IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Dec 14 2023 02:22 PM
Elizabeth A. Brown
Clerk of Supreme Court

SANKONA LOVELLE GRAHAM,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 86876

District Court Case No. CR21-0041

APPELLANT'S APPENDIX VOLUME 1 PAGES 001 - 241

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PAHRUMP JUSTICE COURT
BY A. Malone
2020 MAY 29 AM 10:55
RECEIVED & FILED

Case No. 20CR01499

Department A

LEA Case No(s). 20NY-0804

ARR: _____

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP

COUNTY OF NYE, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

v. **CRIMINAL COMPLAINT**

SANKONA LOVEVELTEMAL GRAHAM,

Defendant. /

The undersigned, Chris Arabia, District Attorney, County of Nye, State of Nevada, by and through his deputy, Michael D. Allmon, complains and charges the above named defendant, SANKONA LOVEVELTEMAL GRAHAM, with having committed the following offenses within said County of Nye, State of Nevada:

COUNT I

SEXUAL ASSAULT WITH A CHILD UNDER 16, in violation of **NRS 200.366, A CATEGORY 'A' FELONY,** committed in the following manner, to wit: That **ON OR ABOUT AND BETWEEN APRIL 1, 2018 TO MAY 9, 2018**, in Pahrump Township, Nye County, Nevada, said Defendant did willfully and unlawfully subject another person, to wit: B.T., (DOB: 8/11/2003; 14 years of age) a minor child that was under 16 years at the time, to sexual penetration, against the victim's will, or under conditions in which said Defendant knew or should have known that the victim was mentally or physically incapable of resisting or understanding the nature of his conduct, by inserting his penis or thumb into her vagina;

///

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

COUNT II

LEWDNESS WITH A CHILD UNDER 16 YEARS OF AGE, in violation of **NRS 201.230, A CATEGORY 'B' FELONY,** committed in the following manner, to wit: That **ON OR ABOUT MARCH 7, 2020**, in Pahrump Township, Nye County, Nevada, said Defendant, being 18 years of age or older at the time, did willfully, unlawfully, and lewdly commit a lewd or lascivious act upon or with the body of B.T., (DOB: 8/11/2003; 14 years of age), with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, by rubbing B.T.'s vagina or vulva with his hands;

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

DATED this 27 day of May, 2020.

CHRIS ARABIA
NYE COUNTY DISTRICT ATTORNEY

By _____
MICHAEL D. ALLMON
Deputy District Attorney

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

Case No. 20CR01499

IN THE PAHRUMP JUSTICE COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

BEFORE LISA CHAMLEE, JUSTICE OF THE PEACE

STATE OF NEVADA,

Plaintiff,

vs.

SANKONA LOVELEE GRAHAM,

Defendant.

_____/

JAVS-RECORDED TRANSCRIPT OF PROCEEDINGS

PRELIMINARY HEARING

THURSDAY, APRIL 29, 2021

PAHRUMP, NEVADA

Transcribed by: Shellie Loomis, RPR

APPEARANCES:

For the State: Andrea Orwoll,
Deputy District Attorney
Nye County, Nevada

For the Defendant: Ronni Boskovich, Esq.
Public Defender
Nye County, Nevada

(INDEX LOCATED AT THE BACK OF THE TRANSCRIPT.)

PAHRUMP, NEVADA, THURSDAY, APRIL 29, 2021

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THE COURT: All right. So this is the time set for preliminary hearing in Case Number 20CR01499, Sankona Graham, and Mr. Graham, just reminding you of your Fifth Amendment right to remain silent. If you choose to waive that right, anything you say can and will be used against you.

So, State, are you ready to proceed with your first witness?

MS. ORWOLL: I am, Your Honor. Actually before the first witness, I would like to admit my first exhibit.

May I make -- lay the foundation for it?

THE COURT: Sure.

MS. ORWOLL: Okay. Your Honor, I am, for the record, showing Defense counsel what's been marked as State's Proposed Exhibit 1. And so I was speaking with Ms. Boskovich earlier, this is a certified copy of a previous judgment of conviction.

So I am moving to admit it under NRS 51.295.

THE COURT: Okay.

MS. ORWOLL: The judgment of conviction. This is a -- this is a photocopy that I made this morning of the actual certified copy that I received from the court in

California. I did bring the original just in case --

THE COURT: Okay.

MS. ORWOLL: -- Your Honor wants to inspect it.

THE COURT: If you made the copy and you know it's a copy of a certified copy, I'm comfortable.

Ms. Boskovich?

MS. BOSKOVICH: I have no objection.

THE COURT: Okay.

MS. ORWOLL: Okay. Thank you, Your Honor.

THE COURT: Sure.

MS. ORWOLL: And so for the record, this is being admitted to prove a fact essential to the judgment under the amended criminal complaint. I do believe Your Honor received it last night.

I asked them not to file it because I was not 100 percent sure we were going forward today, but because we are going forward with this prelim, I'm going to be filing.

THE COURT: Okay. I got it here.

MS. ORWOLL: (Indiscernible) the criminal complaint. It is to support in both Counts I and II, a prior sex offense against a child.

THE COURT: Okay.

MS. ORWOLL: And so, Your Honor, that's what I'm moving to admit this record for. Shall I approach and hand

this to you?

THE COURT: Yes. And, Ms. Boskovich, you have no objection to the admission of that document?

MS. BOSKOVICH: If I can just ask a couple clarifying questions.

THE COURT: Sure.

MS. BOSKOVICH: You received the prior certified JOC filed in court itself in --

MS. ORWOLL: Correct.

MS. BOSKOVICH: -- Riverside, California?

MS. ORWOLL: And I'll make a better record, I apologize. The actual name of the offense is unlawful sexual intercourse with a minor more than three years younger. That's California Penal Code 261.5C.

