will tell you that she was invited, that A.M. texted her, said, "hey, can you come



1 over?" You will find that when we originally asked A.P.  
2 about that, that's how she said it.  
3 A.M. will testify that A.P. had been -- the party  
4 had been discussed well before that time with A.P. and A.P.  
5 told her she had other plans, and it was not until later in  
6 the evening of December 31 when A.P. texted her and asked  
7 if she could come over.  
8 We find that conflicting, but not important.  
9 You are going to hear evidence that A.P. has had,  
10 since at least the time she was 13, mental health problems,  
11 problems with self-esteem, and that she has been medically  
12 treated for those problems with self-esteem throughout.  
13 And to the extent that it will be implied to you  
14 that this all -- this depression and the self-esteem  
15 problems began on December 31 of 2017, you will hear  
16 evidence to the contrary.  
17 Presumably you will hear it from A.P. herself.  
18 But if you don't hear it from A.P. herself, you will hear  
19 it from A.P.'s mother, Ms. Eklund, and her grandmother, Ms.  
20 Crabtree.  
21 The -- some of the testimony, what's coming, we  
22 are not a hundred percent sure of.  
23 The -- it appears, and we'll ask questions about  
24 this from A.P. and to her mother, that A.P. was being  
25 treated by a psychiatrist in Las Vegas, and it was through

1 You will hear testimony that when she got to  
2 preliminary examination she changed her mind.  
3 You will hear in closing argument our analysis of  
4 why that change was occasioned.  
5 The testimony will also be that there was a  
6 bottle of rum that appeared at the party. The testimony  
7 will be that A.P. brought it from home.  
8 There is also going to be testimony that Kevin --  
9 I pertnear called him Kevin McKinney, who is a police  
10 lieutenant -- I'm going to have to be careful about that.  
11 THE DEFENDANT: It's hard to hear you.  
12 MR. WOODBURY: I'm sorry. That's the first thing  
13 I have written up here is to talk loud. Because I was  
14 advised that I am not a loud talker and I should be and I  
15 will be.  
16 In any event, the testimony will be from A.M. and  
17 Mazy that earlier in the evening Kevin had come down -- he  
18 had a friend with him over there at the residence. The  
19 residence is 162 Barite Street.  
20 Kevin had a friend over there with him and he and  
21 the friend went downstairs. And lo and behold, they got in  
22 Mazy's room and happened to see a bottle of vodka. Kevin  
23 confiscated it so his daughters wouldn't be drinking.  
24 He went back upstairs and ultimately Nate went  
25 home. And that fact, I think you will hear evidence,

1 phone discussions back and forth.  
2 And it is our understanding, but we may be shown  
3 to be wrong about that, that A.P. was taking a medication  
4 that theoretically dealt with her depression and  
5 self-esteem problems. What that medication is, you will  
6 find out. Or perhaps they will deny having -- her having  
7 taken that medication.  
8 But we tell you that because the testimony is  
9 going to be from A.P. that she drank, I think, a single  
10 drink from a bottle of rum and that she smoked a bong of  
11 marijuana. And that she did that relatively early in the  
12 evening of December 31. And that she did not consume  
13 enough to affect her, either the alcohol or the marijuana.  
14 You will hear the testimony of A.H. and A.M. and  
15 Mazy that it wasn't a little bit of any of it. There  
16 was -- she consumed at least as much alcohol as A.H. did,  
17 and A.H. was, as I indicated earlier, somewhat intoxicated.  
18 The fact, too, is that you will hear the  
19 testimony of A.P. that when she was interviewed by  
20 Detective Marshowsky that he beseeched her, from start to  
21 finish in the interview, to be truthful.  
22 And that when he asked if there had been any,  
23 quote, weed -- which I assume you all know the meaning  
24 of -- smoked, A.P. told him yes, Mazy had smoked it but she  
25 hadn't.

1 became known to A.P. who wasn't -- apparently was not there  
2 yet.  
3 Apparently A.P. will -- well, not apparently.  
4 She did tell the first police officer who had interviewed  
5 her, Mr. Craig, that that guy, right there, (indicating)  
6 drank two bottles of vodka that night.  
7 We think that the testimony will be that she  
8 hasn't got a clue where she pulled that figure out from,  
9 and it certainly doesn't accord with the truth of the  
10 matter for what Kevin Mentaberry had to drink that night,  
11 two bottles of vodka.  
12 She will also testify that Kevin came downstairs  
13 after Nate left and he confiscated the bottle of rum. And  
14 her idea of confiscation is that he took it and drank it  
15 himself.  
16 Mr. Mentaberry will deny that.  
17 A.M., who was downstairs and might have seen him  
18 do it if he had done that, will deny that.  
19 A.H., who was around and might have seen him do  
20 it if he did it, will deny that.  
21 The evidence will show that in describing the  
22 events that constitute the rape in the case, it began  
23 with -- well, it didn't begin with Ms. Rangel, who is a  
24 counselor and was counseling A.P.  
25 What it began with was on the day -- probably the

1 day after, but we are not sure. It was the day school  
2 picked up again after New Year's. And since New Year's was  
3 on a Sunday, it's conceivable the school picked up on  
4 Tuesday or so.

5 A.P. didn't hide from A.M. that her father had  
6 sexually molested her. You will hear and have heard  
7 argument that somehow one of the things these teenage girls  
8 do when they are molested is they hide it and they don't  
9 say anything. You heard the -- you heard that she hid it  
10 from her mother.

11 The testimony of A.M. will be that A.P. not only  
12 told A.M., she told her right smack dab in front of a bunch  
13 of people at the school. And by the end of the day, A.P.'s  
14 problems with Kevin Mentaberry were all over school.

