

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 83917

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EDWARD MICHAEL ADAMS

Appellant,

v.

THE STATE OF NEVADA

Respondent.

Appeal from a Denial of Petition for Writ of Habeas Corpus (Post-Conviction)
Eighth Judicial District Court, Clark County
The Honorable Nancy A. Becker, District Court Judge
District Court Case No. 08C241003

**APPELLANT'S APPENDIX
VOLUME IV**

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on April 20th, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
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By /s/ Jan Ellison
An Employee of Oronoz & Ericsson, LLC

1 prints and then later you were asked to identify the remaining
2 prints; is that accurate?

3 A I was asked to review the case and go through all the
4 latent prints so that I could testify here today.

5 Q Okay. Now, the initial examination that you did,
6 were you able to make any identifications?

7 A Yes, sir.

8 Q What identifications did you make, and what prints
9 were you examining to -- to make identifications?

10 A May I refer to my notes, sir?

11 Q Yes, if it helps you to remember.

12 A Yes.

13 Q I assume this was a while ago.

14 A January of '04. Excuse me, of '08.

15 Q Okay.

16 A There were four latent prints that were of AFIS
17 quality. They have to meet certain criteria before they're
18 good enough to actually be put into the machine. Four of them
19 were searched by a technician, and of that, one of them
20 generated the source of one of these latent prints. At that
21 time the technician turns it over to me. Actually, at this
22 particular time I was training her, so we were kind of side by
23 side.

24 I compared all of those -- those four initially to
25 Mr. Adams and three of them belonged to him. And the fourth

1 one wasn't really AFIS quality and I didn't compare it. But at
2 that time they were called 301, 302 and 303.

3 Q Okay. So at that point you didn't have like a known
4 case -- major case file prints that were taken from his hands
5 at that point?

6 A No, we just had the ones from the AFIS system.

7 Q Okay. And on the -- the prints that you were
8 examining, were those prints that were impounded and collected
9 by Jonathan Freid --

10 A They were --

11 Q -- CSA?

12 A Yes, sir.

13 Q Okay. I'm going to approach and show you State's
14 Proposed Exhibit 82. Do you recognize this?

15 A Yes.

16 Q What is it?

17 A That is electronic copy of known prints of the person
18 named Edward Adams bearing on ID number of 1969904. These
19 particular set of -- this particular set of known prints was
20 captured digitally, not with ink, and then stored into a
21 database, and we just print -- we just put in the ID number and
22 they -- it prints out a copy of the prints for us. So this is
23 the known prints.

24 Q Okay.

25 MR. SCOW: At this time I'd move to admit State's

1 Proposed 82.

2 THE COURT: Any objection?

3 MR. MANINGO: No objection.

4 THE COURT: 82's admitted.

5 (Exhibit 82 admitted).

6 BY MR. SCOW::

7 Q Now showing you State's Exhibit 78-3. Do you
8 recognize this?

9 A Yes, sir.

10 Q And what is this card here?

11 A This is one of latent prints that was submitted by
12 Mr. Freid. It is -- if you'll see right here where it says
13 303, that is the latent print that was searched in AFIS that
14 helped to identify the source of the latent prints in this
15 case. So it was one of the four that were searched.

16 Q And this is one of the ones that you were able to
17 identify to Edward Adams?

18 A Yes, sir.

19 Q And is that indicated by the writing up here, his
20 name in blue?

21 A Yes.

22 Q And the numbers at the end here, what does that
23 indicate?

24 A That's my initials on each side and my personnel
25 number in between.

1 Q Okay. So that's -- you wrote that?

2 A Yes, sir.

3 Q Now I'm going to show you State's Proposed Exhibit
4 81. Do you recognize this?

5 A Yes, sir.

6 Q What is it?

7 A It's -- well, we call it court chart. It's a -- it's
8 a charting of the identification of that particular latent
9 print that I prepared for court today.

10 Q Okay. This is something that you prepared yourself?

11 A Yes, sir.

12 MR. SCOW: At this time I'd move to admit State's
13 Proposed Exhibit 81.

14 THE COURT: Any objection?

15 MR. MANINGO: No, sir.

16 THE COURT: 81's admitted.

17 (Exhibit 81 admitted).

18 BY MR. SCOW:

19 Q Now showing you 81 with 78-3 right on top of it.
20 This card, you said was print 303?

21 A Yes, sir.

22 Q Latent print 303?

23 A Um-h'm.

24 Q And what -- what we have blown up here is a blowup of
25 that latent print?

1 A Yes, sir.

2 Q Which one is it?

3 A Right here.

4 Q Okay. The one on the left-hand side?

5 A Yes, sir.

6 Q And the one on the right-hand side, what is that?

7 A That is the known print of the right ring finger of
8 Edward Adams.

9 Q Okay. Now, when you say known print, you were able
10 to obtain known prints of Edward Adams?

11 A They were submitted to the laboratory for us, yes.

12 Q Okay. And showing you State's Proposed Exhibit 79
13 and 80. Do you recognize these?

14 A Yes, sir.

15 Q What are they?

16 A Those are -- are latent prints that were collected by
17 crime scene analyst of the victim and of Mr. Adams.

18 Q Okay. So for the victim it was CSA Joseph?

19 A Yes, sir.

20 Q And for the victim it was CSA Fletcher?

21 A Yes, sir.

22 Q And these are the -- some of the prints you relied
23 onto -- to do your analysis?

24 A Yes, sir.

25 MR. SCOW: At this time I'd move to admit State's

1 Proposed Exhibits 79 and 80.

2 THE COURT: Any objection?

3 MR. MANINGO: No, sir.

4 THE COURT: 79 and 80 are admitted.

5 (Exhibits 79 and 80 admitted).

6 BY MR. SCOW:

7 Q So in 81 here, the one on the right was one of the
8 known ink prints of Edward Adams?

9 A Yes, sir.

10 Q So what you've done here is you've marked -- I guess
11 just tell us what you have here so we can understand.

12 A If you would, would you move it over so we can see
13 just this one alone for a little bit?

14 Q Okay. I'll clear that.

15 A All right. I'm not sure if this is -- if you can see
16 pretty good, but how we compare latent prints, we have to, of
17 course, look at them under magnification and we compare them
18 side by side. What you -- we compare three different levels of
19 detail. The first being the pattern type or the flow or the
20 ridges. If both of these prints, both the latent and the
21 known, you'll see that they're -- they're a circular pattern
22 which we call a whirl. And they're about the same size and
23 shape. And therefore, that would lead us to go onto the second
24 level of detail.

25 When we're looking at the second level of detail, we

1 follow each ridge path. And whatever happens in one print,
2 should happen in the other print. So if a print comes -- if
3 you can see the -- the red ridge right there. If it -- if it
4 begins and ends, you have an ending ridge on each side, that
5 must happen both the latent print and the known print. If you
6 look -- at the yellow line right here, it goes -- just for that
7 portion of the print, it goes straight through and there really
8 are no events.

9 And then if you'll look here at the -- at the blue
10 line, you'll see that there's a -- let's see here. Come on.

11 Q I'll get it.

12 A There's one ridge here that divides into two. Then
13 this one ends and this one -- the other one continues on. I
14 can't make it stop. Can you --

15 Q Yes.

16 A Thank you.

17 Q And that's a closer up shot now? You can see the
18 lines better?

19 A Right. So what I have done here, I've just showed
20 you a continuous ridge, a ridge that bifurcates or forks into
21 two, and -- or one that has -- or a couple that have ending
22 ridges. The rest of the green dots are these type of events
23 where ridges have either divided or stopped, and where there
24 are none, of course, the ridges continue on continuously.

25 You'll see some of the areas have been kind of

1 highlighted in -- in a yellowish or orange. We tend to stay
2 away from the areas that aren't clear enough for us to see, and
3 that would be areas that were avoided. We don't look at the
4 parts of print that we cannot see.

5 Q Now turning to the -- the known print on the other
6 side. Are the characteristics, you notice that they're on the
7 other print present here?

8 A Yes, sir, they are.

9 Q Okay. And you -- and you've indicated by lines in
10 the same color as well?

11 A Yes, sir. The third level of detail that we look at
12 are the pore placements and with -- if the ridges are thicker
13 or thinner and the shapes that they have. We look at
14 occasional features like scars and creases that a person may
15 have. However, it's very seldom that we have the third level
16 detail that we're looking for because latent prints are left by
17 chance and not in an ideal situation like they are in the known
18 print.

19 They're -- and then they're processed with powders or
20 chemicals. A lot of times it covers you up that fine detail.
21 So when we don't have third level detail to speak of, then we
22 have to rely on -- we need to rely on more of the second level
23 detail, which is what was done in this case.

24 Q Okay. Now, with -- with all the cards that were
25 impounded by CSA Jonathan Freid, you were able to examine all

1 those cards?

2 A Yes.

3 Q And based on those cards and the locations described
4 or the item that latents were lifted from, can you tell the
5 jury other -- other locations, other identifications you made
6 on this particular case?

7 A The different locations and who?

8 Q Yes.

9 A May I again refer to my notes, please?

10 Q If that helps you to remember, you may do that.

11 A Thank you. There were latent prints from the
12 interior front door that belonged to the victim. There were
13 latent prints from a open lotion packet that belonged to Mr.
14 Adams.

15 Q And again, that was the ones -- the exhibits we just
16 looked at?

17 A Yes, that -- that was the 303 that was put into AFIS.

18 Q For the record, that was Exhibit 81 and Exhibit 78-3.
19 Okay, go ahead.

20 A There was a glass candle jar on the floor of the
21 south bedroom, was identified to Mr. Adams. There was a glass
22 candle jar from the breakfast bar above the sink that was
23 identified to Mr. Adams. There was a latent prints from the
24 interior sliding glass door to the west patio that was
25 identified to Mr. Adams. And that is all.

1 There are other locations where we had latent prints,
2 but they weren't of good enough quality for comparison. And in
3 those cases, of course, no identifications were made.

4 Q Okay. So how many usable prints did you have here?

5 A Fingerprints?

6 Q Latent?

7 A The latent prints --

8 Q Yes.

9 A -- there -- there were, let me see, 17 in all. Two
10 that belonged to Amber and 15 that belonged to Mr. Adams.

11 Q So any identifiable latent print you were able to
12 identify to either Adams or the victim Amber Valles?

13 A They were all identified to one or the other or
14 deemed not a value for comparison.

15 Q So there were some not of value, either a smudge
16 which can be caused by like a touch and the finger moves along
17 the surface?

18 A There are many, many contributing factors, but yes,
19 that would be one.

20 Q Could be one of them? So again, just to make sure
21 we're clear, the locations you described were on the counter at
22 the sink, the breakfast bar in the kitchen --

23 A No, sir. These glass jars or candle jars were on
24 those areas, but they were on jars or -- or candles.

25 Q At those locations?

1 A Candle jars. Right, at those locations --

2 Q Okay.

3 A -- right. And then, of course, two of the doors.

4 Q Okay. I just wanted to -- to make sure it was clear.

5 Glass candle jars on the kitchen counter --

6 A Um-h'm.

7 Q -- by the sink --

8 A Um-h'm.

9 Q -- on the breakfast bar, which is above the sink?

10 A Right.

11 Q The south bedroom, a glass candle jar there?

12 A Um-h'm.

13 Q And then you -- you indicated the sliding glass door,
14 the front door and then the -- the lotion pack, the open lotion
15 pack.

16 A Yes, sir.

17 MR. SCOW: Pass the witness.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. MANINGO:

21 Q Hello, Ms. Farnham.

22 A Hello.

23 Q Just -- just very briefly. Did you receive any blue
24 tape or masking tape to test prints from?

25 A I did not.

1 Q Okay. Did you -- did you receive any prints from CSA
2 that were lifted from any kind of blue painter's tape?

3 A None of the latent prints that were submitted were
4 from tape.

5 Q Okay. So you -- and you never received any of the
6 tape yourself in order it to try and lift any prints or analyze
7 it or anything like that?

8 A No. For the most part usually the processing is done
9 by the crime scene analysts themselves. They can bring things
10 into their lab and do -- process them chemically. We do
11 sometimes do some processing, of course. We all do it, but for
12 the most part, processing is done by the crime scene analyst.

13 Q Okay. Okay. And -- and the purpose of -- of
14 fingerprinting analysis or -- or pulling latent fingerprints is
15 to show that someone had been at a certain location, correct?
16 Is that fair to say?

17 A Well, I mean, the science of fingerprints is -- is
18 based on the ownership of a touch, an identity. And of course,
19 it's used in many, many different areas today. Biometrics,
20 anything like that. But we do use it to find out where someone
21 has touched. It's not necessarily where he's been, unless it's
22 a stationary object --

23 Q Okay.

24 A -- so like a --

25 Q And you --

1 A -- candle can be moved around, but a door is a
2 stationary object. But it does show where people have touched.

3 Q But you said -- you said -- you used the word
4 identity. That's --

5 A Yes, absolutely.

6 Q That's what it's about?

7 A Yes, sir.

8 Q Okay. Thank you.

9 THE COURT: Redirect?

10 MR. SCOW: Nothing else, Judge.

11 THE COURT: Is this witness free to go? Thank you
12 for your testimony. Please step down.

13 THE WITNESS: Thank you, sir.

14 THE COURT: Call your next witness.

15 MR. HENDRICKS: Thank you, Judge. State calls Amy
16 Coe.

17 THE CLERK: Ma'am, once you arrive at the witness
18 stand, remain standing for me, and rise your right hand, I'll
19 swear you in.

20 AMY COE, STATE'S WITNESS, SWORN

21 THE CLERK: Thank you. Please be seated. And please
22 state your name for the record, spelling both first and last
23 name for us.

24 THE WITNESS: My name is Amy Coe, A-m-y, C-o-e.

25 THE CLERK: Thank you.

1 DIRECT EXAMINATION

2 BY MR. HENDRICKS:

3 Q Ms. Coe, how are you employed?

4 A I am a contracted employee with University Medical
5 Center --

6 Q Contracted --

7 A -- as a --

8 Q -- employee. What does that mean?

9 A That means that I'm not immediately employed by UMC.
10 I have a contract with UMC as a sexual assault nurse examiner.11 Q Okay. So you're not an employee of UMC. Are you an
12 employee of Metro?

13 A No, I'm not.

14 Q Not them either?

15 A No.

16 Q So would it be fair to say you're kind of an
17 independent contractor?

18 A That's correct.

19 Q Okay. Now, what exactly do you do?

20 A I'm a sexual assault nurse examiner.

21 Q And how is it that you become a sexual assault nurse
22 examiner?

23 A I first am a nurse, a registered nurse.

24 Q How did you become a nurse? What type of training,
25 experience do you have?

1 A I have a bachelors degree in nursing, and I practiced
2 as a nurse for almost ten years now. And I also have a master
3 degree in nursing, and I'm also a advanced nurse practitioner.

4 Q Do you have any type of specific training in regards
5 to being a sexual assault nurse examiner?

6 A I have post-certification in sexual assault exams.
7 Basically, it's a nationally certified license to practice as a
8 sexual assault examiner.

9 Q How long have you been a SANE nurse?

10 A Almost four years.

11 Q Now, during those four years, approximately how many
12 exams like this have you performed?

13 A What do you mean by like this, specifically?

14 Q SANE exams.

15 A SANE exams, approximately 3 to 400 exams.

16 Q 3 or 400?

17 A Um-h'm.

18 Q Yes?

19 A Yes.

20 Q Okay.

21 A Correct.

22 Q Now, going back to December 14th of -- of 2007, you
23 were employed in that same capacity, correct?

24 A Yes.

25 Q And did you, in fact, perform an examination and

1 evidence retrieval on an individual that presented to you as
2 being a Amber Valles?

3 A Yes.

4 Q Do you recall approximately how old she was?

5 A She was 13.

6 Q Now, when she first comes in and is presented to you,
7 what do you do?

8 A When she first comes in, she's usually attended by
9 the triage nurse. The triage nurse calls me, and I respond.
10 And from that point on I'm the primary care provider for Amber
11 from the time of her visit to when she's discharged.

12 Q Now, we'll eventually get to the examination in
13 regards to some of her private areas. But for now, do you do
14 other things that a regular nurse would do in regards to a
15 patient?

16 A Yes. Do -- we do physical examinations. We obtain
17 history, based on her medical history or social history. We
18 provide medications or treatments, if she needs to be treated,
19 if there's any medical attention needed.

20 Q Okay. History. Did you ask about whether or not she
21 had been sexually active?

22 A Yes.

23 Q And what did she indicate to you?

24 A She told me no.

25 Q And is that something that would have been important

1 to know prior to your examination?

2 A Yes.

3 Q How so?

4 A It affects -- it's a factor in whether or not I will
5 find evidence or any -- any objective findings that I would
6 have based on her history.

7 Q And did you ask her if she -- well, let me ask you,
8 do you do a drug screen?

9 A Yes.

10 Q Why do you do that?

11 A We do a drug screen to see if there is any elicit
12 drugs in her system. Sometimes that can affect memory. It can
13 affect other behaviors. I also do a urine exam, which is part
14 of the drug screening, which is how we find the drug screen is
15 through a urine exam. We examine the urine if she's pregnant.
16 And that's to confirm if she is pregnant, then there's certain
17 medications that we are not allowed to give.

18 And so if she is not pregnant, then we're able to
19 give her certain antibiotics.

20 Q Okay. Now, she said she hadn't been sexually active,
21 correct?

22 A Correct.

23 Q So it would have been a little surprising if she was
24 pregnant, right?

25 A Correct.

1 Q Okay. She wasn't pregnant, was she?

2 A No, she was not.

3 Q Let's talk about the drug screen. You did a drug
4 screen in this particular case, didn't you?

5 A Yes.

6 Q You find any drugs in her system?

7 A No.

8 Q Nothing?

9 A Negative.

10 Q Now, you said that there were certain things that you
11 would treat her with as far as medications?

12 A Correct.

13 Q And some things you couldn't, of course, if she was
14 pregnant, but she was not, right?

15 A Yes.

16 Q Okay. Did you give her any medications?

17 A Yes.

18 Q And if so, why?

19 A I gave her antibiotics to prevent sexual transmitted
20 diseases. And I also gave her what's called plan B. It's a
21 morning after pill to prevent pregnancy.

22 Q Now, did she indicate to you whether or not he --
23 this individual had worn a condom?

24 A She did not. She did not tell me if he wore a
25 condom.

1 Q Okay. Let me ask you this. Now antibiotics don't
2 clear up certain sexual -- sexually transmitted diseases, do
3 they?

4 A Not all of them. It's not a hundred percent
5 guarantee. We give it as a prophylactic. There still required
6 to get an STD test after my examination and after we're given
7 treatment to confirm that it's negative or if she has any STDs.

8 Q Okay. So not -- not only is she tested then, but --
9 but you advise her she needs to be tested for how long?

10 A In one week and repeat the -- the test again in 45
11 days.

12 Q Okay. What about for HIV?

13 A HIV can show up up to six months after a first
14 contact.

15 Q So did you advise her that she now gets to go get
16 tested for HIV after six months and sometime after that also?

17 A Yes, if they -- on the initial follow-up of 45 days,
18 if they found there to be reason for HIV, then they would have
19 her follow up again.

20 Q Now, what about with the herpes? Does antibiotics
21 clean that up?

22 A For herpes, herpes is viral, so it doesn't cure the
23 disease, but it can recur. So what we give is medication to
24 treat the symptoms versus herpes, the virus itself.

25 Q Okay. So are these some of the things that -- that

1 you were aware of and some of the things that she now has to be
2 informed of because of what had happened?

3 A Yes.

4 Q Okay. And you did inform her of those testing
5 procedures that she's going to now go through?

6 A Correct.

7 Q Now, before you conduct a exam, do you get kind of a
8 -- a background of the events that took place?

9 A Yes.

10 Q Why?

11 A It gives me an idea of what her -- her history.
12 Basically if it corroborates with the evidence that I will find
13 or should find.

14 Q And you did that, didn't you?

15 A Yes.

16 Q Did you ask her about this person that had done these
17 things to her?

18 A Yes.

19 Q Do you remember her giving you a description as to
20 what this person looked like or what they were wearing?

21 A Yes.

22 Q Do you recall what that was?

23 A She -- I have my sheet, can I -- I wrote it down on a
24 document or --

25 Q Just did she give you a general description?

1 A General description, yes.

2 Q Okay. Now, did she also give you a description as to
3 to what had happened to her?

4 A Yes.

5 Q And -- and we'll go into that a little bit. What did
6 she tell you about what took place?

7 A She told me that a unknown male approached her as she
8 was walking. And she told me that she was forced to go with
9 him. And she told me that he sexually assaulted her.

10 Q Did she describe in regards to the sexual assault,
11 any specific acts that were performed on her?

12 A Yes.

13 Q What did she tell you?

14 A She told me that the suspect penetrated her vaginally
15 with his penis and his fingers and also anally penetrated her.

16 Q Did -- was she able to describe who you how she was
17 anally penetrated and with what or do you recall?

18 A She was able to describe to me that he penetrated her
19 anally with his fingers. She was not sure if his penis
20 penetrated her anally.

21 Q Did she describe any type of oral sex?

22 A No, she did not.

23 Q None at all?

24 A No.

25 Q Did she ever describe any type of kissing?

1 A No.

2 Q None at all?

3 A No.

4 Q Now, based upon that information, do you then begin
5 conducting your exam?

6 A Yes.

7 Q And tell us what you did in that particular case.

8 A In this case I have her admit into my office, which
9 is a private exam room. I have her remove all her clothing,
10 and I have her place on a patient gown. I then take
11 photographs of her as I see her. And I examine her from head
12 to toe all the way down for any physical injuries on her body.

13 And then I do a vaginal examination where I do
14 examine her genitalia and her -- her anus to -- for any
15 injuries. I also swab any potential areas that may have DNA,
16 and I also take photographs of those areas.

17 Q Now, as far as injuries are concerned, we're not
18 going to talk about her vagina or anus for now, okay. Did you
19 notice any glaring injuries on her body, on the external part
20 of her body?

21 A No, I did not.

22 Q And that's something you noted, correct?

23 A Correct.

24 Q Okay. Now, did she describe to you whether or not
25 she fought with this guy or struggled with guy?

1 A She told me there was no physical fighting or
2 struggling.

3 Q Okay. So that would make sense that you didn't find
4 any bruises or gashes on her body, right?

5 A Right.

6 Q Now, you said that you took photos, correct?

7 A Yes.

8 Q Did you take a photo of just about every every part
9 of her body or --

10 A Just the parts of her body that I find or that she
11 explains to me that would be relevant to her -- her situation.

12 Q Now, you took a photograph of her face at the time of
13 the exam, correct?

14 A Yes.

15 MR. HENDRICKS: May I approach, your Honor?

16 THE COURT: You may.

17 MR. HENDRICKS: Having previously shown defense
18 counsel what's been marked for identification purposes State's
19 Proposed Exhibit 84.

20 BY MR. SCOW:

21 Q Ms. Coe, I now have showed you. Do you recognize
22 what is depicted in that photograph, and how do you recognize
23 it?

24 A It is Amber Valles. And it is on our documentation
25 form, Rose Heart, Inc.

1 Q Okay. And that is photo of her that you took, excuse
2 me, back on December 14th of 2007?

3 A Yes.

4 Q And why do you take a picture of the face?

5 A To identify who she is.

6 Q Okay. Does that help you recall the individual when
7 you eventually testify?

8 A Yes.

9 Q Okay. Do you definitely recall her?

10 A Yes.

11 Q Okay.

12 MR. HENDRICKS: Judge, at this point I'd move for the
13 admission of State's Proposed Exhibit 84.

14 THE COURT: Any objection?

15 MR. MANINGO: No objection.

16 THE COURT: 84's admitted.

17 (Exhibit 84 admitted).

18 MR. HENDRICKS: Thank you, Counsel. Thank you,
19 Judge. In addition, Judge, I'm -- I'm going to go through some
20 of these photos. And I've already spoken with -- with Mr.
21 Maningo about this. We're going to discuss them, I'm going to
22 eventually move for the admission. But because of the
23 sensitive nature of the photos, I'm not going to put them up on
24 the big screen.

25 And then when Mr. Maningo is done questioning Ms.

1 Coe, then I will have the jury then look through those.

2 THE COURT: All right, has that been discussed with
3 you, Mr. Maningo? Do you object to that process at all?

4 MR. MANINGO: No, I -- I agree with it, actually,
5 Judge.

6 THE COURT: All right.

7 MR. HENDRICKS: Okay. Thanks, Counsel.

8 BY MR. HENDRICKS:

9 Q Like you said, there was other parts of the body that
10 you took photos of, correct?

11 A Yes.

12 Q Would that include both the genital area or vaginal
13 area and also the -- the anal area?

14 A Yes.

15 Q And you've had a chance to review all those, correct?

16 A Yes.

17 Q Okay. Now, let's talk about the exam.

18 MR. HENDRICKS: And what I'm going to do, as long as
19 Counsel's okay with it, if you could -- Judge, it's just going
20 to be for demonstrative purposes. I guess I would mark, but
21 I'm not going to move to admit it. And I don't know Ms. Clerk
22 what's next in line.

23 THE CLERK: It would be 93.

24 MR. HENDRICKS: 93.

25 THE COURT: Any objection to it being marked as 93

1 for demonstrative purposes?

2 MR. MANINGO: No, Judge.

3 THE COURT: Okay. So 93 for the record.

4 (Exhibit 93 admitted).

5 MR. HENDRICKS: Thanks, Judge. Thanks, Counsel.

6 Thank you, Richard.

7 BY MR. HENDRICKS::

8 Q Okay. Now, in regards to your exam to the vaginal
9 area Amber, tell us about that.

10 A The photograph here -- can you flip it over? It's
11 the next one.

12 Q Do you mind if we use --

13 A It's the one --

14 Q -- the one that has --

15 A -- next to it.

16 Q Okay.

17 A That, yeah.

18 Q This one?

19 A That would depict --

20 Q Okay.

21 A (Indiscernible) a little bit better.

22 Q All right, now -- now, you realize you can touch that
23 and -- and it will bring up a particular color on there?

24 A Okay.

25 Q Okay. Now, tell us what you did in regards to the

1 exam -- well, first describe what we see --

2 A Okay.

3 Q -- up here and go through the different parts. And
4 then describe the examination and what your findings were.

5 A Okay. This is what I see when I'm doing the vaginal
6 exam on the patient. She is -- her legs are on stirrups, and
7 you're looking at -- this is -- these are her legs and this is
8 her vagina. In terms of description, what I like to describe
9 is 12:00 o'clock would be up here.

10 Q You can touch it.

11 A Okay. And then 6:00 o'clock would be down here and
12 3:00 and 9:00. So she's placed on the stirrups. I initially
13 take a photograph of what I see. I don't touch anything. I
14 take a first picture. And then I collect swabs, DNA.

15 Q How do you do that?

16 A Use Q-tips and just swab just around the outside, the
17 external genitalia.

18 Q Did you do that in this case?

19 A Yes.

20 Q What do you do with those swabs?

21 A Initially they're put in a drying mechanism so that
22 the secretions would be dried and fixed on the Q-tip, and then
23 they are placed in a box, which is put together as a kit,
24 sexual assault kit.

25 Q Okay. Since we're there --

1 A Yes.

2 Q -- I'm going to stop you for a second.

3 MR. HENDRICKS: I've previously shown defense
4 counsel, and I believe it's already been admitted, State's
5 Exhibit 3. May I approach, Judge?

6 THE COURT: You may.

7 BY MR. HENDRICKS:

8 Q Ms. Coe, do you recognize State's Exhibit 3? And if
9 so, how do you?

10 A Yes, I recognize. This is a sexual assault kit for
11 Amber Valles, as it's written, and it's got my name and
12 signature on it.

13 Q And is there a particular date reflected on there?

14 A Yes. December 14, 2007.

15 Q Okay. So now that we're talking about this sexual
16 assault kit, is that something that's contained inside of
17 there?

18 A Yes.

19 Q And is it sealed with evidence tape?

20 A Yes.

21 Q Now, is -- did you seal it with tape?

22 A Yes.

23 Q What color tape did you use?

24 A We use this red tape.

25 Q You use the red.

1 A Um-h'm.

2 Q How about the blue tape, what's that for?

3 A That I -- we don't use the blue tape. I don't know
4 what that's for.

5 Q Okay. That's for someone else's --

6 A Yes.

7 Q -- analysis of this item?

8 A Correct.

9 Q Okay. But the package appears to be intact, right?

10 A Yes.

11 Q This is the same package that you put all these swabs
12 and everything else inside of, right?

13 A Yes.

14 Q Okay. Now, back to the swabs. You said that you
15 used the swabs on her genitalia, correct?

16 A Yes.

17 Q And you put the swabs inside that kit?

18 A Yes.

19 Q What else do you do?

20 A I take photographs of the outside part to see if
21 there's any injuries. And then I use what's called toluidine
22 blue dye, and I apply it right in this area where we generally
23 would see injuries due to sexual assault.

24 Q In which area, you apply --

25 A Right here, 6:00 o'clock. This area right here.

1 Q Now, when you say that generally that would be where
2 injuries would occur, why -- why is that?

3 A Because based on her history of the way she described
4 she was sexually assaulted in the position laying on her back,
5 you would generally find the injuries at the 6:00 o'clock
6 position.

7 Q Okay. Now in regard to someone who -- who had never
8 had sexual intercourse before, could they possibly be more
9 susceptible to injuries? And if so, to what part of the
10 genitalia?

11 A For someone who has never had sexual encounter
12 before, yes, you would -- they would -- it is possible for them
13 to have injuries. And they would generally find injuries in
14 the same area as well.

15 Q Now, in regards to these injuries located at 6:00
16 o'clock, I mean, would -- would these types of injuries cause
17 any type of pain while they're being done to the victim?

18 A Generally, they would have -- they would express
19 discomfort or some pain during the examination if these
20 injuries are present.

21 Q Okay, did -- did you speak with Amber about whether
22 or not she experienced pain when this stuff was taking place?

23 A I did.

24 Q And what was her response?

25 A She told me that it hurt.

1 Q Did she also tell you anything in regards to what she
2 told her assailant?

3 A She told him that it hurt as well.

4 Q In regards to your examination, you said that you --
5 you looked at that area, that 6:00 o'clock area. Did you make
6 any note or any findings of anything in that particular area?

7 A Yes. I noted an abrasion at 6:00 o'clock.

8 Q What does that mean?

9 A An abrasion is a scratch just on the outside of the
10 -- just on the outside of the vagina, which is on the genitalia
11 right in this area here.

12 Q Okay. Anything else in regards to that genitalia
13 area?

14 A As far as injuries?

15 Q Yes, and any other findings.

16 A Yes, I found that her hymen, which is a tissue that
17 surrounds the vaginal canal, was lacerated.

18 Q What does that mean?

19 A Torn. It was a tear.

20 Q Now, when you say hymen, what exactly is that?

21 A It's a skin that -- it's a flap of skin, depending on
22 the size or -- or it's different for each individual, but it's
23 generally a flap of skin that surrounds the -- the vagina, the
24 entrance of the vagina.

25 Q Okay. Now, given the fact that she had never had

1 sexual intercourse before and she indicated that to you, did --
2 did it surprise you that that hymenal tissue was present?

3 A It was not -- no, if she's never had intercourse
4 before, you -- I would -- would be -- it's common to have that
5 hymenal tissue there intact, yes.

6 Q Now, on the flip side, now you've probably had an
7 examination where someone says that they were sexually active
8 and there may still be hymenal tissue present, correct?

9 A Correct.

10 Q That's possible?

11 A That's possible.

12 Q But in this case, you said that there was a
13 laceration.

14 A Yes.

15 Q So it was damaged?

16 A Yes.

17 Q And is that something you noted?

18 A Yes.

19 Q Okay. Now, when you're conducting your exam on her,
20 are there certain tools or utensils that you use?

21 A In this case I used what's called a balloon method.
22 And what that is is the tip of a catheter, there is a balloon
23 that's attached to it that we inflate, and when we insert the
24 catheter into the vagina, because she is small and tiny --

25 Q Now, when you say small and tiny --

1 A Her --

2 Q -- are you talking about --

3 A The --

4 Q -- her height --

5 A -- vaginal opening.

6 Q -- height and weight or what?

7 A The vaginal opening is small. I use what's called a
8 balloon method, and the catheter is inserted. First it's
9 deflated, the balloon is deflated, and then once it's inserted,
10 the balloon is inflated, and it's retracted. Meaning I the
11 balloon back. And what that does is it -- you are able to
12 visualize the hymen where the tear is a little better, so --

13 Q And -- and you did that in this particular case?

14 A Yes.

15 Q Do you use that balloon method -- do you use that on
16 everyone?

17 A Not everyone, no.

18 Q Why not?

19 A Because not everyone has hymenal tears. Not everyone
20 has this type of injury, so it doesn't always require you to do
21 a balloon method, if you don't have these types of injuries.