The conviction is from August 8th, 2013, Case Number RIF, as in Frank, 1200136 out of the Superior Court in California, County of Riverside.

MS. BOSKOVICH: Okay.

THE COURT: Okay.

MS. BOSKOVICH: Thank you.

THE COURT: All right. Thank you.

MS. ORWOLL: May I approach?

THE COURT: Yes, you may. Has it been marked?

MS. ORWOLL: It has, Your Honor.

THE COURT: Okay. Great. Then, yes, thank you. Let me take a look at that here.

MS. BOSKOVICH: Just a question for Madam Clerk, can I get a copy of that filed Amended Complaint, please, whenever we get it filed?

THE CLERK: Well, it hasn't been filed yet.

THE COURT: Did you want me to file that now?

MS. ORWOLL: Yes, please, Your Honor. The State would move to admit.

THE COURT: Sure. Well, the amended criminal complaint.

MS. ORWOLL: Yes, yes. I'm sorry, yes.

THE COURT: Okay. Okay. All right. So we'll go ahead and file it in open court here today, Madam Clerk, and we'll get you a copy, Ms. Boskovich.

All right. And then the record from Riverside County, let me just take a look at this. It looks like it's from February 14, 2012. So I have the Information, felony complaint information.

MS. ORWOLL: Yes. Your Honor, the -- I know it's quite an extensive packet, so it's got the complaint, the information. It has the docket with the minutes. It has the -- whatever Riverside refers to as the abstract of judgment. I'm sorry. It's an unusual term. I didn't

recognize it, but it's got a whole docket of information about that case.

THE COURT: Right. I see it here.

MS. BOSKOVICH: It's in a weird form.

MS. ORWOLL: I know.

MS. BOSKOVICH: It's very weird.

THE COURT: Yeah, California has some -- they're very form intensive. All right. Yeah, I see this here and so without objection by defense, I'm going to go ahead and admit it as State's Exhibit Number 1. That will be so admitted.

(Exhibit 1 admitted into evidence.)

THE COURT: Okay. And just a couple of preliminary things to address before you call your first witness, are you calling the alleged child victim?

MS. ORWOLL: Your Honor, the State does not anticipate calling her today.

THE COURT: Okay.

MS. ORWOLL: My first witness is going to be Detective Fancher.

THE COURT: Okay.

MS. ORWOLL: He should be -- he just asked me -- he is en route right now outside and just -- I guess I can state for the record, Your Honor, I was planning to introduce the victim's statements through the child hearsay --

THE COURT: Sure.

MS. ORWOLL: -- prelim exception.

THE COURT: Right. I understand. So just a couple of things: Pursuant to NRS 200.3771 and 3772, those statutes require that the identity, the addressee, telephone number, anything related to the alleged victim is to remain confidential.

And this court routinely orders that when we're referencing the alleged victim in these cases, that we not refer to them in their full name.

I prefer to have the witnesses identified by initial and that's the way that it's going to appear in the transcript. So that's the -- that's going to be the order, if you can just explain that to your witnesses before they testify.

MS. ORWOLL: Yes.

THE COURT: It is to be addressed by initial, first and last name initial only.

MS. ORWOLL: And, Your Honor, just for my information, I understand and I'm more than happy to do it that way. When it comes to a birth date, I -- just to establish her age.

THE COURT: You can -- you can introduce the birth date of the alleged victim, but I don't want any names.

MS. ORWOLL: Of course.

THE COURT: Or address or phone number. So the birth date will be fine, you know, as long as we don't have any other identifiers.

MS. ORWOLL: Okay.

THE COURT: Okay. Just the initials.

MS. BOSKOVICH: So just like --

MS. ORWOLL: BT.

THE COURT: Yeah, I think that's what the complaint -- yeah, it does say BT, so the alleged victim should be referred to as BT.

MS. ORWOLL: Right.

THE COURT: Okay?

MS. ORWOLL: And, Your Honor, I will go let him know about that right now and then I will come right back.

THE COURT: Okay.

MS. BOSKOVICH: And just for the record, defense is going to be invoking the Exclusionary Rule.

THE COURT: Okay. And so let the record reflect that we don't have any witnesses in the courtroom right now.

And then, Mr. Graham, again, just so you remember, if you need to pass on a note to your attorney, I think the last time you had the deputy hand it to Ms. Boskovich. You can certainly do that at any time during

the testimony. Okay?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right.

(Brief pause in proceedings.)

MS. ORWOLL: The State is prepared to go.

THE COURT: Okay.

MS. ORWOLL: With its first witness.

THE BAILIFF: That is?

MS. ORWOLL: Detective Fancher.

THE BAILIFF: We're changing this up a little bit. Instead of being at the witness stand, we'll have you over there in the jury box.

THE WITNESS: Okay.

THE BAILIFF: Watch your step going up here. And I'm going to ask you to remain standing, raise your right hand and the clerk will swear you in.

DETECTIVE WESLEY FANCHER,

called as a witness on behalf of the STATE, was duly sworn and testified as follows:

THE CLERK: Thank you.

THE BAILIFF: Go ahead and have a seat. I'm going to ask to have you slide the microphone a little closer to you just because that mic doesn't (indiscernible).

THE WITNESS: Sure.

THE COURT: All right. Detective Fancher, if you can please state and spell your name for the record.

THE WITNESS: Yes. Wesley Fancher. That's W-E-S-L-E-Y. Fancher, F-A-N-C-H-E-R.

THE COURT: Okay. And just a couple things before we begin: I will require you to leave your mask on. I know it's going to be a little cumbersome, but I do need you to keep that on. Okay?