15 The -- you will hear testimony from Dr. Piasecki.  
16 Dr. Piasecki will be shown to be a forensic psychiatrist  
17 who deals with these kinds of things from start to finish  
18 really and she is quite knowledgeable.

19 And she will tell you -- she will tell you about  
20 these child rapists. And one of the things they do almost  
21 inevitably is they groom these kids. They get these kids  
22 in a position where they -- I'll give you money, I'll give  
23 you something, I'll do something for you, I'll do whatever  
24 you want to do.

25 You will not hear A.P. describe anything Kevin

1 Mentaberry did to her by way of grooming her. Period.

2 You will hear testimony from Officer Craig and  
3 you will see a written statement by A.P. that during the  
4 course of this rape Kevin Mentaberry unbuttoned her pants.

5 You will hear testimony from her at the  
6 preliminary examination that he didn't, that he just got  
7 down inside her pants.

8 We tried to persuade the Elko Police  
9 Department -- we talked to Josh Morrell, who is a  
10 detective, about it. We tried to persuade him to get the  
11 clothes, at least get a picture of them.

12 We have a sheet of paper signed by A.P. that she  
13 was five-foot-five or five-foot-six inches tall and weighed  
14 145 pounds and had a pair of Levi pants -- Levi -- what do  
15 they call them -- some kind of pants that are tight.

16 And it must have become evident to her in some  
17 way at sometime that if Kevin Mentaberry was going to get  
18 his hands down her pants, that was going to be a big chore  
19 if he didn't get them unbuttoned.

20 But by the preliminary hearing, when she  
21 testified, she testified "he didn't unbutton my pants."  
22 Period. We will of course be asking her questions about  
23 why that was not initially said.

24 You will hear that when it came time, when A.M.  
25 said she was going to be bed -- first of all, let me give

1 you a little bit of a layout down in the Mentaberry  
2 basement.

3 The Mentaberry basement is, as Mr. Thompson  
4 pointed out to you, composed of two bedrooms, one in which  
5 Mazy slept and one in which A.M. slept.

6 The door to Mazy's bedroom did not have a -- or  
7 the bedroom that Mazy was staying in with her friend  
8 Cassidy didn't have a door on it. And the room that A.M.  
9 was in was about 10, 15 feet from where all of this  
10 happened.

11 And the point that they -- when A.M. went to bed  
12 and asked A.H. and A.P. if they wanted to go to bed, A.P.  
13 said no, that she wanted to stay up and watch a little  
14 television.

15 It wasn't just television, it was Pretty Little  
16 Liars.

17 And since we asked you on voir dire whether any  
18 of you had any knowledge whatever of what the show Pretty  
19 Little Liars was about for the eight years it was on  
20 television, you will hear that it's about teenaged girls  
21 who spend 50 percent of their time lying, getting other  
22 people in trouble, threatening other people, pulling back,  
23 lying again.

24 Whether or not you will hear testimony that those  
25 kind of television shows affect young children,

1 particularly those with self-esteem problems, I don't know.

2 You will decide that.

3 You will also hear that when A.P. told A.M. and  
4 half the school about her having been raped, the friendship  
5 between A.P., A.M., A.H. and A.T. ended. And it ended on  
6 that Monday.

7 We suggest to you that you will be thinking about  
8 how A.P. would react to that.

9 The testimony of A.P. will be that when A.H. woke  
10 up, she was lying on her side, facing away from  
11 Mr. Mentaberry.

12 A.H.'s testimony would be she was sitting up  
13 looking at her cell phone.

14 Now, there is going to be a question about that.  
15 You will hear A.P. having said that she didn't have her  
16 cell phone, it was over being charged.

17 However, it was in her hand at the time that A.H.  
18 looked at her.

19 We asked the police officers, Find out what the  
20 heck is on that cell phone, will you? Will you please get  
21 that cell phone? We would like to know if that was what  
22 was making her sad.

23 Did we get the cell phone? You will find that we  
24 did not. They didn't make any effort whatever to get it.

25 So now we don't know what her clothes looked

1 like, we don't know how they fit, and we don't what was on  
2 the cell phone.

3 But if you look at it, you will find that A.P.  
4 has got herself in a position where she had some other  
5 arrangements for New Year's and they went to pieces.

6 If you look at it, she has lost friends.

7 But it's going to be shown to be worse than that.

8 When Mr. Mentaberry went upstairs, you will hear  
9 that A.P. said he couldn't get up the stairs and he  
10 wouldn't go and he fought her.

11 And A.H. is going to come in here and say she  
12 said, "Kevin, will you go upstairs," or something. And he  
13 went upstairs.

14 There was no fight about it. No nothing. He  
15 simply went upstairs.

16 He was intoxicated. How intoxicated, we're going  
17 to have a massive amount of information for you about that,  
18 all right, so you can know whether or not he totally lost  
19 his brains or not.

20 The case, ladies and gentlemen, is going to be  
21 complicated.

22 It's complicated because there is not an iota of  
23 evidence to corroborate what A.P. is telling you.

24 And when Kevin Mentaberry gets on the witnesses  
25 stand and says, "I never touched her," there is not an iota

14

1 of evidence, direct evidence at least, that he is not lying  
2 through his teeth.

3 So you are going to have to draw some rational,  
4 theoretically psychological conclusions about why little  
5 A.P. would be making this terrible story up about Kevin  
6 Mentaberry if it didn't happen.

7 The defense has a theory and we will explain it  
8 to you in infinite detail. As you can see, I am kind of  
9 inclined that way. And you can make your minds up whether  
10 or not you believe her or you believe him.

11 There is a lot more coming. And, again, we have  
12 confidence that you have the patience and the will and the  
13 intelligence to figure this out. And that you will, as  
14 you've kind of indicated, not let your emotional attachment  
15 to poor little 14-year-old girls get the best of your  
16 intelligence.