22 Q All right. What's a speculum?

23 A A speculum is a tool that we use to visualize the
24 cervix.

25 Q Did you use that in this case?

1 A I did not.

2 Q Well, wouldn't that have been helpful?

3 A Yes, but at this point, based on her history and the
4 injury that she has, using a speculum would further traumatize
5 the vaginal opening, so I did not do a speculum.

6 Q Okay. So you didn't use the speculum because you
7 thought that that would probably cause more injury?

8 A Correct.

9 Q You chose not to?

10 A No.

11 Q Okay. Now, in regards to the cervix, were you able
12 it to access that with swabs?

13 A Yes.

14 Q And you did that in this case, didn't you?

15 A I did.

16 Q And you took vaginal swabs, right?

17 A Yes.

18 Q And any other swabs?

19 A In terms of the genitalia?

20 Q Yes.

21 A I took anal swabs as well.

22 Q Okay. And why did you do that?

23 A Because she told me that there was anal penetration.

24 Q Now, you didn't have any DNA results at that point,
25 right?

1 A No.

2 Q You don't know. She said it was just some unknown
3 guy, someone that she did not know at all?

4 A Yes.

5 Q So you don't have any identification at that point,
6 do you?

7 A No.

8 Q But you're just retrieving evidence in the hopes of
9 maybe getting an identification?

10 A Yes.

11 Q And you did that, didn't you?

12 A Yes.

13 Q Okay. Now, if lotion or lubrication was used, would
14 that potentially lessen an injury that may occur to this -- to
15 this area of the body?

16 A Yes.

17 Q How so?

18 A With lubrication you're able to penetrate with ease
19 and you're not going to cause as much damage or trauma and it
20 wouldn't cause as much pain to someone if --

21 Q Now, did she indicate to you whether lubrication or
22 lotion was used?

23 A Yes.

24 Q And she told you it had been, correct?

25 A Yes.

1 Q And yet, she's still damaged?

2 A Yes.

3 Q Did that indicate anything to you?

4 A The fact that --

5 Q Let me strike that. Let me ask you something else.

6 Now, you don't know what caused the damage to her vagina

7 because you weren't present, correct?

8 A No, I don't.

9 Q You can just go on what she described as what was
10 forced inside of her --

11 A Yes.

12 Q -- right? Okay. Did she ever indicate to you
13 anything about being restrained or bound or anything like that?

14 A Yes.

15 Q How so?

16 A She told me that he had taped her arms and her mouth.
17 Her hands, her wrists.

18 Q And what was she taped with, do you -- do you
19 remember --

20 A She --

21 Q -- particulars?

22 A She described to me as a blue tape.

23 Q And that's something she told you on that day?

24 A Yes.

25 Q Now let's go to the inner thigh area. Did you make

1 any notation in regards to that?

2 A Yes. I noted a brown substance that was on her left
3 inner thigh.

4 Q Okay. And what did you do with that?

5 A I took a photograph, and I also swabbed the area.

6 Q You didn't know what it was, did you?

7 A No, I did not.

8 Q Now, in regards to her clothes, do you remember what
9 she was wearing when she presented to you?

10 A Not at this moment. I can review -- can I review my
11 notes?

12 Q Now, you prepared a report, correct?

13 A Yes, I did.

14 Q Would that help you refresh your recollection --

15 A Yes.

16 Q -- if you reviewed that? Please do.

17 A She said she was wearing a white t-shirt, what capri
18 pants and tennis shoes.

19 Q Now, did you retrieve those items from her or did
20 someone else?

21 A I retrieved it from her.

22 Q Okay. Now, let me ask you about -- this is State's
23 Exhibit 62. Let me ask you if you recognize that particular
24 item?

25 A Yes.

1 Q What is it?

2 A That's the crotch area of her pants.

3 Q And those are the pants that you retrieved from her?

4 A Yes.

5 Q Anything noticeable or notable about the crotch area
6 of her pants?

7 A There's bleeding.

8 Q Now, did that surprise you, based upon the injuries
9 that you -- you saw?

10 A No.

11 Q In fact, you saw bleeding on her, didn't you?

12 A Yes.

13 Q What parts of her body were bleeding?

14 A Her vagina.

15 Q Anything else?

16 A Her anus wasn't bleeding, but it was oozing a little
17 bit.

18 Q What does that mean?

19 A Oozing -- there -- when -- when you get a scratch,
20 sometimes the skin is broken, so there's some white cells that
21 come out and they -- they ooze.

22 Q Was there damage to that particular area?

23 A Yes.

24 Q Well, before I get there, let me ask you, do you
25 recognize State's 63? I know there's a bunch of different

1 markings on there, so it may be a little difficult?

2 A Yes, her t-shirt.

3 Q Okay. Those are items you retrieved from her,
4 correct?

5 A Yes.

6 Q Did you turn those over to the detective?

7 A Yes.

8 Q Okay. Back to the -- the anal findings. What type
9 of exam did you conduct on her in regards to that area?

10 A I just visualized the anus by retracting her
11 buttocks, and again, I apply the toluidine blue dye, which is
12 enhancement, it enhances the injuries, and I was able to find
13 injuries on her anus.

14 Q Now, when you first looked at her, did -- and these
15 particular areas, could you recognize that there were injuries
16 present without using the dye?

17 A Yes.

18 Q Then why did you use the dye?

19 A Usually for documentation purposes. It enhances it
20 on the photographs.

21 Q And that eventually helps you to explain it and point
22 that out to juries --

23 A Yes.

24 Q -- right?

25 A Yes.

1 Q Okay. Now, in regards to the injuries in that anal
2 area, did you make particular notes as to what locations,
3 injuries --

4 A Yes.

5 Q -- that were present? And where were those?

6 A The injuries was at 6:00 o'clock, and there was an
7 injury -- two injuries at, I believe, 11:00 o'clock and 1:00
8 o'clock.

9 Q And that's something that you noted on those
10 photographs that you took, correct?

11 A Yes.

12 Q Okay.

13 MR. HENDRICKS: And as I stated earlier, I'm not
14 going to blow these up, but I've shown defense counsel these
15 photos. He's got a copy of those. Can I approach, Judge?

16 THE COURT: Yes.

17 MR. HENDRICKS: Thanks.

18 THE COURT: Can you identify them for the record,
19 please?

20 MR. HENDRICKS: Yes.

21 BY MR. HENDRICKS:

22 Q Ms. Coe, I'm showing you for identification purposes
23 State's Proposed Exhibit 85, 86, 87, 88, 89, 90, 91, 92. If
24 you could look through those quickly, and tell me if those are
25 photos that you took, and if they accurately and truly depict

1 Amber Valles back on December 14th of 2007?

2 A Yes.

3 Q Are those photos you recognize?

4 A Yes.

5 Q Did you take those photos?

6 A Yes.

7 Q And is that Amber Valles?

8 A Yes.

9 Q And are those the particular areas that you've
10 already testified about in regards to the inner thigh, the
11 vaginal area and also the anal area?

12 A Yes.

13 Q Okay.

14 MR. HENDRICKS: At this point, Judge, I'd move for
15 the admission of State's Proposed Exhibit 85 through 92.

16 THE COURT: 85 through 92 are offered. Any
17 objection?

18 MR. MANINGO: No objection.

19 THE COURT: Hearing no objection, they'll be
20 admitted.

21 (Exhibits 85 through 92 admitted).

22 MR. HENDRICKS: And I'm going to have her briefly
23 describe these. But once again, I'm not going to publish these
24 until later.

25 BY MR. HENDRICKS:

1 Q Okay. In regards to State's 85, what's reflected in
2 there?

3 A That is her left inner thigh.

4 Q Okay. 86?

5 A That is the vagina.

6 Q Okay. And is there anything noted on that
7 photograph?

8 A There is a scratch at 6:00 o'clock.

9 Q Okay. And is there anything else in regards to
10 details or description or notes located on there?

11 A No.

12 Q What's a posterior fourchette?

13 A That is the area where -- just below the opening of
14 the vagina.

15 Q 87?

16 A Yes, this is the enhancement of the abrasion with the
17 toluidine blue dye.

18 Q 88?

19 A This is the balloon method that I used to visualize
20 the hymenal tear.

21 Q And in regards to that photo, is there -- is there
22 pretty apparent bleeding?

23 A Yes.

24 Q Okay. 89?

25 A This is a traction method that we -- I use to further

1 visualize any other injuries surrounding the vagina.

2 Q And on to 90?

3 A This is the anal examination. This is the anal
4 laceration that I saw initially when I first examined her --
5 her anus.

6 Q Okay. 91?

7 A And I applied toluidine blue dye so it would be
8 enhanced further in my documentation.

9 Q Same area?

10 A Same area.

11 Q Okay. And 92?

12 A And 92 are the other two lacerations at 11:00 and
13 1:00 o'clock of the anus --

14 Q Okay.

15 A -- with the dye enhancement.

16 Q Okay, what color's the dye?

17 A Blue.

18 Q Okay. But that blue dye indicates where injuries had
19 taken place?

20 A Yes.

21 Q Okay.

22 MR. HENDRICKS: Court's indulgence. At this point I
23 don't have any additional questions. Like I said, I'm going to
24 hold off on these exhibits.

25 THE COURT: Cross.

1 MR. MANINGO: Thank you, Judge.

2 CROSS-EXAMINATION

3 BY MR. MANINGO:

4 Q Hello, Ms. Coe?

5 A Hello.

6 (Off-record colloquy).

7 BY MR. MANINGO::

8 Q Now, you had stated that as a SANE nurse you -- you
9 work with the sexual assault detectives?

10 A Yes.

11 Q And the sexual assault detectives will come and bring
12 a case to you and oftentimes bring an individual to you?

13 A Yes.

14 Q And when they -- when they do this, before you setoff
15 on your physical examination, they will typically give you some
16 kind of background or summary of what the case is about?

17 A Yes.

18 Q They'll talk to you about what the allegations are?

19 A Yes.

20 Q Okay. So you have that already going into your
21 examination?

22 A In -- not necessarily, but in this particular case, I
23 can't recall if I spoke to the detective before I saw -- did my
24 examination on Amber.

25 Q Okay. You did talk to Amber beforehand?

1 A Yes.

2 Q Okay. And so you did -- you were able to receive
3 some kind of information about what the allegations were in
4 this case?

5 A Yes.

6 Q Okay. And you did have that information going into
7 your examination?

8 A Yes.

9 Q Okay. And that is the reason why you took some of
10 the photographs that you did, correct?

11 A Yes.

12 Q Okay. Now, Mr. Hendricks give you some of the
13 photographs that you took, correct?

14 A Yes.

15 Q There are others that you took as well?

16 A Yes.

17 Q You took photographs of -- of Amber's forearms and
18 wrists, correct?

19 A Yes.

20 Q Both on the outside?

21 A Yes.

22 Q And on the inside?

23 A Yes.

24 Q Okay. And do you remember what you indicated on
25 those pictures?

1 A I indicated that there were no injuries on those
2 pictures.

3 Q That there were no signs of injury or marks to the
4 wrists?

5 A Yes.

6 Q Okay. And you took those photos because of the
7 information you had heard about possibly being bound or taped?

8 A Yes.

9 Q Okay. You also didn't find any visible injuries on
10 her face, correct?

11 A No, I did not.

12 Q Okay. Now, based on your experience, you're aware
13 that injuries can occur from consensual sex as well --

14 A Yes.

15 Q -- correct? And I think you indicated to Mr.
16 Hendricks earlier that it's quite possible that someone who had
17 never had sex before, they may be more susceptible to injury.

18 A Yes.

19 Q Okay. Whether that's consensual or not, those
20 injuries can still occur?

21 A Yes.

22 Q Okay. Thank you, Ms. Coe.

23 THE COURT: Redirect.

24 MR. HENDRICKS: No thank you, Judge.

25 THE COURT: Is this -- anything else for this

1 witness? Is this witness free to go? Thank you for your
2 testimony.

3 THE WITNESS: Thank you.

4 THE COURT: Please step down. Ladies and gentlemen,
5 we're going to take our lunch and recess at this time.

6 MR. HENDRICKS: Judge --

7 MR. MANINGO: Do you want to --

8 THE COURT: Yes?

9 MR. HENDRICKS: -- just a few minutes so that they
10 could review those. Because I don't want to come back after
11 lunch and then hand those photos to them.

12 THE COURT: Oh, so you want to publish?

13 MR. HENDRICKS: Yeah, I wanted to wait until -- until
14 Mr. Maningo was done with his -- his cross before I published.

15 THE COURT: Okay. We need to have them marked by the
16 clerk. Looks like we're ready for that. Mr. Maningo.

17 MR. MANINGO: Yes.

18 (Off-record bench conference).

19 THE COURT: All right, Mr. Hendricks, you --

20 MR. HENDRICKS: I'll just --

21 THE COURT: Okay.

22 MR. SCOW: Just before we're asked whether we rest or
23 not, one photograph that somehow slipped through, it's marked
24 as State's Proposed 83. Just clean up all the -- make sure we
25 have everything admitted. We're going to move to admit 83 at

1 this point.

2 THE COURT: 83's offered at this time. Any
3 objection?

4 MR. MANINGO: Judge, it appears that 83 is just a
5 different angle of a photograph that is already in evidence.
6 Mr. Scow discussed this with me. It doesn't seem to be
7 anything new, and there was already testimony regarding the
8 foundation of -- of this area of the doorway, so I would have
9 no objection.

10 THE COURT: Okay.

11 THE CLERK: (Indiscernible).

12 THE COURT: Just checking my notes here. So hearing
13 no objection, 83 offered at this time. 83's admitted.

14 (Exhibit 83 admitted).

15 (Off-record colloquy).

16 MR. HENDRICKS: Thank you, Judge.

17 THE COURT: State.

18 MR. HENDRICKS: Judge, I believe everything's been
19 admitted. At this point we are going to rest.

20 THE COURT: State rests at this point. As soon as
21 the jury's finished with the previous exhibits that have been
22 published to them, then we'll take our lunch and recess. But
23 we're going to stay here until that process is complete.

24 MR. HENDRICKS: Thanks, Judge.

25 (Pause in proceedings).

1 THE COURT: All right, it appears the process of
2 publication of the photographs is complete. It is your duty
3 not to converse among yourselves or with anyone else on any
4 subject connected with this trial. You may not -- further, you
5 may not read, watch or listen to any report of or commentary on
6 this trial by any medium of information, including without
7 limitation, newspaper, television or radio.

8 You may not form or express any opinion on any
9 subject connected with this case until it's finally submitted
10 to you. We'll be in recess hour and 15 minutes, ladies and
11 gentlemen, about an hour and 20 minutes, so we'll be back here
12 at a quarter of 1:00 -- excuse me, quarter of 2:00, 1:45,
13 quarter of 2:00. We'll be in recess. Follow Officer Reichert,
14 please.

15 (Outside the presence of the jury).

16 THE COURT: Record should reflect we're outside the
17 presence of the jury. You haven't formally rested yet or at
18 least that was my impression. I do need to settle up jury
19 instructions, so I'd like to do that right now, if we can.

20 MR. MANINGO: Oh, Judge, I have gone through them. I
21 have been able to go through them. I received a hard copy and
22 -- and it seems that everything is -- is in order.

23 THE COURT: Okay.

24 MR. MANINGO: They have put the statutory in. I
25 anticipate my client will not testify. I would be asking for

1 that instruction.

2 THE COURT: Did you include the Carter instruction or
3 -- we have it.

4 MR. MANINGO: Okay.

5 MR. SCOW: I didn't include it in. I didn't know
6 which way he --

7 MR. HENDRICKS: We'll do that. We forgot, sorry.

8 THE COURT: No, I've got it here.

9 MR. MANINGO: So I would be asking for that to be
10 included. I notice in the packet right now we have both a play
11 back and a read back instruction.

12 THE COURT: We always pull the play back.

13 MR. MANINGO: We'll yank --

14 THE COURT: Or excuse me, the read back.

15 MR. MANINGO: Yank that one.

16 THE COURT: Right.

17 MR. MANINGO: And then on the verdict form --

18 MR. SCOW: I messed up.

19 MR. MANINGO: Well, it -- it looks okay, except for
20 Count 12 which is open and gross lewdness, which gives options
21 for --

22 MR. SCOW: Convicting of sex assault.

23 MR. MANINGO: And statutory and other things.

24 MR. SCOW: I just -- was a cut and paste --

25 THE COURT: We can change that. Mr. Maningo, do you

1 need to prepare for your case in chief? Is that what you're
2 concerned about?

3 MR. MANINGO: Yes. That's why I -- because, you
4 know, typically, I would have a second chair, and they would be
5 doing instructions while I'm taking care of the rest of this --

6 THE COURT: Right.

7 MR. MANINGO: -- but I'm trying to juggle both right
8 now.

9 THE COURT: Okay. Get your case ready. Could you be
10 back here say at like 20 after, 25 after, and since it doesn't
11 sound like we're going to be arguing about instructions to a
12 great degree, we can probably --

13 MR. MANINGO: Right.

14 THE COURT: -- settle them up, number them up and put
15 them on the record then.

16 MR. MANINGO: Sure, that's -- that sounds fine.

17 THE COURT: That will work for you?

18 MR. MANINGO: Yeah, so 25 after?

19 THE COURT: Yeah.

20 MR. MANINGO: Great.

21 MR. HENDRICKS: Just --

22 THE COURT: Anything else?

23 MR. HENDRICKS: Just one question that we need you to
24 determine.

25 THE COURT: Okay.

1 MR. HENDRICKS: He's probably -- I don't know if I'm
2 speaking that all right. I think he's going to present some
3 witnesses that may say that he has good character.

4 THE COURT: Okay. He opens the door. He's permitted
5 to present character evidence.

6 MR. HENDRICKS: We're going to ask, would it change
7 your opinion if you knew that he had been convicted of two
8 prior felonies, both being theft of a vehicle, taking a vehicle
9 without owner --

10 THE COURT: I don't think that's appropriate.

11 MR. HENDRICKS: Why? That wasn't really my question
12 because absolutely that's appropriate.

13 THE COURT: All right.

14 MR. HENDRICKS: The -- the question was more, would
15 it change your opinion -- my second question --

16 THE COURT: I thought -- I thought you were going to
17 say -- okay, go ahead. Go ahead. I'm not stepping on you.

18 MR. HENDRICKS: Would it change your -- your opinion
19 if you found out that he, in fact, had sexual activity -- I'm
20 not going to call it consensual or a sexual assault -- sex with
21 a 13-year-old child?

22 THE COURT: Okay.

23 MR. HENDRICKS: That's the question I had. Now in
24 regards to, I guess, I could bring back some case law in
25 regards to whether or not we can ask about his --

1 THE COURT: All right.

2 MR. HENDRICKS: -- his felonies. I thought we could
3 even ask about arrests, which I'm not going to do. It was
4 just --

5 THE COURT: No, I don't -- I -- and I think it's the
6 Daniels (phonetic) decision. However, questions asking whether
7 or not someone has been arrested do not relate to specific
8 instance of the conduct. The arrest alone is not an adequate
9 basis to cross-examine the witness about reputation or opinion
10 testimony. As distinguishes from questions regarding arrest
11 (indiscernible) questions about a specific acts and
12 circumstances that culminated an arrest may be proper for such
13 questions regards specific acts and circumstances that
14 culminate arrests to be proper, the trial court must first
15 determine outside the presence of the jury before allowing
16 inquiry into the facts harmful to the defendant's character
17 that are not otherwise evidence whether the prosecution has a
18 reasonable good faith belief, basis for its belief that the
19 defendant committed the acts and the inquiry.

20 So all right, the Daniels decision say probably
21 arrests alone, no. But if -- if you've got certified copies of
22 a felony conviction --

23 MR. HENDRICKS: Well, we certainly have a good faith
24 belief that he was convicted of that.

25 THE COURT: Well, I mean --

1 MR. HENDRICKS: I mean, he's actually confirmed that.

2 THE COURT: -- that would be my burden. I'd have to
3 make that finding.

4 MR. HENDRICKS: Okay.

5 THE COURT: Okay?

6 MR. HENDRICKS: Okay.

7 THE COURT: But under that decision, okay. What
8 else?

9 MR. HENDRICKS: That's it.

10 MR. MANINGO: Well, but you --

11 MR. SCOW: The second part.

12 MR. MANINGO: Yeah, the second part is what you were
13 most concerned about, which --

14 MR. HENDRICKS: It's -- if I can ask would it change
15 your opinion about his character if you found out that he had
16 had sexual activity with a 13-year-old girl?

17 MR. MANINGO: Because now we're talking about this
18 case.

19 MR. HENDRICKS: Because I don't know if they're aware
20 of it or not. And the reason being is because my investigator
21 spoke with some of his witnesses that we didn't know whether
22 they were going to be character or alibi witnesses.

23 And when I heard alibi -- and Mr. Maningo kind of
24 explained that to me, that that may be presenting an alibi in
25 regards to a date in which he was arrested and not the day of

1 the crime. But there's still a little confusing to me. But if
2 they're presenting -- and I don't care if there's notice filed
3 or not.

4 If they want to present an alibi witness, I'll
5 certainly fine with that for --

6 MR. MANINGO: We're not.

7 MR. HENDRICKS: -- for obvious reasons.

8 MR. MANINGO: We're not, so --

9 MR. HENDRICKS: But that's what my concern was. My
10 investigator actually prepared an investigator's report stating
11 that the mother and one of the sisters were -- were going to
12 indicate that they knew --

13 THE COURT: All right, let's --

14 MR. HENDRICKS: -- he was somewhere else.

15 THE COURT: -- let's listen to this. Foster versus
16 State. "Admission of evidence of previous crimes when
17 defendant raises affirmative defense of entrapment. Defendant
18 here has raised the defense of consensual sex off an allegation
19 of sexual assault." So I don't know how close that is.

20 "Where a defendant raises an affirmative defense of
21 entrapment, he thereby places his character directly in issue,
22 pursuant to 055. The State is entitled to prove the
23 predisposition of such a defendant to commit a crime by
24 offering evidence of a specific instance of the defendant's
25 conduct. Requires relevant evidence be excluded where danger

1 of unfair prejudice or confusion of the issue or misleading the
2 jury substantially outweighs its probative value. Thus, when a
3 defendant raises entrapment defense at trial, evidence of prior
4 crime may be admitted (indiscernible)."

5 Bring me the law when we settle up instructions and,
6 all right, tell me again, and I'm going to chew on it. You
7 know, because frankly, I'm inclined to let you ask the question
8 because the issue that this trier of fact must decide in
9 balancing the character testimony or character witness'
10 testimony is the basis of knowledge and their understanding.

11 He's admitting, based upon the defense, that he
12 engaged in sex with a 13-year-old being girl, right?

13 MR. SCOW: Yes.

14 THE COURT: And so --

15 MR. HENDRICKS: Well --

16 THE COURT: And your question is --

17 MR. HENDRICKS: -- technically, he's not admitting.
18 I guess, Jeff is --

19 THE COURT: Well, the fact the defense's consent --

20 MR. HENDRICKS: Right.

21 THE COURT: -- so would that consent -- consensual
22 activity change the opinion of the witness in terms of their
23 perception of his -- their opinion as to his character?

24 MR. HENDRICKS: The other thing that -- and I'll
25 bring something back for you, Judge. I think you're right.

1 The other thing is is I need to make sure that there's a clear
2 record in regards to, I guess, conversations or consent from
3 the defendant to Mr. Maningo saying it's okay for you to number
4 one, argue that this was consensual.

5 THE COURT: Well, that -- that is true in terms of --

6 MR. HENDRICKS: And --

7 THE COURT: -- processes that we -- is it moved
8 through depending on what this jury does. Mr. Maningo, we do
9 need to make a record with that.

10 MR. MANINGO: That's correct. I agree with that.

11 THE COURT: And we want to -- when do you want to do
12 that?

13 MR. MANINGO: Well, we can do it right now if you'd
14 like.

15 THE COURT: Let's do it right now.

16 MR. MANINGO: Go ahead. Well, for the record, and
17 I'll allow the judge -- allow your Honor or counsel to ask any
18 questions to supplement it. However, I have had discussions
19 over the last two years with Mr. Adams regarding --

20 MR. HENDRICKS: And Judge, I don't -- I don't know if
21 we need to be present for this or not. I don't know if it'd be
22 better that we're not --

23 MR. MANINGO: Actually, you know what, I think that
24 you're not supposed to be.

25 MR. HENDRICKS: And yeah, and --

1 MR. MANINGO: Okay.

2 MR. HENDRICKS: And I wasn't paying attention to
3 anything you said so far.

4 MR. MANINGO: Well, I haven't said anything yet,
5 so --

6 MR. HENDRICKS: Actually, someone was communicating
7 with me and said, yeah, we should probably get out of here, and
8 I think he's right.

9 MR. MANINGO: Yeah, that's a good point. And I
10 haven't said anything yet anyways, so.

11 MR. HENDRICKS: All right.

12 THE COURT: All right. Record should reflect the
13 prosecution's leaving.

14 (Outside the presence of the prosecution).

15 MR. MANINGO: Judge, to continue the record, I've had
16 conversations with Mr. Adams over the last two years regarding
17 the -- this case.

18 THE COURT RECORDER: Do you want this
19 (indiscernible)?

20 THE COURT: Yes, absolutely, it needs to be on the
21 record.

22 THE COURT RECORDER: Okay.

23 THE COURT: That we can seal it.

24 MR. MANINGO: Okay. For two years now between Mr.
25 Adams and I, and we have -- we had agreed a long time ago when

1 we were ready for trial that we would be arguing consent, which
2 thereby concedes the point that there was sexual contact
3 between himself and an underaged girl, which is Amber. And
4 anything --

5 THE COURT: Is that correct, Mr. Adams, in that --
6 basically by making that argument to the jury he's conceding
7 that you committed a crime. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And is that the trial strategy that
10 you've discussed with Counsel and approve of?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay.

13 THE DEFENDANT: Yes.

14 THE COURT: Anything else, Mr. Maningo?

15 MR. MANINGO: No, I think that's it.

16 THE COURT: All right. So the only remaining issue
17 right now is the -- whether or not I'm going to let -- well,
18 we're not going to talk about that right now.

19 MR. MANINGO: Well, yeah --

20 THE COURT: Those gentlemen are gone.

21 MR. MANINGO: -- certain questions, yeah. But we can
22 come back and talk about that.

23 THE COURT: All right. We'll see you about 20 after.

24 MR. MANINGO: Great, thanks.

25 (Court recessed at 12:33 p.m. until 1:30 p.m.).

1 THE COURT: This is C-241003, State of Nevada versus
2 Edward Michael Adams. Record should reflect presence of
3 representative of State, defense, outside the presence of the
4 jury. Mr. Adams is also not present. We've asked -- I've
5 asked parties to participate in the settlement of jury
6 instructions, and we're discussing potential issue of
7 character, a character instruction as a consequence of a
8 proffer of the defense.

9 Character witnesses are about to be called --
10 character witnesses are about to called in defense case in
11 chief. So brought to everybody's attention that if character
12 evidence is going to be presented, then the jury needs to be
13 appropriately instructed on what that means, if anything. I
14 found the Barren (phonetic) decision. I asked the DA -- asked
15 everybody to discuss what, if any, instruction wants to be
16 tendered.

17 So then we jumped into well, what character trait are
18 the witnesses going to testify to. Mr. Maningo, what is your
19 kind of impression, because you said you were going to -- is it
20 a family member?

21 MR. MANINGO: Yes, it's -- it's -- it's his -- his
22 two sisters and one of their friends.

23 THE COURT: Two sisters and one of their friends, and
24 they're going to testify to his sexual proclivity or his
25 sexual --

1 MR. MANINGO: No. Here's what the questions would
2 be. Mr. Hendricks makes it a little bit more difficult. I'm
3 going to ask them first how -- how they know Mr. Adams, how
4 long they've known Mr. Adams, and they've had an opportunity to
5 be around him on a regular basis. Basically foundational --

6 THE COURT: Right.

7 MR. MANINGO: -- so that they would be able --

8 THE COURT: The basic knowledge for opinion and
9 reputation.

10 MR. MANINGO: Exactly. To show that they would be
11 able to have an opinion as to his repetition. Then I'm going
12 to ask if -- if they have ever seen Mr. Adams act inappropriate
13 in a sexual manner towards them or -- or anyone else that they
14 is have seen him around.

15 THE COURT: So that's a specific -- you're asking for
16 on a collateral matter and referencing -- attempting to
17 reference specific instances of conduct saying, "Have you ever
18 seen my client act out sexually or inappropriately with
19 others?" So what --

20 MR. MANINGO: But -- but I --

21 THE COURT: -- that is a --

22 MR. MANINGO: -- I can reword that, then.

23 THE COURT: Where's the character trait, though? I
24 mean, I wasn't being flip when I said sexual proclivity
25 because --

1 MR. MANINGO: Right.

2 THE COURT: -- that's what it kind of sounded like.

3 MR. MANINGO: Right.

4 THE COURT: I never --

5 MR. MANINGO: Right.

6 THE COURT: I don't know of any -- the character
7 traits I've seen addressed are, as I stated, violence, lack of
8 -- a propensity for violence or non-violence, truth and
9 veracity. A truthful -- a truthful individual or not,
10 depending on the nature of the charges. Those are really where
11 I've seen character evidence focused on.

12 Now, I'm not saying that the statute necessarily
13 limits to that, because should -- and show me a -- do you have
14 any cases that say I can put sister and her female friend up to
15 say this guy never acted out with me sexually?

16 MR. MANINGO: Well, what I can do, I mean, obviously
17 the goal of putting on a character evidence is to demonstrate
18 that the individual does not have -- is not of the character of
19 someone who would commit this offense.

20 THE COURT: Did he ever sexual assault you?

21 MR. MANINGO: So -- so, I guess, we could go with
22 violence because what we're saying is --

23 THE COURT: I think that would be the only way,
24 frankly, that I will -- I think you -- I would let you go in,
25 "Do you have an opinion based upon your contact with the

1 defendant as to his, whether he's violent or non-violent?" "I
2 have an opinion as -- that he's non-violent."

3 MR. MANINGO: Okay.

4 THE COURT: I -- that seems to be the appropriate
5 character trait at issue. And I would limit -- really, that's
6 where I think the focus needs to be.

7 MR. HENDRICKS: And Judge --

8 MR. MANINGO: (Indiscernible).

9 MR. HENDRICKS: -- I -- I think you're right on on
10 everything you've stated. And I would not be asking anything
11 about his prior felony convictions, if that were the case. And
12 I think you're right on about that.

13 In regards to the aforementioned proposed questions
14 in regards to, have you ever seen him act in appropriate around
15 younger girls, I think that that would cause a huge problem
16 because I think I would be able to ask at that point, if you're
17 talking about that specific character trait, then I could ask,
18 "Well, do you think it would be appropriate for a 25 or
19 26-year-old to have sex with a 13-year-old?" I'm sure the
20 witness would say, "Of course, it's not appropriate."

21 And so would it then change your opinion if you found
22 out, because defense has conceded that he had sex with this
23 13-year-old, that if you found out that Mr. Adams did, in fact,
24 have sexual intercourse or anal intercourse with a 13-year-old,
25 would that change your opinion in your regards to him acting

1 appropriate or inappropriate around young girls?"

2 I think that would certainly be relevant, based upon
3 that specific character trait, so that --

4 MR. MANINGO: But now we're -- we're not using that
5 character trait, though, now.

6 MR. HENDRICKS: No, and I agree. I was just --

7 MR. MANINGO: (Indiscernible).

8 MR. HENDRICKS: -- I was --

9 THE COURT: So if we're limiting -- what I'm hearing
10 both sides say is that Mr. Maningo's intent now is to present
11 character witnesses and limit their testimony to opinion or
12 reputation. Do you have an opinion as to the defendant's
13 whether he's violent or not violent, peaceful or not?

14 MR. MANINGO: Right.

15 MR. HENDRICKS: If --

16 THE COURT: Yes, I do. And the basis for that -- for
17 that opinion. "I've known him for X number of years. I have a
18 -- this is my relationship with him --

19 MR. MANINGO: Right.

20 THE COURT: -- based upon that contact with him, this
21 is my opinion, bang, bang (indiscernible)."

22 MR. MANINGO: That is my direct.

23 MR. HENDRICKS: If -- if his client is okay with
24 that, I'm certainly okay with that. And I'm not going to ask
25 about priors. I think that would probably be inappropriate

1 unless, of course, they start going into, "Yeah, his just
2 overall opinion, he's just a swell, great guy and nothing could
3 ever change by opinion about him."

4 THE COURT: Because I was going to -- under -- I
5 reread Daniels again, and there are different issues in
6 allowing you to impeach a witness with that prior felony
7 conviction because this is a character issue. It's not a
8 specific instance of misconduct. It's a collateral matter, so
9 I'm --

10 MR. HENDRICKS: Right.

11 THE COURT: -- uncomfortable with letting you do that
12 under what we have right here, the instruction we have right
13 now.

14 MR. HENDRICKS: And I wasn't disagreeing with you,
15 Judge. I -- I just wasn't sure what specifically was going to
16 be asked. And like I said, so long as his client says, "That's
17 what I want out." Because I don't want him to come back later
18 on under say, "I wanted that specific question about would I
19 ever be inappropriate around a young girl." I wanted to make a
20 record to say this is what I would then be able to ask. And I
21 think that would be horrible for Mr. Maningo's case.