And as you are aware, you know, you've testified multiple times in had this courtroom, yes or no answers, no nodding or shaking of the head. The recording needs to pick up all of your answers.

Ms. Orwoll, you may proceed.

MS. ORWOLL: Thank you, Your Honor.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MS. ORWOLL:

Q. Good afternoon, Detective. Where do you work?

A. I work at the Nye County Sheriff's Office.

Q. In what position?

A. I'm a detective.

Q. How long have you been a detective?

A. About six years now.

Q. Six years. Did you work with the sheriff's office prior to that?

A. I did.

Q. And in what position?

A. I was assigned to the patrol division.

Q. And how long were you with patrol?

A. I was with patrol for about five years.

Q. So you have about 11 years of experience working in law enforcement?

A. Yes, ma'am.

Q. Okay. What are some of your duties as a Detective?

A. I investigate all major crimes. Homicide, any sexual assault, child abuse, physical abuse, child pornography, investigations.

Q. Okay. So have you ever dealt with a sex offense involving a child victim?

A. I have, yes.

Q. Okay. Could you estimate about how many of those you've dealt with?

A. I can't. In the six years, there's a lot. I would be guessing hundreds.

Q. Hundreds? Okay.

A. That's a guess, yeah.

Q. So in the typical process of you investigating such an offense, is there a standard procedure that's used in a case like that?

A. There is.

Q. And can you explain what that would be?

A. So for sexual related child offenses, typically the child will be sent, given the nature of the circumstances, to Las Vegas for a sexual assault examination, whether it be acute examination or non-acute, which is out 30 days.

Q. What does that mean, the difference between acute and non-acute?

A. Acute and non-acute. Acute would be basically anything that's happened, the offense allegation was within the seven-day period. So that there's -- you know, they can pull DNA, protocol changes, they -- you know, there's DNA forensics that they can use and pull off of underwear and parts of the body and everything that non-acute medical exams don't present.

Q. Okay. So after such an exam, if one is necessary is completed, what's the typical next step?

A. Next step is the child will be scheduled for a forensic interview.

Q. And what is that forensic interview for?

A. It's designed -- when you do them with children,

as a forensic interviewer myself, to not -- you're specifically trained to talk to children, so there's no -- in a comfortable environment where there's no interruptions and that you're trained to ask questions in a specific way as to not lead -- you know, no leading questions or anything that's going to warp or manipulate the -- a child's mind.

Q. Okay. So you -- did you just say that you are a forensic interviewer?

A. I am, yes.

Q. Did you train as a forensic interview?

A. I did, yes.

Q. And what does that training involve?

A. Several hours. My training was through Clark County, so it was several hours of training in how to -- you know, understanding the mind and like the psyche behind how a child's mind works. How to avoid like contaminating, I guess, the interview by asking the wrong questions the wrong way.

Yeah, how to not lead the child, things to stay away from, you know, that might trigger a -- the child's -- I guess you'd say what they have is not factual. You know, it's (indiscernible) fit the word, where they like to play pretend. What is it? Not -- reality from, you know, the way kids think.

Q. Okay. So part of the training, then, to kind of

tease that out is to be able to have a kiddo focus on what actually happened rather than some kind of imagined event?

A. Imagined. So it's -- yes, to try to stay away from child's imagination, you know, to stay away from certain topics because then children can -- you can -- that mind can start to head that direction.

Q. Okay. And now when you -- have you done a forensic interview before?

A. I have, yes.

Q. And when you do that, do you use that training?

A. Yes.

Q. Okay. Did you have any other kind of training in dealing with child victims specifically as a Detective or even as a patrol officer?

A. Yes.

Q. And then what would that training have involved?

A. Child abuse, like physical injuries.

Q. Would that be to be able to identify such injuries or what do you mean?

A. Well, it's to identify such injuries and also to identify behavior in child that would exhibit -- that may -- the untrained brain may not catch.

Q. Okay.

A. For -- a lot of -- for example, how much trauma

can be done to the internal organs of a child without there being any bruising or anything visible to the naked eye on the outside.

Q. Okay. So in addition to physical child abuse, what other kinds of training, if any, have you completed on dealing with child victims?

A. Child sex abuse and then the internet crimes obviously.

Q. Internet crimes, what would one example be?

A. Child pornography.

Q. Okay. When it comes to child sexual abuse, did you find that your training as a forensic interview helped shore up your understanding of how to work with a child victim?

A. Yes.

Q. So, Detective Fancher, did you ever have reason to conduct an investigation in law enforcement Number 20-NY-0804?

A. Yes.

Q. Okay. And when did you start that investigation?

A. I believe that was in 2018.

Q. Okay.

A. May, I think maybe May of 2018.

Q. May of 2018. Were you the first officer -- or

the first Detective, rather, than worked on the case?

A. I was, yes.

Q. Okay.

A. Well, possibly. That's still unknown for certain -- for sure, but yeah.

Q. All right. I'll stop you there for now.

So, Detective Fancher, in 2018 when this case was starting to be investigated, was there a CAC or a forensic interview performed?

A. There was according to the Nye County Child Advocacy Center, yes.

Q. Okay. So your understanding was that it did happen somewhere and typically when there's a forensic interview, is it recorded in any way?

A. It is, yes.

Q. Would it include audio and visual?

A. Yes.

Q. Okay. When you're reviewing a sexual assault case involving a child, do you typically view those forensic interviews?

A. Yes.

Q. Okay. Were you able to do that in this case?

A. No, I was not.

Q. And why was that?

A. Because the DVD of the -- of the forensic interview was, nobody found, it wasn't booked, just don't know what happened with the case.