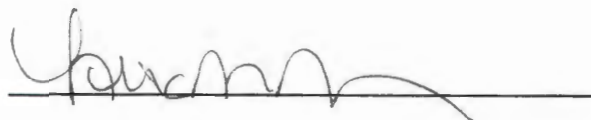
17 Thank you.

18 (WHEREUPON, defense's opening statement was concluded  
19 at 5:01 p.m.)

15



1 STATE OF NEVADA )  
2 ) SS.  
3 COUNTY OF ELKO )  
4 I, LISA M. MANLEY, Official Court Reporter of the Fourth  
5 Judicial District Court, Dept. II, of the State of Nevada,  
6 in and for the County of Elko, do hereby certify that I was  
7 present in court during all the proceedings had in the  
8 matter of the State of Nevada, plaintiff, versus  
9 KEVIN JOHN MENTABERRY, defendant, heard at Elko, Nevada, on  
10 January 21, 2020, and took verbatim stenotype notes  
11 thereof; and that the foregoing 15 pages contain a full,  
12 true and correct transcription of my stenotype notes so  
13 taken, and a full, true and correct copy of all proceedings  
14 had.  
15  
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LISA M. MANLEY - CCR No. 271

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18

1 Case No. CR-FP-18-5030

2 Dept. II

3  
4  
5  
6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF  
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

8 ooOoo

9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : JURY TRIAL

12 KEVIN JOHN MENTABERRY, : DEFENSE CLOSING ARGUMENT

13 Defendant. :  
14 \_\_\_\_\_/

15  
16 TRANSCRIPT OF PROCEEDINGS

17  
18 BE IT REMEMBERED that the above-entitled matter  
19 came on for hearing on January 27, 2020, at the hour of  
20 9:35 a.m. of said day, in Elko, Nevada, before the  
21 HONORABLE ALVIN R. KACIN, District Judge.

22  
23  
24  
25 Stenographically Reported by Lisa M. Manley, CCR No. 271

COPY

1	<u>A P P E A R A N C E S</u>	1	<u>P R O C E E D I N G S</u>
2		2	THE COURT: Thank you Mr. Thompson.
3	For the Plaintiff:	3	Argument for the defense today, Mr. Woodbury?
4	CHAD B. THOMPSON, ESQ. Elko County Deputy District Attorney 540 Court Street Second Floor Elko, Nevada 89801 (775) 738-3101	4	MR. WOODBURY: Thank you, Your Honor.
5		5	The question, of course, is why in heaven's name
6		6	would A.P. make this up if it didn't happen?
7		7	That should be the first question that is on your
8	For the Defendant:	8	mind: What in heaven's name would she make this up for?
9	GARY D. WOODBURY, ESQ. 1053 Idaho Street Elko, Nevada 89801 (775) 738-8006	9	That question did not come as a big surprise to
10		10	the defense. It's clear from day one of all of this that
11		11	there had to be some reason if Kevin Mentaberry didn't
12		12	touch her.
13		13	You all agree with that, I'm sure.
14		14	In order to do that, the first thing you have to
15		15	do is ask yourself what you know about A.P. You have to
16		16	ask that question.
17		17	The prosecution suggests she was just a normal,
18		18	everyday, ordinary girl.
19		19	Baloney. She was not an ordinary, everyday sort
20		20	of girl from square one. She started going to Rangel
21		21	because she tried to commit suicide when she was in the
22		22	seventh grade, for heaven's sake.
23		23	Does that strike you as an ordinary, everyday
24		24	girl?
25		25	What was going on in her mind?
	2		3
1	Well, we don't know. We don't know because the	1	You heard her mother. Her mother works in
2	prosecution won't bring somebody here, like a psychiatrist	2	Carlin. They live in Elko. Her mother goes to work before
3	out of Las Vegas, to say what in heaven's name is in her	3	she leaves for school and comes home after she gets home.
4	mind.	4	The child is essentially living by herself, because her
5	That's not our problem; that's their problem.	5	stepfather works the same sequence and her sister lives in
6	If they want to come in here and put a child on	6	Reno.
7	the witness stand under those circumstances, it seems	7	That's the 14-year-old girl that we're talking
8	reasonable, if they want you to convict him beyond a	8	about, just to start.
9	reasonable doubt based on her testimony and her reliability	9	Second, it's kind of the reason we started out
10	and her truthfulness, that's what you do.	10	with her father. Every child has a natural father. A.P.
11	Did they bring the doctor from Las Vegas? No.	11	is no exception. And if you recall, we showed her a post
12	Who did they bring?	12	or whatever you call it on the Facebook or the Snapchat or
13	They brought Melissa Piasecki, who spent an hour	13	whatever it is, in which she said, "Dad, why do you buy a
14	talking to her and her mother. That's the psychiatric	14	pickup rather than paying child support?"
15	testimony that you have about her and that's what you know.	15	That's this little child who is afraid, who is
16	And they have Ms. Rangel. You all sat here and	16	just a natural, everyday, ordinary child, who is too afraid
17	you watched Ms. Rangel. You know how good she is at her	17	to do anything to Kevin Mentaberry when he starts to rape
18	job. Clearly you had to see that.	18	her, but she is willing to say to her dad, why buy a
19	So let's talk a little bit about the	19	pickup, buddy, when you should be paying child support.
20	circumstances of A.P., the one where she is an ordinary,	20	And what happened? The child support -- the dad
21	everyday kid.	21	writes back and says "you don't know what you're talking
22	She was 14 years old at the time of -- on	22	about." And she writes to him and says we're done with,
23	December 31, and she was about to become 15. She was a	23	it's over, no more mother -- or father-child relationship.
24	couple months away from being 15 years old in February of	24	Do you suppose that mattered to her? How do you
25	2018.	25	suppose -- what was in her mind, while she is saying such
	4		5