22 THE COURT: I -- I think we're all clear. Talk to
23 your -- talk to your client, Mr. Adams, when he gets here --

24 MR. MANINGO: Yep.

25 THE COURT: -- make sure --

1 MR. MANINGO: He'll be --

2 THE COURT: -- he understands.

3 MR. MANINGO: He'll be fine --

4 THE COURT: All right.

5 MR. MANINGO: -- with whatever I decide to do.

6 THE COURT: All right.

7 MR. MANINGO: I mean --

8 THE COURT: Well, that's good.

9 MR. HENDRICKS: That issue's good. I have one
10 additional --

11 THE COURT: Now let me -- and -- let me carry the
12 ball to its end and then you can --

13 MR. HENDRICKS: Okay.

14 THE COURT: -- step up.

15 MR. HENDRICKS: Perfect.

16 THE COURT: Since character evidence is going to be
17 presented, I believe under the Barren decision a jury needs to
18 be instructed on it. The instruction that I propose is "Have
19 you heard of -- you've heard evidence of defendant's character.
20 That is opinion evidence about the character trait for -- for
21 peacefulness or violence, non-violence," how do you want to put
22 that? Violence or non-violence? Peacefulness, quietness? I
23 don't -- I never liked quietness. I don't even know what that
24 is. Peacefulness or --

25 MR. MANINGO: I think non-violence.

1 THE COURT: For violence --

2 MR. HENDRICKS: Whatever Jeff sends over, whatever
3 you're comfortable with, Judge, I'm comfortable with.

4 THE COURT: "For violence or non-violence. You
5 should consider character evidence together with -- with and in
6 the same manner as all other evidence in the case." Now,
7 there's an argument to be made, and in fact, in the Barren
8 decision as you read it, it's all part of the credibility,
9 believability of witnesses to be determined (indiscernible)
10 upon the stand instruction. But it doesn't -- that instruction
11 doesn't necessarily include this language, and so I would be
12 inclined to make this its own instruction if that's your
13 request.

14 MR. MANINGO: That -- that would be our request.

15 THE COURT: All right. All right. Good. Now, Mr.
16 Hendricks, that clears that up.

17 MR. HENDRICKS: Yeah. It does. Thank you, Judge.

18 THE COURT: Now what do you have?

19 MR. HENDRICKS: The -- the other question, and I'll
20 have you read through this also, but it's an investigator's
21 report prepared by my investigator who spoke with these
22 potential witnesses. And I'm not sure which ones are going to
23 testify.

24 MR. MANINGO: I can tell you right now, if you want,
25 and I can tell you order even.

1 MR. HENDRICKS: Okay. Just -- I'll just put it on
2 the record and then you'll let me know.

3 MR. MANINGO: Okay.

4 MR. HENDRICKS: I have a Lori Galloway, that I
5 believe is his mother. There was a Breanna Galloway, a
6 Samantha and possibly a Jamie. And these are some of the
7 witnesses that were interviewed by any investigator. And most
8 of which stated that they were going to be alibi witnesses.
9 And that causes me concern about whether or not I can ask them
10 questions like, "You spoke with my investigator and you
11 actually said that you knew he was out painting a shed on that
12 day because you were with him, so he couldn't have done this,"
13 which, of course, I would love to have them come in and state
14 that.

15 And if they deny it on the stand, I want to present
16 in rebuttal my investigator's say, "I spoke with them, and they
17 said they were going to be alibi witnesses, and they knew he
18 couldn't have done it because he was out painting a shed that
19 day." Which we know is impossible because his sperm or
20 whatever is found inside this girl's body, and now he's
21 conceded that he did it.

22 But I don't think those witnesses were informe by the
23 defendant that yeah, I had sex with 13-year-old. So I want to
24 be able to ask them, "Didn't you tell me investigator you were
25 going to provide an alibi?"

1 MR. MANINGO: Okay.

2 THE COURT: But they're not -- okay, your response.

3 MR. MANINGO: I -- I -- I believe I can address this.

4 When the investigator came over to speak with the witnesses,
5 the witnesses were referring to the day when -- when Mr. Adams
6 was arrested. And so that's where the confusion came in. They
7 were not presenting any kind of an alibi, and -- and I doubt
8 that any of them even understand or know what the word alibi
9 means.

10 What they told the investigator was -- and this were
11 referring to the day that he was arrested -- was that he was at
12 work at Tree Amigos, which is a tree removing company. He was
13 with his co-worker. And -- and that's all true, when the
14 police came and -- and arrested him and picked him up.

15 And that's what they were referring to. They were
16 not referring to --

17 THE COURT: Is that -- is that -- I guess is that
18 fair examination of the witness, whether there's a
19 misunderstanding or not. I mean, if it were -- if the shoe
20 were on the other foot, I -- I'd let you get into that because
21 the basis of the witness' information -- I mean, we even had
22 that to some degree with the detective. You -- you both going
23 back and forth on the detective and whether there's a complete
24 understanding of the questions asked and all.

25 MR. MANINGO: And I think as far as that second part

1 of -- of the issue that Mr. Hendricks is bringing up, I don't
2 -- I'm not sure how he wants to get into it because now that
3 we've basically structured what my direct is going to be, it
4 doesn't really have anything to do --

5 THE COURT: With that.

6 MR. MANINGO: -- with that at all. It -- it -- my
7 direct is going to be about three questions of, "How long have
8 you known your brother, your whole life," and --

9 THE COURT: I think Mr. Hendricks, if we're going to
10 limit it to the questions on character, at this point I'm going
11 to -- I'm going to keep the focus on the character issue alone.
12 I'm not going to let you get into that collateral.

13 MR. HENDRICKS: And Judge, I'm fine with that.

14 THE COURT: Okay.

15 MR. HENDRICKS: I think that's the appropriate --

16 THE COURT: All right.

17 MR. HENDRICKS: -- ruling. I -- I just wanted to
18 make my record --

19 THE COURT: Okay.

20 MR. HENDRICKS: -- later on, you know, when they're
21 calling witnesses and said I wish my witnesses could have
22 testified -- you know, if we get a conviction -- if my
23 witnesses would have testified an alibi or this, this, this and
24 this, I wanted to make sure the record is clear that we had
25 some potential witness or witness testimony from the defense

1 witnesses that would not have helped him out much.

2 THE COURT: Okay. All right.

3 MR. HENDRICKS: That's all.

4 THE COURT: Well, I think I'll -- I think based upon
5 what we're doing here so far, the -- my decision is to not let
6 you get into those -- that collateral issue or that information
7 at this point, all right?

8 MR. MANINGO: And that's fine. And I will --

9 THE COURT: And you're limiting it --

10 MR. MANINGO: -- keep --

11 THE COURT: -- to reputation or opinion.

12 MR. MANINGO: -- it tight and clean.

13 THE COURT: Yes.

14 MR. MANINGO: Yes.

15 THE COURT: Tight and clean. All right. We
16 obviously don't have time to settle up instructions. Although,
17 we don't have Mr. Adams back yet. So what we'll do is let you
18 present your case. State's going to formally rest. You
19 present your case. Then we'll give them an extended lunch --
20 or extended afternoon break for half hour or so, settle up,
21 number up, and then head into arguments this afternoon. Good
22 enough?

23 MR. HENDRICKS: Yeah. Yeah --

24 MR. MANINGO: Great.

25 MR. HENDRICKS: -- I definitely want to finish today.

1 THE COURT: Good. I agree. I'll go robe up and
2 we'll wait for Mr. Adams to show up.

3 (Court went off record at 1:43 p.m. until 1:49 p.m.).

4 (In the presence of the jury).

5 THE MARSHAL: Panel's present, your Honor.

6 THE COURT: Thank you. This is C-241003, State of
7 Nevada, plaintiff versus Edward Adams. Record should reflect
8 the presence of representatives of State, defense. All members
9 of the jury panel appear to be present. Parties stipulate to
10 the presence of the entire panel?

11 MR. SCOW: Yes, Judge.

12 MR. MANINGO: Yes, sir.

13 THE COURT: State.

14 MR. SCOW: Yes, Judge, the State rests its case in
15 chief.

16 THE COURT: State officially rests. Mr. Maningo.

17 MR. MANINGO: Your Honor, the defense would call as
18 its first witness Breanna Galloway.

19 BREANNA GALLOWAY, DEFENSE'S WITNESS, SWORN

20 THE CLERK: Thank you. You may be seated. And then
21 please loudly state your name.

22 THE WITNESS: Breanna Galloway.

23 THE CLERK: Can you spell both your first and last
24 name for me.

25 THE WITNESS: B-r-e-a-n-n-a, G-a-l-l-o-w-a-y.

1 THE CLERK: Thank you.

2 THE COURT: Counsel.

3 MR. MANINGO: Thank you.

4 DIRECT EXAMINATION

5 BY MR. MANINGO:

6 Q Hello, Breanna.

7 A Hello.

8 Q How old are you?

9 A 16.

10 Q I'm sorry, you gotta speak up.

11 A 16.

12 Q Okay. And do you know Ed Adams?

13 A Yes.

14 Q And how do you know Ed?

15 A He's my brother.

16 Q Have you ever lived in the same household as Ed?

17 A Yes.

18 Q Have you had had an opportunity to spend much time
19 with Ed as you -- as you were growing up?

20 A Yes.

21 Q And has that always been in the same household or --

22 A No, not really. Like we'd live -- like when he
23 wasn't living with us I'd visit him -- we visited him.

24 Q Okay. There was a time when Ed moved out and --

25 A When he was 16, yeah.

1 Q Okay.

2 A And he lived with his dad.

3 Q Okay. But you still spent time with -- with Ed? You
4 have to answer out loud for the record.

5 A Yes.

6 Q Okay. Then I really only have two questions for you,
7 okay. Number one is, do you have an opinion as to your
8 brother's character for non-violence?

9 A Yes, I do.

10 Q Okay. What is that opinion?

11 A He's not a very violent person. He's not very
12 forceful at all. He's like a Teddy bear.

13 Q Okay. Okay. That's all I wanted to ask you. Thank
14 you.

15 THE COURT: Cross-examination.

16 MR. HENDRICKS: Can we approach first?

17 THE COURT: Yes.

18 (Off-record bench conference).

19 MR. HENDRICKS: We have no questions. Thank you,
20 Judge.

21 THE COURT: All right. Thank you for your testimony.
22 Please step down. Call your next witness.

23 MR. MANINGO: Daneil Irish.

24 THE CLERK: Will you please remain standing once you
25 arrive in the witness stand, and I'll swear you in. Raise your

1 right hand for me.

2 DANEIL IRISH, DEFENSE'S WITNESS, SWORN

3 THE CLERK: Thank you. You may be seated. Please
4 state your name loudly for us and spelling both first and last
5 name.

6 THE WITNESS: Daneil Irish.

7 THE CLERK: Spell your first and last name for us.

8 THE WITNESS: D-a-n-e-i-l, I-r-i-s-h.

9 THE CLERK: Thank you.

10 THE COURT: Counsel.

11 MR. MANINGO: Thank you.

12 DIRECT EXAMINATION

13 BY MR. MANINGO:

14 Q Hi Daneil. How old are you?

15 A 18.

16 Q 18. Do you know Edward Adams?

17 A I do.

18 Q Okay. How do you know Ed?

19 A Through his sisters.

20 Q Okay.

21 A I --

22 Q Which sisters?

23 A Breanna and Jamie.

24 Q Okay. In your friendship with his sisters, have you
25 had a friendship with the entire family?

1 A Yes, I have.

2 Q Okay. Have you had an opportunity to spend time
3 around Ed as you were growing up?

4 A Yes, I have.

5 Q Okay. And how long have you known Ed?

6 A About two and a half years.

7 Q Okay. Now, I just want to ask you two quick
8 questions, and we've talked about how we're keeping this --

9 A Um-h'm.

10 Q -- very tight, right? Okay. Do you have an opinion
11 regarding Ed's character for non-violence?

12 A I do.

13 Q Okay. And what is your opinion?

14 A I've never seen him get outrageously mean with
15 anybody, an argument, as well as violent with anybody at all.
16 He's just not known for that.

17 Q Okay. Thank you.

18 THE COURT: Cross-examination.

19 MR. HENDRICKS: No thank you, Judge.

20 THE COURT: Thank you for your testimony. Please
21 step down. Call your next witness.

22 MR. MANINGO: Jamie Galloway.

23 THE CLERK: And I'll swear you in once you arrive in
24 the witness stand. Please remain standing.

25 JAMIE GALLOWAY, DEFENSE'S WITNESS, SWORN

1 THE CLERK: Thank you. You may be seated. Please
2 state your name loudly for us and spelling your first and last
3 name.

4 THE WITNESS: Jamie Galloway, J-a-m-i-e,
5 G-a-l-l-o-w-a-y.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MR. MANINGO:

9 Q Hello, Jamie.

10 A Hi.

11 Q How old are you?

12 A I'm 22.

13 Q Okay. And do you know Ed Adams?

14 A Yes.

15 Q And how do you know Ed?

16 A He's my brother.

17 Q Okay. Growing up did you spend much time with your
18 brother?

19 A Yeah, a lot of time with my brother.

20 Q Okay. Did you ever share a room?

21 A Yes.

22 Q Okay. How many years did you share a room?

23 A I think for --

24 MR. HENDRICKS: And Judge, can we approach at this
25 point?

1 THE COURT: Yes.

2 (Off-record bench conference).

3 THE COURT: Counsel, your witness.

4 MR. MANINGO: Thank you.

5 BY MR. MANINGO:

6 Q Jamie, I just need to ask you two questions that I've
7 asked everyone else.

8 A Yes.

9 Q Do -- do you have an opinion regarding Ed's --
10 regarding your brother's character for non-violence?

11 A Yes, I do have an opinion. He's not -- he's never
12 been a violent person, you know what I mean? He's always been
13 like just protective. You know, never violent. Never like
14 forceful or anything like that. He's just, you know, normal or
15 whatever, like nice --

16 Q Okay.

17 A -- you know. Never -- never mean.

18 Q Okay. Okay. Thank you.

19 THE COURT: Cross-examination?

20 MR. HENDRICKS: No thank you, Judge.

21 THE COURT: Thank you for your testimony. Please
22 step down. Call your next witness.

23 MR. MANINGO: Defense rests.

24 THE COURT: Defense rests. Rebuttal, State?

25 MR. HENDRICKS: No thank you, Judge.

1 THE COURT: No rebuttal.

2 Ladies and gentlemen, that concludes the evidence
3 portion of the jury trial. As I explained to you when we began
4 with jury selection, that's how it goes. We're going to move
5 onto -- next onto the instruction phase. In order to do that,
6 I need some time outside your presence to prepare those
7 instructions. So we're going to take a break for approximately
8 one half hour at this time, and then we'll reconvene and read
9 those instructions to you.

10 In the meantime, it is your duty not to converse
11 among yourselves or with anyone else on any subject connected
12 with this trial. Further, you may not read, watch or listen to
13 any report of or commentary on the trial by any medium of
14 information, including without limitation, newspaper,
15 television or radio. You may not form or express any opinion
16 on any subject connected with this case until it's finally
17 submitted to you.

18 Based upon the -- as we're moving through the process
19 and my understanding of it, this case will be submitted it to
20 you today for your deliberations. So on this break you might
21 want to make calls, whatever calls you need to adjust your
22 schedule accordingly because again, you will be charged with
23 the case and begin your deliberations after argument is
24 complete this evening. Follow Officer Reichert, please.

25 (Outside the presence of the jury).

1 THE COURT: Record should reflect we're outside the
2 presence of the jury. Any additional record need to be made as
3 a consequence of the testimony in defense case in chief, State?

4 MR. HENDRICKS: Just real quick. Just based on the
5 conversations at the bench, Judge, my only concern -- and I
6 thought we had already hashed out that there was just going to
7 be a couple questions. And I know Mr. Maningo kind of stuck to
8 that.

9 My only concern was when there was some foundational
10 questions as far as how long they had been around him, when he
11 eventually left the house, because I have information that he
12 was, in fact, you know in another state. I think he was
13 certified up as a juvenile. I think he did some time in
14 prison. So he was certainly away from them during that time
15 period. And he's also been in custody for the last two years.

16 I did not want to go there, and -- and I got the look
17 from you, Judge, and you told me when we approached the bench,
18 "Mr. Hendricks, you're not going anywhere near there so don't
19 even think about it," and I agree with you. I was not going
20 to. That was my only concern.

21 THE COURT: All right. Well, we -- we've noted for
22 the record. You know, the presentation of opinion reputation
23 testimony or character evidence. You know, these are -- these
24 are lay witnesses. They do the best they can. They offered
25 that opinion. They did elaborate more than -- to some extent

1 more than normal. I don't believe it was an intentional act,
2 and I don't believe the jury's been misinformed on that -- any
3 facts. You're not requesting a mistrial as a --

4 MR. HENDRICKS: No, absolutely not, Judge.

5 THE COURT: Okay.

6 MR. HENDRICKS: And I -- I think what Mr. Maningo did
7 was absolutely proper. I -- I saw him out there instructing
8 and admonishing them to --

9 THE COURT: All right.

10 MR. HENDRICKS: -- to keep it tight. And he even did
11 that on the record. I appreciate that.

12 THE COURT: Everybody here is a seasoned litigator.
13 You understand that the dynamics of taking testimony can be
14 somewhat different when you actually get them on the stand.

15 MR. HENDRICKS: No doubt about it. That's why I'm
16 not complaining about anything he's done. Everything was fine.
17 The -- the only thing I wanted to add is the last witness that
18 was called spoke with my investigator. My investigator did, in
19 fact, speak with her about an alibi. She specifically stated
20 to my investigator that she would be providing an alibi for the
21 day of the crime for her brother.

22 And that's a prior ruling you made. You said I could
23 not go there. I respect that decision, and I just wanted to
24 put that on the record.

25 THE COURT: And that's true. Since the proffer was

1 limited to character in a general sense and opinion as to
2 character evidence, I did not allow the State to -- to approach
3 the witness with that specific instance or what -- I don't know
4 that it's necessarily even collateral, because it's related
5 obviously to this event. But since that evidence wasn't
6 proffered, I didn't let the State impeach with that, so --

7 MR. HENDRICKS: Right.

8 THE COURT: All right.

9 MR. HENDRICKS: I appreciate that.

10 THE COURT: That said, let's settle instructions.
11 I'll see you in my office. Grab what you've got. Bring your
12 law. Everybody else, Mr. Adams, Officer Hams (phonetic) stay
13 -- keep him where he's at because we're going to number up and
14 get to argument.

15 (Court recessed at 2:05 p.m. until 2:17 p.m.).

16 (Off-record colloquy).

17 THE COURT: Officer Ham, I need Mr. Adams back in
18 here, please.

19 (Off-record colloquy).

20 THE COURT: All right, this is C-241003, State of
21 Nevada, plaintiff versus Edward Michael Adams. Record should
22 reflect the presence of representatives of the State, defense.

23 THE MARSHAL: All right, counsel, we're on the
24 record.

25 THE COURT: Outside the presence of the -- outside

1 the presence of the jury. Minutes should further reflect the
2 parties participated in settlement of jury instructions. And
3 as a consequence, instructions 1 through 32 have been marked.
4 Is the State familiar with instructions 1 through 32?

5 MR. SCOW: Yes, Judge.

6 THE COURT: Does the State object to the giving of
7 any of these instructions?

8 MR. SCOW: No, Judge.

9 THE COURT: Does the state have any additional
10 instructions it wishes to offer that the court has refused to
11 give?

12 MR. SCOW: No.

13 THE COURT: Is the State familiar with the verdict
14 form?

15 MR. SCOW: Yes, Judge.

16 THE COURT: Any objection to the verdict form?

17 MR. SCOW: None.

18 THE COURT: Mr. Maningo, is the defense familiar with
19 instructions 1 through 32.

20 MR. MANINGO: Yes, sir.

21 THE COURT: Does the defense object to the giving of
22 any of these instructions?

23 MR. MANINGO: No, we do not.

24 THE COURT: Does the defense have any additional
25 instructions it wishes to offer that the court's refused to

1 give?

2 MR. MANINGO: No, Judge. We have offered two
3 instructions, and I believe they were one dealing with
4 character, which is number -- well, one -- one involving the
5 statutory sexual seduction that we asked for --

6 THE COURT: Right.

7 MR. MANINGO: -- number 19, and that is being given.
8 One involving the Honeycut (phonetic) case, which is --

9 THE COURT: Isn't it like 20, 19, no.

10 MR. MANINGO: No, I think we -- no, we put that one
11 in right before the no corroboration, wherever that one is.

12 THE COURT: We did include the Honeycut.

13 MR. MANINGO: Yes.

14 THE COURT: And the character is 22. So these are
15 the -- all the instructions that you wish to have given have
16 been given?

17 MR. MANINGO: That's correct, Judge.

18

19 MR. SCOW: 16.

20 THE COURT: It's included in the package. So you
21 have no additional instructions that the court's refused? Is
22 that --

23 MR. MANINGO: No, sir.

24 THE COURT: All right. And is the defense familiar
25 with the verdict form?

1 MR. MANINGO: We are.

2 THE COURT: Any objection to the verdict form?

3 MR. MANINGO: No, sir.

4 THE COURT: All right. We've settled instructions.
5 We're making copies of them right now. We'll hand out those
6 instructions to every member of the jury. We'll get to the
7 reading of those instructions. Everybody set up for closing,
8 please. Stand easy for a few minutes while we finish up those
9 copies.

10 (Pause in proceedings)

11 (Court went off record at 2:21 p.m. until 2:37 p.m.)

12 (In the presence of the jury).

13 THE MARSHAL: Panel's present, your Honor.

14 THE COURT: Thank you. This is C-241003, State of
15 Nevada, plaintiff versus Michael -- Edward Michael Adams.
16 Record should reflect the presence of representative of State,
17 defense. All members of the jury panel appear to be present.
18 Do parties stipulate to the presence of the entire jury?

19 MR. SCOW: Yes, Judge.

20 MR. MANINGO: Yes, sir.

21 THE COURT: All right, ladies and gentlemen, you
22 should have all in your seats copies of the jury instructions
23 that apply to this case. As much as -- and as I explained to
24 you when we began jury selection, as much as I'd like to sit
25 down and go through with you verbally the instructions and the

1 law, they are of such importance, I've reduced them to writing.

2 It's my intention to read those instructions to you
3 in a moment. The instruction packages you have you keep. You
4 can make notes on them as you wish as we head into argument.
5 And take them back with you to jury deliberation. These
6 instructions are as follows.

7 (Jury instructions were read but not transcribed).

8 THE COURT: Counsel?

9 STATE'S CLOSING ARGUMENT

10 MR. SCOW: Thank you, Judge. State of Nevada versus
11 Edward Adams. You've heard the case, you've heard the
12 evidence. Now it's your decision -- it's your time to make the
13 determination what the evidence really is. Here's a summary.

14 Defendant, a stranger, picks up Amber Valles on the
15 street. He takes Amber to the 1111 apartments. When he takes
16 there, he sexually assaults her, both vaginal and anal sexual
17 assault. She reports this immediately to her mother. And the
18 DNA fingerprints identified the defendant as the perpetrator.

19 Now, keep in mind that in every criminal case the
20 State of Nevada has to prove two things. One that crimes are
21 committed. And two, just as important, that the defendant
22 committed these crimes.

23 We have to present evidence of identification. A
24 defense attorney standing up and say in opening statement he's
25 the guy, that's not evidence. We have to present evidence that

1 this defendant committed these crimes.

2 What are the crimes? First degree kidnapping with
3 use of a deadly weapon, one count. Battery with intent to
4 commit a crime, in this case, sexual assault, one count.
5 Sexual assault victim under 14, with use of a deadly weapon.
6 There are nine counts charged. And open or gross lewdness.

7 This case boils down to the defendant's intent to
8 commit sexual assault or the defendant actually committing
9 sexual assault. That's basically what each crime, except for
10 the last one, open or gross lewdness, is based on, the
11 defendant intending to or actually committing sexual assault.

12 So as I go through the kidnapping and describe some
13 of the elements, what it really boils down to is did he take
14 her to that apartment to sexually assault her or was this a
15 thrill seeking.

16 Amber Valles. We'll talked about that. The defense
17 in their opening called her a thrill seeker. Why? Because
18 it's easier. First degree kidnapping. Every person who
19 seizes, confines, inveigles, decoys, entices, abducts, kidnaps,
20 which that doesn't really help you because how do you define
21 the word by using the word itself? So I didn't underline that.
22 Or carries away any person. For what purpose? To commit
23 sexual assault. That person is guilty of first degree
24 kidnapping.

25 So let's look at some of these words, seize,

1 confines, inveigle. Oh, I did include kidnap here. I was
2 trying to be real helpful there. What do some of these words
3 mean? Inveigle, acquire or obtain by lure or flattery, artful
4 talk or false representations. Here "I've got a gun" would be
5 clue number one. Or two, "Help me take care of my crying
6 babies." Each of these reasons the defendant gave to the
7 victim was decoy, entice and he carried her away. It doesn't
8 mean he has to pick her up over his shoulder and start walking
9 or "We're going to this apartment because I'm going to sexually
10 assault you." It means take her somewhere. And that's what
11 happened in this case.

12 He took her, Amber Valles. Again, the purpose to
13 commit sex assault, he took her from this area, Buffalo and
14 Alta, down to 1111 Warbonnet Way to the 1111 apartments. Alta
15 to Charleston, it's a pretty long walk. A full city block.
16 She testified about 15 minutes. She wasn't sitting there with
17 her watch counting down every minute. But about a 15 minute
18 walk. That's probably accurate or close to it. But that's a
19 long ways to carry somebody away to entice them.

20 When I get to the sex assault, there's an instruction
21 that says you can convict of kidnapping and sexual assault
22 certain requirements need to be met. One is that the carrying
23 away or the movement was more than required to commit sexual
24 assault. Well, obviously, walking her that far was more than
25 necessary to stick his penis in her vagina.

1 He tells her again he's got a gun. This is the
2 threat he uses to get her to not act crazy on the street. Is
3 she going to test that? Well, let me try something to see if I
4 stay alive or not. But he does that because it's broad
5 daylight, doesn't want to make a scene. And he gives her some
6 story about needing help with child care.

7 He takes her to a concealed location, an abandoned
8 apartment that hadn't been leased for seven months. How did he
9 know about that? There's the apartment. There's inside.
10 Again, exactly how she described it. There's the door, and
11 looking there, we've got the stuff wadded in the bottom part or
12 the receiving end of the door handle. But it can still be
13 locked from the inside. The top bolt.

14 And once inside, he orders her to take off her
15 clothes and he begins shoving his penis and fingers every where
16 inside of her body. Does he have intent to sexual assault her
17 when he carries her away? Of course he does. So we have
18 seize, confine, inveigle, carry away any person, Amber Valles,
19 purpose to commit sexual assault. Again, I'm going to talk
20 about that more later. But all those elements are met for
21 first degree kidnapping.

22 Deadly weapon. In order to use a deadly weapon, he
23 doesn't have to shoot her with it. And according to this
24 instruction, he doesn't even need to pull it out of his pocket.
25 But only conduct which produces fear. Did he do that here? Of

1 course. She was terrified. Produces fear by means or display.
2 It could be displayed or other means. He had it in his pocket.
3 Even a passerby that, you know, it seems like he had a gun.
4 Maybe he was just joking with his friend Angela, but it was the
5 thought that crossed his mind.

6 And you're instructed that a firearm is a deadly
7 weapon. We're not required to, right here, recover the deadly
8 weapon. We don't have to present it as Exhibit No. -- what are
9 we at 101 or something? It doesn't need to be here in court in
10 order for you to find that a deadly weapon was used.

11 Now, this is your call. You're the fact finders.
12 You're the ones that decide whether a deadly weapon was used.
13 He may have had a weapon. He may not. Nobody saw it, okay.
14 We're not trying to hide anything from you. This is your call,
15 whether he had one or not. But he did tell her that he had
16 one. And he did frighten her into submission. Keep that in
17 mind.

18 Didn't want to struggle. Didn't want to make a
19 scene. This again was broad daylight. So when we're looking
20 at first degree kidnapping, all the elements are met. With use
21 of a deadly weapon.

22 Turn to battery with intent to commit a crime.
23 Battery is any willful or unlawful use of force or violence
24 upon the person of another. Now, battery can be spitting on
25 somebody. It's not like you have to walk up and smack them

1 down and tear off their shirt and then start sexually
2 assaulting them for battery with intent to commit sex assault.
3 How about grabbing Amber by the hand or the wrist, leading her
4 along the sidewalk.

5 And the nurse testified that Amber told her once they
6 got to the apartment he -- he put her hand on her neck (sic).
7 This is the evidence you consider on the battery with intent.
8 And then he proceeds to sexually assault her. Again,
9 everything hinges on this sexual assault and his intent. So
10 when we look at battery with intent, those elements are
11 satisfied.

12 So I told you I'd come to this instruction regarding
13 kidnapping and sexual assault. You can find him guilty of
14 both, but in order for you to do that you must find that one of
15 these -- as you see there's the or there -- not all, but one of
16 these has been met. And looking at this case, we have at least
17 four. Physically restrained. There was an attempt, but the
18 tape was pretty weak and she broke it right off. It's there,
19 but is it a sufficient tying to -- to fit within the kidnapping
20 statute? Probably, but who knows. But the other four are met.
21 So it doesn't even matter.

22 The movement was not incidental. It's a sexual
23 assault. He took her the whole city block, again, to get her
24 to this apartment. Increased risk of harm. If she started to
25 bolt from him, she could have been hit by a car. Any number of

1 things could have happened. He could have panicked and done
2 something to her. It was substantially exceeded that required
3 to complete the sex assault.

4 I mean, if he wanted to sexually assault her, why not
5 just take her down where he finds her and start doing it?
6 Well, there's also independent significance for purpose to the
7 movement. Take her to a secluded place where it can't be seen.
8 So here there's more than enough for you to convict of both
9 first degree kidnapping and sexual assault.

10 So we turn now to sexual assault with a minor under
11 14. Now, I've broken this down in this next slide. This is
12 the same language of the instruction, but it's kind of breaking
13 it down by element. First, a minor being under 14, which she
14 was -- just barely turned 13. So that element's satisfied. To
15 sexual penetration against the minor's will. Or that the
16 perpetrator knew or should have known that she was mentally or
17 physically incapable of giving the consent.

18 First of all, consider that she's 13 years old. That
19 person who does those things is guilty of sexual assault on a
20 minor under 14. So first of all, sexual penetration. Any
21 intrusion, however slight -- it's like a football game. When
22 they're going to the end zone if the ball just barely crosses
23 that end zone, it's a touchdown. Any intrusion into her vagina
24 or her anal opening is penetration. And it spells out into the
25 genital or anal opening of the body of another. Whether it's

1 his finger, fingers, his penis or anything he used. Well, you
2 know what he used here because Amber testified to it, and
3 there's DNA evidence proving what he used.

4 So the crucial question's not whether the person's
5 physically forced. She doesn't need to be taken into that room
6 and beaten until she's unconscious for it to be against her
7 will. It's whether it's without her consent. If she says no
8 -- and she testified she said no multiple times, stop, it hurts
9 -- or under conditions in which she's mentally or physically
10 incapable of giving consent or even understanding the nature.
11 Again, she was 13. She'd never even kissed a boy.

12 Amber Valles doesn't understand the nature of this
13 conduct. She submitted to everything he said. Even "Don't
14 call until you get to McDonalds." And a consent of a child is
15 a less degree than of a person of more mature years. It's
16 different because they're children. Children are not supposed
17 to be taken to apartments and sexual assaulted, have penises
18 and fingers shoved into their crevasses.

19 The fact that the defendant may not have employed
20 violence or expressed threats, which you have here, the fact
21 that no violence is used upon her, that he's a Teddy bear, that
22 doesn't matter. The fact that he gained her submission through
23 threats or -- or looking like a 40-year-old man with nasty
24 teeth, that's enough. This was against her will.

25 And she got to do more than her age or circumstances

1 required. She didn't have to fight him. It's a manifest
2 opposition. Now, the reason that there are multiple counts of
3 sexual assault is because in any single criminal encounter
4 where multiple sexual acts take place, the perpetrator can be
5 convicted of each act of penetration. Each time he stuck his
6 fingers inside of her. Each time his penis went inside of her,
7 front and back. These are different acts of sexual -- sexual
8 acts, sex penetration in this single encounter, and that's why
9 there are multiple charges.

10 Again, what does that mean? May be charged and
11 convicted of every act of penetration, finger versus penis,
12 vagina versus her rectum. And again, he broke it up by putting
13 her in different positions. Taking her from the -- the ground
14 to the couch, from the couch to the ground, leaning over the
15 couch so he can get her from behind.