Q. Okay.

A. It's just not --

Q. So it wasn't in your file?

A. It was not available.

Q. Okay.

A. At all. I can't explain. It's never happened to me before, so --

Q. Okay. So, Detective, when you realized that was the case, what step did you take next to continue the investigation?

A. I called the -- contacted the mother and spoke to her.

Q. Okay. And actually I'm going to back up for a second, I'm sorry.

The people involved in this case, can you please give me the initials of the alleged victim?

A. Yes. BT.

Q. Okay. Did you have a suspect in this case as well?

A. Yes.

Q. And what's the suspect's name?

A. The initials or it doesn't matter?

Q. The full name.

A. Sankona Graham.

Q. All right.

MS. ORWOLL: And, Your Honor, similar to this morning, if it's all right, I would ask everyone please to lower their masks for just a minute.

BY MS. ORWOLL:

Q. Detective Fancher, look around, please. And do you see Sankona Graham in the courtroom today?

A. I do.

Q. Okay. And can you please point to him?

A. He's to my right here.

Q. Okay.

A. In the --

Q. What's the one thing he's wearing?

A. He's wearing the Nye County Detention Center, the orange and white striped suit.

MS. BOSKOVICH: And, Your Honor --

THE COURT: I'm sorry to interrupt. I'm going to ask Mr. Graham to put his mask on, please.

THE WITNESS: They just told me to --

THE COURT: Yeah, but we can put it right back on.

THE WITNESS: Oh.

THE COURT: Thank you.

MS. BOSKOVICH: And I'm going to make an objection at this point, Your Honor, as of -- as to foundation. At this point, we have no evidence that Mr. -- or I'm sorry, Detective Fancher has ever had any interactions with Mr. Graham.

MS. ORWOLL: I will lay some foundation.

THE COURT: Okay.

MS. ORWOLL: If the Court will permit?

THE COURT: Yes, I will.

BY MS. ORWOLL:

Q. Detective Fancher, when you're investigating a case -- or rather when you were investigating this case, did you ever personally interact with Mr. Graham?

A. No, ma'am, no.

Q. So how can you recognize him today?

A. So all I had was booking photos.

Q. Okay.

A. And he looks the same with the beard and --

Q. And I'm actually going to ask you to back up just a minute. A booking photo is what?

A. When people are booked into the jail, the photographs are taken.

Q. Okay.

A. And so there was booking photos of him.

Q. And why would a photograph like that be taken?

A. Documentation purposes, you know, for several reasons, I believe.

Q. Okay. And did you see the booking photo in this case, this 20-NY-0804?

A. I didn't see the booking photo in this actual case. I did see the booking photo prior to -- prior to my involvement, there was a booking photo in our system.

Q. So explain that just really quickly. Are you talking about in 2018?

A. Yes.

Q. Okay. And there was a booking photo of Mr. Graham taken at that point?

A. There was a booking photo in our Spillman software, the database that we use. Under the names table, there's a picture. If the person's been arrested before, for example, like convicted felons or anything, any kind of history, there's prior booking photos and that's what I used.

Q. Okay. And did you see booking photos of Mr. Graham in that record?

A. I did.

Q. Okay. And does the person you identified today

in court resemble that person in that booking photo?

A. Yes.

Q. Okay.

MS. ORWOLL: Your Honor, I would ask that the record would reflect the identification of the Defendant.

THE COURT: Okay. Ms. Boskovich, any objection?

MS. BOSKOVICH: Can I just ask Detective Fancher one or two questions on voir dire?

THE COURT: Sure. Ms. Orwoll, do you mind if she does a quick voir --

MS. ORWOLL: Huh-uh.

THE COURT: Okay. Go ahead.

VOIR DIRE EXAMINATION

BY MS. BOSKOVICH:

Q. So after you -- when did you look at the photograph of Sankona Graham?

A. Oh, the first time would be -- that'd be a good question. I would say when I -- when I reviewed the case, when I looked at the case and realized that, you know -- I'm like --

Q. So this year -- or I'm sorry, last year?

A. Just prior to -- I typed out a -- like an arrest warrant. So during that process, that's when I started -- that's when I viewed the --

Q. And you typed in Sankona Graham's name in your -- in the Spillman, a photo came up and that was how you knew what Sankona Graham looked like?

A. Yes.

Q. Okay.

MS. BOSKOVICH: No objection, Your Honor.

THE COURT: Okay. The record will reflect the witness' in-court identification of the Defendant.

MS. ORWOLL: Thank you, Your Honor.

THE COURT: Yes.

BY MS. ORWOLL:

Q. Okay. So the people in the case identified after you realized that there was no DVD, no recording of the forensic interview, what step did you take next?

A. That's when I contacted the mother.

Q. Contacted the mother. Okay. And did you ever speak with BT, the child, in this case?

A. Not at that point immediately, but I did so right afterwards, yes.

Q. Okay. So you talked to the mom first and then to BT?

A. Yes.

Q. Okay. Now, how old was BT when you spoke to her?

A. 16 when I spoke to her.

Q. Okay. Do you know BT's date of birth or do you remember BT's date of birth?

A. It's January -- or not January, it's in '03. Oh, I want to say maybe August, but I'm guessing. I know it was in '03. I want to say August of '03 or May of '03. It's -- I think it's 2003, though. I could be off.

Q. Would it refresh your memory if I showed you the police report in this case?

A. Yes, yes, it would.

MS. ORWOLL: Your Honor, may I?

THE COURT: Yes, you may.

BY MS. ORWOLL:

Q. I'm going to ask you to look and then look up and tell me if it refreshes your memory?

A. Okay.

MS. BOSKOVICH: And, counsel, what Bates stamp page was that?

THE WITNESS: Yes, yes, that's exactly. I was right. I didn't have the exact date, though.

BY MS. ORWOLL:

Q. So, sir, you said it was what date?

A. It was in -- it was August 3rd of 2003.

Q. Of 2003.

A. Yes.

Q. All right.

MS. BOSKOVICH: I don't think that's quite right.