1 things?  
2 Is that just an ordinary, everyday child?  
3 You are going to have to answer that.  
4 She couldn't even remember, but do you remember  
5 when that took place? That took place on December 27.  
6 Three days before this event with Kevin Mentaberry. Three  
7 days.  
8 You want to talk about Dr. Rangel and her  
9 analysis of everything. What did Rangel say? Well, she  
10 said she was going to go back with her dad.  
11 Does that tell you about the child?  
12 That's what she told Rangel she wanted to do.  
13 Did she tell Rangel she had terminated the  
14 relationship with him?  
15 Did she tell Rangel that she had posted a meme,  
16 whatever in Heaven's name that is, on the electronic media  
17 that said "my mother is insane"?  
18 That's the child we're talking about.  
19 That's the family we're talking about.  
20 We asked her mother, "Did you ever see that?"  
21 "Well, I don't remember."  
22 Do you suppose this is common, ordinary stuff for  
23 15- or 14-year-old kids to be posting is "my mother is  
24 insane"?  
25 And what happened when she told Rangel that?

1 why not?  
2 From our point of view, it's because he didn't do  
3 nothing. Because if they would have found any evidence,  
4 they would have put it on. And they didn't.  
5 There is no corroborative evidence.  
6 There is no effort on their part to find out just  
7 how much trouble this little girl has got.  
8 For heaven's sake, you can review the Marshowsky  
9 interview from now to breakfast and you aren't going to  
10 find nothing in there about her mental health problems.  
11 Didn't talk about them.  
12 But the cops are supposed to know it. The  
13 prosecutor is supposed to it. It's not up to us to try to  
14 figure it out. Kevin Mentaberry never knew the girl  
15 before.  
16 All right. You will remember her testimony,  
17 A.P.'s testimony, about what she did the day of --  
18 before -- or the day of New Year's Eve. She stayed home  
19 and watched a bunch of her nephews and nieces because there  
20 was a party at her house. And she had to clean up  
21 afterward.  
22 That's her life.  
23 But there was also a question. What is the  
24 question?  
25 Her mother came in and said there was no party.

1 Rangel has got her all doing well. She is taking  
2 medication. Rangel doesn't know what the medication is.  
3 She is sending her homework home to fill out stories or  
4 something about -- about bringing her to grips with herself  
5 and she is doing fine.  
6 She tells Rangel, "I want to go to my father."  
7 And Rangel just tosses it aside, it don't mean anything.  
8 Who is supposed to know that?  
9 These guys. Not us.  
10 Kevin Mentaberry is an ordinary, run-of-the-mill  
11 guy who has got a job and a house and kids and a car. He  
12 is not a private investigator and he is not a police  
13 officer and he is not a prosecutor.  
14 That's what they got.  
15 When they get those cases, that's what they are  
16 supposed to do. Not leave Rangel in the dark.  
17 So who was the follow-up detective, ladies and  
18 gentlemen?  
19 Do you all remember?  
20 Do you all remember up there the name Josh  
21 Morrell?  
22 Do you all remember that Marshowsky said? "I am  
23 just the forensic interviewer. That's all I do."  
24 If you want corroboration, we go to Josh Morrell.  
25 Did you see Josh Morrell testify here? No.

1 So how does A.P. -- that's a nothing proposition. There is  
2 no trauma involved in that necessarily.  
3 So how come there is no party and she says there  
4 is a party and that she was the guy, the lady, who had to  
5 keep -- keep the kids in line and had to clean it up?  
6 Is that in her head?  
7 Of course it is. That's what she said.  
8 Does that mean anything?  
9 Who knows? Who knows? You certainly don't know.  
10 And there is no way to figure it out. It's just  
11 that if she dreams something up, you don't know why she is  
12 dreaming that stuff up, other than she has got significant  
13 mental health problems concerning anxiety, self-esteem and  
14 depression.  
15 Does she want attention? Does she want people to  
16 feel sorry for her because she was saddled with that task?  
17 How are we to know?  
18 That's why you go and you bring the psychiatrist  
19 up and ask him those kinds of questions.  
20 When you have got a child who is taking four  
21 medications prescribed by a psychologist or psychiatrist in  
22 Las Vegas, don't you have to find -- look a little further?  
23 Don't you have to worry about it?  
24 If she's told Rangel she is going with her  
25 father, if she's holding back information, if she is having

1 to work at a party, don't you have to look a little closer?  
2 That's what cops are for, isn't it?  
3 But it didn't even come close to ending there.  
4 It didn't even come close.  
5 Officer Craig comes in, tells you A.P. saw, or at  
6 least said she saw Kevin Mentaberry drink two bottles of  
7 vodka that day. You all remember that?  
8 Wasn't true.  
9 She testified to it.  
10 Does that sound like someone that you want to  
11 believe beyond a reasonable doubt?  
12 You just read that instruction that says if you  
13 believe her testimony beyond a reasonable doubt, you don't  
14 need any corroborative evidence.  
15 You got a gal who says that this guy who raped me  
16 drank two bottles of vodka.  
17 She didn't see it.  
18 She also had Mentaberry drinking her rum. It  
19 changed. Her Malibu rum she brought over.  
20 He also molested her.  
21 So let's take the next step with A.P.  
22 In her world, A.P. is way short of friends.  
23 I'm assuming most all of you have children or  
24 have been around children and see that children's lives,  
25 for a period of time after they are born and start school,