16 So there's nine counts that you have. And you have
17 them in the instructions. It's instruction 3, and it's like
18 three or four pages. Four finger and vagina, four penis and
19 vagina, one finger or penis -- that should say "anal opening".
20 And based on the evidence presented, you can find the defendant
21 not guilty of counts nine and ten because she only testified
22 three times that the finger went inside of her and three times
23 that his penis went inside of her vagina. But she did testify
24 about the anal penetration. So that will make counts nine and
25 ten easy for you. Check the box "not guilty" there, and think

1 about the other charges.

2 So Amber Valles, she had just turned -- just turned
3 13 years old. She was a minor. Two months into being 13 years
4 old. She testified that she did not know the defendant. He
5 randomly selected her off the street. There's no evidence to
6 contradict that. He was a stranger. Now think about this, he
7 was waiting around on a wall right by a school right at the
8 time that school gets out. Now, you know what he was waiting
9 for, right? Some thrill seeking girl to stop by and say, "Hey,
10 let's have sex, that sounds great." Because doesn't that
11 happen everyday?

12 I mean, things like that happen, right? Little girls
13 walk up to some grown strangers on the street and say, "What's
14 up, dude. Let's go have sex." And then she testified about
15 him taking her to the abandoned apartment. And she'd never
16 been there before, and isn't that pretty obvious? Because when
17 the detectives wanted to find where it was and she took them
18 back, she pointed to the wrong one. She wasn't paying perfect
19 attention to where they were going when the defendant's taking
20 her. She probably thinking more about "I hope I get home".

21 So it's obvious she hadn't been there before, and we
22 know who had. And he proceeded to subject Amber to vaginal and
23 anal penetration again and again. And in spite of her saying,
24 "Stop it, it hurts," and you know it hurt her because you --
25 you saw the pictures of the tearing inside of her vagina.

1 "Stop, it hurts." Whatever else is said, the minute she says
2 that, he's crossing any line, which he crossed already because
3 she's 13.

4 Counts three and four. "He told me to get on the
5 ground," remember when they first got in? Remove her clothes.
6 "He stuck his fingers and then his penis into my vagina." And
7 immediately she was saying "Stop, this hurts. And it was very
8 painful. Then he told me to sit on the couch," different
9 position, and he did it again. Fingers and penis in her
10 vagina, counts five and six.

11 Counts seven and eight, "He told me to get on the
12 ground again." Fingers and penis in vagina. At this point
13 she's kept saying stop, it hurts. He decided he didn't want to
14 hear anymore, so he tried to tape her mouth with some weak tape
15 and her wrists. It didn't hold her long as masking tape. That
16 wasn't her decision, though. That was his.

17 He tried to use the tape. "And then he had me lean
18 over the arm of the couch," count 11, "where he stuck his hand
19 or something into my rectum." Obviously that wasn't the word
20 she used, but subjecting her to anal penetration to top it all
21 off.

22 Her testimony is alone is sufficient to find that man
23 guilty of sexual assault. That's it. Her testimony alone. He
24 was a stranger, she did not know him, she did not want to have
25 sex with him. She didn't know what sex was because she'd never

1 had it before. She obeyed because he threatened her. She was
2 only 13 and unable to understand the nature of defendant's
3 conduct. That's it. Because there's in requirement that the
4 testimony of the victim of a sexual assault be corroborated.
5 No other evidence needs to be presented.

6 Her testimony alone is enough for a verdict of
7 guilty. But here there is mountains of corroboration, what the
8 defense wants to try to downplay and call a waste of time. Why
9 did the State show all those slides of DNA? With him standing
10 up and saying he's the guy. That's not evidence. And the
11 evidence that we presented corroborates Amber Valles and what
12 she said. DNA, fingerprints, sex assault exam, Jonathan,
13 Angela, the scene itself, her mom.

14 First her mom. Amber was a good student. She never
15 ditched school. She slept in our room for six months
16 afterwards. She never goes anywhere alone anymore. She panics
17 in the car and makes sure the windows are up and the doors are
18 locked. And the 911 call, go listen to it. You can hear Amber
19 in the background sobbing. You can hear her. It's very
20 telling.

21 And then Amber keeps to herself. She keeps her body
22 private. And I'll talk more about this later. But you heard
23 her mom say, "If she's changing and I accidentally walk in the
24 room, she immediately covers up and mom, get out of here." It
25 pretty significant, and we'll talk about that.

1 The crime scene, corroboration. He describes a black
2 couch. Check. Candles. Check, check. Black and white Nikes,
3 they were there. May not have been his, but they're in the
4 place where he took her. She assumed they were his. White
5 towel. Check. Blue tape. Now, let's look at this blue tape.
6 Look at the shape when the detectives found it. As if it had
7 been wrapped a couple times around her wrists. And then broken
8 apart. And it's still in that same shape. Do you need
9 fingerprints on there to tell you what it was used for?

10 And then the one on the mouth. There's just a single
11 strand. This one is multiple layers. Just as she described,
12 and in the exact spot where she described it, right in that
13 room in front of the couch on the floor. Right where she
14 finished wiping herself off with that dirty towel.

15 And the defense, some of the questioning, throughout
16 that there was tape all over that apartment. And this is one
17 of the pictures that maybe is unclear from that overhead
18 projector. But when you take a closer look, oh, there's some
19 (indiscernible). There's not tape just flying everywhere. The
20 only other place that there was tape is on a table on the
21 patio, the -- the leaves are taped down.

22 The only other tape is right where Amber was sexually
23 assaulted. He just walked in, pushed the door open and you saw
24 the picture of the stuff jammed in the door frame. We'll throw
25 that up again.

1 Angela saw Amber with a guy, not her father. Usually
2 says hi or hugs me, and it was different that day. I'd never
3 seen the guy before. He was holding her by the hand or wrist.
4 Walked around the yard to avoid them on the sidewalk. He was
5 wearing a hoody and tennis shoes. I was going to call, but
6 didn't want to be blamed if we were wrong. That's pretty
7 serious.

8 Jonathan. Gives very, very similar testimony. Guy
9 holding her by the right arm. His hand was in his pocket like
10 he had a gun. They walked through a yard as we pass each
11 other. At the time we thought we should call. He was bald but
12 had hair around his head. Something hanging over his left
13 eyebrow. And this is all consistent with how Amber described.
14 And again, at times where they had spoken with each other.

15 Amber was having her body examined by a nurse while
16 Jonathan was at home about to eat dinner and the cops come
17 over. He was like, "Yeah, this guy had this Band-Aid over his
18 eye." Described him exactly as Amber did. Thought he might
19 have had a gun. Between 190, 200 pounds. And Amber had a
20 scared look on her face. They didn't call right away. Does
21 that mean they didn't see what they saw?

22 The sex assault exam. Amy Coe took swabs, and I'm
23 not going to put the pictures up. You have them in evidence.
24 Her vaginal injuries and abrasion to the posterior fourchette,
25 6:00 o'clock. It's in the picture. You can see that. The

1 hymenal laceration, and this was a pretty significant tear, she
2 said. Required some force to -- to penetrate and to tear her
3 hymen. And again, stop, it hurts.

4 And then she had anal injuries. Tears at 1:00
5 o'clock, 11:00 o'clock and 6:00 o'clock. And there's her
6 pants. Bleeding in her pants. She didn't even know.

7 Fingerprints. His prints were identified. Candles
8 in the bedroom. Candles in the kitchen by the sink. Kitchen
9 -- on the breakfast bar. On the sliding glass door. On the
10 lotion packet. His prints all over there. It wasn't a one
11 time let's find the first random apartment we can go to. He
12 knew where this was. He'd been there. He's lighting candles
13 in different areas in that apartment to give him light, to
14 sleep over, maybe. He knew it was there.

15 There you go, different areas. Prints were lifted.
16 The lotion pack that he used to lubricate himself and
17 masturbate his penis in front of her. And there's the latent
18 lifts. You have all the cards that you can go through and
19 review.

20 Now, the DNA results. His sperm was on her cervix.
21 That's the very end of the vagina. His sperm was all over her
22 shirt, her pants. Sperm was on the white towel. Sperm was on
23 the rectal swab. What does that mean, just that this is the
24 guy? Is that all it means? There it is, all of it. It's all
25 over. It means one thing, he's having his way with her. It

1 means the defendant's penis was going in and out of Amber's
2 13-year-old body.

3 It means a grown man, twice her age, ejaculated into
4 not only her vagina, but also her rectum, her anal opening. It
5 means that this little girl's first sexual encounter was with a
6 strange man who plucked her off the street when she's on her
7 way home from school. And it means the defendant didn't stop
8 until he got what he wanted. Different positions, lubricated
9 himself. It means that all these circumstances combined, the
10 defendant sexual assaulted Amber Valles, an innocent girl who
11 just wanted to go home.

12 So now sexual assault victim under 14, seven counts
13 because she -- she didn't testify about any other penetration
14 than the seven counts. Open or gross lewdness, masturbating
15 penis in the direct view of a minor in an offensive manner.
16 She testified about that, so you can check those and that one,
17 too.

18 So you go back to the -- the theme of the defense
19 opening. Thrill seeker or innocent victim? And he talked
20 about meeting up with Cierra beforehand. So her thrill goes
21 from I'm going to spend the night with my 13-year-old
22 girlfriend to even better yet, let me go find some guy and have
23 sex with him, some strange man without a condom. She may not
24 have known exactly what that meant, but you do. So did he.

25 And the statement in opening that lying is easier.

1 Then he talked about inconsistencies. That the water's off in
2 the apartment, but the towel was damp. A lot of questions
3 about that. Couldn't have been run through the sink because
4 the water was turned off. Well, would it also follow that it's
5 impossible for there to be water in the toilet because the
6 water had been shut off for at least seven months. Any water
7 there would have either evaporated or turned green because
8 there's nasty bacteria in there.

9 But look, there's water, clear water in the toilet.
10 Obviously somebody's bringing water in there. There was soap
11 in the bathtub. Is it impossible to damp that towel? No.
12 Another statement in opening was we need to get in the mind of
13 the victim, which we do. She'd just turned 13. She never had
14 a boyfriend. She'd never even kissed a boy, let alone have
15 sex. Wouldn't even let her mother see her undressed, let alone
16 some strange man sitting on the corner. That's the last thing
17 she would have wanted.

18 Does that mean some random twice her age and within
19 minutes, let's go have sex (indiscernible). There was no
20 conversation. He took her, said let's go (indiscernible). She
21 was sexually assaulted by a strange man with nasty teeth.
22 There's the real thrill seeker, the defendant, Edward Adams,
23 whose DNA is all over inside of Amber Valles' vagina, her anus.

24 This man sexually assaulted her. Make no mistake
25 about that. Hold him responsible for his actions what he did

1 to Amber. The pain he caused her. And find him guilty of the
2 charges as I've outlined for you. Thank you very much.

3 THE COURT: Counsel.

4 DEFENSE CLOSING ARGUMENT

5 MR. MANINGO: Bad decisions, a very bad situation.
6 That's what this case is about. But it's not about bad people.
7 And the people we're talking about in this case are both Amber
8 and Ed Adams. Now, talking about Amber first. No one at any
9 time has ever tried to convince you that Amber is a horrible,
10 evil conniving little girl. Instead, it's that she's a
11 teenager.

12 The thing about teenagers is they don't understand
13 consequences, whether it's for actions taken on a specific day
14 or for something that happens down the road. That's why we
15 make them take a test before they can drive, we don't let them
16 vote until a certain age, we don't let them drink alcohol.
17 It's because we know as a community that teenagers don't
18 understand consequences.

19 Now, when it's on that day in December of 2007 where
20 she ended up getting wrapped up into a situation, not
21 understanding the consequences of what she may have said or did
22 or whether we flash forward to just a few days ago and it's her
23 it telling a story about no doubt what she wants to believe the
24 way it happened, but didn't. We don't expect Amber to
25 understand those consequences.

1 The other person involved, of course, is Edward
2 Adams. He was 25 years old at the time. He told you right
3 from the beginning that his decision was bad to be involved in
4 this.

5 And now, at the end of this trial you're given a
6 charge. And you'll see it when you go back and look at your
7 packet. And it's in instruction number 19, and it's on your
8 verdict form, but it's called statutory sexual seduction. And
9 it means ordinary sexual intercourse, anal intercourse or any
10 other sex you mean penetrated -- penetration committed by a
11 person 21 years of age or older with a consenting person under
12 the age of 16 years old. That is the instruction and it's --
13 like I said, it's on your verdict form now as another option.

14 We told you that that was the charge and that Mr.
15 Adams was guilty of that from the very beginning. Never hid
16 the ball on that. What happens throughout the trial, then, is
17 that the real issue, the issue of consent, gets buried under a
18 mountain of evidence that goes to identification. Do you need
19 to have fingerprints from every square inch of that room when
20 you already know that Ed Adams was there, when you already know
21 that Amber was there?

22 Do you need to see a photo line up over and over and
23 over to tell you yeah, that guy number five, that's Ed Adams
24 when three days ago we already told you that guy, Ed Adams, was
25 there? Do you need experts to come in and talk about how they

1 lifted fingerprints, how they analyzed fingerprints, how they
2 took swabs for DNA, and then we send them to labs? And all of
3 it goes to show one great big point that it's Ed Adams. Big
4 surprise. We already knew all of that.

5 So when it comes to the issue of consent, the only
6 real issue in this trial, were left with very little. But we
7 have to look at the surrounding circumstances of what was going
8 on on that day. Now, it's probably safe to imagine that the
9 first time you heard anyone, and it was probably me, mention
10 the word consent in this case, you probably cringed. A natural
11 reaction.

12 Let's talk about consent just for a few minutes.
13 This is not so some TV show or some movie where I'm standing up
14 yelling at a 13-year-old saying, "You know you wanted it, you
15 got what you deserved." That's -- that's not this situation.
16 That's not this case. That's not what's happening. Consent is
17 nothing more than an agreement. It doesn't have to be a smart
18 agreement, an educated agreement. It can be a can dumb
19 decision. It can be something that you regret later on. But
20 that's the thing, later on.

21 Consent comes before an encounter. Consent comes
22 during the encounter. Now, after the encounter when you're
23 walking home and your mom calls and you feel shame or you feel
24 guilt or you feel regret or you realize you've done something
25 that if you go back in time you would take back, that doesn't

1 go and get reasserted to the beginning of the encounter. It
2 doesn't become non-consensual then.

3 We know now that this is something that Amber didn't
4 want. And we're not trying to say she did want it. In fact,
5 it's -- it's more likely she had no idea what she was agreeing
6 to, what she was getting into. But we know that what she
7 really doesn't want is this regret and this shame that she
8 probably feels now. And it's two years later. She's looking
9 back at when she's 13.

10 It's -- it's likely that Amber really wants to
11 believe that it was forced. It's easier to believe that it was
12 forced. If you think about something long enough and hard
13 enough, you can just about convince yourself that it's true.

14 Now, when it comes to consent, you have another
15 instruction, which is instruction number 16. And it reads
16 that, "It is a defense to the charge of sexual assault that the
17 defendant entertained a reasonable and good faith belief that
18 the female person voluntarily consented to engage in sexual
19 intercourse. If from all the evidence you have a reasonable
20 doubt whether the -- whether the defendant reasonably and in
21 good faith believed she voluntarily consented to engage in
22 sexual intercourse, you must give the defendant the benefit of
23 the doubt and find him not guilty of said charge."

24 Well, that's the issue in this trial. I told you
25 from the beginning and Mr. Scow has quoted a number of things

1 that I said in the beginning and one of them was that this is
2 not a who done it. That's the issue for this -- for this case.
3 And you've heard now that a 25-year-old man engaged in sexual
4 intercourse with a 13-year-old. Do you like that idea? Are
5 you comfortable with it? Does it feel right to you? Of course
6 not.

7 But this is the not a court of ethics. This is not a
8 court of morality. This is a court of law. This is a special
9 place and it has special rules. One of those rules is that you
10 must maintain the fact that Mr. Adams is innocent unless the
11 State can prove beyond a reasonable doubt the contrary.
12 Another one of those special rules is that if you're going to
13 do the accusing, you have to do the proving in these cases.
14 That means the State, Mr. Hendricks and Mr. Scow, they have to
15 prove each and every element of each and every charge in this
16 case. And they have to do is beyond a reasonable doubt. You
17 can't have any reasonable doubts.

18 Well, think about the case. Think about the evidence
19 that you heard. And then you ask yourself if you have any
20 questions, anything that makes you sort of scratch your head
21 and wonder about.

22 Well, we can start with Andre Randle. Here we have a
23 young man who's an independent witness in this case. He's not
24 tied to anybody in this case. He doesn't know anyone. But he
25 lives in the area. He lives in the 1111 Apartments. We

1 referred to him for the first half of the trial as the -- the
2 young black male adult because that's all we knew about him
3 because that's an all that was placed in the police report.
4 Detective Lebario, for whatever reason, decided to exclude his
5 name in the report, didn't list who it was.

6 But we found out what he did say and things that were
7 taken down -- notes taken down by Detective Lebario at the
8 time. And what did Andre Randle tell you? He saw two people,
9 they were walking together. They weren't touching. She wasn't
10 being dragged. She didn't look mad. She wasn't in distress.
11 They looked normal. And what did he say? He didn't make
12 anything of it.

13 We also asked him, if you saw somebody dragging a
14 girl crying into an apartment that you know is vacant, what
15 would you do? He said he'd call the police. But he didn't.
16 Compare that to Amber's testimony that from the very beginning
17 of this situation she was crying, she was shaking and she was
18 very emotional.

19 Let's talk about that for a minute and see if it
20 makes sense. A man is going to abduct a young girl. So the
21 first thing he does is make sure he doesn't have a car. He's
22 going to grab her in the middle of the day at 2:30 in the
23 afternoon in broad daylight, and he's going to walk her a mile,
24 which takes 15 to 20 minutes, in a part of town, if you've ever
25 been there, Charleston, Alta, Buffalo, where there is a lot of

1 traffic, a lot of pedestrians, a lot of businesses. So he
2 takes her, he's dragging her and this just goes on for 15, 20
3 minutes, and the whole time he's dragging her, he's doing one
4 of these with -- with this mystery gun that we never see. And
5 she's emotional this whole time.

6 And not a single person in the area, not a single
7 business sees anything wrong. No one with walks up to them,
8 say, "Hey, what's happening, what's going on?" No one makes a
9 phone call? A crowd doesn't gather, nothing? I guess you have
10 a couple of choices of what you can believe. You can believe
11 that number one, that that is complete nonsense as to what
12 happened. Or you can believe that our community is completely
13 heartless and thoughtless and is willing to just watch a young
14 girl be abducted and have this go on for 20 minutes.

15 This isn't all set up by Mr. Adams. Think about the
16 horrible planning. You grab someone that far away from where
17 you're going to go. Now, I mentioned that there's a number
18 much businesses, busy locations all along the way. Amber
19 never, you know, yells out to anyone for help or anything like
20 that. No one volunteers any help. You heard Detective Lebario
21 say there were no 911 calls recorded during that time in
22 reference to anything going on in that area.

23 But they also -- there's -- there's video cameras on
24 a number of these businesses. At the Sinclair's gas station,
25 at the 7-Eleven, at the McDonalds. And Detective Lebario went

1 out to do his job and check out these videos. And there's
2 nothing that he came across that identifies Mr. Adams and --
3 and Amber together, nothing. At least nothing that shows or
4 backs up Amber's story of being grabbed, crying and shaking
5 down the street.

6 There's -- talking about the people ignoring what's
7 going on. We also have Angela, the young girl who testified,
8 who said she's a friend of Amber's. And her testimony was a
9 little bit different from what she had originally told
10 Detective Lebario. According to it Detective Lebario when he
11 interviewed Angela, she said, Well, it seemed that he was --
12 the man was walking fast and Amber was actually trying to keep
13 up with him and was behind him and that they weren't touching
14 and he wasn't grabbing her. That's what appears in his report.

15 Now, when she testifies she says, "Well, he -- he did
16 have her by the hand or the wrist and they -- they walked up
17 into this other property. But I didn't make anything of it."
18 Those were her words. Didn't make anything of it. She had a
19 cell phone. This was a friend of hers in school. She sees
20 her, knows it's not her dad. Never does anything? Doesn't go
21 back to the school and tell a teacher? Doesn't call 911?
22 Doesn't call her own mom and say I think there's something
23 weird going on, just nothing at all.

24 The guy with her, Jonathan Cerboni, you heard him
25 testify also. And he says, oh, Amber looked scared. Amber

1 looked scared. And -- and I think maybe the guy had a gun.
2 This is what he says, of course, after the police show up at
3 his house and informed him as to why they're there and what
4 they're looking into and investigating. And now all of a
5 sudden, his story is, oh, she was scared and I think he had a
6 gun. Well, you know what, if she was really looking that
7 scared and -- and he really believed that Mr. Adams had a gun,
8 then why didn't he do anything?

9 What was his answer? What was his response? I
10 forgot. Is that just something you for get if it's really that
11 serious? If that's really what you're witnessing, do you like,
12 no exaggeration, within a minute, just forget it, forget about
13 it and then keep messing around with your friends and head on
14 home? That doesn't make any sense either.

15 If the scene was happening and developing the way
16 that Amber told it, someone would have said something. Someone
17 would have noticed something. Someone would have done
18 something.

19 We have the gun issue. Despite the hundreds of
20 slides and pictures you've seen, you never saw anything about a
21 gun. He's charged with using a gun. No gun was ever found at
22 the scene. No gun was ever found on his person. No gun, no
23 gun, no gun. There was no gun.

24 We received the very insightful question from
25 somewhere in the jury about was anything tested for gun

1 residue. Maybe the couch where supposedly he hid something
2 under a cushion. Maybe clothing. Was anything tested to see
3 if there was any kind of residue or -- or gunpowder or anything
4 like that? No. No. They just want you to take their word for
5 it. That's not how to works, though. You gotta have proof.

6 The tape issue is another one. This is what the
7 State relies on to -- to really sort of drive home the point
8 that force was used. But think about this situation. First of
9 all, even the detective makes mention of the fact when he finds
10 this tape, he looks at it and it seems very weak, very frail.
11 It's painter's tape. It's not duct tape or electrical tape.
12 It tears very easily. And then Amber's story is that this
13 man's abducting her, wraps up her hands with tape, wraps her
14 mouth with tape. Amber's response is, she pulls her hands
15 apart, breaks the tape, takes the tape off her mouth.

16 And then, I guess, this person who's forcibly trying
17 to tie her down just says, nah, I gave it a shot and just
18 forgets about it? Doesn't take any of the clothing that's
19 laying around to wrap her up that way. Doesn't take any of the
20 clothing that's laying around or that towel or anything else
21 and try and gag her or -- or -- or put something in her mouth.
22 None of those things done. Just I'll give it a shot one time
23 with some tape. It didn't work. That doesn't make any sense.
24 That's not what really happened.

25 And then this tape that they rely on, what's even

1 more interesting about it is, wow, they did DNA and they did
2 fingerprints and all of that on pretty much everything in that
3 entire apartment, even these old shoes and everything else,
4 except for the tape. Except for the tape. There must have
5 been at least three or four questions from the jury about was
6 the tape tested, was any skin or hair found on the tape? They
7 didn't even check it other than they did check it for the DNA,
8 but they found nothing. No DNA profile. Negative for semen.
9 Didn't check the adhesive part. Proof beyond a reasonable
10 doubt. That's the standard. And yet, you're left with these
11 question marks.

12 Amber's mother testified and, you know, wow, that's
13 -- that's a compelling witness and a disturbing and a sad
14 witness. That's completely honest. This woman was terrified.
15 No doubt. No doubt. She was terrified. She -- she was
16 worried about her daughter. But all we know as far as
17 evidentiary value, the only thing she can really provide -- I
18 mean, she can talk about lots of things that happened
19 afterwards. But the only thing we really know from her is that
20 when this event concluded, she's the one who called Amber.

21 This encounter ends in this apartment and Amber
22 leaves. Amber walks down the stairs. Mr. Adams is still in
23 the apartment. She's got her cell phone with the battery in
24 it. Well, that right there doesn't seem to make a lot of
25 sense. Why would someone kidnap a person by force, commit

1 these kinds of acts on this person and then at the end of it
2 say, "Here you go, here's your cell phone and the battery and
3 leave? Go ahead, you leave. I'll stay here at the scene."

4 But according to Amber that's what happened. So
5 Amber leaves. She walks down the stairs, doesn't call her mom,
6 doesn't call 911. She gets out on the street, doesn't call her
7 mom, doesn't call 911. She begins walking to McDonalds. She's
8 halfway there, still hasn't called her mom or called 911. It's
9 her mom that has to call her and get ahold of her. And her mom
10 was panicked. Her mom's upset. Amber herself had said at a
11 prior hearing and again here at trial and to the detective that
12 yes, she thought her mom was mad. Can you blame her mom?
13 She's frightened.

14 These are the points -- these are the things you look
15 at when trying to make sense of this. And you say, well, did
16 this happen the way Amber says it did, or do I have a
17 reasonable doubt? Are any of these things reasonable to think
18 about? Do any of these questions, you know, make you uneasy
19 about this? And when I'm finished, Mr. Hendricks will get a
20 chance to stand up, and no matter how angry or how loud or how
21 many times the word rape is used, or how many times the word
22 virgin is used, it doesn't excuse those doubts. It doesn't
23 fill in those missing pieces.

24 This -- this is a -- a difficult case. And you have
25 the hardest job in the building. It's -- you know, the bottom

1 line is, you hold a real person's fate in your hands. We've
2 heard for three days, you know, reference to defendant, and
3 we've got a little name plate on there on our table. But Ed
4 Adams is a real human being. And you -- you saw some of that
5 when you saw two of his sisters and -- and a friend of the
6 family get up on the stand. And it was very limited as to what
7 they talked about. But they basically told you that they are
8 people who know Ed Adams and have known him. And he's not the
9 monster that the State is trying to paint him out to be.

10 MR. HENDRICKS: And Judge, I'm going to object. I --
11 I -- the State has never stated that he's a monster.

12 THE COURT: Sustained.

13 MR. HENDRICKS: I'd move to strike it.

14 THE COURT: Sustained.

15 MR. MANINGO: You heard from these people about his
16 character. And that's whose decision, or decisions that you
17 have control of now. It's been said many times that rarely is
18 doing the right thing the same as doing the easy thing. And
19 this is a very good example of that.

20 It's very easy to get swept up with emotion, to get
21 swept up with sympathy, to get swept up with -- with outrage.
22 But you can't just do the easy thing. You have to do the right
23 thing and you have to look at all this evidence that you've
24 spent all this time and all this attention on.

25 You have to see whether or not you have reasonable

1 doubts in there. And then when you do, we ask you to do the
2 right thing. And we're not asking you to go through that
3 verdict form and just mark not guilty on everything, not at
4 all. We're asking you to mark guilty on all seven counts there
5 of sexual assault. You have the option of the statutory sexual
6 seduction, and we ask that you mark those.

7 But there was no kidnap. There was no gun involved
8 or any deadly weapon for that matter. And there was no sexual
9 assault. We trust what you will do the right thing. And we
10 thank you for your time. And we thank you for your attention.

11 THE COURT: Rebuttal.

12 STATE'S REBUTTAL CLOSING ARGUMENT

13 MR. HENDRICKS: Thank you, Judge. My first time.
14 Most adults have a story to tell about their first time, their
15 first sexual experience. For 13-year-old Amber Valles her
16 first time story gets to start out with a kidnapping, an
17 abduction, taken to a vacant apartment and raped vaginally and
18 anally. How about that for a first time.

19 What do we know about her? She's 13 years old, she's
20 a virgin. I've never even kissed a boy. Complete and total
21 stranger, this man, Mr. Adams, who she described as being dirty
22 looking, older and unattractive to her. Her dream date, her
23 first time, that's what she wanted.

24 Now, that's what defense counsel would have you
25 believe, that Amber walking out of school that day, December

1 14th, decided that her first time was going to be with this
2 guy, someone she had never even met. That's what you have to
3 believe in order to go along with what defense counsel is
4 proposing to you. And I'd suggest to you that that's not how
5 it happened.

6 Now, if we're looking at this first time, what are we
7 looking at? We're looking at setting. First time for this
8 13-year-old is a stranger's apartment. Sounds like a romantic
9 place. How about a vacant burned out water damaged apartment?
10 Sounds nice. No furniture inside of there. Of course, no bed.
11 But he did light some candles just to add to the mood. She's
12 thrown down on a dirty floor and on a dirty couch. And this
13 was all Amber's idea because she wanted this to be her first
14 time in this setting. It was her bad decision. She's the one
15 who was a thrill seeker.

16 How about the timing? It's easy to throw out that
17 this was all consensual. Real easy to say that, but let's
18 start asking some questions. She's headed home from school, my
19 mom's expecting right now. She had just spoken with her
20 father, Joseph Valles, said, yeah, I'm going to head home.
21 Think about it, how long is this going to take, this wonderful
22 first time sexual experience? Ever think about that? Amber
23 didn't. Why? Because she wasn't consenting to anything. She
24 wasn't part of this guy's plans.

25 How about where are we going to walk? To this vacant

1 apartment? Did she have any idea in hell where she was going?
2 Of course not. She was being led there and dragged there, as
3 the other witnesses told you. How am I going to get home? Was
4 that conversation ever had between Amber Valles and this guy?
5 Of course it wasn't.

6 Now, in regards to evidence of consent. And before
7 we get to these non-consensual acts, let's talk about that for
8 a minute. Now, I was going to put up a slide in regards to
9 evidence of consent in this case. But there wasn't any. What
10 piece of evidence did you hear --

11 MR. MANINGO: I'm going to object. It's starting to
12 sound a little bit like burden shifting at this point, Judge.

13 THE COURT: Objection's noted.

14 MR. HENDRICKS: And Judge --

15 THE COURT: Counsel, argument.

16 MR. HENDRICKS: -- absolutely. The burden's going to
17 be on the State beyond a reasonable doubt on each and every
18 charge. But what piece of evidence was presented in this
19 courtroom that said that this was consensual sex? I would
20 submit to you there was nothing. Look through all of these
21 exhibits, the hundred exhibits, and try and find one piece of
22 evidence that says this was consensual. Go back and think
23 about everyone that's testified. Did any of those witnesses --

24 MR. MANINGO: I'm going to object, and I'm sorry, Mr.
25 Hendricks. And ask to approach, please.

1 THE COURT: Approach.

2 (Off-record bench conference).

3 THE COURT: Objection's noted. Closing argument,
4 Counsel.

5 MR. HENDRICKS: Zero. Zero. Now, Mr. Maningo is a
6 very talented attorney, and you saw that in this courtroom.
7 He's a very experienced attorney. But what he says to you and
8 what he suggest to you in regards to consent is not evidence.
9 The evidence you are to consider is what you heard as far as
10 testimony and what you saw as far as exhibits. And the Judge
11 reminded you of that.

12 Now, Mr. Maningo also said that Mr. Adams is a real
13 human being. He is a real human being. He's a real human
14 being who made some real bad decisions. Now, of course, Mr.
15 Maningo says Amber made some bad decisions. I would submit to
16 you there was only one person who was allowed to make decisions
17 that day, and that was Mr. Adams.

18 When did Amber have a decision in what was going to
19 happen to her? When she was threatened? When she was grabbed?
20 When she was told, "I've got a gun and I'll kill you if you
21 talk?" What 13-year-old thinks they have a decision to make
22 when they're approached with that circumstance? One person
23 made bad decisions, and that's the man that sits before you
24 here today. "I'll kill you, shut up," and the rapes began.

25 When did this consensual agreement that they were

1 going to head off and have sex take place? Must have taken
2 place in 10 to 15 minutes and they agreed to go somewhere to
3 this place where she knew nothing about, but you know who did.
4 And we'll get to that later.

5 Mr. Maningo talked about no evidence -- well, in
6 regards to a car. If he was making such a great plan, why
7 didn't he have a car? Well, there was no evidence to suggest
8 he either had a car or did not have a car, right? What we need
9 -- what we do know is evidence that he told her that he had a
10 gun. Why do you need a car when you got a gun? Just walk up
11 and tell a child, "I've got a gun, if you scream, I'm going to
12 kill you."

13 What else do we know about his planning? Think about
14 it, where is he at? He's sitting outside a junior high school.
15 What in the hell is doing there during the day? He's not at
16 work. He's not at school. He's not at home. He's sitting
17 outside a junior high school. That's part of his plan. Why do
18 you sit outside a junior high school? Because that's where
19 kids come out. And it's a hell of lot easier to kidnap a kid,
20 tell her you're going to kill her and then rape her. That's
21 why the law says different circumstances for children when you
22 look at sexual assault victims. That's his plan.

23 Think about it, he's waiting outside a junior high
24 school, threatens her with a gun and goes to this apartment.
25 And what do we know about this apartment? He's been there

1 before. And how do you know he's been there before? Because
2 he knew exactly where it was. He didn't just drag her around
3 all afternoon long looking for a place to sexually assault her.
4 He headed right to a vacant apartment where he did not live,
5 but he had been there before. He had been all over that
6 apartment because the fingerprints told you. The DNA was left
7 all over there too, wasn't it?