MS. ORWOLL: August -- I'm sorry.

BY MS. ORWOLL:

Q. August, what's the date?

A. 11th, 2003.

Q. August 11th, 2003?

A. Yes, sorry.

Q. Okay. So when you spoke to her and she was 16, that would have been this past year, 2020; correct?

A. Correct.

Q. Okay. So in this same time of year, spring of 2018, she would have been 14 years of age?

A. Correct.

Q. Okay. Now, when you spoke to BT, did you tell her what the investigation -- let me rephrase that.

When you spoke to BT, did she inform you of anything had happened between herself and Mr. Graham?

A. She did.

Q. Okay. I'm going to ask you to go through exactly what she said in some detail.

Now, did she say these things to you out loud?

A. No.

Q. Okay. So how did she tell them to you?

A. Well, she had -- she ended up emailing me a written statement.

MS. BOSKOVICH: Your Honor, I apologize to interrupt. This is probably going to be a recurring objection of mine, but I am going to object to the -- any statements that Detective Fancher is making on behalf of the -- of BT.

I do know that there is a statute that allows Ms. Orwoll to bring in some evidence this way. However, I think, especially given BT's current age, the testimony would be better brought in with her. So she is, I believe, 17 now.

Typically, I think this -- my opinion at least is the statute is intended for super minor children, like single digits. Being that BT is 17 years of age, I think it would be best laid out by her rather than from a third party. And if we can just make a note that that's a recurring objection so I don't have to say that every time.

THE COURT: Ms. Orwoll?

MS. ORWOLL: Yes, Your Honor. Specifically to answer the scope of this statute, NRS 171.196, Section 6, it specifically speaks about hearsay evidence consisting of a statement made by the alleged victim of the offense.

One of the types of preliminary hearings you can use a statute at is Section A, a sexual offense committed against a child who is under the age of 16 if the offense is

punishable as a felony.

Your Honor, the amended criminal complaint here shows that Mr. Graham is currently charged with two counts of sexual assault with a child under 16, one count of lewdness with a child under the age of 16.

That is exactly the type of case for which this preliminary hearing exception was created. Your Honor, this is a very recent amendment as well, so the Nevada legislature, with all of the current science we have about a child psychology and all of this is something that they decided to adopt for the State of Nevada.

Your Honor, I've seen -- I can't remember the case number, but I've read many transcripts wherein -- in this courtroom, Your Honor has admitted child hearsay statements and that's been the sole basis on occasion to find probable cause for an event like this.

And, you know, Your Honor, the other thing is really, really (indiscernible), we know there's no confrontation clause right at prelim. There's no rights under Crawford at prelim. The Nevada Supreme Court stated as much in *Sheriff v. Witzenburg*, which is 122 Nev. 1056. The courts have said, the legislature has said and, Your Honor, I'm asking you to permit the State to admit the child's hearsay under the statute.

THE COURT: Okay. I'm going to overrule the objection of defense. I do understand the objection. It's noted for the record, Ms. Boskovich.

MS. BOSKOVICH: Thank you.

THE COURT: But pursuant to 171.196, it is allowed.

MS. ORWOLL: Thank you, Your Honor.

THE COURT: Thank you.

BY MS. ORWOLL:

Q. Back to where we were. So you had stated that she ended up emailing you?

A. She did, yes.

Q. Okay. Did you ask her to email you?

A. A statement -- I may have offered. I know she was uncomfortable talking about it. She -- it may have -- it may have been my idea. I'd have to review my report. But she ended up emailing me her statement.

Q. Okay. And when you discussed her sending you that email, did you inform her what her obligations were in making that kind of statement over email?

A. Yes.

Q. What did you tell her?

A. That she was to do it uninterrupted by herself, but with someone who can be there to witness, you know, her

filling out the statement, which it was -- I believe her grandmother was there. But she wasn't, you know -- do it by herself, that way not to -- back to forensic interviewing, not to compromise, you know, to keep the integrity of her statements.

Q. And so your training as a forensic interviewer helped you to get that knowledge across to her?

A. Yes.

Q. Okay. So when you reviewed the email statement that she made, did she disclose any incidents between herself and the Defendant?

A. She did.

Q. Okay. What were those incidents?

A. The incidents, it was while she was playing. It was the two years prior, while she was playing on her iPad -- I think it was her iPad in the living room.

Q. I'm sorry, I'm going to stop you already.

A. Okay.

Q. When you said "two years prior," do you mean the original 2018 investigation?

A. Yes. So there's two statements that she had. The one that she gave -- emailed to me, I also compared with a statement that she made initially, the -- during the actual initial investigation.

Q. So --

A. And they were consistent, very consistent.

Q. There was another statement made by her in 2018, even though the present interview is gone, but there was another statement that she made?

A. Yes.

Q. Okay. Was it a written?

A. It was a written statement.

Q. A written statement? Okay.

So in looking at that 2018 statement, you're saying, is what you compared the email to?

A. Yes.

Q. Okay. And so in the email, in the statement, were the disclosures the same?

A. They were, yes.

Q. Okay. And what were the disclosures?

A. There was some fellatio she said that Mr. Graham performed on her.

Q. When you say "fellatio," would we call that oral sex?

A. Yes.

Q. Is the term for performing that on a female anatomy "cunnilingus"?

A. Cunnilingus, yes. That'd be a better way of

putting it.

Q. So you stated -- any other actions that she disclosed?

A. Digital penetration.

Q. And when you say "digital penetration," what body part of Mr. Graham's would it have been?

A. The fingers.

Q. Okay. And what body part of BT's?

A. Her vagina.

Q. Okay. Any other acts disclosed?

A. Yes. There was a towel that was put over her eyes and then there was some pain that she felt that can be reasonably presumed it was penile sex.