10

1 You remember the guy Josh Morrell? If you want  
2 to know why somebody is, quote, crying while looking at  
3 their cell phone, you might want to know what they were  
4 looking at, mightn't you?  
5 Where is he at?  
6 That's their problem. Not our problem; their  
7 problem.  
8 Who knows what was on that cell phone.  
9 You also remember that the child, A.P., said that  
10 she didn't have any prior arrangements for New Year's Eve.  
11 Turned out, according to A.M.'s testimony, she did. They  
12 fell through.  
13 Who was the arrangements with?  
14 A.P. doesn't remember. A.M. doesn't know it.  
15 Did something -- did she have something -- she  
16 said she had already turned down an invitation with her  
17 four friends, her four close friends, and that's according  
18 to A.P., she had turned down their invitation and had  
19 something apparently better to do.  
20 And it had fallen through.  
21 Did it occur to you that she might be looking at  
22 that cell phone and be getting information about something  
23 she ain't liking to hear.  
24 But it goes beyond that, ladies and gentlemen.  
25 She denied having a cell phone with her -- or her

12

1 have to do with their parents being the principal players  
2 in the game. And as time passes, their peers become the  
3 principal players in the game.  
4 We assume, the defense assumes, you have seen  
5 that.  
6 So what happens when she doesn't have any  
7 friends?  
8 You heard A.M. testify to that.  
9 You heard A.H. testify that A.M. had gone to and  
10 started to try to make a friend out of A.P. because she  
11 didn't have any friends.  
12 Can you imagine living in that world? Your  
13 relationship with your father is cut off. Your relationship  
14 with your mother is one where she thinks she is insane.  
15 Your relationship with your peers isn't -- there aren't any  
16 relationships with peers except for A.P., A.M., A.T. and  
17 A.H.  
18 That's her life.  
19 So when did she lose these friends?  
20 Well, let's go the other way.  
21 After the behavior of Mr. Mentaberry that  
22 resulted in this rape or molestation or sexual assault or  
23 whatever we're calling it, she was sitting up on her bottom  
24 looking at a cell phone, according to A.H.  
25 What was on the cell phone?

11

1 cell phone was over being charged, she couldn't possibly  
2 have had it in her hand. Well, lo and behold, she did,  
3 if A.H. knows what she's talking about.  
4 What did she tell -- well, I will stop for a  
5 second and tell you, I am fully aware that any lawyer that  
6 yaps over 20 minutes is very likely to have a jury go,  
7 (yawns), "no more, please."  
8 But I really have no choice, ladies and  
9 gentlemen. I wish I did, but I don't.  
10 What did she tell A.H.?  
11 "He touched my stomach." Period. That's it.  
12 If you take that and you put that in terms of  
13 Dr. Piasecki's expertise that these guys typically don't  
14 release it for at least seven days, she released it in four  
15 or five minutes after it happened, if it actually happened.  
16 When did it turn into, he did a whole lot more  
17 than touch my stomach?  
18 That's the kind of a hard question. It's hard to  
19 say.  
20 She talked to A.T. the following day. A.M. --  
21 no, I think that was A.H. texted her the following day and  
22 asked her if she was all right.  
23 She had already revealed it. And it was a stomach  
24 touch.  
25 When did it become a full blown rape?

13



1 After people started pushing her.  
 2 You remember that her mother testified, A.P.'s  
 3 mother testified that she never saw any changes in A.P. for  
 4 the next two, three, four days.  
 5 This trauma apparently didn't hit for two or  
 6 three days. And then it started to hit. And you may  
 7 notice that's after the conversation with A.T. who said,  
 8 apparently, "keep your mouth shut."  
 9 And Mom, assuming there was a party on the day  
 10 before New Year's, may not have a good memory.  
 11 It could have also started on the first day of  
 12 school. I think it was January 8 we decided. Because  
 13 January 1 was a Monday and January 8 was the day that  
 14 school started.  
 15 And you may recall that on January 8, A.M.  
 16 testified that's when she revealed this long stretch of  
 17 molestation that Kevin Mentaberry perpetrated on her.  
 18 And nobody was buying it.  
 19 So why would she go from a stomach touch to that?  
 20 Because there is no other communication. There  
 21 is no other communication with her friends.  
 22 Because obviously you would think we lost our  
 23 minds if we suggested to you that this wasn't being batted  
 24 around between A.M. and A.T. and A.H.  
 25 They're friends. It's a big concern.

14

1 of how the law proceeds is tough.  
 2 You heard Marshowsky testify that the worst thing  
 3 that could happen is Officer Craig, an Elko street police  
 4 officer, talk to her about all this.  
 5 He has no idea what kind of pressure he put on  
 6 her. Not a clue.  
 7 And Officer Craig acknowledged that; he didn't  
 8 know how bad he was screwing up.  
 9 Does it matter?  
 10 Defense obviously thinks it does.  
 11 You remember that A.P. testified -- let me go  
 12 back and start that one all over.  
 13 This all began, according to Ms. Eklund, when she  
 14 called Ms. Rangel.  
 15 And then when we had Ms. Rangel on the witness  
 16 stand, it all happened when she called Ms. Eklund not about  
 17 problems the kid was having but about not showing up for  
 18 her appointments, and I have got to either be seeing her in  
 19 an appointment or I got to release her.  
 20 Which way did it go.  
 21 You remember A.P. testifying that she didn't want  
 22 to tell Rangel anything so she asked it in the context of  
 23 something having happened to her friend.  
 24 Do you remember Rangel saying that that  
 25 conversation didn't happen?