8 Let's talk about these non-consensual acts, these
9 things that this 13-year-old just couldn't wait to have happen
10 to her. Mr. Maningo suggested it was all consensual. Please
11 jam your fingers inside of me so that it causes pain, abrasions
12 and tearing. Please don't stop. Put your penis in me. Don't
13 do it once. Please do it twice. How about a third time with
14 your fingers and please three times with your penis, too. Does
15 that that sound like consent? No.

16 What did you hear from Amber Valles? It hurt. It
17 caused me pain. Stop, please, stop, you're hurting me. Does
18 that sound like consensual sex? That bad decision, this
19 romantic meeting, she was going to have this -- with this guy
20 she had just met a few minutes earlier.

21 But the topper, when you're done with my vagina,
22 could you go ahead and put your fingers or your penis in my
23 anus, please? That sounds like consensual sex from a
24 13-year-old. And if I'm fighting back, you know what, there's
25 some S and M fantasy that I've got going here, could you go

1 ahead and put tape over my mouth and go ahead and put some tape
2 around my wrists?

3 This is what defense counsel is suggesting to you,
4 that all of this was a consensual act. Consensual sex is not
5 supposed to be painful.

6 When we talk about this consent, what did Amber have
7 to endure once she told her mother exactly what happened? She
8 had to tell mom, obviously, and she did immediately. She told
9 her friends because they wondered what had happened to her.
10 She's interrogated by a detective. She's questioned by a
11 nurse. She has a medical exam of her entire body, including
12 some glamour shots of her vagina and her anus. It sounds like
13 a fun consensual time. That's what she had to endure because
14 of this man's actions.

15 She had to testify at a preliminary hearing. She was
16 subjected to cross-examination. She had to testify in front of
17 you folks about everything that took place to her. And you
18 never heard once from that young lady that it was consensual.
19 And you know what? Had she come in at any point, this was all
20 consensual, I made it all up, we're not here. That didn't
21 happen.

22 In regards to deadly weapon, Mr. Maningo brought up
23 up this weapon, this mysterious weapon or whatever he called
24 it. You hear Mr. Scow talk about the jury instruction that
25 talks about a deadly weapon, and I'll repeat it. In order to

1 use, in quotes, a deadly weapon, there need not be conduct
2 which actually produces harm. That means you don't have to
3 shoot it. You don't have to beat her with it. But only, only
4 conduct which produces a fear of harm or force.

5 What did he do? "I've got a gun inside of his hoody
6 pocket, and if you scream or run I'm going to kill you. I've
7 got a gun." He said those words. The defendant said those
8 words, and they worked pretty good, didn't they? She didn't
9 run because she was in fear of something happening to her, and
10 she told you that from the witness stand. Yes, a firearm was
11 used, according to the evidence, according to the law, and it
12 should be according to your verdict, a firearm was used.

13 It also says the State is not required to have
14 recovered the deadly weapon. In this particular case, he was
15 not arrested until January 12th, almost a month later. The
16 only place that was processed was that crime scene. The gun
17 was not located there. So you don't know whether the gun was
18 -- well, it obviously was removed from there. You don't know
19 where the gun was. But it doesn't matter because the State is
20 not obligated with our burden to produce the gun, recover the
21 gun or bring it in here. You can still find him guilty of
22 using a deadly weapon. That's what the law tells you and at
23 the end of this argument, that's what I'm going to ask you to
24 do.

25 Physical force. Mr. Maningo suggested on a number of

1 occasions, well, Amber, you weren't beat up, you didn't have
2 marks to your face. Why would he have had to done that? He
3 didn't because he threatened her with a gun. And that was
4 enough for a kid, and he knew that. It's awful easy to kidnap
5 and rape a kid and threaten her, which is why he was waiting
6 outside a junior high school for a 13-year-old.

7 Physical force is not, is not, according to the law,
8 a necessary ingredient in the commission of sexual assault.
9 The crucial question is not whether the victim was physically
10 forced to engage in sexual assault, but whether the act was
11 exhibited without her consent. Once again, where's the slide
12 that shows any evidence of consent? Mr. Maningo suggests to
13 you there must have been consent because she wasn't beaten up,
14 there weren't any marks on her or anything like that. There
15 doesn't have it be physical force.

16 The instruction goes on to tell you, there is no
17 consent where the victim is induced to submit to the sexual act
18 through fear or death or serious bodily injury. And isn't that
19 what we have in this case, fear? "I've got a gun, I'll kill
20 you, don't say anything, shut up." Right here, that's what the
21 law says.

22 She was induced to do these things through threats
23 and through fear. He didn't have to beat her up, once again,
24 because she was a 13-year-old.

25 He also in instruction 16, is the defense to a charge

1 of sexual assault the defendant entertained a reasonable and
2 good faith belief that the female person voluntarily consented.
3 How could anyone in their right mind think that it was a
4 reasonable and good faith belief that you're having consensual
5 sex when it starts out with a stranger that you grab by the
6 arm, tell her you got a gun, tell her you you're going to kill
7 her if she says anything, force her into a vacant apartment and
8 then rape her over and over again? What reasonable person
9 would believe that that was consensual?

10 The first time she says, no, don't do it, don't do
11 it, stop, please, you're hurting me, wasn't consensual then
12 neither. Stop, please you're hurting me. The second time when
13 he's sticking something in her butt, stop hurting me. When
14 he's trying to put tape over her mouth. What part of that is
15 consensual? How could any reasonable person believe that that
16 was a consensual act?

17 Think about these bad decisions, this thrill seeker
18 thing when she is picked up from the McDonalds or the Sinclair.
19 What did mom tell you? She didn't have on her bra, and I
20 noticed that immediately. She didn't have on her t-shirt, and
21 she always wore a t-shirt under her clothes, and I noticed that
22 immediately.

23 She's a smart kid, her mom told you that. If she
24 thought she was going to be in trouble for being an hour late,
25 why not just say, I'm sorry, I lost track of time. Mom, please

1 for give me. I went over to Cierra's house, I hung out with my
2 friend Jonathan, I hung out with someone? I went over to the
3 7-Eleven, I went over to the McDonalds. One hour she has to
4 account for. I'm sorry, mom, my phone wasn't working, the
5 battery went dead, and it's done. That's it. But what doesn't
6 make sense -- I mean, she could have done that.

7 If she really had this consensual sexual encounter
8 with this guy, why would she tell anyone? If it was really
9 consensual, don't you think that she would have put other bra
10 back on before seeing mom? Putting her t-shirt back on before
11 seeing her mom? If it's consensual and no one wants to know
12 about it, no one is going to find out about it, don't you put
13 your clothes back on? No. She grabbed her clothes, threw them
14 in her backpack and got out of there thankfully because this
15 man said, you can go, but don't use your phone until you reach
16 at least McDonalds.

17 Why would Mr. Adams care about letting her go? How
18 is he associated with that apartment? How she's going to be
19 able to identify him? Didn't know his name. Didn't know
20 anything about him, except for he had a yucky mouth, bald head,
21 25 to 45 years of age. Didn't know the name. He obviously
22 didn't live there. There aren't going to go to the apartment
23 records and say Apartment 204, this guy, Ed Adams. Why would
24 he care? He didn't. Go, I'm not associated with this
25 apartment. You don't know what the hell I am. That's why she

1 was allowed to leave.

2 Unfortunately for him she told. And unfortunately
3 for him his fingerprints were left there. Unfortunately for
4 him his DNA was left there. They did find out where it took
5 place and he was apprehended. And think about this, about all
6 the people, if she, as Mr. Maningo stated, lied about this
7 whole thing, think about all the people that she had to have
8 fooled.

9 Won't even mention all of them, but think about the
10 two most important people that she must have fooled. Mom and
11 dad. She must have fooled them if she was really lying. And
12 boy, this lie continued on for six months when she dragged heir
13 mattress and slept at the foot of their bed for six months.
14 She should win some sort of award for that if, according to Mr.
15 Maningo's words, she was lying. Boy did it last for a long
16 time. It's continued onto this day, hasn't it?

17 Or, it really happened to her. You're the judges of
18 that. And as Mr. Scow pointed out to you, you can convict him
19 based upon her testimony alone, if you believe her beyond a
20 reasonable doubt. But of course, you don't have to just rely
21 on her testimony alone.

22 One jury instruction, I believe it's 28. Common
23 sense tells you that a 13-year-old virgin does not agree to
24 have sex with a complete stranger in a vacant apartment what
25 she is due home from middle school. One of the instructions

1 says use your common sense. This isn't mysterious. These are
2 facts presented to you and you're the trier of fact.

3 So which version of events makes sense? That this
4 was agreed upon, put into place, a plan between these two, that
5 somehow that they were going to go off to this vacant apartment
6 and have a romantic good sexual time or that she was kidnapped
7 and raped? Which one makes sense? Use your common sense.

8 Amber's version of events is all corroborated. And
9 Mr. Scow went through all of that with you, every bit, down to
10 the DNA, down to the fingerprints, down to the tape, and
11 actually how the tape looks, the two pieces of tape. One this
12 long to go over the mouth and one that was bound up and then
13 torn. Even down to those little simple details. All of
14 Amber's testimony is corroborated, every bit it.

15 Now, defendant was left with no option but to claim
16 that it was consensual.

17 MR. MANINGO: I'm going to object to as to counsel
18 commenting on my client's right to a defense.

19 THE COURT: Sustained.

20 MR. HENDRICKS: He talked about consistencies and
21 corroboration. Angela and Jonathan said that he was held by
22 arm or wrists being dragged, scared look on her face, taken up
23 into a yard to avoid them, his hand was in his pocket. Why, if
24 this was consensual, Amber's idea, why did this man, according
25 to two separate witnesses, nope, three, including Amber, have

1 to take Amber up into a yard to avoid them? Does that sound
2 like a consensual agreement? Hey, we're just strolling along
3 headed off to have a fun time. Independent witnesses that saw
4 what happened that day.

5 The apartment. Black couch, the blue tape. I've
6 talked about that. The dirty towels, the candles, the lotion.
7 Do you think she, Amber, as a 13-year-old had any idea about
8 fingerprints, DNA, sexual assault exams or anything else? When
9 she went in and gave her first statement that day, we didn't
10 have any of it. But amazingly everything she said was
11 corroborated by all of the evidence, everything.

12 The medical exam showed damages to the exact areas
13 that she described, or were those self-inflicted wounds or were
14 those wounds inflicted by this man? Mother described how her
15 child was crying, sobbing, and upset. If she was lying, she
16 must have once again, fooled mom.

17 As I've talked about, the fingerprints matched up,
18 the DNA matched up to her testimony. Now, Mr. Maningo stood up
19 in opening statement and said, Mr. Scow and I are going to be
20 wasting our time. He said that, not me. Keep in mind the
21 bottom line there, the burden is on the State to prove all
22 charges beyond a reasonable doubt. That's our burden. We have
23 it. Just us. They don't have to do a thing.

24 Now, think about this, if we don't call any witnesses
25 in regards to identifying this man, what option does the

1 defense now have? It was not the defendant, right? If the
2 fingerprints evidence was not presented, what option does
3 defense counsel have? Well, the defendant was never inside of
4 that apartment, right?

5 If we don't put on the DNA evidence, if that's not
6 presented, then what option is left with defense counsel? He
7 could say the defendant never had vaginal or anal intercourse
8 with the victim. It's our burden and we proved this case
9 beyond a reasonable doubt. We proved with the identifications.
10 We proved with the fingerprint. We proved it with the DNA,
11 each and every one of those counts.

12 Now, what -- what was the only option left to defense
13 counsel in this particular case?

14 MR. MANINGO: I'm going to object. This is -- we're
15 getting into the same thing regarding commentary on the
16 defense.

17 THE COURT: No commentary on the defense, Counsel.

18 MR. HENDRICKS: It's a defense they presented, Judge,
19 based upon the evidence.

20 THE COURT: No burden shifting.

21 MR. HENDRICKS: But I'm saying -- I'm not.

22 THE COURT: Okay.

23 MR. HENDRICKS: I've clearly stated --

24 THE COURT: The objection's noted for the record.

25 MR. HENDRICKS: Okay.

1 THE COURT: This is closing argument.

2 MR. HENDRICKS: I've clearly stated to the jury that
3 they didn't have to present anything. But Mr. Maningo
4 suggested to you there was no evidence of it, zero evidence of
5 it. But he suggested to you that this was all consensual,
6 which then results in, please find my client guilty of the
7 statutory sexual seductions and not the sexual assaults.
8 That's what Mr. Maningo suggested to you because his client's
9 DNA was inside of the this little girl, this 13-year-old girl.
10 That's the option that was left available to defense counsel.

11 Now, in this particular case there was overwhelming
12 evidence, and we had gone through this, in regards to Amber's
13 description and identification, Jonathan's description,
14 Angela's description and identification. And in regards to
15 Angela, you heard Mr. Maningo talk about the detective saying,
16 oh, yeah, Angela that -- that Amber was following trying to
17 keep up. I showed Angela her statement, her written statement.
18 And I said, "Please, Angela, look on your statement and find
19 the one spot that says Amber was following the defendant." She
20 said, "It's not in there because I never said it." And she
21 testified that she was being held -- Amber was being held by
22 the wrist, her arm and being dragged off with the defendant.

23 The fingerprints at the crime scene, the DNA on the
24 shirt, DNA on the pants, vaginal swabs, cervical swab, rectal
25 and anus swab.

1 Now, I'm almost done. Defense counsel had asked
2 Amber when she was on the stand, "Amber, let me ask you, did
3 this defendant take anything from you?" She said no. Really?
4 The defendant took nothing from this 13-year-old girl? I would
5 submit to you that he took this child's innocence. Took this
6 young girl's special gift. Took this young girl's ability to
7 sleep in her own room at night. Took this young girl's ability
8 to go anywhere alone.

9 This man that sits before you today took those
10 things. They were not given to him. This was not consensual.
11 There is zero evidence that this was consensual. He took these
12 things from that young girl. I would ask you to tell him that,
13 that he took these things. They were not given to him. And I
14 would ask that that be reflected in your verdict. Guilty
15 verdicts in regards to the kidnapping with deadly weapon, the
16 counts of sexual assault with a minor under 14 years of age
17 with a deadly weapon, battery with intent to commit sexual
18 assault with a deadly weapon, and also open or gross lewdness.
19 Thank you.

20 THE COURT: The clerk will now swear officers to take
21 charge of the jury. Ladies and gentlemen, in this case, as in
22 all cases, there's alternate jurors. Ms. Laba and Mr. Carter,
23 you are the alternate jurors in this case. You'll meet Diane,
24 my JEA. She's going to have some specific instructions for
25 you.

1 The balance of the panel will retire to consider your
2 verdict after we've sworn Officer Reichert to take charge.

3 (Swearing the officer).

4 THE COURT: Ladies and gentlemen, follow Officer
5 Reichert.

6 (Jurors retire to deliberate at 4:31 p.m.)

7 (Outside the presence of the jury).

8 THE COURT: Record should reflect we're outside the
9 presence of the jury. Any additional record need to be made as
10 a consequence of closing argument, State?

11 MR. HENDRICKS: Judge, I've got a few comments. In
12 regards to defense counsel, in State's opinion, inappropriate
13 objections. Some of my closing argument was in response to Mr.
14 Maningo's statement in opening statement stating that the State
15 is just wasting their time. In the State's opinion, that would
16 clearly be disparaging us, disparaging our strategy, and I
17 think that I had a right to respond to that, and I did in
18 rebuttal argument.

19 We have to explain to a jury why we are presenting
20 evidence of fingerprints, why we are presenting evidence of
21 identification, why we are presenting evidence of DNA evidence
22 in this particular case. And once again, defense counsel said
23 we're just wasting everyone's time. I certainly didn't suggest
24 that Mr. Maningo when he stood up and started talking he was
25 wasting everyone's time. He did that to the State.

1 Had I not explained that we have the burden of proof
2 to prove every count beyond a reasonable doubt, had I not gone
3 through and proved up our counts beyond a reasonable doubt,
4 then, of course, what would have happened? Mr. Maningo would
5 have stood up and said, you know what, they didn't even prove
6 identification, they didn't even prove anything about
7 fingerprints, they didn't prove anything about DNA evidence,
8 they didn't prove my client did anything, and now I'm entitled
9 to a verdict of not guilty on each and every count.

10 I think the State has a -- a right to respond to
11 disparaging comments by defense counsel, and I clearly did
12 that. He was left with one defense, and it's not like I was
13 doing anything mysterious or making it up. He presented that
14 defense, that it was consent. He chose that based upon the
15 evidence that he had presented to him, and that's all I
16 suggested to the jury.

17 THE COURT: All right. Mr. Maningo, any response?

18 MR. MANINGO: No.

19 THE COURT: Any additional record need to be made on
20 your side as a consequence of closing argument?

21 MR. MANINGO: No.

22 THE COURT: All right. Gentlemen, provide your
23 numbers to the clerk. As soon as we hear something back from
24 the jury -- I was sitting here rereading the McGuire (phonetic)
25 decision, which is kind of the -- and all its progeny. It's

1 dozen of cases that the supreme court has addressed issue on.
2 I heard attorneys argue forcefully on both sides the law and
3 the facts of this case, as presented by the witnesses. No
4 motion for mistrial as a consequence of that. So the record is
5 what it is. So give your numbers to the clerk, and we'll be in
6 touch.

7 MR. HENDRICKS: Do you know how long you're going to
8 keep them, Judge?

9 THE COURT: Yeah, they're going to work. They're
10 going to work as long as they want to work. Does any -- is
11 there any concern on either side that Exhibit 6 and 7 might
12 pose or should not, for some reason, go back to the jury? Do
13 you care?

14 THE CLERK: If they open it, then (indiscernible).

15 THE COURT: We'll they're marked -- frankly, they're
16 marked as exhibits, they're admitted as exhibits. There's no
17 biohazard indication on the outside of the envelope, so I think
18 they should all go back as evidence. It goes back. All right.

19 (Court recessed at 4:37 p.m. until 6:35 p.m.)

20 (In the presence of the jury)

21 THE MARSHAL: Jury's present, Your Honor.

22 THE COURT: Thank you. This is C-241003, State of
23 Nevada, Plaintiff, v. Edward Michael Adams. The record should
24 reflect the presence of representatives of the State, defense,
25 all members of the jury panel appear to be present. Do the

1 parties stipulate to the presence of the entire panel?

2 MR. SCOW: Yes, Judge.

3 MR. MANINGO: Yes, sir.

4 THE COURT: Ms. Clayton, I saw you walk in with the
5 Verdict form. Are you the foreperson of this jury?

6 JUROR NO. 7: Yes, sir.

7 THE COURT: Has this jury reached a verdict?

8 JUROR NO. 7: Yes, sir.

9 THE COURT: Would you hand the verdict form to the
10 Bailiff, please?

11 The Clerk will now read the Verdict.

12 THE CLERK: Okay. In the matter of District Court --

13 THE COURT: Please rise, Mr. Adams.

14 THE CLERK: -- Clark County, Nevada, the State of
15 Nevada, Plaintiff, vs. Edward Michael Adams, Defendant, Case
16 No. 241003, in Department 18. Verdict.

17 We, the jury in the above entitled case, find the
18 defendant, Edward Michael Adams, as follows:

19 Count 1, first degree kidnapping with use of a deadly
20 weapon, Guilty of first degree kidnapping.

21 Count 2, battery with intent to commit sexual assault
22 with use of a deadly weapon; guilty of battery with intent to
23 commit sexual assault.

24 Count 3, sexual assault with a minor under 14 years
25 of age with use of a deadly weapon; guilty of sexual assault.

1 Count 4, sexual assault with a minor under 14 years
2 of age with use of a deadly weapon; Guilty of sexual assault.

3 Count 5, sexual assault with a minor under 14 years
4 of age with use of a deadly weapon; Guilty of sexual assault.

5 Count 6, sexual assault with a minor under 14 years
6 of age with use of a deadly weapon; Guilty of sexual assault.

7 Count 7, sexual assault with a minor under 14 years
8 of age with use of a deadly weapon; Guilty of sexual assault.

9 Count 8, sexual assault with a minor under 14 years
10 of age with use of a deadly weapon, Guilty of sexual assault.

11 Count 9, sexual assault with a minor under 14 years
12 of age with use of a deadly weapon; Not Guilty.

13 Count 10, sexual assault with a minor under 14 years
14 of age with use of a deadly weapon; Not Guilty.

15 Count 11, sexual assault with a minor under 14 years
16 of age with use of a deadly weapon; Guilty of sexual assault.

17 Count 12, open or gross lewdness; Guilty of open or
18 gross lewdness.

19 Dated this 4th day of November, the year 2009, by the
20 foreperson, Margaret Clayton. Ladies and gentlemen of the
21 jury, is that your verdict as read, so say you one, so say you
22 all?

23 THE JURY: Yes.

24 THE COURT: Does either side wish to have the jury
25 polled? State?

1 MR. SCOW: No, Judge.

2 THE COURT: Defense?

3 MR. MANINGO: Yes, please.

4 THE CLERK: All right. Juror No. 1, is that your
5 verdict as read?

6 JUROR NO. 1: Yes.

7 THE CLERK: Number 2, is that your verdict as read?

8 JUROR NO. 2: Yes.

9 THE CLERK: Number three, is that your verdict as
10 read?

11 JUROR NO. 3: Yes.

12 THE CLERK: Number four, is that your verdict as
13 read?

14 JUROR NO. 4: Yes.

15 THE CLERK: Number five, is that your verdict as
16 read?

17 JUROR NO. 5: Yes.

18 THE CLERK: Number six, is that your verdict as read?

19 JUROR NO. 6: Yes.

20 THE CLERK: Number seven, is that your verdict as
21 read?

22 JUROR NO. 7: Yes.

23 THE CLERK: Number eight, is that your verdict as
24 read?

25 JUROR NO. 8: Yes.

1 THE CLERK: Number nine, is that your verdict as
2 read?

3 JUROR NO. 9: Yes.

4 THE CLERK: Number ten, is that your verdict as read?

5 JUROR NO. 10: Yes.

6 THE CLERK: Number 11, is that your verdict as read?

7 JUROR NO. 11: Yes.

8 THE CLERK: Number 12, is that your verdict as read?

9 JUROR NO. 12: Yes.

10 THE CLERK: Thank you.

11 THE COURT: Ladies and gentlemen, I want to thank you
12 on behalf of the Eighth Judicial District Court for your time
13 and service to the community. I say this with all sincerity.
14 If we didn't have people like you in our community who are
15 willing to sacrifice their time, their lives to make these
16 important decisions, decisions of this type, of this magnitude
17 and that are required by our Constitution, we couldn't meet
18 that responsibility without people like you.

19 So on behalf of the Eighth Judicial District, I want
20 to thank you for your service. The admonition I've been
21 reading to you for the last few days that you can't speak with
22 anybody about this case, you're with -- you're released from
23 that admonition. You can speak to anybody you wish about this
24 case. Conversely, if somebody should attempt to speak with you
25 against your wishes, about this case, just bring that to

1 Officer Reichert's attention and I'll deal with it
2 appropriately.

3 Sometimes the parties, the attorneys specifically
4 like to speak with jurors about the decision, anything at all
5 that frankly they're allowed to. Some like to talk about what
6 you liked, or didn't like about their presentation, to improve
7 their craft, their talents and their energies as lawyers. So
8 like to know what you think. You're free to talk with them
9 about that. But they shouldn't and probably -- and they
10 wouldn't persist in talking if you didn't want to.

11 I like to speak with juries just for a few minutes in
12 the jury room; not about the facts of the case, but about how
13 you were treated from the time you received the jury summons,
14 to the point where I'm releasing you today, see if there are
15 things that have annoyed you that we might be able to better as
16 a system. That only takes a very few minutes, then I'll let
17 the attorneys speak with you, or not. It's up to you.

18 I know due to the late hour you've already been taken
19 down to the Jury Commissioner so you've got your voucher, so
20 we'll get you on your way in just a few minutes.

21 Again, thank you very much for your service. Follow
22 Officer Reichert, please. We'll stand at ease.

23 (Jury excused at 6:41 p.m.)

24 (Outside the presence of the jury)

25 THE COURT: Record should reflect we're outside the

1 presence of the jury. The Court directs the Clerk to lodge the
2 verdict in the minutes of the Court. This matter is referred
3 -- based upon the verdict, this matter is referred to the
4 Department of Parole and Probation for the preparation of a
5 presentence investigation report. The matter is passed for
6 sentencing.

7 THE COURT: That would be January the 13th at 8:15,
8 please.

9 THE COURT: Anything else to come before the Court?

10 MR. SCOW: Judge, can we have the defendant remanded
11 without bail?

12 THE COURT: The defendant's remanded without bail,
13 pending sentencing. Anything on the defense side, Mr. Maningo?

14 MR. MANINGO: No, sir.

15 THE COURT: All right. We're in recess. Gentlemen,
16 if you'd like to talk to the jury, I'll have -- I'll be done
17 with them in just a few minutes and you can speak with them in
18 the back room.

19 (Proceedings concluded at 6:42 p.m.)
20
21
22
23
24
25

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WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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PLAINTIFF'S WITNESSES:

Kellie Gauthier	3	22	25	
Andre Randle	26	31	33	
Vicki Farnham	36	49		
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Brianna Galloway	111
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EXHIBITS

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)	CASE NO. C227324 C241003
)	
Plaintiff,)	DEPT. NO. XVIII
vs.)	
)	
EDWARD MICHAEL ADAMS,)	
)	
Defendant.)	

BEFORE THE HONORABLE DAVID B. BARKER, DISTRICT COURT JUDGE

RECORDER'S TRANSCRIPT RE:
SENTENCING

WEDNESDAY, JANUARY 13, 2010

APPEARANCES:

FOR THE STATE:	CRAIG L. HENDRICKS, ESQ. Chief Deputy District Atty.
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FOR THE DEFENDANT:	JEFFREY S. MANINGO, ESQ. Deputy Public Defender
--------------------	--

RECORDER/TRANSCRIBER:	RICHARD L. KANGAS
-----------------------	-------------------

CLERK OF THE COURT

APR 13 2010

1 LAS VEGAS, CLARK COUNTY, NEVADA
2 WEDNESDAY, JANUARY 13, 2010, 9:09 A.M.
3 * * * * *
4 THE BAILIFF: Bottom of 3, Adams.
5 THE COURT: C241003, State of Nevada versus Edward
6 Adams. The record should reflect the presence of Mr. Adams
7 in custody with counsel, a representative of the State.
8 This is the time set for sentencing and status check
9 dismissal of Counts 9 and 10.
10 Any legal cause or reason why judgment should not
11 be entered?
12 MR. MANINGO: May we approach?
13 THE COURT: Yes.
14 MR. MANINGO: Thank you.
15 (Off-record bench conference)
16 THE COURT: All right. Mr. Adams, we're going to
17 trail your matter to the end.
18 (At 9:10 a.m. matter trailed on calendar until 10:30 a.m.)
19 THE COURT: All right. The bottom of page 3 is
20 C241003, State of Nevada versus Edward Michael Adams. The
21 record should reflect the presence of Mr. Adams in custody
22 with counsel, a representative of the State. This is the
23 time set for sentencing.
24 Any legal cause or reason why judgment should not
25 be entered?

1 MR. MANINGO: No, sir.

2 THE COURT: By virtue of your plea - or by virtue
3 of the jury verdict in this case, Mr. Adams, you're
4 adjudicated guilty of Counts 1 through 8 and 11 and 12.
5 Those counts respectively are: Count 1, first degree
6 kidnapping; Count 2, battery with intent to commit sexual
7 assault; Counts 3 through 8 and 11, sexual assault; you were
8 found not guilty on Counts 9 and 10, so those counts are
9 dismissed pursuant to the verdict of the jury; and Count 12,
10 open or gross lewdness, a gross misdemeanor offense.

11 State's position regarding sentencing.

12 MR. HENDRICKS: Judge, I'll be very brief.
13 Obviously you heard the trial, you saw what the jury did in
14 regards to the verdict. I'd just simply point out a couple
15 things.

16 I know how thorough you are in regards to your
17 preparation. I know that you've had a chance - and I
18 apologize for getting these to you this morning, but it's a
19 statement from the victim in this case, and also from the
20 victim's mother. We did not provide notice in time in
21 regards to having them speak today, and it's my under-
22 standing that the defendant is opposed to having them speak
23 this morning. I spoke with the victim and her mother; they
24 understand that, and they want to go forward today. And
25 hopefully, like I said, I'm sure you've already read through

1 those statements, and they just wanted you to hear from them
2 in regards to that -

3 THE COURT: Okay.

4 MR. HENDRICKS: - and how this has impacted their
5 lives.

6 Judge, you've seen that this isn't the guy that
7 this is his first time in the system; he's got priors, and
8 according to P and P's report, he's got at least three
9 priors. He's been to prison before; obviously he didn't
10 learn. But those crimes in comparison to this were
11 basically nothing, in my opinion. What he did on that
12 particular day by kidnapping a thirteen-year-old girl,
13 taking her to a vacant apartment and doing what he did to
14 her on that day is just absolutely unbelievable.

15 In regards to this young girl, it is certainly the
16 worst nightmare that she could ever face, the worst
17 nightmare that these parents could've ever had to face; yet
18 they did, and they got through it. And as the letter points
19 out, they're going to be stronger because of it. But that's
20 in regards to that family.

21 Now in regards to the defendant, certainly what he
22 did on that day, he explained that the reason he did it was
23 probably methamphetamine, but if that were the case then
24 we'd have a ton of different individuals out there raping
25 children all the time, because the methamphetamine problem

1 here in Las Vegas is so bad. So that he provides an excuse,
2 and it's ridiculous, and I'm sure that the Court's gonna
3 ignore that.

4 And once again, Judge, this isn't his first time
5 in the system. But what he did on that day was - qualifies
6 him to be, in my opinion, one of the worst of the worst.
7 To kidnap a young child off the street, like I said, is the
8 worst thing that could possibly happen to a kid. I guess
9 the one good thing he did do is allow her to leave and did
10 not take her life; that's what he didn't take. There's
11 some other things he did take on that day, and those are
12 some of the things that actually came out during trial, and
13 I'm sure you remember that, Judge.

14 Parole and Probation went through, did a thorough
15 interview, and I think came back with the perfect
16 recommendation, and that is: every one of these counts,
17 except for the final gross misdemeanor count, to run
18 consecutive. And I think that's appropriate, because this
19 is an individual that does not need to be back out in our
20 society. And I would ask that the Court make sure, ensure
21 that he never returns back to society so that he cannot ever
22 do this again to another family.

23 And with that, Judge, I'd submit it.

24 THE COURT: Mr. Adams, this is your opportunity to
25 present any information in mitigation of sentence.

1 Counsel?

2 MR. MANINGO: Judge, I'll also be brief, because
3 this is the courtroom where the trial took place and you've
4 already heard the different theories and possible
5 explanations and results of what had happened in this case.

6 Just a few things I would like to point out, is Mr.
7 Adams did supply a very brief written statement in the P and
8 P report -

9 THE COURT: Right.

10 MR. MANINGO: - where he does explain his regret
11 and remorse over the way things happened and took place. He
12 also mentions verbally, which is stated in the P and P
13 report, his remorse. And I don't think he offers the use of
14 methamphetamine as an excuse, but only as more of an
15 explanation of an additional factor of what took place. And
16 I really do think that methamphetamine is an absolute
17 monster. And while Mr. Hendricks had pointed out that, you
18 know, thank God we do not have daily kidnaps of children
19 because of methamphetamine, there are daily crimes committed
20 because of methamphetamine, and it really does change a
21 person's character, and I believe that especially in this
22 case.

23 I've known Mr. Adams for over two years now that
24 he's been in custody, and the entire two years he has been
25 nothing but respectful and appreciative and helpful. I look

1 at the charges and I hear the testimony at trial, and I just
2 - it blows my mind as to how this man that I've spoken to
3 and that I've known could have participated in anything like
4 this; it - it's absolutely shocking to me.

5 And I know that it's a tragedy for everybody
6 involved. For Amber and her family, I know that is a
7 nightmare that will continue on.

8 But it really - it is so far out of character I
9 think that it really must take somekind of catalyst, and
10 the only thing that I can come to grips with, and - and as
11 the Court knows, these are the only kind of cases I do. I
12 deal with these every single day, and every time I look at
13 these files I try and figure out why, why did this happen,
14 what's going on. There must be something because this is
15 not normal behavior; this is not, you know, this is not
16 something with an easy motivation.

17 I mean, you can understand why someone might steal
18 some money, because they need it, you know, for food or
19 something like that. But the motivations behind something
20 like this are so mind-blowing and so far out on another
21 plane that I think we really grasp and seek explanations,
22 and may never find them, but I think it's one of the
23 difficulties with these cases.

24 Mr. Hendricks mentioned the priors. He does have
25 the priors, but they are for car thefts; they're nothing

1 related to this kind of behavior or this kind of conduct.