Q. Okay. So I'm just going to go through a little bit. You said --

MS. BOSKOVICH: I'm going to object to speculation, his phrasing "reasonably presumed to be penile sex."

MS. ORWOLL: And, Your Honor, I'm going to go through that in some detail.

THE COURT: Okay. I'm going to sustain the objection. You'll go ahead and break it down a little bit more.

MS. ORWOLL: Thank you.

BY MS. ORWOLL:

Q. So, Detective Fancher, the last incident, you just told me a towel was placed over her eyes?

A. Yes, over her face.

Q. Over her face. Okay. So when a towel was placed over her face, what did BT describe experiencing?

A. So her -- she stated that she -- the towel was placed over her face and then she felt a burning stretching in her vagina. It was painful, painful enough that she had to hold her breath.

Her initial statement was that either it was -- she thought it was, quote, "either his thumb or his dick," and then the second most recent statement, she didn't exactly say it in those words. But it was the same description of pain. It was a stretching burning type of pain that she was feeling down there.

Q. Okay.

A. Associated with some other like noises and grunting that she said like as if he was struggling.

Q. She said Mr. Graham was making those noises?

A. Yes, while the towel was still over her eyes, she described in her statements sounds that he was either struggling or like making some type of noises.

MS. BOSKOVICH: (Indiscernible).

THE COURT: Sure.

BY MS. ORWOLL:

Q. And did BT tell you where these incidents occurred?

A. Yes, she did.

Q. And where was that?

A. That would be the master bedroom bathroom.

Q. Okay.

A. Master bathroom, yes.

Q. Of a house?

A. Yes.

Q. Okay. And where was that house?

A. I don't recall the exact address, but I believe it was on the north end of town. I'd have to --

Q. When you say "the north end of town," do you mean the Town of Pahrump?

A. Yes, sorry.

Q. Is that here in Nye County, Nevada?

A. Yes, it is.

Q. Okay.

MS. ORWOLL: Court's indulgence.

THE COURT: Sure.

BY MS. ORWOLL:

Q. And I'm sorry if I'm repeating myself. I don't

remember if I asked.

In the statement that she made in 2018, they were living in that house in Pahrump in 2018?

A. Correct, yes.

Q. Okay. And when in 2000 -- when did the event occur? Did it occur in 2018?

A. It did, yes.

Q. Okay.

A. Her initial statement said within a month of -- that they had a domestic and that's how we first got the knowledge of the allegations, the sexual allegations.

Q. Okay.

MS. ORWOLL: Your Honor, I'm going to pass the witness.

THE COURT: Sure. Ms. Boskovich.

MS. BOSKOVICH: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. BOSKOVICH:

Q. You said you've been in law enforcement for about 11 years?

A. Yeah, it would be just about under 11 years. Yes, ma'am.

Q. Prior to being with NCSO, were you at any other law enforcement agency?

A. No, no, ma'am.

MS. BOSKOVICH: I apologize, Your Honor.

THE COURT: Sure. No problem.

BY MS. BOSKOVICH:

Q. I'm sorry. You said you were or were not with any other law enforcement agencies?

A. I was not, no.

Q. And then you became a detective after about five years as a patrol deputy?

A. Yes, ma'am.

Q. And I apologize if Ms. Orwoll covered this already, but when you become a detective, I assume there's additional training and background training protocol you have to go through?

A. Yes.

Q. Can you expound on those a little bit?

A. Yes. So they send you to trainings. I've been trained -- sexual assault training. I think I've been to two in metro, sexual assault investigation classes. They send you to homicide school just a few months ago.

I've been to Atlanta for the ICAC, internet crimes against children's task force trainings, part of the task force, just -- there's just a lot of -- a lot of -- anything related to major crimes, they would send me to

training.

Q. Is that training -- is that training you do prior to becoming a detective, or once you become a detective, you start going to all these trainings and getting more training under your belt?

A. Once you become a detective, that's when they start sending you to the miscellaneous training.

Q. Okay. And you described major crimes. Are you a specialized Detective or do you just handle all unrelated crimes?

A. So we have -- I do have a specialization. It would be the internet crimes against children. That's part of the -- you know, the task force in child pornography, and then specifically over the last six years, I've been dealing mostly if it's a sexual related offense, child or not, I was usually involved in it, you know.

But as far as the scope of my job is any major crimes. So, you know, if there's a homicide, you know, sometimes I'm involved in it, so --

Q. And compared to like Las Vegas or Henderson, Nye County is a pretty small law enforcement (indiscernible)?

A. Correct, yes.

Q. And you indicated you had done a lot of training focused on internet crimes against children, sex assault

against children, sex assault in general?

A. Yes, ma'am.

Q. So when you're investigating those types of cases, you know generally what to look for?

A. Yes. I mean, I'm always learning and I've got a lot more to learn, but yes.

Q. You know who to talk to generally when you're investigating these type of crimes?

A. Yes.

Q. What certain questions to ask?

A. Yes.

Q. And you are trained in report writing; correct?

A. Correct, yes.

Q. That's something you would be trained as a general patrol officer?

A. Yes.

Q. Patrol deputy.

So you know it's important to include as many details as possible in your report?

A. Yes.

Q. And it's important, generally a good strategy at least, to write the reports as soon after an incident occurs as possible so everything is fresh in your mind?

A. Definitely.

Q. Because, you know, as time passes, memories can fade?

A. Um-hum.

Q. Some details can be missed or forgotten; right?

A. Correct, yes.

Q. And on direct you talked a bit about CAC interviews?

A. Correct, yes.

Q. And can you tell me the acronym for CAC?

A. Well, it's the internet crimes against children.

Q. Oh, that's (indiscernible)?

A. I'm sorry, Child Advocacy Center. I'm sorry, I mixed those two up. Child Advocacy Center, the forensic interviews happen at the Child Advocacy Center.