16

1 And there is no talking to her.  
 2 Another problem.  
 3 Now her life is apparently without her good  
 4 friends. Do you remember A.M. testifying about she had no  
 5 other significant friendships?  
 6 Do you think that that -- how -- when it's a big  
 7 part -- peers are a big part of your life, do you think  
 8 that doesn't count?  
 9 She cries incessantly.  
 10 Are you under the impression that this was just a  
 11 trauma being created by this -- this tough questioning that  
 12 sent her off that witness stand I don't remember how many  
 13 times, at least three, maybe four times, while she was  
 14 testifying?  
 15 Do you think that has nothing to do with "please  
 16 feel sorry for me"?  
 17 You can watch the Marshowsky interview, I gather,  
 18 and they want you to look at it, of A.P.  
 19 Look at how many times she cried in that one.  
 20 Zero.  
 21 She can do it. It's for your attention. For you  
 22 to feel sorry for her.  
 23 And it sounds like we're picking on her, and I  
 24 assure you that the defense is not.  
 25 She is a troubled young woman. And this idiocy

15

1 What does that mean?  
 2 It means that A.P. is not particularly married to  
 3 a clear -- not married to the proposition that she has got  
 4 to be direct and straightforward.  
 5 Okay. We'll move off of A.P. for a while.  
 6 Well, one more, I guess. You recall the  
 7 testimony of A.P. after she relearned everything when she  
 8 went back at noon and read her statement? All of a sudden  
 9 it was A.H. asking Kevin to leave, and Kevin saying, "No,  
 10 I'll stay down here and I am not going to leave," and A.H.  
 11 finally having to force him to go upstairs.  
 12 A.H. says that didn't happen. Period.  
 13 Now, A.H. has probably ingested too much alcohol  
 14 and too much marijuana, but she recalled that very clearly.  
 15 You also remember the testimony about -- from  
 16 A.P. -- or not the testimony. Well, I guess it was the  
 17 testimony -- where we asked her if she told Marshowsky  
 18 about admitting that and having smoked marijuana at the  
 19 party.  
 20 You all remember that?  
 21 And she told him no. Mazy had, but not me.  
 22 There's another deception to Marshowsky.  
 23 It's a deception that Josh Morrell should have  
 24 found out about. And it's a deception Josh Morrell didn't  
 25 look at. Or if he did, he didn't come tell you about it.

17



1 This idea that you make up stories, that A.P. is  
2 capable of making up a story that will hurt somebody, and  
3 she really wouldn't do that. Why would she make up a story  
4 about Kevin Mentaberry if it wasn't true?

5 She made up a story about Mazy. Or at least  
6 eliminated her, what she thought she might have a problem  
7 about, even though she implicated Mazy, she thought she was  
8 implicating Mazy, turns out she had a medical marijuana  
9 permit. But she thought she was.

10 Think about her reaction to what she said  
11 Mr. Mentaberry was doing.

12 First of all, Mentaberry never looked up to see  
13 if A.H. was awake. Never looked up to see if somebody,  
14 Mazy or a friend, had come out of the room or A.M. had come  
15 out of the room.

16 And he was whispering. Ladies and gentlemen, if  
17 he was whispering, he was trying to hide it.

18 He had -- he is not so drunk he doesn't know what  
19 he is doing. He is trying to hide it. If he has got  
20 enough brain power to whisper, he has got enough brain  
21 power to know what he's doing is wrong.

22 And how did she answer? "I answered in a normal  
23 voice."

24 Got kind of confusing about how many times she  
25 told him to stop. And then she thought stop -- one of the

18

1 But he didn't.

2 She is 140 pounds, you'll remember the testimony.  
3 She is laying on her side with her back toward Kevin. He  
4 sticks his hand down her pants and sticks his finger in her  
5 vagina.

6 You are all adults. I don't know how you are  
7 going to talk about it in deliberation, but you are not  
8 going to reach a conclusion that's a very likely  
9 possibility.

10 It may well be physically impossible.

11 Okay. The dog location. This all started, as  
12 you will recall, from her testimony saying that Kevin was  
13 scratching the dog and inadvertently, she thought, might be  
14 touching her thigh, her outer thigh, and then he moved the  
15 dog, this 60- or 70-pound dog, moved it over on top of  
16 A.H. -- or by A.H.

17 Again, we put him on the witness stand for you to  
18 see if he was an idiot, to at least show you he was of  
19 average intelligence.

20 If you are about to molest a 14-year-old kid, why  
21 would you move your dog over to the nearest eye witness so  
22 that the dog can move around or do whatever in the heck it  
23 is that dogs do? Is the dog just going to lay there? Can  
24 you count on it?

25 A.P. said he never looked at A.H., never looked

20

1 "stops" had woken A.H. up on the couch.

2 A.H. testified that what woke her up, she wasn't  
3 sure of, but thought it was the dog moving.

4 So if he didn't want A.H. to wake up, why in  
5 heaven's name would you put the dog over by A.H.?

6 We put Kevin on the witness stand to let you have  
7 a look at him as at least a man with reasonable  
8 intelligence.

9 Our assumption is that you concluded he at least  
10 reached that level.

11 She had the will power to resist by talking in a  
12 normal voice.

13 This is theoretically the last part of at least  
14 the first part of the closing.

15 She told you that after Kevin touched her  
16 stomach, at least at some point before he inserted his  
17 finger into her vagina, that she had rolled over and was  
18 pretending to be asleep on the couch.

19 She confessed to having originally told Officer  
20 Craig that he had unbuttoned her pants, and that, in fact,  
21 he never had.

22 I don't know why she backed up from that. Maybe  
23 you don't either. But that was what she told Craig because  
24 that is what the testimony is. And that's right there in  
25 Craig's report. It's also in Rangel's report.

19

1 to see whether A.H. was awake.

2 He is making propositions to her. He wants to  
3 touch her. He wants to do other things. He wants her to  
4 cooperate.