2 And I understand the recommendation made by P and
3 P, however what we - what we really are talking about - and
4 I know it's charged differently, and I understand the law
5 and the rationale behind it, but what we're really talking
6 about is a single incident, a single incident with different
7 acts that took place during this incident. This isn't a
8 case where there is an ongoing pattern of abuse that we see
9 many times over an extended period of time. These are all
10 charges stemming from what took place over approximately an
11 hour or so, and that's why I think it would be excessive to
12 run all of these consecutively.

13 On a single count of ten-to-life you're talking
14 about the Parole Board having the ability to keep Mr. Adams
15 in custody for as long as they deem fit, whether it's ten
16 years - and we know that on these cases they never parole
17 after ten; they're always gonna have to come back again, and
18 they're lucky if it's fifteen years or something like that
19 when the Parole Board would consider release. But because
20 of these types of charges and the number of them, the Parole
21 Board would be able to do their job and say, look, okay, he
22 shouldn't be out, you know, we're the ones who have been
23 reviewing his progress, reviewing whether he's been going
24 through therapy or anything else, the length of his
25 punishment, now is the appropriate time, or not. And they

1 can keep him in because of that life tail.

2 I think that it would - I know - I understand, I
3 understand Amber and her family wanting all the big numbers
4 stacked together. I can understand where they would come
5 from, and I think that's fair. But I don't think it really
6 achieves anything more than if you run them concurrently and
7 allow the Parole Board to do their job.

8 The jury has found that on all charges that no
9 weapon was used, which is why I think Mr. Adams had
10 explained the case and the events happening the way they
11 did. I already mentioned that Mr. Adams has been in custody
12 for over seven hundred days; the exact number is in the P
13 and P report, so I'd ask for credit for that amount of time.
14 And I would be asking the Court to run the counts
15 concurrently with one another, with the first ten-to-life.

16 THE COURT: All right. I did hear the trial. Some
17 facts are self-evident, and have been stated and argued
18 effectively by both sides. A thirteen-year-old girl on her
19 way home from school when the defendant took her from the
20 street and repeatedly sexually assaulted her. He - and as
21 she testified before this jury, indicated that the defendant
22 claimed a weapon, and that's why she went initially, and
23 resulted in being victimized in the manner that we've talked
24 about.

25 At the time the defendant committed this terrible

1 act he was on parole out of California from an '03
2 conviction, in fact was a fugitive from that parole. No
3 stranger to the system because before that he'd managed to
4 sustain two additional felony convictions, and was in fact a
5 three-time ex-felon at the time he victimized this young
6 girl.

7 Mr. Adams, as a consequence of that history and the
8 terrible things you did to this girl, you are and remain a
9 continuing threat to this community, in my opinion. And as
10 a consequence, I think the sentence here needs to reflect
11 that.

12 In accordance with the law of the State of Nevada:
13 Count 1, first degree kidnapping, 60 months on the bottom,
14 life on the top; restitution ordered under Count 1, twenty-
15 nine hundred and thirty-two dollars and zero cents
16 (\$2932.60). Count 2, 60 months on the bottom, life on the
17 top, consecutive to Count 1. Count 3 for the sexual assault
18 120 months Nevada Department of Corrections on the bottom,
19 life on the top, consecutive to Count 2. Count 4, 120
20 months on the bottom, life on the top, consecutive to Count
21 3. Count 5, 120 months to life, consecutive. Count 6, also
22 120 months to life, consecutive. Count 7, 120 to life,
23 consecutive. Count 8, 120 months to life, consecutive.
24 Count 11, 120 months to life, consecutive as well. Twenty-
25 five-dollar (\$25) administrative assessment fee, hundred-

1 and-fifty-dollar (\$15) DNA fee - if I didn't sentence on
2 Count 12, that's a gross misdemeanor conviction, it will run
3 concurrent with the balance of the counts, as recommended by
4 P and P. Twenty-five-dollar (\$25) administrative, hundred-
5 and-fifty-dollar (\$150) DNA, five-hundred-dollar (\$500)
6 indigent defense fund fee.

7 I also would note that pursuant to statute, before
8 the defendant is eligible for parole, a panel consisting of
9 the administrator of the mental health and development
10 services for the Department of Health - or Human Resources,
11 or his designee, and the Director of the Department of
12 Corrections or his designee, and a psychologist licensed to
13 practice in the state, or a psychiatrist licensed to
14 practice medicine in Nevada, must certify that the defendant
15 does not present or represent a high risk to reoffend on
16 current accepted standards of assessment. The Court also
17 orders special lifetime sentence - or lifetime supervision
18 as a special sentence upon any release on the terms as
19 outlined herein.

20 731 days CTS against that sentence appears to be
21 the recommendation of P and P.

22 Anything else, gentlemen?

23 MR. HENDRICKS: No, thank you, Judge.

24 THE CLERK: Yes, Your Honor. What was the sentence
25 for the gross misdemeanor?

1 THE COURT: 12 months CCDC concurrent with the
2 balance of the counts.

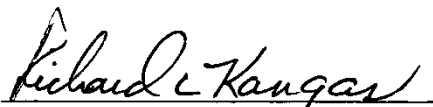
3 Anything else on the calendar, Danny? We're in
4 recess.

5 PROCEEDING CONCLUDED AT 10:45 A.M.

6 * * * * *

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8
9 ATTEST: I do hereby certify that I have transcribed the audio-
10 video recording of this proceeding in the above-entitled case to
11 the best of my ability.

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RICHARD L. KANGAS,
Court Recorder/Transcriber

ORIGINAL

JOC

FILED

FEB 02 2010

John L. Blum
CLERK OF COURT

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C241003

-vs-

DEPT. NO. XVIII

EDWARD MICHAEL ADAMS
#1969904

Defendant.

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.310, 200.320, 193.165; COUNT 2 – BATTERY WITH INTENT TO COMMIT A CRIME WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.400, 193.165; COUNT 3 – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.364, 200.366, 193.165; COUNT 4 – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.364, 200.366,

1 193.165; COUNT 5 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS
2 OF AGE WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS
3 200.364, 200.366, 193.165; COUNT 6 – SEXUAL ASSAULT WITH A MINOR UNDER
4 FOURTEEN YEARS OF AGE WITH USE OF A DEADLY WEAPON (Category A
5 Felony) in violation of NRS 200.364, 200.366, 193.165; COUNT 7 – SEXUAL ASSAULT
6 WITH A MINOR UNDER FOURTEEN YEARS OF AGE WITH USE OF A DEADLY
7 WEAPON (Category A Felony) in violation of NRS 200.364, 200.366, 193.165; COUNT
8 8 – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE WITH
9 USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.364,
10 200.366, 193.165; COUNT 9 – SEXUAL ASSAULT WITH A MINOR UNDER
11 FOURTEEN YEARS OF AGE WITH USE OF A DEADLY WEAPON (Category A
12 Felony) in violation of NRS 200.364, 200.366, 193.165; COUNT 10 – SEXUAL
13 ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE WITH USE OF A
14 DEADLY WEAPON (Category A Felony) in violation of NRS 200.364, 200.366, 193.165;
15 COUNT 11 – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
16 AGE WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS
17 200.364, 200.366, 193.165; COUNT 12 – OPEN OR GROSS LEWDNESS (Gross
18 Misdemeanor) in violation of NRS 201.210, and the matter having been tried before a
19 jury and the Defendant having been found guilty of the crimes of COUNT 1 – FIRST
20 DEGREE KIDNAPPING (Category A Felony) in violation of NRS 200.310, 200.320;
21 COUNT 2 – BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT (Category A
22 Felony) in violation of NRS 200.400; COUNT 3 – SEXUAL ASSAULT (Category A
23 Felony) in violation of NRS 200.364, 200.366; COUNT 4 – SEXUAL ASSAULT
24 (Category A Felony) in violation of NRS 200.364, 200.366; COUNT 5 – SEXUAL

1 ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; COUNT 6 –
2 SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; COUNT
3 7 – SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366;
4 COUNT 8 – SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364,
5 200.366; COUNT 9 – NOT GUILTY; COUNT 10 – NOT GUILTY; COUNT 11 – SEXUAL
6 ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; COUNT 12 –
7 OPEN OR GROSS LEWDNESS (Gross Misdemeanor) in violation of NRS 201.210;
8 thereafter, on the 13TH day of January, 2010, the Defendant was present in court for
9 sentencing with his counsel, JEFFREY S. MANINGO, Deputy Public Defender, and
10 good cause appearing,
11


12
13 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
14 addition to the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee
15 including testing to determine genetic markers and \$500.00 Indigent Defense Fee, the
16 Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:
17 AS TO COUNT 1 - TO LIFE with a MINIMUM Parole Eligibility of SIXTY (60) MONTHS
18 and PAY \$2,932.00 in Restitution; AS TO COUNT 2 - TO LIFE with a MINIMUM Parole
19 Eligibility of SIXTY (60) MONTHS, COUNT 2 to run CONSECUTIVE to COUNT 1; AS
20 TO COUNT 3 - TO LIFE with a MINIMUM Parole Eligibility of ONE HUNDRED
21 TWENTY (120) MONTHS, COUNT 3 to run CONSECUTIVE to COUNT 2; AS TO
22 COUNT 4 – TO LIFE with a MINIMUM Parole Eligibility of ONE HUNDRED TWENTY
23 (120) MONTHS, COUNT 4 to run CONSECUTIVE to COUNT 3; AS TO COUNT 5 - TO
24 LIFE with a MINIMUM Parole Eligibility of ONE HUNDRED TWENTY (120) MONTHS,
25 COUNT 5 to run CONSECUTIVE to COUNT 4; AS TO COUNT 6 - TO LIFE with a
26 MINIMUM Parole Eligibility of ONE HUNDRED TWENTY (120) MONTHS, COUNT 6 to
27
28

1 run CONSECUTIVE to COUNT 5; AS TO COUNT 7 - TO LIFE with a MINIMUM Parole
2 Eligibility of ONE HUNDRED TWENTY (120) MONTHS, COUNT 7 to run
3 CONSECUTIVE to COUNT 6; AS TO COUNT 8 - TO LIFE with a MINIMUM Parole
4 Eligibility of ONE HUNDRED TWENTY (120) MONTHS, COUNT 8 to run
5 CONSECUTIVE to COUNT 7; AS TO COUNT 11 - TO LIFE with a MINIMUM Parole
6 Eligibility of ONE HUNDRED TWENTY (120) MONTHS, COUNT 11 to run
7 CONSECUTIVE to COUNT 8; AS TO COUNT 12 - TO TWELVE (12) MONTHS in the
8 Clark County Detention Center (CCDC), COUNT 12 to run CONCURRENT with
9 BALANCE OF COUNTS; with SEVEN HUNDRED THIRTY-ONE (731) DAYS credit for
10 time served.
11

12
13 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION
14 is imposed to commence upon release from any term of imprisonment, probation or
15 parole.
16

17 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender
18 in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any
19 release from custody.
20

21 FEB 01 2010
22 DATED this _____ day of January, 2010
23

24
25 
26 DAVID BARKER
27 DISTRICT JUDGE
28

1 NOAS

2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR No. 0556
4 309 South Third Street, Suite 226
5 Las Vegas, Nevada 89155
6 (702) 455-4685
7 Attorney for Defendant

FILED
FEB 22 2010
Electronically Filed
Feb 22 2010 10:26 a.m.
Tracie R. Lindeman

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)
11)
12 Plaintiff,) CASE NO. C241003
13)
14 v.) DEPT. NO. XVIII
15)
16 EDWARD MICHAEL ADAMS,)
17)
18 Defendant.)

19 NOTICE OF APPEAL

20 TO: THE STATE OF NEVADA


21 DAVID ROGER, DISTRICT ATTORNEY, CLARK COUNTY, NEVADA and
22 DEPARTMENT NO. XVIII OF THE EIGHTH JUDICIAL DISTRICT
23 COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF
24 CLARK.

25 NOTICE is hereby given that Defendant, Edward Michael
26 Adams, presently incarcerated in the Nevada State Prison, appeals
27 to the Supreme Court of the State of Nevada from the judgment
28 entered against said Defendant on the 2nd day of February, 2010,
whereby he was convicted of Ct. 1 - First Degree Kidnapping With
Use of a Deadly Weapon; Ct. 2 - Battery With Intent to Commit a
Crime With Use of a Deadly Weapon; Cts. 3, 4, 5, 6, 7, 8, 11 -
Sexual Assault With a Minor Under Fourteen Years of Age With Use
of a Deadly Weapon; Ct. 12 - Open or Gross Lewdness and sentenced
to \$25 Admin. fee; \$150 DNA analysis fee; genetic testing; \$500
Indigent Defense Fee, Ct. 1 - 60 months to Life in prison, \$2,932
in restitution; Ct. 2 - 60 months to Life in prison; Ct. 2 to run
consecutive to Ct. 1; Ct. 3 - 120 months to Life in prison, Ct. 3

1 to run consecutive to Ct. 2; Cts, 4, 5, 6, 7, 8, 11 - 120 months
2 to Life in prison; Ct. 4 to run consecutive to Ct. 3; Ct. 5 to run
3 consecutive to Ct. 4; Ct. 6 to run consecutive to Ct. 5; Ct. 7 to
4 run consecutive to Ct. 6; Ct. 8 to run consecutive to Ct. 7; Ct.
5 11 to run consecutive to Ct. 8; Ct. 12 - 12 months in CCDC to run
6 concurrent with balance of counts; 731 days credit for time
7 served; special sentence of lifetime supervision imposed upon
8 release from any term of imprisonment, probation or parole;
9 register as sex offender within 48 hours of release.

10 DATED this 22nd day of February, 2010.

11 PHILIP J. KOHN
12 CLARK COUNTY PUBLIC DEFENDER

13 By: 
14 P. DAVID WESTBROOK, #9278
15 Deputy Public Defender
16 309 S. Third Street, Ste. 226
17 Las Vegas, Nevada 89155
18 (702) 455-4685
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I declare under penalty of perjury that the foregoing is true and correct.

An employee of the Clark County
Public Defender's Office

DAVID ROGER
CLARK COUNTY DISTRICT ATTORNEY

3

1 **CAS**

2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR No. 0556
4 309 South Third Street, Suite 226
5 Las Vegas, Nevada 89155
6 (702) 455-4685
7 Attorney for Defendant

FILED
FEB 22 2010
CLERK OF COURT

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,)
11)
12 Plaintiff,) CASE NO. C241003
13 v.) DEPT. NO. XVIII
14 EDWARD MICHAEL ADAMS,)
15)
16 Defendant.)

17 **CASE APPEAL STATEMENT**

18 1. Appellant filing this case appeal statement:
19 Edward Michael Adams.

20 2. Judge issuing the decision, judgment, or order
21 appealed from: David Barker.

22 3. All parties to the proceedings in the district
23 court (the use of et al. To denote parties is prohibited): The
24 State of Nevada, Plaintiff; Edward Michael Adams, Defendant.

25 4. All parties involved in this appeal (the use of et.
26 al. to denote parties is prohibited): Edward Michael Adams,
27 Appellant; The State of Nevada, Respondent.

28 / / /

/ / /

/ / /

/ / /

1 5. Name, law firm, address, and telephone number of
2 all counsel on appeal and party or parties whom they represent:

3 PHILIP J. KOHN
4 Clark County Public Defender
309 South Third Street, #226
Las Vegas, Nevada 89155-2610

DAVID ROGER
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

5
6 Attorney for Appellant

CATHERINE CORTEZ MASTO
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

7
8
9 Counsel for Respondent

10 6. Whether appellant was represented by appointed or
11 retained counsel in the district court: Appointed.


12 7. Whether appellant is represented by appointed or
13 retained counsel on appeal: Appointed.

14 8. Whether appellant was granted leave to proceed in
15 forma pauperis, and the date of entry of the district court order
16 granting such leave: N/A.

17 9. Date proceedings commenced in the district court
18 (e.g., date complaint, indictment, information, or petition was
19 filed): Information filed 02/12/2008.

20 DATED this 22nd day of February, 2010.

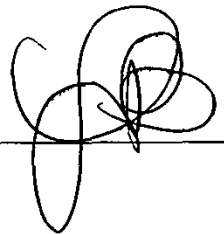
21 PHILIP J. KOHN
22 CLARK COUNTY PUBLIC DEFENDER

23 By: 
24 P. DAVID WESTBROOK, #9278
25 Deputy Public Defender
26 309 S. Third Street, Ste. 226
27 Las Vegas, Nevada 89155
28 (702) 455-4685

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RECEIPT OF COPY of the foregoing Case Appeal Statement
is hereby acknowledged this 22 day of February, 2010.

DAVID ROGER
CLARK COUNTY DISTRICT ATTORNEY

By:  _____

DATE: 02/23/10
CASE NO. 08-C-241003-C

I N D E X

TIME 9:41 AM
JUDGE:Barker, David

STATE OF NEVADA

[] vs Adams, Edward M

[]

0001 D1 Edward M Adams

Pro Se

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0001	01/31/08	INFO/INFORMATION	Fee \$0.00			01/31/08	
0002	02/01/08	ARRN/INITIAL ARRAIGNMENT		0001		02/19/08	
0003	02/01/08	CBO /CRIMINAL BINDOVER		0001			
0004	02/01/08	CBOR/CRIMINAL BINDOVER RECEIPT		0001			
0005	02/08/08	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS		0001		01/30/08	
0006	02/19/08	CALC/CALENDAR CALL		0001		06/10/08	
0007	02/19/08	JURY/TRIAL BY JURY (VH 6/10/08)		0001	VC	06/16/08	
0008	03/04/08	RAO /MEDIA REQUEST AND ORDER		0001	GR	03/04/08	
0009	04/16/08	NWEW/NOTICE OF WITNESSES AND/OR EXPERT WITNESSES		0001			
0010	06/10/08	CALC/CALENDAR CALL		0001	MH	10/07/08	
0011	06/10/08	JURY/TRIAL BY JURY (VJ 10/7/08)		0001	VC	10/13/08	
0012	10/06/08	MOT /DEFT'S MTN TO CONTINUE TRIAL DATE/06		0001	GR	10/07/08	
0013	10/07/08	OCAL/STATUS CHECK: NEGOTIATIONS AND/OR TRIAL SETTING		0001	MH	10/28/08	
0014	10/07/08	MOT /ALL PENDING MOTIONS 10/7/08		0001		10/07/08	
0015	10/09/08	EIE /ENTRY IN ERROR					
0016	10/28/08	JURY/TRIAL BY JURY (VJ 3/31/09)		0001	VC	04/06/09	
0017	10/28/08	CALC/CALENDAR CALL		0001	MH	03/31/09	
0018	12/28/08	ASSG/Reassign Case From Judge Glass To Judge Villani					
0019	03/31/09	CALC/CALENDAR CALL		0001		10/27/09	
0020	03/31/09	JURY/TRIAL BY JURY (VJ 10/27/09)	(S)	0001	VC	11/02/09	
0021	10/21/09	MOT /PD'S MTN TO DISMISS BASED UPON STATE'S FAILURE TO PRESERVE EXCULP EVID/13		0001		10/27/09	
0022	10/21/09	NWEW/SUPPLEMENTAL NOTICE OF WITNESSES AND/OR EXPERT WITNESSES		0001			
0023	10/21/09	NWEW/DEFENDANTS NOTICE OF WITNESSES PURSUANT TO NRS 174.234		0001			
0024	10/27/09	MOT /ALL PENDING MOTIONS 10-27-09		0001		10/27/09	
0025	10/27/09	JURY/OVERFLOW (17) C. HENDRICKS/J. MANINGO 19-20 WITNESSES/5 DAYS/SOME OUT-OF-STATE		0001		10/29/09	
0026	10/29/09	JURY/TRIAL BY JURY		0001		11/04/09	
0027	10/28/09	INFO/AMENDED INFORMATION		0001		10/28/09	
0028	11/02/09	TRB /TRIAL BEGINS		0001		11/02/09	
0029	11/02/09	ASSG/REASSIGNMENT OF JUDGE Villani TO JUDGE Barker					
0030	11/02/09	JLST/DISTRICT COURT JURY LIST		0001			
0031	11/04/09	TRE /TRIAL ENDS		0001		11/04/09	
0032	11/04/09	SENT/SENTENCING COUNTS 1-8 & 11-12		0001	DD	01/13/10	
0033	11/04/09	OCAL/STATUS CHECK: DISMISSAL COUNTS 9 & 10		0001	DM	01/13/10	
0034	11/04/09	INST/INSTRUCTIONS TO THE JURY - INSTRUCTION NO 1		0001			
0035	11/04/09	JMNT/VERDICT COUNTS 1 THROUGH 8, 11 AND 12		0001		11/06/09	
0036	11/04/09	JMNT/VERDICT COUNTS 9 AND 10		S		11/06/09	
0037	11/09/09	OCAL/MINUTE ORDER RE: SEALING OF STATE'S TRIAL EXHIBITS 86-92		0001		11/09/09	

(Continued to page 2)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0038	01/13/10		MOT /ALL PENDING MOTIONS OF 1/13/10	0001	MH	01/13/10	
0039	01/15/10		CCPD/CASE CLOSED PER DEPARTMENT	AL		01/15/10	
0040	02/02/10		JMNT/JUDGMENT OF CONVICTION/ADMIN ASSESSMENT	0001		02/04/10	
0041	02/02/10		JMNT/JUDGMENT OF CONVICTION/GENETIC TESTING	0001		02/04/10	
0042	02/02/10		JMNT/COURT ASSESSMENT FEE INDIGENT DEFENSE	0001		02/04/10	
0043	02/02/10		JMNT/JUDGMENT OF CONVICTION/RESTITUTION	0001		02/04/10	
0044	02/08/10		NOEV/NOTICE OF EXHIBIT(S) IN THE VAULT			11/02/09	

JOC

FILED

FEB 02 2010

John L. Johnson
CLERK OF COURT

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C241003

-vs-

DEPT. NO. XVIII

EDWARD MICHAEL ADAMS
#1969904

Defendant.

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.310, 200.320, 193.165; COUNT 2 – BATTERY WITH INTENT TO COMMIT A CRIME WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.400, 193.165; COUNT 3 – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.364, 200.366, 193.165; COUNT 4 – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.364, 200.366,

1 193.165; COUNT 5 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS
2 OF AGE WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS
3 200.364, 200.366, 193.165; COUNT 6 – SEXUAL ASSAULT WITH A MINOR UNDER
4 FOURTEEN YEARS OF AGE WITH USE OF A DEADLY WEAPON (Category A
5 Felony) in violation of NRS 200.364, 200.366, 193.165; COUNT 7 – SEXUAL ASSAULT
6 WITH A MINOR UNDER FOURTEEN YEARS OF AGE WITH USE OF A DEADLY
7 WEAPON (Category A Felony) in violation of NRS 200.364, 200.366, 193.165; COUNT
8 8 – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE WITH
9 USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.364,
10 200.366, 193.165; COUNT 9 – SEXUAL ASSAULT WITH A MINOR UNDER
11 FOURTEEN YEARS OF AGE WITH USE OF A DEADLY WEAPON (Category A
12 Felony) in violation of NRS 200.364, 200.366, 193.165; COUNT 10 – SEXUAL
13 ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE WITH USE OF A
14 DEADLY WEAPON (Category A Felony) in violation of NRS 200.364, 200.366, 193.165;
15 COUNT 11 – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
16 AGE WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS
17 200.364, 200.366, 193.165; COUNT 12 – OPEN OR GROSS LEWDNESS (Gross
18 Misdemeanor) in violation of NRS 201.210, and the matter having been tried before a
19 jury and the Defendant having been found guilty of the crimes of COUNT 1 – FIRST
20 DEGREE KIDNAPPING (Category A Felony) in violation of NRS 200.310, 200.320;
21 COUNT 2 – BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT (Category A
22 Felony) in violation of NRS 200.400; COUNT 3 – SEXUAL ASSAULT (Category A
23 Felony) in violation of NRS 200.364, 200.366; COUNT 4 – SEXUAL ASSAULT
24 (Category A Felony) in violation of NRS 200.364, 200.366; COUNT 5 – SEXUAL

1 ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; COUNT 6 -
2 SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; COUNT
3 7 - SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366;
4 COUNT 8 - SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364,
5 200.366; COUNT 9 - NOT GUILTY; COUNT 10 - NOT GUILTY; COUNT 11 - SEXUAL
6 ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; COUNT 12 -
7 OPEN OR GROSS LEWDNESS (Gross Misdemeanor) in violation of NRS 201.210;
8 thereafter, on the 13TH day of January, 2010, the Defendant was present in court for
9 sentencing with his counsel, JEFFREY S. MANINGO, Deputy Public Defender, and
10 good cause appearing,
11


12
13 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
14 addition to the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee
15 including testing to determine genetic markers and \$500.00 Indigent Defense Fee, the
16 Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:
17 AS TO COUNT 1 - TO LIFE with a MINIMUM Parole Eligibility of SIXTY (60) MONTHS
18 and PAY \$2,932.00 in Restitution; AS TO COUNT 2 - TO LIFE with a MINIMUM Parole
19 Eligibility of SIXTY (60) MONTHS, COUNT 2 to run CONSECUTIVE to COUNT 1; AS
20 TO COUNT 3 - TO LIFE with a MINIMUM Parole Eligibility of ONE HUNDRED
21 TWENTY (120) MONTHS, COUNT 3 to run CONSECUTIVE to COUNT 2; AS TO
22 COUNT 4 - TO LIFE with a MINIMUM Parole Eligibility of ONE HUNDRED TWENTY
23 (120) MONTHS, COUNT 4 to run CONSECUTIVE to COUNT 3; AS TO COUNT 5 - TO
24 LIFE with a MINIMUM Parole Eligibility of ONE HUNDRED TWENTY (120) MONTHS,
25 COUNT 5 to run CONSECUTIVE to COUNT 4; AS TO COUNT 6 - TO LIFE with a
26 MINIMUM Parole Eligibility of ONE HUNDRED TWENTY (120) MONTHS, COUNT 6 to
27
28

1 run CONSECUTIVE to COUNT 5; AS TO COUNT 7 - TO LIFE with a MINIMUM Parole
2 Eligibility of ONE HUNDRED TWENTY (120) MONTHS, COUNT 7 to run
3 CONSECUTIVE to COUNT 6; AS TO COUNT 8 - TO LIFE with a MINIMUM Parole
4 Eligibility of ONE HUNDRED TWENTY (120) MONTHS, COUNT 8 to run
5 CONSECUTIVE to COUNT 7; AS TO COUNT 11 - TO LIFE with a MINIMUM Parole
6 Eligibility of ONE HUNDRED TWENTY (120) MONTHS, COUNT 11 to run
7 CONSECUTIVE to COUNT 8; AS TO COUNT 12 - TO TWELVE (12) MONTHS in the
8 Clark County Detention Center (CCDC), COUNT 12 to run CONCURRENT with
9 BALANCE OF COUNTS; with SEVEN HUNDRED THIRTY-ONE (731) DAYS credit for
10 time served.
11

12
13 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION
14 is imposed to commence upon release from any term of imprisonment, probation or
15 parole.
16

17 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender
18 in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any
19 release from custody.
20

21 FEB 01 2010
22 DATED this _____ day of January, 2010
23

24 
25 DAVID BARKER
26 DISTRICT JUDGE
27
28

CRIMINAL COURT MINUTES

08-C-241003-C STATE OF NEVADA vs Adams, Edward M

02/19/08 09:00 AM 00 INITIAL ARRAIGNMENT

HEARD BY: Kevin V Williams, Hearing Master; Dept. AA

OFFICERS: Roshonda Mayfield, Court Clerk
Kiara Schmidt, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	004031 Porterfield Jr, Owen W.	Y
	0001 D1 Adams, Edward M	Y
	PUBDEF Public Defender	Y
	008845 Maningo, Jeffrey S.	Y

DEFT. ADAMS ARRAIGNED, PLED NOT GUILTY and WAIVED THE 60-DAY RULE. COURT ORDERED, matter set for trial.

CUSTODY

6/10/08 8:30 A.M. CALENDAR CALL (DEPT. 5)

6/16/08 10:00 A.M. JURY TRIAL (DEPT. 5)

06/10/08 08:30 AM 00 CALENDAR CALL

HEARD BY: Jackie Glass, Judge; Dept. 5

OFFICERS: Sandra Jeter, Court Clerk
Rachelle Hamilton, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	004630 Hendricks, Craig L.	Y
	0001 D1 Adams, Edward M	Y
	PUBDEF Public Defender	Y
	008845 Maningo, Jeffrey S.	Y

Mr. Maningo moved to continue stating he just filed a motion and they are missing essentials on both sides to include the Preliminary Hearing transcript and DNA. There being no opposition, COURT ORDERED, current trial date VACATED; matter RESET for TRIAL.

CUSTODY

10/7/08 8:30 AM CALENDAR CALL

10/13/08 10:00 AM JURY TRIAL

CRIMINAL COURT MINUTES

08-C-241003-C STATE OF NEVADA

vs Adams, Edward M

CONTINUED FROM PAGE: 001

10/07/08 08:30 AM 00 ALL PENDING MOTIONS 10/7/08

HEARD BY: Jackie Glass, Judge; Dept. 5

OFFICERS: Sandra Jeter, Court Clerk
Rachelle Hamilton, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	004630 Hendricks, Craig L.	Y
	0001 D1 Adams, Edward M	Y
	PUBDEF Public Defender	Y
	008845 Maningo, Jeffrey S.	Y

CALENDAR CALL ... DEFT.'S MOTION TO CONTINUE TRIAL DATE

There being no opposition, COURT ORDERED, deft.'s Motion GRANTED; current trial date VACATED; matter CONTINUED two weeks for status check on negotiations.

CUSTODY

10/28/08 8:30 AM STATUS CHECK: NEGOTIATIONS AND/OR TRIAL SETTING

10/28/08 08:30 AM 00 STATUS CHECK: NEGOTIATIONS AND/OR TRIAL SETTING

HEARD BY: James Brennan, Senior Judge; Dept. VJ6

OFFICERS: Denise Trujillo, Court Clerk
Rachelle Hamilton, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	003814 Holthus, Mary Kay	Y
	0001 D1 Adams, Edward M	Y
	PUBDEF Public Defender	Y
	008845 Maningo, Jeffrey S.	Y

Counsel advised they need a new trial in early April. COURT SO ORDERED.

CUSTODY

3/31/09 8:30 AM CALENDAR CALL

4/6/09 10:00 AM JURY TRIAL

CONTINUED ON PAGE: 003

CRIMINAL COURT MINUTES

08-C-241003-C STATE OF NEVADA

vs Adams, Edward M

CONTINUED FROM PAGE: 002

03/31/09 08:00 AM 00 CALENDAR CALL

HEARD BY: Michael Villani, Judge; Dept. 17

OFFICERS: Kristen Brown, Court Clerk
Michelle Ramsey, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	004630 Hendricks, Craig L.	Y
	0001 D1 Adams, Edward M	Y
	PUBDEF Public Defender	Y
	008845 Maningo, Jeffrey S.	Y

Mr. Maningo requested the trial date be reset in the ordinary course. Mr. Hendricks stated this is a joint request. COURT ORDERED, Trial VACATED and RESET. Upon Court's inquiry, counsel stated the trial will take one week.

CUSTODY

10/27/09 8:00 AM CALENDAR CALL

11/02/09 10:00 AM JURY TRIAL

10/27/09 08:00 AM 00 ALL PENDING MOTIONS 10-27-09

HEARD BY: Michael Villani, Judge; Dept. 17

OFFICERS: Kristen Brown, Court Clerk
Michelle Ramsey, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	004630 Hendricks, Craig L.	Y
	009182 Scow, Richard H.	Y
	0001 D1 Adams, Edward M	Y
	PUBDEF Public Defender	Y
	008845 Maningo, Jeffrey S.	Y

CALENDAR CALL...PUBLIC DEFENDER'S MOTION TO DISMISS BASED UPON STATE'S FAILURE TO PRESERVE EXCULPATORY EVIDENCE AND MOTION TO DISMISS DUE TO THE STATE'S FAILURE TO PROVIDE BRADY MATERIAL

Mr. Hendricks stated he is ready to proceed to trial which will take about 4-5 days with 15 witnesses, several being out of state. Mr. Maningo stated the defense will have about 4-5 witnesses. COURT ORDERED, trial VACATED and matter REFERRED to Overflow. Upon Court's inquiry, Mr. Maningo stated that the Motion on calendar today is WITHDRAWN, COURT SO ORDERED.

CONTINUED ON PAGE: 004

PRINT DATE: 02/23/10

PAGE: 003

MINUTES DATE: 10/27/09

AA 0864

CRIMINAL COURT MINUTES

08-C-241003-C STATE OF NEVADA

vs Adams, Edward M

CONTINUED FROM PAGE: 003

CUSTODY

10/29/09 9:00 AM OVERFLOW (17)
C. HENDRICKS/R. SCOW/J. MANINGO
4-5 DAYS
19-20 WITNESSES
SOME OUT OF STATE

10/29/09 09:00 AM 00 OVERFLOW (17) C. HENDRICKS/J. MANINGO
19-20 WITNESSES/5 DAYS/SOME OUT-OF-STATE

HEARD BY: David Barker, Judge; Dept. 18

OFFICERS: Tia Everett/te, Relief Clerk
Richard Kangas, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
009182	Scow, Richard H.	Y
0001 D1	Adams, Edward M	Y
PUBDEF	Public Defender	Y
008845	Maningo, Jeffrey S.	Y

COURT ORDERED, REFERRED to Department 18 and Set for trial. FURTHER
ORDERED, matter REASSIGNED to Department 18.