Q. Okay.

A. And then I-C-A-C, ICAC is a wholly different.

Q. And is that -- those interviews happen here in Pahrump or in Las Vegas?

A. The interviews that we attend like for my investigations or the training?

Q. Yes, the CAC interviews that you --

A. They're conducted here in Nye County, in Pahrump, yes.

Q. Have they always been conducted here or do they

have to go to Las Vegas sometimes?

A. There has been occasions that we've sent them to Las Vegas, but that's usually a jurisdictional thing. To my knowledge, at least since I can remember, it's always been done here.

Q. Okay. And what's the typical procedure surrounding when an interview -- when the CAC interview is conducted?

A. So when a CAC interview is conducted, we used to have it on DVD, like in this case it was, you know, usually burned on DVD. But now we use, because of the sensitivity and the nature of the crime. It's uploaded into a software system that we use called Videnex or Videnex.

Q. Okay.

A. And so we have to request through our chain of command to get access to the -- to that same interview that we just attended.

Q. Okay?

A. It's pretty super confidential and then, you know, review that, type the report just to make sure that we're not missing anything, you know, just like you said, memory.

Then, you know, what do you have, do you -- you know, there's just -- generally there's more follow-up

investigation afterwards and sometimes there is and sometimes there isn't. So it depends on the circumstances.

Q. Is there a general policy for how quickly after an incident is alleged to have occurred or how quickly you're involved in the case, how soon after that does the interview occur?

A. So as far as policy, we've got policies coming in like -- I couldn't tell you the exact policy or if it was a directive, but if -- I wouldn't not be -- there should be one in place if not.

Q. Okay. Is it only sex crimes that require CAC interviews?

A. No.

Q. What other types of crimes require CAC interviews?

A. Any offense, physical abuse, sexual abuse when it comes to a child and the CAC's are only done on child victims, not, for example, if there's another child suspect, you wouldn't conduct a forensic interview on a child suspect. So just specifically for any type of physical or sexual abuse on a child who is the victim.

Q. And is it somebody at NCSO that requests those CAC interviews (indiscernible)?

A. Yes.

Q. I think you indicated on direct that you observed quite a few CAC interviews?

A. I have, yes.

Q. Is it typical that there's always either a Detective or a deputy from NCSO observing the CAC interview?

A. Absolutely. Every time I -- like I can think of except for maybe one or two since I've been a Detective.

Q. And are you in the room with the child in the interview?

A. No.

Q. (Indiscernible)?

A. No.

Q. So you're watching from a separate room, but you can see and hear everything that's going on?

A. Yes, the observation room.

Q. Do you have a direct line of communication to the interviewer?

A. I do.

Q. So at some point, you could be saying, hey, ask the kid this or --

A. Generally, you can, yes. It opens it up. I'm -- generally that's something I don't -- I usually let the professional do their job and -- but I do utilize that when I have to if it's necessary.

Q. And then after the report is -- or I'm sorry, after the interview is completed, does the interviewer write a report?

A. No.

Q. Do the NCSO write a report, whichever personnel?

A. It would be the Detective that was on it would write the report, yes.

Q. So you said that you, yourself, are a forensic interviewer?

A. Yes, I went through the training years ago. So, yes, it's not a common practice thing, it's just more of tools in your toolbox type of thing, I guess.

Q. But you're not out there conducting CAC interviews all the time?

A. No.

Q. Okay. So you said you did that quite a few years ago?

A. Yeah, it's been four years maybe, five years since I've been to that --

Q. (Indiscernible)?

A. -- forensic interview training to get certified. But, you know, you get little bits and pieces of the training here and there from miscellaneous courses, but yeah, it's been -- it's been quite a few years since that.

Q. Okay. Let's jump forward -- or backwards, I guess, to March of '21. You indicated in your report that you started reviewing this case on March 7th of 2020; correct?

A. Correct.

Q. What prompted you to (indiscernible)?

A. So I was going through -- because we had our -- we were changing the way we did case management and then we had new supervisors that were coming in and everything. And so I'm going through -- just every once in a while, I go through like everything just for these types of reasons and came across this one. And I'm like, I don't recognize the name or anything about it.

And I started asking around, sent an email, sent an e-mail to Nye County Child Advocacy Center, like, hey, what's the story with this. And then I just had to end up calling the mother.

Q. Did Nye County child -- the CAC, did they have any recollection of this interview?

A. I'm not sure about recollection, they had documentation.

Q. So the interview was conducted?

A. According to their documentation, it was conducted and they even had me as the one that -- who attended it, so . . .

Q. Do you happen know when the interview was conducted?

A. I don't. I could get that documentation and I probably do have it somewhere.

Q. It's not (indiscernible)?

A. It's documented somewhere, I just don't have it off the top of my head.

Q. So this case just kind of fell to the wayside and the file kind of got lost in the shuffle?

A. I wish I knew exactly what happened. Again, it's never happened to me. There's some questions I don't really -- they put my name on it, I probably was there, and yeah, unfortunately it's not my desire to -- results I like in investigations.

Q. When you found the file, what documents were in it?

A. Just the -- in the original, when it was -- the case was pulled, it had Sankona Graham as the suspect and the case number and the mother's name and I believe the child's name, but very limited information.

Q. Do you happen to remember what that original case number was?

A. 18-NY -- oh, I just saw it. I couldn't remember off the top of my head, but I can get that.

Q. I just noticed that 18-NY number wasn't actually reflected in your report.

A. Yeah, I noticed that, too.

Q. Is it typical that cases get assigned new LEA numbers?

A. There are some -- there are like situations where that, you know -- for like the purpose of this one, it was just -- we didn't know exactly what happened.