5 And he's not looking at A.H. to see this dog.

6 The door banging. Do you remember the door  
7 banging?

8 There are four girls in that basement who did not  
9 hear a door banging by Kevin Mentaberry and one that did:  
10 A.P.

11 Ladies and gentlemen, think about it for an  
12 instant, would you?

13 Why would you go back downstairs to bang the  
14 door?

15 What -- what's the point, other than to say that  
16 he is just continuing to act like an idiot?

17 What was he trying to accomplish with door  
18 banging?

19 What could he possibly accomplish with the door  
20 banging?

21 Grooming. Dr. Piasecki said that grooming is  
22 when you start to touch ladies, and you touch them a little  
23 bit here first, see how they react, and then you touch them  
24 other places and see how they react.

25 And we suggest to you that what grooming means in

21

1 the natural world and in the common sense of every human  
 2 being on the planet aside from Dr. Piasecki is that you do  
 3 things to persuade the lady to say okay.  
 4 You compliment them. You offer them things. Do  
 5 you want to come upstairs? You separate them.  
 6 Anybody's common sense tells you that ladies are  
 7 not likely to consent to those kind of activities in the  
 8 company of other people.  
 9 Did he do it? No.  
 10 Give her some more rum. Did he do it? No.  
 11 Well, the State says he is just too drunk to know  
 12 that he had to do something like that.  
 13 You all think that's true?  
 14 If he would have brains enough to ask if he could  
 15 sit on the couch based on the proposition that he thought  
 16 they might be uncomfortable if he sat on the couch there,  
 17 he is thinking about moral and social values; is he not?  
 18 He is evaluating them. He is behaving according  
 19 to those values.  
 20 Dr. Piasecki talked about the difference between  
 21 an illusion, a delusion, and just being mixed up because  
 22 you're drunk. And that was the jumping-over-the-fence  
 23 question.  
 24 I would assume that we all recognize that alcohol  
 25 tends to make you feel a little stronger and more powerful

22

1 situations and make things happen?  
 2 Who knows?  
 3 That's what they watched.  
 4 What show was on that night? What show did they  
 5 see?  
 6 Remember Josh Morrell? That's what you look at.  
 7 You take a look. If this girl is changing things  
 8 from Kevin Mentaberry unbuttoning her pants to not  
 9 unbuttoning, to taking her belt off prior to going to  
 10 sleep, that's what you look at.  
 11 You start to wonder, is she being truthful? Is  
 12 she telling us everything?  
 13 Is Pretty Little Liars -- if you read the  
 14 Marshowsky thing, she is very clear about that's what they  
 15 watched.  
 16 Why wouldn't you look to see if maybe there was a  
 17 little something on that night about something similar to  
 18 this?  
 19 From our point of view, Dr. Piasecki didn't know  
 20 what the other two medications were. She did not know  
 21 particularly what the affect of Lamictal was on the girl  
 22 and whether she was acting under an illusion or a delusion.  
 23 We have no clue. Not a clue. It's a  
 24 possibility.  
 25 Lamictal is a possibility.

24

1 than usual.  
 2 It doesn't make you a blind idiot. You might do  
 3 some stupid things. But it doesn't make you forget moral  
 4 and social values.  
 5 It might be something that you would do that was  
 6 stupid and you might hurt yourself, but it doesn't make you  
 7 forget your moral values.  
 8 So let's add one other little thing. You heard  
 9 the discussion about the Pretty Little Liars.  
 10 So if you are A.P. and you got no friends except  
 11 these four, your party plans for New Year's have been  
 12 disrupted and you had to settle for something that was a  
 13 little less exciting, you are mad at your old man, your  
 14 mother is insane and your father is a crack head, your  
 15 natural father is a crack head, how much impact do you  
 16 think television has on this girl?  
 17 She sat there and watched Pretty Little Liars.  
 18 We know, and have had confirmed at least slightly, that  
 19 it's about pretty young teenage girls who lie.  
 20 A.P. said she just barely watched it; she doesn't  
 21 know much about it. A.H. said it was A.P. that picked the  
 22 show.  
 23 If that's the world that the Pretty Little Liars  
 24 live in, why wouldn't it be at least arguably somewhat  
 25 attractive to A.P. where you could tell lies and create

23

1 The other two medications she was taking in  
 2 December are not a possibility; they are happening.  
 3 But the delusion is the question.  
 4 Where were her pants? Where was the shirt she  
 5 was wearing on December 31? Did you hear about that?  
 6 Did you see Josh Morrell show up and testify to  
 7 you that "we have located them, here they are, we'll show  
 8 it to you"? Do you think anybody would be interested in  
 9 that?  
 10 Do you think any realistic cop on the street  
 11 after hearing that she had her back turned toward Kevin  
 12 Mentaberry, with her pants buttoned and weighed 140 pounds,  
 13 that a cop wouldn't want to have a look at them pants and  
 14 see just how possible that was?  
 15 Is that our fault? We're supposed to do  
 16 something about that?  
 17 That's theirs.  
 18 Where is A.T.?  
 19 If A.T. knows something, why isn't she here? Why  
 20 wasn't she subpoenaed?  
 21 The better question, ladies and gentlemen, is if  
 22 the State has charged this offense in three different ways,  
 23 rape, they call it sexual assault, but step one, it has to  
 24 be against her will or under circumstances where it's clear  
 25 she doesn't know what is going on.

25

1 Clearly they could show that because that's what  
2 they have charged.

3 The second charge is in the alternative. Well,  
4 if he didn't rape her and she didn't -- she consented,  
5 well, that's a crime too. She is only 14 or 15 years old.  
6 It's statutory sexual seduction.

7 If you are so sure that she was a lady who did  
8 not consent or lived under conditions where she couldn't  
9 and he should have known she couldn't consent, what do you  
10 charge the other count for?