CUSTODY

11/2/08 10:00 AM JURY TRIAL

11/02/09 10:00 AM 00 TRIAL BY JURY

HEARD BY: David Barker, Judge; Dept. 18

OFFICERS: Sharon Chun, Court Clerk
Richard Kangas, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
009182	Scow, Richard H.	Y
004630	Hendricks, Craig L.	Y
0001 D1	Adams, Edward M	Y
PUBDEF	Public Defender	Y
008845	Maningo, Jeffrey S.	Y

TRIAL CONVENED at 9:55 A.M. and JURY PANEL SEATED. Introductions presented
by the Court and counsel. Following roll call of Panel, Panel was placed
under oath and general voir dire was conducted by the Court. Panel members

CONTINUED ON PAGE: 005

PRINT DATE: 02/23/10

PAGE: 004

MINUTES DATE: 11/02/09

CRIMINAL COURT MINUTES

08-C-241003-C STATE OF NEVADA

vs Adams, Edward M

CONTINUED FROM PAGE: 004

thanked and excused for cause. The State conducted additional voir dire and passed the Panel. COURT ORDERED, LUNCH RECESS.

COURT RECONVENED OUTSIDE PANEL MEMBERS. Mr. Maningo noted the racial make-up of the Jury Panel members. JURY PANEL SEATED, Mr. Maningo conducted additional voir dire. Bench Conference, following which COURT ORDERED additional Panel Members excused for cause. Peremptory Challenges were conducted, during which COURT ORDERED, JURORS RECESSED. Mr. Maningo raised a Batson Challenge and arguments presented by both sides. COURT ORDERED, BATSON CHALLENGE OVER-RULED, it does not find the State demonstrated a pattern of bias. Peremptory Challenges continued.

COURT DIRECTED the State to present a hard-copy of their Power Point presentations, which will be marked as Court's Exhibits. Mr. Maningo objected to most of the Power Point presentations which depicts Deft in jail cloths. COURT ORDERED, ALLOWED, there is nothing which indicates the custody status of Deft and it is not more prejudicial than probative.

JURY PANEL SEATED. COURT THANKED and EXCUSED those Panel Members which were removed during Peremptory Challenges. Remaining Jurors placed under oath and seated. Court presented preliminary instructions to the Jury. Information was read to Jurors by the Clerk.

Opening statements presented by the State with Power Point presentation. Defense presented its opening statement. BENCH CONFERENCE HELD.

COURT ORDERED, JURORS RECESSED AND TO RETURN TOMORROW AT 10:00 A.M.

OUTSIDE PRESENCE OF JURY: COURT ADVISED that since Panel Member #202 was absent after lunch an Order Show Cause will be requested. Both sides stated that no additional inquiry will be requested. COURT STATED Jury Services is to inquire of panel Member #202 as to why not present after lunch and perhaps schedule him before the Chief Judge for hearing.

COURT ORDERED, EVENING RECESS; CONTINUED TOMORROW.

CONTINUED TO: 11/03/09 09:30 AM 01

CRIMINAL COURT MINUTES

08-C-241003-C STATE OF NEVADA

vs Adams, Edward M

CONTINUED FROM PAGE: 005

11/03/09 10:00 AM 01 TRIAL BY JURY

HEARD BY: David Barker, Judge; Dept. 18

OFFICERS: Sharon Chun, Court Clerk

PARTIES:	STATE OF NEVADA	Y
009182	Scow, Richard H.	Y
004630	Hendricks, Craig L.	Y
0001 D1	Adams, Edward M	Y
PUBDEF	Public Defender	Y
008845	Maningo, Jeffrey S.	Y

TRIAL RECONVENED at 10:08 A.M. with JURY SEATED. State called forth witnesses who were placed under oath, testified, and identified Deft Adams; exhibits presented. (Please see Witness and Exhibit Lists.)

OUTSIDE PRESENCE OF JURY: Court advised Deft of his Fifth Amendment right not to testify; Carter Instruction.

JURY SEATED. State called additional witnesses. COURT ORDERED, JURY RECESSED; to return tomorrow at 10:00 A.M.

OUTSIDE PRESENCE OF JURY: Mr. Hendricks stated the black witness was found and the State plans to call him tomorrow, although not on the Witness list. Mr. Maningo had no objection. Mr. Hendricks advised he will make the witness available to Defense.

COURT ORDERED, EVENING RECESS.

CONTINUED TO: 11/04/09 10:00 AM 02

CRIMINAL COURT MINUTES

08-C-241003-C STATE OF NEVADA

vs Adams, Edward M

CONTINUED FROM PAGE: 006

11/04/09 10:00 AM 02 TRIAL BY JURY

HEARD BY: David Barker, Judge; Dept. 18

OFFICERS: Sharon Chun @ 11 AM/sc, Court Clerk
Dameda Scott @ 10:00 AM/ds, Relief Clerk
Richard Kangas, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	004630 Hendricks, Craig L.	Y
	009182 Scow, Richard H.	Y
	0001 D1 Adams, Edward M	Y
	PUBDEF Public Defender	Y
	008845 Maningo, Jeffrey S.	Y

TRIAL RECONVENED with JURY PRESENT. State called forth additional witnesses; exhibits presented. (Please see Witness and Exhibit Lists.) Photographs were published in open court. JURY RECESSED.

OUTSIDE PRESENCE OF JURY: Jury Instructions settled on the record. Counsel argued re allowing in Deft's prior arrests. COURT ORDERED, MUST BE CONVICTIONS with Certified Copies, otherwise not allowed. Discussion also held regarding "alibi witnesses being introduced", but, Mr. Maningo stated he is not going to present alibi witnesses. Mr. Maningo raised issue of a "consensual" theory, and Mr. Hendricks argued. OUTSIDE PRESENCE OF THE STATE: Discussion between the Court and Deft re consensual conduct.

JURY INSTRUCTIONS settled on the record.

JURY SEATED. STATE RESTED its case in chief. Defense called forth witnesses who were sworn and testified. DEFENSE RESTED. No rebuttal arguments made by the state. JURY RECESSED. JURY INSTRUCTIONS FINALIZED.

JURY SEATED and COURT READ Jury Instructions to Jury.

Closing arguments presented.

COURT ANNOUNCED Alternate Jurors to be #13 and 14. The Marshal and Judicial Executive Assistant were sworn to take charge of Jurors and ORDERED, JURORS TO DELIBERATION at 4:35 P.M.

VERDICT REACHED. All counsel, Deft Adams, and jurors returned to the court room and the TRIAL RECONVENED AT 6:35 P.M. COURT ANNOUNCED the Foreperson to be Juror #7.

VERDICT READ by the Clerk, as follows:

"We, the jury in the above entitled case, find the Defendant EDWARD MICHAEL ADAMS, as follows:

COUNT 1 - GUILTY OF FIRST DEGREE KIDNAPPING;

CRIMINAL COURT MINUTES

08-C-241003-C STATE OF NEVADA

vs Adams, Edward M

CONTINUED FROM PAGE: 007

COUNT 2 - GUILTY OF BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT;
COUNT 3-8, & 11 - GUILTY OF SEXUAL ASSAULT;
COUNT 9 - NOT GUILTY;
COUNT 10 - NOT GUILTY; and
COUNT 12 - GUILTY OF OPEN OR GROSS LEWDNESS".

COURT POLLED JURORS at request of Defense; all twelve jurors responded that was their verdict, as read.

COURT THANKED and EXCUSED JURORS.

OUTSIDE PRESENCE OF JURORS: COURT ORDERED, matter referred to the Division of Parole and Probation (P&P) and set for sentencing.

COURT FURTHER ORDERED, DEFT ADAMS REMANDED TO CUSTODY; WITHOUT BAIL.

CUSTODY

1/13/10 8:15 AM SENTENCING (COUNTS 1-8 AND 11-12)...STATUS CHECK: DISMISSAL OF COUNTS 9 AND 10

11/09/09 09:00 AM 00 MINUTE ORDER RE: SEALING OF STATE'S TRIAL EXHIBITS 86-92

HEARD BY: David Barker, Judge; Dept. 18

OFFICERS: Sharon Chun, Court Clerk

PARTIES: NO PARTIES PRESENT

COURT ORDERED, State's Exhibits 86-92, as admitted during the Jury Trial of 11/2/09 are to be SEALED, and, not to be released unless by Court Order.

CRIMINAL COURT MINUTES

08-C-241003-C STATE OF NEVADA

vs Adams, Edward M

CONTINUED FROM PAGE: 008

01/13/10 08:15 AM 00 ALL PENDING MOTIONS OF 1/13/10

HEARD BY: David Barker, Judge; Dept. 18

OFFICERS: Sharon Chun/SC, Court Clerk
Shelly Landwehr, Relief Clerk
Richard Kangas, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	004630 Hendricks, Craig L.	Y
	0001 D1 Adams, Edward M	Y
	PUBDEF Public Defender	Y
	008845 Maningo, Jeffrey S.	Y

PURSUANT TO JURY VERDICT OF 11/4/09, COURT ADJUDGED DEFT ADAMS GUILTY OF COUNT 1 - FIRST DEGREE KIDNAPPING (F); COUNT 2 - BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT (F); COUNTS 3-8 AND 11 - SEXUAL ASSAULT (F); COUNT 12 - OPEN OR GROSS LEWDNESS (GM). COURT FURTHER ORDERED, COUNTS 9 AND 10 DISMISSED PURSUANT TO JURY VERDICT OF NOT GUILTY.

Mr. Hendricks noted that no victim impact statements will be presented today because the State did not provide them with notice, but, it was agreed to go forward with sentencing today. COURT NOTED Deft Adams prior criminal history. Mr. Maningo presented argument in support of Deft. Mr. Hendricks argued in support of life sentence because Deft is a threat to the community. COURT STATED IT FINDS DEFT ADAMS A THREAT TO THE COMMUNITY.

COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, a \$150.00 DNA Analysis fee including testing to determine genetic markers, and \$500.00 Indigent Defense Fund fee, Deft. SENTENCED, as follows:

COUNT 1 - a MINIMUM TERM of SIXTY (60) MONTHS and a MAXIMUM TERM OF LIFE in the Nevada Department of Corrections (NDC), and TO PAY RESTITUTION IN THE AMOUNT OF \$2,932.00;

COUNT 2 - a MINIMUM TERM of SIXTY (60) MONTHS and a MAXIMUM TERM OF LIFE in the Nevada Department of Corrections (NDC), CONSECUTIVE TO COUNT 1;

COUNT 3 - a MINIMUM TERM of ONE-HUNDRED-TWENTY MONTHS (120) and a MAXIMUM TERM OF LIFE in the Nevada Department of Corrections (NDC), CONSECUTIVE TO COUNT 2;

COUNT 4 - a MINIMUM TERM of ONE-HUNDRED-TWENTY MONTHS (120) and a MAXIMUM TERM OF LIFE in the Nevada Department of Corrections (NDC), CONSECUTIVE TO COUNT 3;

COUNT 5 - a MINIMUM TERM of ONE-HUNDRED-TWENTY MONTHS (120) and a MAXIMUM TERM OF LIFE in the Nevada Department of Corrections (NDC), CONSECUTIVE TO COUNT 4;

COUNT 6 - a MINIMUM TERM of ONE-HUNDRED-TWENTY MONTHS (120) and a MAXIMUM TERM OF LIFE in the Nevada Department of Corrections (NDC), CONSECUTIVE TO COUNT 5;

COUNT 7 - a MINIMUM TERM of ONE-HUNDRED-TWENTY MONTHS (120) and a MAXIMUM TERM OF LIFE in the Nevada Department of Corrections (NDC),

CRIMINAL COURT MINUTES

08-C-241003-C STATE OF NEVADA

vs Adams, Edward M

CONTINUED FROM PAGE: 009

CONSECUTIVE TO COUNT 6;

COUNT 8 - a MINIMUM TERM of ONE-HUNDRED-TWENTY MONTHS (120) and a MAXIMUM TERM OF LIFE in the Nevada Department of Corrections (NDC), CONSECUTIVE TO COUNT 7;

COUNT 11 - a MINIMUM TERM of ONE-HUNDRED-TWENTY MONTHS (120) and a MAXIMUM TERM OF LIFE in the Nevada Department of Corrections (NDC), CONSECUTIVE TO COUNT 8;

COUNT 12 - TWELVE (12) MONTHS IN THE CLARK COUNTY DETENTION CENTER, CONCURRENT WITH BALANCE OF COUNTS.

COURT FURTHER ORDERED, Deft to receive 731 DAYS CREDIT for time served.

COURT FURTHER ORDERED, pursuant to NRS 179D.460, DEFT SHALL REGISTER AS A SEX OFFENDER WITHIN 48 HOURS OF SENTENCING OR RELEASE FROM CUSTODY.

COURT FURTHER ORDERED, A SPECIAL SENTENCE OF LIFETIME SUPERVISION TO COMMENCE UPON RELEASE FROM ANY TERM OF PROBATION, PAROLE OR IMPRISONMENT.

COURT NOTED, BEFORE DEFT IS ELIGIBLE FOR PAROLE, a panel consisting of the Administer of the Mental Health and Development Services of the Dept of Human Resources or his designee; the Director of the Dept of Corrections or his designee; and a psychologist licensed to practice in this State; or a psychiatrist licensed to practice medicine in NV must certify that the Deft does not represent a high risk to re-offend based on current accepted standards of assessment.

If bond, exonerated.

02/23/10
CASE NO. 08-C-241003-C

E X H I B I T S

9:41 AM
CASE STATUS: CLOSED

STATE OF NEVADA

[] vs Adams, Edward M

[]

NO.	CODE	EXHIBIT DESCRIPTION	SUB	OF/OB	DATE	S
0001	P1	/LVMP EVIDENCE PACKAGE NOT OPEN		AD/NO	11/03/09	V
0002	P2	/LVMPD BAG NOT OPENED MASKING TAPE		AD/NO	11/03/09	V
0003	P3	/LVMPD BAG NOT OPEN ASSAULT KIT		AD/NO	11/04/09	V
0004	P4	/LVMPD BAG NOT OPENED LATENT PRINTS		AD/NO	11/03/09	V
0005	P5	/LVMPD BAG NOT OPENED SWEATSHIRT		AD/NO	11/03/09	V
0006	P6	/LVMPD BAG NOT OPENED TOWEL, WASH CLOTH		AD/NO	11/03/09	V
0007	P7	/LVMPD BAG NOT OPENED SEAT CUSHION		AD/NO	11/03/09	V
0008	P8	/PHOTO VICTIM		AD/NO	11/03/09	V
0009	P9	/PHOTO UNIT 204		AD/NO	11/03/09	V
0010	P10-11	/PHOTO		AD/NO	11/03/09	V
0011	P12	/PHOTO UNIT 204 LIVING ROOM		AD/NO	11/03/09	V
0012	P13-36	/PHOTO		AD/NO	11/03/09	V
0013	P37	/PHOTO DAMAGES IN UNIT 204 12/14/07		AD/NO	11/03/09	V
0014	P38-51	/PHOTO		AD/NO	11/03/09	V
0015	P52-61	/PHOTO		AD/NO	11/04/09	V
0016	P62	/PHOTO VICTIM PANTS		AD/NO	11/03/09	V
0017	P63	/PHOTO VICTIMS SHIRT		AD/NO	11/03/09	V
0018	P64-66	/PHOTO		AD/NO	11/04/09	V
0019	P67	/AERIAL VIEW		AD/NO	11/03/09	V
0020	P68	/POTO LINE UP WITNESS INSTRUCTIONS 6 PAX		AD/NO	11/03/09	V
0021	P69-73	/PHOTO DEFT		AD/NO	11/03/09	V
0022	P74	/911 CD		AD/NO	11/03/09	V
0023	P75	/PHOTO LINE UP INSTRUCTIONS & 6 PACK		AD/NO	11/03/09	V
0024	P76	/AERIAL LAYOUT OF APT COMPLEX		AD/NO	11/03/09	V
0025	P77	/ENVELOPE WITH LATENT FINGER PRINTS 21		AD/NO	11/03/09	V
0026	P78	/ENVELOPE WITH LATENT FINGER PRINTS 14		AD/NO	11/03/09	V
0027	P79	/MAJOR CASE PRINTS- AMBER VALLES		AD/NO	11/04/09	V
0028	P80	/MAJOR CASE PRINTS DEFT EDWARD ADAMS		AD/NO	11/04/09	V
0029	P81	/FINGERPRINT PHOTO DEFT ADAMS		AD/NO	11/04/09	V
0030	P82	/AFIS PRINTS DEFT ADAMS		AD/NO	11/04/09	V
0031	P83	/PHOTO FRONT DOOR OF 204		AD/NO	11/04/09	V
0032	P84-85	/PHOTO OF VICTIM		AD/NO	11/04/09	V
0033	P86-92	/PHOTO OF VICTIM SEALED		AD/NO	11/04/09	V
0034	P93	/DRAWING OF VIGINAL AREA		/	99/99/99	V
0035	PCT1	/JUROR QUESTION OF WITNESS VILLES ASKED		/	11/03/09	V
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0039	PCT6	/JURY QUESTION DURING DELIBERATION		/	11/04/09	V
0040	PCT7	/STATE POWER POINT OPENING		/	11/02/09	V
0041	PCT8	/STATE POWER POINT REBUTTAL		/	11/04/09	V
0042	PCT9	/STATE POWER POINT CLOSING		/	11/04/09	V

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; JUDGMENT OF CONVICTION (JURY TRIAL); DISTRICT COURT
MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

EDWARD MICHAEL ADAMS,

Defendant(s),

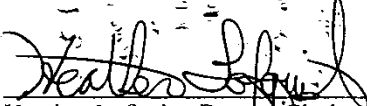
Case No: C241003

Dept No: XVIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 23 day of February 2010.

Steven D. Grierson, Clerk of the Court


Heather Lofquist, Deputy Clerk

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Electronically Filed
Feb 22 2011 01:47 p.m.
Tracie K. Lindeman

VS.

Respondent.

(Appeal from Judgment of Conviction)

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CLARK COUNTY DISTRICT ATTY.
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155
(702) 455-4711

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Attorney General
100 North Carson Street
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(775) 684-1265

Counsel for Respondent

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Appellant,

VS.

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Respondent.

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Attorney for Appellant

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Counsel for Respondent

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EDWARD MICHAEL ADAMS,) NO.
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 Appellant,)
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 vs.)
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 THE STATE OF NEVADA,)
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 Respondent.)
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1 deadly weapon, battery with intent to commit a crime with use of a deadly weapon, open
2 or gross lewdness, and numerous counts of sexual assault with a minor under 14 years of
3 age with use of a deadly weapon. (AA 57-61). The State filed its Amended Information
4 on October 28, 2009. (AA 96-101).

6 Trial commenced on November 2, 2009. (AA 176-891). Adams was found guilty
7 of **seven** counts of sexual assault, one count of first degree kidnapping, one count of
8 battery with intent to commit a crime (sexual assault) and one count of open or gross
9 lewdness. (AA 137-140). Adams was acquitted of the deadly weapon enhancements
10 and counts nine and ten of the Amended Information.¹ Adams was sentenced on January
11 13, 2010. The court ran every felony count **consecutively**. Adams was sentenced to life
12 in prison with a minimum parole eligibility of eighty (80) years. (AA 141-144).

15 Adams filed his notice of appeal on February 22, 2010. (AA 145-147). The instant
16 brief follows.

18 STATEMENT OF FACTS

19 The following facts are derived primarily from the trial testimony of State
20 witness, Amber Valles (Valles). On December 14, 2007 at about 2:30 p.m., Valles was
21 walking home from school when she encountered Edward Adams. (AA 435, 439, 442).
22 She saw Adams across the street from her, sitting on a wall smoking a cigarette. (AA
23 443). Adams was a stranger; Valles had never met him before. (AA 488). As she
24 approached the intersection, Adams crossed the street and walked towards her. (AA
25
26
27
28

¹ The State conceded that there was no evidence to support counts nine and ten and directed the jury to acquit. (AA 842).

1 444). Valles became scared as Adams approached her. *Id.* Valles continued to walk
2 towards her house with Adams close behind. (AA 446).

3
4 Adams eventually made contact with Valles. He put his arm on her shoulder and
5 turned her around. *Id.* According to Valles, Adams “said don’t scream, not to yell, that he
6 had a gun.” *Id.* Amber never saw a gun, but she believed that Adams may have had one
7 in the pocket of his hooded sweatshirt. (AA 447). Adams also said that he needed
8 Valles to come with him to help babysit his “son or niece or something.” (AA 488).

9
10 Adams turned Valles around and began walking her back toward her school. (AA
11 449). Valles testified that she was crying and shaking as she walked. (AA 450). As
12 she approached the school, Valles saw a classmate named Jonathan. *Id.* Jonathan was
13 with their mutual friend, Angela and another boy named Aaron. (AA 529). Valles
14 testified that she was crying and that she mouthed the words, “help me” to Jonathan.
15 (AA 450). However, Jonathan did not call 9-11 or attempt to intervene in any way.
16

17
18 At trial, Jonathan testified that he saw Valles with “a guy.” She was being held by
19 the right wrist and “sort of dragged, pulled, led up the street.” (AA 532). Jonathan said
20 that Valles had “sort of scared look on her face, but that was it.” (AA 533). Jonathan did
21 not see her crying or asking for help.
22

23 Angela also testified that she saw Valles with “a guy.” (AA 560). The guy was
24 “holding her by her hand or her arm.” It appeared to Angela that they were trying, “to
25 avoid us.” *Id.* Angela did not see Valles crying or asking for help. After Valles passed
26 by, she asked Jonathan whether the guy was Valles’ father. Jonathan said, “no.” They
27 even joked that the guy “could be a rapist or something.” Angela had a mobile phone
28

1 with her, but neither she nor Jonathan felt it was necessary to call for help. (AA 532,
2 570).

3
4 Later, Angela was interviewed by a police detective. According to the detective's
5 report, Angela said that Valles was chasing after the man, trying to keep up with him
6 because he was walking too fast. At trial, Angela denied saying that to the detective.
7 (AA 570).

8
9 Adams took Valles to a vacant apartment near the intersection of Charleston and
10 Buffalo. (AA 453). A man named Andre Randle saw them just before they entered the
11 unit. (AA 737). Andre knew the apartment was vacant because it had recently been
12 damaged in a fire. Andre thought it was a little strange that they were entering an
13 abandoned apartment, but he saw no sign that Valles was in danger. Andre testified that
14 Adams was not touching Valles; they were "walking side by side." Andre noted, "She
15 didn't even look mad or nothing[.]" (AA 739-742). Andre said that he would have
16 called the police if he had seen a girl who was crying and shaking being dragged into a
17 vacant apartment by an older man. (AA 743). However, Valles did not appear to be in
18 any distress.
19
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22 Adams opened the unlocked door, and the two went inside. *Id.* The apartment
23 had no running water or electricity. *See* (AA 459, 697). The apartment was lit by
24 candles. (AA 455). Adams removed the battery from Valles' mobile phone and told her
25 to sit on the couch. (AA 457).

26
27 Adams then instructed Valles to remove her clothing; he did the same. (AA 459-
28 60). Adams rubbed a lubricant on his penis and directed Valles to lie down on the floor

1 in front of the couch. (AA 460, 486-87). Adams got on top of Valles. He first inserted
2 his fingers into her vagina, then his penis. Adams then moved Valles up to the couch.
3 He again inserted his fingers into her vagina, followed by his penis. (AA 462). Adams
4 moved Valles back to the floor and continued the act, inserting his fingers into her
5 vagina, followed by his penis. *Id.* Valles told him "to stop, that it hurt," but the act
6 continued. Finally, Adams stood Valles up and bent her over the side of the couch. He
7 inserted "something" into her anus; Valles was unsure whether it was his fingers, his
8 penis or both. (AA 464).

11 After he ejaculated, Adams told Valles to get dressed. (AA 465, 718-720). He
12 gave Valles a towel to "wipe [her]self down." (AA 467). Adams returned Valles' phone
13 and battery and told her to leave. He said she, "better not call the cops or anything." (AA
14 473-474). Valles walked to a nearby McDonalds restaurant. As she was walking, Valles'
15 phone rang; it was her mother. (AA 475). Valles told her mother to meet her at the
16 McDonalds.

19 When she arrived at McDonalds, Valles told her mother, "[H]e put his thing in
20 me." Valles' mother called the police and Valles was taken to the hospital for an
21 examination. (AA 477). Amber was examined by a Sexual Assault Nurse Examiner
22 who performed a standard "rape kit." Samples taken from Valles' vagina and rectum
23 later tested positive for the presence of Adams' semen. (AA 718-720). Adams was
24 arrested on or about January 13, 2008. (AA 635).

27 At trial, Adams admitted through his attorney that he and Amber Valles had sex,
28 but that the sex was consensual. (AA 864). The jury was instructed on the crime of

1 statutory sexual seduction and defense counsel asked the jury to find him guilty of that
2 charge. *Id.*

3 4 ARGUMENT

5 **I. DOUBLE JEOPARDY AND REDUNDANCY PRINCIPLES PRECLUDE** 6 **APPELLANT'S MULTIPLE CONVICTIONS FOR SEXUAL ASSAULT,** 7 **BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT, AND** 8 **OPEN OR GROSS LEWDNESS.**

9 A. Overview of the law concerning Double Jeopardy, Redundancy and 10 Multiplicitous Convictions.

11 The Double Jeopardy Clause of the United States Constitution provides that no
12 person shall be "subject for the same offense to be twice put in jeopardy of life or limb."
13 **U.S. Const. Amend. V.** This protection applies to the states through the Fourteenth
14 Amendment and **Benton v. Maryland**, 395 U.S. 784, 794 (1969) *rev'd on other*
15 *grounds*, **Payne v. Tennessee**, 501 U.S. 808 (1991). Nevada incorporated this protection
16 into the Nevada Constitution at Article 1, Section 8. **State v. Combs**, 116 Nev. 1178,
17 1179, 14 P.3d 520 (2000). The Fifth Amendment protects not only against a second trial
18 for the same offense, but also against **multiple punishments** for the same offense.
19 **Whalen v. United States**, 445 U.S. 684, 688 (1980)(emphasis added).

20
21
22 Multiplicity, or "charging a single offense in several counts," is analyzed in
23 Nevada under **Blockburger v. United States**, 284 U.S. 299 (1932). The Blockburger
24 test is simple. Multiple convictions will violate the Double Jeopardy Clause "if the
25 elements of one offense are entirely included within the elements of a second offense."
26 **Salazar v. State**, 119 Nev. 224, 227 (2003).

27
28 Double jeopardy analysis may begin with Blockburger, but it does not end there.

1 Like many jurisdictions, the Nevada Supreme Court has found that Blockburger suffers
2 serious shortcomings when applied to the “real world.” Blockburger is a far more
3 powerful tool for resolving conflicts on paper than safeguarding justice and fundamental
4 fairness on a case-by-case basis. This is where the concept of “redundancy” comes in.

5
6 Nevada chose to expand its traditional double jeopardy analysis in cases like
7 Salazar, where the language of Blockburger failed to protect the defendant from
8 receiving “multiple punishments for the same offense,” as required by the Fifth
9 Amendment.²

10
11 Battery with use of a deadly weapon with substantial bodily
12 harm and mayhem with a deadly weapon are separate offenses
13 under the Blockburger test. However, while the State may
14 bring multiple charges based upon a single incident, **we will**
15 **reverse redundant convictions that do not comport with**
16 **legislative intent.**

17 Salazar v. State, 119 Nev. at 227 (citing State v. Koseck, 113 Nev. 477, 479, 936 P.2d
18 836, 837 (1997); Albitre v. State, 103 Nev. 281, 283, 738 P.2d 1307, 1309
19 (1987))(emphasis added).

20
21 In essence, the doctrine of “redundancy” was created to pick up where regular
22 Blockburger analysis left off. However, redundancy is still covered under the double
23 jeopardy umbrella because it implicates the fairness concerns of the Double Jeopardy
24 Clause and Fifth Amendment Due Process as a whole.

25
26
27 ² See Williams v. State, 118 Nev. 536, 50 P.3d 1116, 1124 (2002), *cert. denied*, 537
28 U.S. 1031 (2002)(stating that Double Jeopardy protects individuals from receiving
multiple punishments for the same offense); See also, Jacqueline E. Ross, **Damned**
Under Many Headings: The Problem of Multiple Punishment, 29 Am. J. Crim. L.
245, 251 (2002).

1 The precise test for redundancy is currently being addressed by the Court *en banc*.
2 See, e.g., **Jackson v. State**, Case # 53632. In the past, Nevada has utilized several
3 different methods of redundancy analysis, all of which are consistent and fully applicable
4 in the instant case. See, e.g., **Nevada v. District Court**, 116 Nev. 127 (2000), **Wilson v.**
5 **State**, 121 Nev. 345 (2005), and **Salazar v. State**, *supra*, 119 Nev. 224 (2003). In
6 general, they each require an analysis of legislative intent and a factual analysis of the
7 crime charged.
8

9
10 For example, in **Nevada v. District Court**, the Supreme Court analyzed the
11 “gravamen” test, as set forth in **Albitre v. State**, *supra*:
12

13 The issue under Albitre is whether the gravamen of the charged offenses is
14 the same such that it can be said that the legislature did not intend multiple
15 convictions. “[R]edundancy does not, of necessity, arise when a defendant
16 is convicted of numerous charges arising from a single act.” The question is
17 whether the material or significant part of each charge is the same even if
18 the offenses are not the same. Thus, where a defendant is convicted of two
19 offenses that, as charged, punish the exact same illegal act, the convictions
20 are redundant.

21 116 Nev. at 136 (*quoting* **Skiba v. State**, 114 Nev. 612, 616 n. 4 (1998)).

22 In addition, this Court has considered the Eighth Circuit case of **United States v.**
23 **Chipps**, 410 F.3d 438 (8th Cir. 2005) for guidance in precisely defining our redundancy
24 test. **Chipps** requires the court to consider two questions:

- 25 a) Did the legislature intend the facts underlying each
26 count to make up a separate unit of prosecution; and
- 27 b) Did the violations arise from that singleness of
28 thought, purpose or action, which may be deemed a
single “**impulse**?”

Id. at 447-449 (emphasis added).

1 In explaining the first prong of its test, the Chipps court defined a “unit of
2 prosecution” as, “the aspect of criminal activity that [the Legislature] intended to
3 punish.” *Id.* at 448. The relevant inquiry is often whether the legislature intended to
4 punish the charged crime as a “course of conduct.” In examining the question of
5 Legislative intent, the Eighth Circuit considers statutory language, legislative history and
6 statutory scheme. If legislative intent cannot be determined “clearly and without
7 ambiguity,” all remaining questions are resolved in favor of the defendant. *Id.*

10 The second prong of the Chipps analysis is the “impulse test.” This test
11 compliments the “overlapping facts” analysis utilized in Nevada under Jefferson v.
12 State, 95 Nev. 577, 599 (1979).³ Prosecutors often charge multiple crimes for acts that
13 take place within a very short window of time, involving the same victim, and employing
14 largely the same actions. For example, the “impulse” to commit a murder might
15 necessarily include the acts of committing an assault and a battery, but double jeopardy
16 and fundamental fairness should *preclude* multiple or redundant prosecutions for what is
17 essentially **one criminal impulse**.

20 Regardless of which test this Court applies, be it “impulse,” gravamen,” or some
21 combination, the *goal* of redundancy analysis will remain the same: to prevent multiple
22 punishments for what is essentially a single criminal intent. That is exactly what Mr.
23 Adams hopes the Court will do in the instant case.

26 The law states that, “The Double Jeopardy Clause is not such a fragile guarantee
27 that prosecutors can avoid its limitations by the simple expedient of dividing a single
28 crime into a series of temporal or spatial units.” Larson v. State, 102 Nev. 448, 449, 725

³ See also, Wilson, *supra*, 121 Nev at 355-56.

1 P.2d 1214 (1986), *quoting* **Brown v. Ohio**, 432 U.S. 161, 169 (1977). However, that is
2 *exactly* what prosecutors did in the instant case.

3
4 In this case, the prosecution took a singular, continuous act of sexual assault, and
5 artificially divided it into **seven** separate counts. The prosecution then added counts of
6 “battery with intent to commit a crime” and “open or gross lewdness” for acts that were
7 necessary precedents to the target offenses of first degree kidnapping and sexual assault.
8
9 At sentencing, Adams received a consecutive life sentence for *each* of these redundant
10 felony counts. Only the gross misdemeanor was run concurrently. These multiplicitous
11 and redundant convictions violate the double jeopardy clause and well-established
12 principles of Nevada law. They must be vacated.

13
14 B. Adams was improperly charged and punished **six times** for a singular act
15 of sexual assault.

16 The first step in determining whether the State violated double jeopardy is to
17 analyze whether the same act or transaction constituted a violation of two distinct
18 statutory provisions. This Court must determine whether Adams committed one or
19 multiple offenses by analyzing whether each provision requires proof of a fact which the
20 other does not. **Barton v. State**, 117 Nev. 686, 692, 30 P.3d 1103 (2001). That analysis
21 is very simple as applied to **Counts 3 through 8** of the State’s Amended Information. In
22 each count, Adams is accused of the **same act**: sexually assaulting Amber Valles’ by
23 penetrating her vagina. There are no “distinct statutory provisions” in play and the facts
24 alleged in each count are virtually identical, right down to the wording of the State’s
25 charging document.
26
27
28

1 The Double Jeopardy Clause prohibits the State from multiplying one crime into
2 many by artificially dividing a continuing action into a series of discrete units. Larson v.
3 State, 102 Nev. at 449. In **Counts 3, 5 and 7**, Adams is accused of “inserting his
4 finger(s) into the genital opening of the said Amber Valles.” (AA 97-99). In **Counts 4,**
5 **6 and 8**, Adams is accused of “inserting his penis into the genital opening of the said
6 Amber Valles.” *Id.* There is no legal basis for dividing this one act into six counts.
7

8
9 This Honorable Court **rejects** the view that the State can obtain multiple
10 convictions from one continuous sexual encounter where only a brief interruption
11 occurred between the acts. Under Townsend v. State, 103 Nev. 113 (1987), when a
12 single act of sexual conduct is interrupted briefly for some reason and then resumed, the
13 continuation cannot form the basis for a separate charge. A “hypertechnical division of
14 what was essentially a single act” cannot sustain a separate charge of sexual assault. *Id.*
15 at 121.
16

17
18 Here, the acts were only “separated” by the time it took to move a few inches
19 from the floor to the couch, and then back to the floor. (AA 460-465). The assault took
20 place in an abandoned apartment that had been damaged in a fire. Given the
21 surroundings, the purpose of this incidental movement was obvious: to facilitate the sex
22 act. This case is similar to Townsend, where the defendant was improperly charged with
23 two counts of sexual assault because he paused to apply lubricant to his victim. *See*
24 Townsend, 103 Nev. at 116. The lubricant was a necessary predicate to the completion
25 of the sex act, as was the minor movement in the instant case.
26
27

28 There is no question that the convictions constituted multiple punishments for the

1 same act, in violation of redundancy doctrine. Whether the Court applies a “gravamen”
2 test, an “impulse” test, or adopts something similar to the Eighth Circuit test set forth in
3 Chipps, *supra*, the result is the same. Adams was convicted of sexual assault based on
4 vaginal penetration. He cannot receive **six identical convictions** for that **one act and**
5 **intent**. He *certainly* cannot be forced to serve **6 consecutive life sentences**. Thus, five
6 of the six counts related to vaginal penetration must be vacated.⁴

7
8
9 C. An act cannot constitute a separate offense when it is merely incidental to
10 another charge.

11 In Crowley v. State, the Court vacated a conviction for lewdness because:

12 Crowley's act of rubbing the male victim's penis on the outside of his pants
13 was a **prelude** to touching the victim's penis inside his underwear and the
14 fellatio. By touching and rubbing the male victim's penis, Crowley **sought**
15 **to arouse the victim** and create willingness to engage in sexual conduct.
16 Crowley's actions were **not separate and distinct**; they were a part of the
17 same episode. Because Crowley intended to predispose the victim to the
18 subsequent fellatio, his conduct was **incidental to the sexual assault** and
19 cannot support a separate lewdness conviction. Therefore, we conclude that
20 Crowley's convictions for sexual assault and lewdness with a minor are
21 **redundant**, and we reverse the conviction for lewdness with a minor.

22 Crowley, 120 Nev. at 34.

23 Here Adams was charged with open or gross lewdness for “masturbating his
24 penis” in front of Valles. According to trial testimony, the so-called, “masturbation”
25 consisted of Adams rubbing some **lotion** on his penis just prior to engaging in sexual
26 intercourse. (AA 460, 486-87). This was an act of preparation, nothing more. Adams
27 stimulated and lubricated his penis in order to facilitate the vaginal intercourse that took

28 ⁴ Though the appellant strongly disagrees with this position, the law in Nevada appears
to support a separate conviction for the act of anal penetration alleged in **Count 11**.
Despite the current State of the law, Appellant would argue that Count 11 also runs afoul
of the Double Jeopardy Clause and Fifth Amendment Due Process because it is
redundant and multiplicitious.

1 place just seconds later. Even the State's Sexual Assault Nurse Examiner testified that
2 lotion was used by Adams *as a lubricant*. (AA 783). Thus, Adams' conviction for open
3 or gross lewdness must be vacated. It cannot stand alone as a separate crime.
4

5 In fact, the same analysis applies to the digital, vaginal penetration alleged in
6 **Counts 3, 5 and 7**. According to Valles, Adams inserted his penis into her vagina three
7 times. Each time, he briefly inserted one or more fingers first, and then immediately
8 inserted his penis. Thus, as in Crowly, the use of his fingers was designed to stimulate
9 and lubricate the vagina so Adams could insert his penis. It was **incidental** to the target
10 act. This is another reason why the six counts of vaginal sexual assault must be reduced
11 to one count. *See also, Ebeling v. State*, 120 Nev. 401, 91 P.3d 599, 601 (2004). The
12 digital penetration was incidental to the insertion of the penis.
13
14

15 D. The charge of Battery with Intent to Commit a Crime must be vacated
16 because it is based on precisely the same acts alleged in the First Degree
17 Kidnapping charge.

18 According to the State, Adams committed the crime of first degree kidnapping
19 when he "did willfully, unlawfully and feloniously, and without authority of law, seize...
20 kidnap, or carry away Amber Valles" with the intent to hold her against her will "for the
21 purpose of sexual assault." (AA 97). Adams was specifically accused of "**taking** the
22 said Amber Valles against her will" when he allegedly grabbed by the arm and forced
23 her to walk with him to the vacant apartment. Adams was charged with battery with
24 intent to commit a crime for "grabbing the said Amber Valles by the neck to restrain her
25 and by grabbing her by the arm [SIC] **forcing her to go with him.**" *Id.* (emphasis
26 added). Both counts allege exactly the same thing: physically taking Amber Valles and
27
28

1 moving her somewhere. Once again, Adams was convicted and punished *twice* for the
2 same act.

3
4 In Salazar v. State, *supra*, 119 Nev. 224, the jury convicted of both battery with
5 use of a deadly weapon with substantial bodily harm and mayhem with use of a deadly
6 weapon. In overturning the conviction for battery with a deadly weapon with substantial
7 bodily harm, this Court noted:

8
9 The Double Jeopardy Clause of the United States Constitution protects
10 defendants from multiple punishments for the same offense. This court
11 utilizes the test set forth in Blockburger v. United States, to determine
12 whether multiple convictions for the same act or transaction are
13 permissible. “Under this test, ‘if the elements of one offense are entirely
14 included within the elements of a second offense, the first offense is a
15 lesser included offense and the Double Jeopardy Clause prohibits a
16 conviction for both offense.’” (Citations omitted).

17 Salazar, 119 Nev. at 227.

18 As stated earlier, the Salazar Court also recognized this Court will reverse
19 redundant convictions that do not comport with legislative intent:

20 When considering whether convictions are redundant, in State of Nevada
21 v. District Court, this court stated: The issue . . . is whether the gravamen
22 of the charged offenses is the same such that it can be said that the
23 legislature did not intend multiple convictions. . . The question is whether
24 the material or significant part of each charge is the same even if the
25 offenses are not the same. **Thus, where a defendant is convicted of two**
26 **offenses that, as charged, punish the exact same illegal act, the**
27 **convictions are redundant.**

28 *Id.* at 227-28 (citations omitted)(emphasis added).

29 As in Salazar, this Court should deem these convictions redundant because
30 “Both arise from and punish the same illegal act... ‘The Legislature never intended to
31 permit the State to proliferate charges as to one course of conduct by adorning it with
32 chameleonic attire.’” *Id.* at 228 (citations omitted).

1 In addition, though it is not always the case, the way the State worded the charge
2 of battery with intent to commit a crime in this case made it a lesser-included offense of
3 first degree kidnapping. Thus, the conviction must be vacated under both redundancy
4 analysis and a straight **Blockburger** analysis.

6 E. Summary

7 In **Wilson v. State**, this Court held that the Nevada Legislature did not intend to
8 separately punish multiple acts that occur close in time and make up one course of
9 conduct: “We have declared convictions redundant when the facts forming the basis for
10 two crimes overlap, when the statutory language indicates one rather than multiple
11 criminal violations was contemplated, and when legislative history shows that an
12 ambiguous statute was intended to assess one punishment.” **Wilson v. State**, 121 Nev.
13 345, 114 P.3d 285, 292-93 (2005).

14 Allowing these redundant and multiplicitous convictions to stand would violate
15 Adams’ double jeopardy protections. Adams therefore requests that his convictions for
16 Counts 2, 3, 4, 5, 6, 7 and 12 be vacated, and that his sentence be modified accordingly.

17
18 **II. THE PROSECUTOR COMMITTED REPEATED ACTS OF**
19 **MISCONDUCT IN CLOSING ARGUMENT, THEREBY DEPRIVING**
20 **APPELLANT OF A FAIR TRIAL AND VIOLATING HIS RIGHTS**
21 **UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS AND**
22 **THE NEVADA CONSTITUTION.**

23 Although her abduction took place in broad daylight, in a populated, public area,
24 and in full view of at least four witnesses, Valles never screamed, made an audible
25 request for help, attempted to use her cell phone, or tried to run away. Valles testified
26 that she was crying and shaking the entire time she was with Adams. However, none of
27
28

1 the eyewitness saw her crying or felt she was in legitimate danger. In fact, one
2 eyewitness initially informed the police that Valles was following Adams, and not the
3 other way around. (AA 570).

4
5 The forensic evidence proved that Adams and Valles had sex, but it did not prove
6 that a sexual *assault* occurred. The State's Sexual Assault Nurse Examiner testified that
7 injuries such as minor lacerations, bruising and swelling can easily occur from
8 consensual sex. (AA 794). The examiner found no tape marks, despite the fact that
9 Valles claimed Adams had taped her hands and mouth briefly. *Id.* She found no injuries
10 on Valles' wrists, arms, or face. In fact, there was no physical evidence to prove Valles
11 was a victim of sexual *assault*.
12

13
14 The allegations in this case are upsetting and emotionally polarizing, but it would
15 be folly to suggest that there were no inconsistencies in Amber Valle's story, or that
16 there was "zero" evidence supporting consent. But that is *exactly* what the District
17 Attorney did.
18

19 During closing rebuttal, the prosecutor committed numerous acts of misconduct,
20 despite repeated objections by defense counsel. Adams admitted to having sex with
21 Amber Valles, but he argued to the jury that the sex was consensual. Defense counsel
22 asked the jury to find Adams guilty of Statutory Sexual Seduction. During rebuttal, the
23 prosecutor attacked this defense by **shifting the burden of proof**:
24

25
26 D.A. Hendricks: Now, I was going to put up a slide in regards to
27 evidence of consent in this case. But there wasn't any.
28 **What piece of evidence did you hear –**

Mr. Maningo: I'm going to object. It's starting to sound a little like
burden shifting at this point, judge.

1 The Court: Objection's noted.

2 (AA 866)(emphasis added).

3 The prosecutor continued with his argument, and despite paying lip service to the
4 concept of "proof beyond a reasonable doubt", he immediately shifted the burden of
5 proof *again*.

6
7 D.A. Hendricks: But **what piece of evidence was presented** in this
8 courtroom that said that this was consensual sex? I
9 would submit to you there was nothing. Look through
10 all of these exhibits, hundreds of exhibits, and try to
11 find one piece of evidence that says this was
12 consensual. Go back and think about everyone's
that's testified. Did any of those witnesses --

13 Mr. Maningo: I'm going to object, and I'm sorry Mr. Hendricks.
14 And ask to approach please.

15 The Court: Approach... Objection's noted. Closing argument,
16 counsel.

17 (AA 866)(emphasis added).

18 Despite a second objection and a bench conference, the D.A. picked up right
19 where he left off. He states again that "zero" evidence had been presented to support the
20 consent defense. (AA 867-868). He then went on to directly comment on the
21 defendant's constitutional right to present a defense:
22

23 D.A. Hendricks: Now defendant was left with **no option** but to **claim**
24 **that it was consensual**.

25 Mr. Maningo: I'm going to object to, as to counsel commenting on
26 my client's right to a defense.

27 The Court: Sustained.

28 (AA 876)(emphasis added).

1 The objection was sustained, but that did not stop the D.A. from *again*
2 commenting on the defense just a few minutes later, in violation of the court's directive.

3
4 D.A. Hendricks: Now what – what was **the only option left to defense**
5 **counsel** in this particular case?

6 Mr. Maningo: I'm going to object. This is – we're getting into the
7 same thing regarding commentary on the defense.

8 The Court: No commentary on the defense, counsel.

9 D.A. Hendricks: It's a defense they presented, Judge, based on the
10 evidence.

11 The Court: No burden shifting.

12 (AA 878)(emphasis added).

13
14 Objection sustained; but then a few minutes later, the D.A. made the same type of
15 comment: "That's the option that was left available to defense counsel." (AA 879). D.A.
16 Hendricks finished his closing argument by *again* flipping the burden of proof, saying,
17 "There is **zero evidence** that this was consensual." (AA 880)(emphasis added).

18
19 D.A. Hendricks flipped the burden of proof⁵ and improperly commented on the
20 defendant's right to a defense.⁶ He injected his personal feelings about the defendant and
21 his defense by showing utter incredulity and disdain throughout his closing argument.⁷
22 He also **misstated the evidence** every time he claimed there was "zero" evidence of
23 consent. As outlined above, there were several inconsistencies in Valles' story and
24 observations by eye witnesses that could rationally be explained by a **consensual**
25 encounter.
26
27

28 ⁵ See Washington v. State, 922 P.2d 547 (1996).

⁶ See Murray v. State, 930 P.2d 121 (1997).

⁷ See Pascua v. State, 145 P.3d 1031 (2006); Valdez v. State, 196 P.3d 465 (2008).

1 This honorable Court has never “condone[d] or promote[d] prosecutorial
2 misconduct in any form or manner.” Washington v. State, 922 P.2d 547 (1996). Due to
3 the prosecutor's position of authority, “improper suggestions, insinuations, and
4 especially, assertions of personal knowledge are apt to carry much weight against the
5 accused when they should properly carry none.” Berger v. United States, 295 U.S. 78,
6 88 (1935). Jurors have an implicit trust of law enforcement. Thus, when a prosecutor
7 makes an improper argument, the impact on the jury can be profound:
8
9

10 The power and force of the government tends to impart an implicit stamp of
11 believability to what the prosecutor says. That same power and force
12 allows him, with a minimum of words, to impress on the jury that the
13 government's vast investigative network, apart from the ordinary machinery
14 of trial, knows that the accused is guilty or has non-judicially reached
15 conclusions on relevant facts which tend to show he is guilty.

16 Hall v. United States, 419 F.2d 582, 583 - 84 (5th Cir. 1969).

17 The fact that the prosecutor continued to commit the same acts of misconduct
18 after being admonished by the court makes this case particularly egregious. See Glover
19 v. Eighth Judicial Dist. Court, 220 P.3d 684 (2009)(*en banc*). In the Glover case, a
20 single, isolated incident of misconduct by a defense attorney was deemed adequate to
21 justify a mistrial. Here, we have numerous incidents of misconduct by a seasoned
22 prosecutor who blatantly disregarded the court's admonishments. This only served to
23 magnify the effect of the misconduct on the jury.
24

25 “Prosecutors are subject to constraints and responsibilities that don't apply to
26 other lawyers.” U.S. v. Kojavan, 8 F.3d 1315, 1323 (9th Cir. 1993). “The prosecutor's
27 job isn't just to win, but to win fairly, staying within the rules.” *Id.* The misconduct in
28

1 the instant case violated Adam's constitutional right to a fair trial. Adams requests that
2 his case be reversed and remanded for a new trial.

3
4 **CONCLUSION**

5 For the forgoing reasons, Adams requests that Counts 2, 3, 4, 5, 6, 7 and 12 be
6 **vacated** and that he be remanded to District Court for a new trial on the remaining
7 counts. Adams also requests oral argument in this case.

8 Respectfully submitted,

9
10 PHILIP J. KOHN
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11
12 By: 

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DATED this 22nd day of February, 2011.

By P. David Westbrook
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 22nd day of February, 2011. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO	P. DAVID WESTBROOK
STEVEN S. OWENS	HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

EDWARD MICHAEL ADAMS
NDOC No. 1046775
c/o High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

BY Cheryl Zinnica
Employee, Clark County Public
Defender's Office

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD MICHAEL ADAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55494

FILED

JUL 26 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree kidnapping, battery with the intent to commit sexual assault, open or gross lewdness, and seven counts of sexual assault. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

First, appellant Edward Michael Adams contends that his conviction on the seven counts of sexual assault violates double jeopardy and redundancy/multiplicity principles. Additionally, Adams contends that the open or gross lewdness conviction was impermissibly redundant because it was “merely incidental” to the sexual assault and that the battery conviction should be vacated “because it is based on precisely the same acts alleged in the First Degree Kidnapping charge.” We disagree.

Adams’ convictions do not violate the Double Jeopardy Clause because the counts were based upon separate and distinct acts. See U.S. Const. amend. V; Blockburger v. United States, 284 U.S. 299, 304 (1932) (“The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each

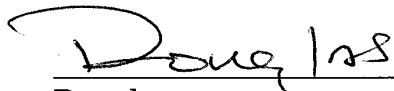
provision requires proof of a fact which the other does not.”). Adams’ convictions were not redundant because “the material or significant part of each charge” was not the same. Salazar v. State, 119 Nev. 224, 227-28, 70 P.3d 749, 751 (2003) (internal quotation marks omitted); see also Crowley v. State, 120 Nev. 30, 33, 83 P.3d 282, 285 (2004) (“[T]he facts of a case may support convictions on separate charges ‘even though the acts were the result of a single encounter and all occurred within a relatively short time.’” (quoting Wright v. State, 106 Nev. 647, 650, 799 P.2d 548, 549-50 (1990))). Therefore, we conclude that Adams’ contention is without merit.


Second, Adams contends that the prosecutor committed misconduct during closing arguments by shifting the burden of proof, misstating the evidence, commenting about his failure to produce evidence, and “inject[ing] his personal feelings about the defendant and his defense.” The district court sustained Adams’ objections and admonished the prosecutor not to shift the burden of proof and/or comment on the defense. Even assuming that the prosecutor’s statements were improper, we conclude that Adams was not prejudiced and therefore no relief is warranted. See Browning v. State, 124 Nev. 517, 533, 188 P.3d 60, 72 (2008) (“[P]rejudice from prosecutorial misconduct results when a prosecutor’s statements so infect the proceedings with unfairness as to make the results a denial of due process.” (alteration omitted) (internal quotation marks omitted)); Valdez v. State, 124 Nev. 1172, 1193-94, 196 P.3d 465, 479 (2008) (no prejudice resulting from prosecutorial misconduct where objection sustained); King v. State, 116 Nev. 349, 356, 998 P.2d

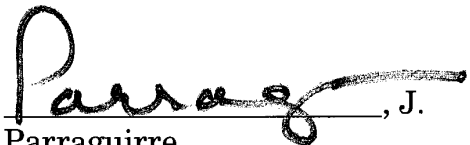
1172, 1176 (2000) (“[W]here evidence of guilt is overwhelming, even aggravated prosecutorial misconduct may constitute harmless error.”).

Accordingly, we

ORDER the judgment of conviction AFFIRMED.


Douglas, J.


Gibbons, J.


Parraguirre, J.

cc: Hon. David B. Barker, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

08C241003

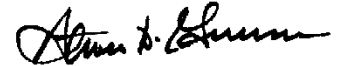
IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD MICHAEL ADAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 55494
District Court Case No. C241003

Electronically Filed
08/30/2012 08:04:46 AM

CLERK'S CERTIFICATE



CLERK OF THE COURT

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 26th day of July, 2012.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
August 21, 2012.

Tracie Lindeman, Supreme Court Clerk

By: Tiffany Maccagno
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD MICHAEL ADAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55494

FILED

JUL 26 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree kidnapping, battery with the intent to commit sexual assault, open or gross lewdness, and seven counts of sexual assault. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

First, appellant Edward Michael Adams contends that his conviction on the seven counts of sexual assault violates double jeopardy and redundancy/multiplicity principles. Additionally, Adams contends that the open or gross lewdness conviction was impermissibly redundant because it was "merely incidental" to the sexual assault and that the battery conviction should be vacated "because it is based on precisely the same acts alleged in the First Degree Kidnapping charge." We disagree.

Adams' convictions do not violate the Double Jeopardy Clause because the counts were based upon separate and distinct acts. See U.S. Const. amend. V; Blockburger v. United States, 284 U.S. 299, 304 (1932) ("The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each

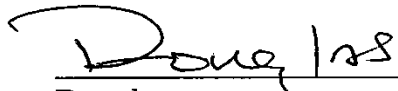
provision requires proof of a fact which the other does not.”). Adams’ convictions were not redundant because “the material or significant part of each charge” was not the same. Salazar v. State, 119 Nev. 224, 227-28, 70 P.3d 749, 751 (2003) (internal quotation marks omitted); see also Crowley v. State, 120 Nev. 30, 33, 83 P.3d 282, 285 (2004) (“[T]he facts of a case may support convictions on separate charges ‘even though the acts were the result of a single encounter and all occurred within a relatively short time.’” (quoting Wright v. State, 106 Nev. 647, 650, 799 P.2d 548, 549-50 (1990))). Therefore, we conclude that Adams’ contention is without merit.


Second, Adams contends that the prosecutor committed misconduct during closing arguments by shifting the burden of proof, misstating the evidence, commenting about his failure to produce evidence, and “inject[ing] his personal feelings about the defendant and his defense.” The district court sustained Adams’ objections and admonished the prosecutor not to shift the burden of proof and/or comment on the defense. Even assuming that the prosecutor’s statements were improper, we conclude that Adams was not prejudiced and therefore no relief is warranted. See Browning v. State, 124 Nev. 517, 533, 188 P.3d 60, 72 (2008) (“[P]rejudice from prosecutorial misconduct results when a prosecutor’s statements so infect the proceedings with unfairness as to make the results a denial of due process.” (alteration omitted) (internal quotation marks omitted)); Valdez v. State, 124 Nev. 1172, 1193-94, 196 P.3d 465, 479 (2008) (no prejudice resulting from prosecutorial misconduct where objection sustained); King v. State, 116 Nev. 349, 356, 998 P.2d

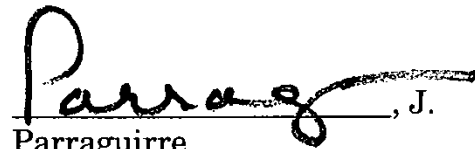
1172, 1176 (2000) ("[W]here evidence of guilt is overwhelming, even aggravated prosecutorial misconduct may constitute harmless error.").

Accordingly, we

ORDER the judgment of conviction AFFIRMED.


Douglas, J.


Gibbons, J.


Parraguirre, J.

cc: Hon. David B. Barker, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

AA 0909

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD MICHAEL ADAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 55494
District Court Case No. C241003

REMITTITUR

TO: Steven Grierson, Clark County District Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: August 21, 2012

Tracie Lindeman, Clerk of Court

By: Tiffany Maccagno
Deputy Clerk

cc (without enclosures):

Hon. David B. Barker, District Judge
Clark County Public Defender/Philip David Westbrook, Deputy Public Defender
Attorney General/Carson City/Catherine Cortez Masto, Attorney General
Clark County District Attorney/Nancy A. Becker, Deputy District Attorney

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on AUG 30 2012.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED

AUG 28 2012

CLERK OF THE COURT

Original CA/ ~~REMOVED~~

3

02S

1 Edward Michael Adams - 1046775
2 Petitioner/In Propria Persona
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

FILED

SEP 11 2012

John J. Sullivan
CLERK OF COURT

District Court

Clark County, Nevada

08C241003
PWHC
Petition for Writ of Habeas Corpus
1955676



8 Edward Michael Adams

Petitioner,

10 vs.

Case No. 08C241003

11 D. Neven - Warden
12 High Desert State Prison,
13 State of Nevada

Dept. No. 18

Respondent(s).

Docket _____

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department within its custody, name the director of the department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

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CLERK OF THE COURT
SEP 11 2012
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CLERK OF THE COURT

original copy

1 Failure to raise all grounds in this petition may preclude you from filing future petitions challenging
2 your conviction and sentence.

3 (6) You must allege specific facts supporting the claims in the petition you file seeking relief from
4 any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your
5 petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that
6 claim will operate to waive the attorney-client privilege for the proceeding in which you claim your
7 counsel was ineffective.

8 (7) If your petition challenges the validity of your conviction or sentence, the original and one
9 copy must be filed with the clerk of the district court for the county in which the conviction occurred.
10 Petitions raising any other claim must be filed with the clerk of the district court for the county in
11 which you are incarcerated. One copy must be mailed to the respondent, one copy to the attorney
12 general's office, and one copy to the district attorney of the county in which you were convicted or to
13 the original prosecutor if you are challenging your original conviction or sentence. Copies must
14 conform in all particulars to the original submitted for filing.

15 **PETITION**

16 1. Name of institution and county in which you are presently imprisoned or where and who you
17 are presently restrained of your liberty: High Desert State Prison, Clark County, Nevada

18 2. Name the location of court which entered the judgment of conviction under attack: _____
19 Regional Justice Center 200 Lewis Avenue, Las Vegas, Nevada 89155

20 3. Date of judgment of conviction: 07/02/2010

21 4. Case number: 08C241003

22 5. (a) Length of sentence: Two: Five to life and seven: ten to life Sentences - consecutive

23 (b) If sentence is death, state any date upon which execution is scheduled: N/A

24 6. Are you presently serving a sentence for a conviction other than the conviction under attack in
25 this motion:

26 Yes _____ No X If "Yes", list crime, case number and sentence being served at this time: _____

27 7. Nature of offense involved in conviction being challenged: Kidnapping, Battery and Sexual Assault

28 X7

1 8. What was your plea? (Check one)

2 (a) Not guilty ☒

3 (b) Guilty _____

4 (c) Nolo contendere _____

5 9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea
6 to another count of an indictment or information, or if a guilty plea was negotiated, give details: _____
7 _____
8 _____

9 10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

10 (a) Jury ☒

11 (b) Judge without a jury _____

12 11. Did you testify at trial? Yes _____ No ☒

13 12. Did you appeal from the judgment of conviction?

14 Yes ☒ No _____

15 13. If you did appeal, answer the following:

16 (a) Name of court: Nevada Supreme Court

17 (b) Case number or citation: 55444

18 (c) Result: Denied

19 (d) Date of appeal: July 26, 2012

20 (Attach copy of order or decision, if available).

21 14.) If you did not appeal, explain briefly why you did not: N/A
22 _____
23 _____

24 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously
25 filed any petitions, applications or motions with respect to this judgment in any court, state or
26 federal? Yes _____ No ☒
27
28

Original copy

16. If your answer to No 15 was "Yes", give the following information:

(a) (1) Name of court: _____

(2) Nature of proceedings: _____

(3) Grounds raised : _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ____ No ____

(5) Result: _____

(6) Date of result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to each result: _____

(b) As to any second petition, application or motion, give the same information:

(1) Name of Court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ____ No ____

(5) Result: _____

(6) Date of result: _____

(7) If known, citations or any written opinion or date of orders entered pursuant to each result: _____

(c) As to any third or subsequent additional application or motions, give the same information as above, list them on a separate sheet and attach.

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1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action
2 taken on any petition, application or motion?

3 (1) First petition, application or motion?

4 Yes ____ No ____

5 Citation or date of decision: _____

6 (2) Second petition, application or motion?

7 Yes ____ No ____

8 Citation or date of decision: _____

9 (e) If you did not appeal from the adverse action on any petition, application or motion, explain
10 briefly why you did not. (You may relate specific facts in response to this question. Your response
11 may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not
12 exceed five handwritten or typewritten pages in length). _____

13 _____

14 17. Has any ground being raised in this petition been previously presented to this or any other
15 court by way of petition for habeas corpus, motion or application or any other post-conviction
16 proceeding? If so, identify:

17 (a) Which of the grounds is the same: _____

18 _____

19 (b) The proceedings in which these grounds were raised: _____

20 _____

21 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts in
22 response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached
23 to the petition. Your response may not exceed five handwritten or typewritten pages in length). _____

24 _____

25 _____

26 _____

27 _____

28 _____

1 18. If any of the grounds listed in Nos. 23(a), (b), (c), and (d), or listed on any additional pages
2 you have attached, were not previously presented in any other court, state or federal, list briefly what
3 grounds were not so presented, and give your reasons for not presenting them. (You must relate
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 x
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten
6 pages in length). I was told by my direct Appeal lawyer that any additional issues were P.C.
7 issues Not Direct Appeal issues.

8 19. Are you filing this petition more than one (1) year following the filing of the judgment of
9 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.
10 (You must relate specific facts in response to this question. Your response may be included on paper
11 which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or
12 typewritten pages in length). No

13
14
15 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the
16 judgment under attack?

17 Yes ___ No X

18 If "Yes", state what court and the case number: _____

19
20 21. Give the name of each attorney who represented you in the proceeding resulting in your
21 conviction and on direct appeal: Jeffery Manning - Trial and P. David Wentzlow - Direct

22
23
24 22. Do you have any future sentences to serve after you complete the sentence imposed by the
25 judgment under attack?

26 Yes ___ No ✓ If "Yes", specify where and when it is to be served, if you know: _____

1 Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating
2 additional grounds and facts supporting same.

3 23. (a) GROUND ONE: Ineffective assistance of counsel - Violation of 5th, 6th and
4 14th Amendments to the US Constitution

5
6
7 23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): my
8 trial lawyer Jeff manny against my arguments allowed a jury member - who later became
9 the jury foreperson - to remain on the jury panel after Juror #7 - Mrs Clayton - Admitted
10 to knowing the presiding judge in my case along with his wife for the past twenty years
11 as well as later on in trial again allowing the same juror to remain on the panel
12 after admitting to the judge in my case that she personally knew one of the
13 investigating officers in my case (Mrs Shavita Joseph L.V.M.P.d) and I believe
14 because of this I was found guilty of the more harsher conviction of Kidnapping,
15 Battery & Sexual assault instead of the charge of Sexual Seduction which I Admitted
16 too and should have been convicted of.

23. (b) GROUND TWO: Failure to gather or preserve EXCULPATORY EVIDENCE -
Violation of Brady Rights, Violation of 5th, 6th and 14th Amendments

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Detective Gabriel Labiano - The lead detective investigating this case went taking reports of eyewitnesses in this case but in the interview of witness Andre Randall the one person who could testify that indeed the victim was not under distress or anything, Mr Randall's testimony backs up what I told the judge really happened in this case - That I am guilty of Sexual Seduction and Not Sexual Assault.

Mr Randall states that he did a taped interview with detectives on December 15, 2007 and he told detectives that the victim didn't look mad, upset, scared or anything while walking with me, and he was close enough to tell us "what's up"

Detective Labiano stated in trial that he didn't prepare a report because he "didn't see any need to at that time", a report that would have shown that the victim was under no distress and was just walking with me. It disproves what the victim stated that she was "shaking, screaming and crying" as I "dragged her down a busy Las Vegas street during the middle of the day, during a twenty minute walk". The report would have helped prove that the only crime I am guilty of is Sexual Seduction.

It seems the only thing that proves that I am telling the truth about this crime was not documented but everything else was.

1 23. (c) GROUND THREE: Ineffective Assistance of Counsel - Violation of 6th and
2 14th Amendments rights to the US. Constitution.

3
4
5 23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Trial
6 Walter J. Mamingo refused to do any Preliminary investigation, in fact the one
7 person who backs up my story was not found until the first day of trial, and he was
8 located by the District Attorney's office - also he refused to do any interview of witnesses
9 before trial, Mr Mamingo also refused to come visit for discussions in regards to this
10 case, I believe in the two years I worked in the County Jail for trial my lawyer
11 came to visit about roughly 5 times, also during my trial Mr Mamingo stated that
12 he was not properly prepared because he did not have a second chair and as
13 a result he had to "juggle" during my trial.

1 23. (d) GROUND FOUR: Right to an impartial jury/ Violation of 5th, 6th and 14th
2 Amendment Rights to the us Constitution
3
4

5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): We
6 (me and my lawyer) objected to the showing of pictures of me in Jail clothing,
7 Judge Barker overruled our objection stating that "Juries would not know they were
8 Jail clothes" Contrary to the fact that there were Attorneys on the Jury Panel who
9 knew what the Jail clothing was.
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