11 Kind of as a backstop.

12 Third, lewdness with a minor. Same thing.

13 They are the guys who select what they are going  
14 to charge. And what they have selected are essentially  
15 crimes in which she could have consented.

16 We are not suggesting to you in any way, shape or  
17 form that's so, but it shows you how much they know about  
18 their case too.

19 Okay. As I have indicated to you on a number of  
20 different occasions, we put Kevin Mentaberry on the witness  
21 stand to let you have a look to see if he was of ordinary  
22 intelligence.

23 Because the view of the defense is that a person  
24 of ordinary intelligence, being about as drunk as Kevin  
25 Mentaberry was, there is no chance he would have tried

25

1 the location of the dog. She said, "That dog was by my  
2 legs when he sat down."

3 Given that A.P. testified, and Kevin Mentaberry  
4 sat right there and listened to it, that it was the dog  
5 petting that was by her side that started this thing, do  
6 you think that Kevin Mentaberry wanted you to -- wanted to  
7 contradict A.H.?

8 Absolutely not. He would have to be a bonehead  
9 to do that.

10 Or he would have to be swearing to tell the truth  
11 and do it. And he did it.

12 He sat right there on that witness stand, knowing  
13 full well that A.H. had taken that dog out of the picture  
14 as something that had started this molestation, and at a  
15 bare minimum he said, "I don't know where the dog was."

16 If he has got average intelligence, he knows how  
17 important that is. He would have to be -- well, you figure  
18 that out. That's a big issue.

19 Not satisfied yet?

20 "Did you take a drink out of that vodka after you  
21 confiscated it and took it upstairs?"

22 Kevin Mentaberry is of ordinary intelligence and  
23 he knows that this jury is going to be considering how  
24 intoxicated he was.

25 "Did you take a drink out of it upstairs, Kevin,

28

1 to -- or done what A.P. says to her in front of four other  
2 girls or where they could walk two feet and look out and  
3 see him doing it.

4 But it's better than that.

5 We wanted you to have a look at somebody who  
6 testifies honestly.

7 It's staggering. "How drunk were you, Kevin?"

8 "Nine drinks, nine beers over a five- or six-hour  
9 period."

10 "Did you fall down?"

11 "No, I didn't fall down, I fell the whole way  
12 down the stairs."

13 Do you think that Kevin Mentaberry doesn't think  
14 that you are going to think about that? That a jury  
15 wouldn't think about him falling all the way down the  
16 stairs as an indication of just how drunk he was?

17 But it's better than that. He knows that you are  
18 going to think about it.

19 Nobody throughout the trial had said he fell all  
20 the way down the stairs until Kevin Mentaberry said it.

21 That tells you a little something about Kevin  
22 Mentaberry: He is not going to try to deceive you.

23 And if you don't buy that one, if you think that  
24 one's too lightweight, what about the dog?

25 A.H. sat right there and contradicted A.P. about

27

1 where nobody saw you, nobody could say yea or nay?"

2 What is the truth? "Yeah, I had one."

3 Why would he tell you that if he was not trying  
4 to abide by the rule that said testify truthfully?

5 Finally, the apology.

6 We had testimony from A.P. that the apology  
7 occurred to her alone.

8 Mazy said that there was no apology issued. "I'm  
9 sorry for my drunken behavior," his drunken fool behavior.

10 He can live with that, he's got a toss up.

11 Mazy is every bit as credible as A.P. is.

12 Possibly more.

13 "Did you apologize?"

14 "Yep. Sorry for acting like a drunken fool."

15 That was not an apology for raping A.P. It was  
16 not an apology to her alone. But it was an apology that  
17 was a mixed bag for this jury.

18 And it shows you that sitting over there is a guy  
19 who testified truthfully.

20 "Did you touch her?"

21 "No." Period. "I did not touch her."

22 Ladies and gentlemen, that's the end of it.

23 I realize it's long and it's complex. And I

24 realize that you are not probably very excited about  
25 sitting there and examining every piece of evidence and

29

1 every argument that has been made.

2 The crime that Kevin Mentaberry is charged with  
3 is right at the top of the list. It's a Class A felony.

4 It has meaning to him far beyond what you can  
5 imagine.

6 So we hope that rather than get your emotions  
7 involved, feeling sorry for A.P., which we all do, that you  
8 will sit down and listen and think about what happened  
9 during this trial.

10 And when you are done doing that, we expect you  
11 to acquit him.

12 THE COURT: Thank you for your argument,

13 Mr. Woodbury.

14 (WHEREUPON, defense's closing argument was concluded  
15 at 10:27 a.m.)

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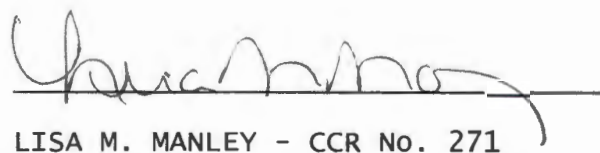
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1 STATE OF NEVADA )  
2 ) SS.  
3 COUNTY OF ELKO )  
4 I, LISA M. MANLEY, Official Court Reporter of the Fourth  
5 Judicial District Court, Dept. II, of the State of Nevada,  
6 in and for the County of Elko, do hereby certify that I was  
7 present in court during all the proceedings had in the  
8 matter of the State of Nevada, plaintiff, versus  
9 KEVIN JOHN MENTABERRY, defendant, heard at Elko, Nevada, on  
10 January 27, 2020, and took verbatim stenotype notes  
11 thereof; and that the foregoing 30 pages contain a full,  
12 true and correct transcription of my stenotype notes so  
13 taken, and a full, true and correct copy of all proceedings  
14 had.  
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LISA M. MANLEY - CCR No. 271

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