Q. Okay.

A. And so we just pulled the case number.

Q. It was easier to start fresh?

A. Just start fresh and then as long as you reference the case number, of course which in the report, I see that I didn't, but --

Q. Okay. So when you picked up the file, did you have a list of who the original responding officers were?

A. No. If I can remember correctly, it was a case that was pulled at the Nye County Sheriff's Office. And then I was involved in just the responsible officer, but that's it.

Q. Were there -- so there were no reports from any other officers?

A. So there was the report from the domestic when the -- when the child made the disclosure after the domestic. When we initially got involved at the very beginning, there

was obviously patrol officers that were involved in that.

What probably happened is that I pulled a case number, I don't know what happened, but there was -- yeah, there was patrol officers, other investigators that were involved in the domestic when she made the disclosure.

Q. So if I'm understanding correctly, there was a domestic incident that happened, officers responded to the domestic incident.

In some -- at some point in that investigation, BT made a disclosure to mom or officers?

A. I believe it was the officer and there was a written statement filled out.

Q. So BT actually filled out a statement and signed?

A. Yes.

Q. Okay. Have you provided that to the DA's office?

A. It should be in Spillman in the file section. It should -- definitely should be in the DA's office, though.

Q. I would love to have that at some point if it exists. Not saying it doesn't exist, it's just I don't have it.

Okay. So when you -- I'm going to jump around for a second, but when you ultimately forwarded all of this to the DA's office, did you include all of the information about that domestic case, all of those police reports and witness

statements and send it over to the DA's office?

A. I'm not sure if I really -- I believe, if I can remember correctly as far as my report, I noted, you know, how we got -- came to know about it, talking about the domestic. But as far as anything in great detail, much more than that, I would say no.

Q. Do you know if Mr. Graham was ever arrested for that domestic?

A. For the domestic, I don't know if he was arrested or not. I do not know.

Q. So after you reviewed the file, you called Child Advocacy Center, they couldn't come up with the DVD, so then you called BT's mom; correct?

A. Correct, yes.

Q. And her name is Sarah?

A. Yes.

Q. You spoke to her the same day that you picked up the file?

A. Picked up what file?

Q. The March 7th date when you found the file on your desk and called her that same day?

A. So I didn't -- it wasn't -- I didn't find the file on my desk. It was more of like just skimming through all the cases that I have on my computer.

Q. Okay.

A. But, yes, I did.

Q. I thought it was a physical file you found?

A. No, no, just going through all the -- trying to clean up all my -- trying to go through everything and make sure.

Q. Sarah also remembered BT participating in a forensic interview?

A. Yes.

Q. You asked her if BT would be willing to conduct a second forensic interview; correct?

A. Correct.

Q. Even though it was two years after the incident?

A. Yes.

Q. And BT's mom said that she didn't feel comfortable with that?

A. Correct, yes.

Q. She also said that she didn't feel comfortable with you going to their house to speak to BT?

A. Yes. She was -- yes, I don't remember exactly what the -- what the reason was behind that, but it was -- I'm not sure if it -- if she was comfortable or -- yeah, I think -- I don't remember exactly what, but yes, she was uncomfortable with that.

Q. At some point, though, you figured out that BT was over at her grandma's house?

A. Correct, yes.

Q. And that's when you went over there and spoke to BT and her grandmother?

A. Yes.

Q. Did you speak to BT's grandmother about the need for her for a new written statement?

A. Yes. Well, I may have just had a conversation with -- no, her mom was there -- her grandmother was there, too. Yes, I did.

Q. You told grandmother it was very important that BT fill this out on her own?

A. I do remember something like that, but I'd be, you know, not -- I don't want to jump to say exactly what happened, what I said to her. But I remember that the nature of our conversation and my visit was pretty clear is that she's to do this by herself.

Q. You asked her grandmother, though, to sign as a witness on the -- on the form; correct?

A. Correct, yes.

Q. And I guess I should back up. You did leave a physical blank paper form?

A. Yes.

Q. And later, was it that same day that you received the email from BT or was it a few days later?

A. I couldn't -- I couldn't -- I can't recall exactly what day it was.

Q. But at some point, you received an email purportedly from BT?

A. Yes.

Q. Do you remember the address that that email was sent from?

A. I do not, no.

Q. Was there a PDF attachment of the form that -- could you tell that BT, herself, handwrote this form, signed it, scanned it in, or did she just type up an email to you?

A. I don't recall. I probably should. I just -- I want to say she wrote it out and then sent me an email. I don't know if -- I think there may have been some dialogue back and forth on the email. I'd have to review that part, though.

Q. As you sit here today, though, you can't remember if she sent -- if you have a PDF of the written form?

A. Oh, I --

Q. With her signature on it?

A. I'm sorry. Yeah, I would have a PDF of that, yes.

Q. If you have a PDF of the written form?

A. Oh, like a --

Q. -- that has the signature on it?

A. I'm sorry. Yeah, we would have a PDF of that, yes.

Q. And I'm sorry if this is repetitive, I just want to (indiscernible) --

A. No, that's okay.

Q. So BT has this physical form in her hand, she fills it out, signs it, scans it and emails you a PDF version of that form?

A. Yes. So I want to say that's exactly what happened. I mean, yes. Yeah, because, I -- yeah, how else would she witness -- she would have to witness -- yeah, I want to say that's correct.

Q. Well, grandmother didn't actually witness the statement, though; did she?

A. What do you mean?

Q. She didn't sign as a witness, obviously?

A. So I -- I'd have to look.

Q. Would it refresh your memory to see her (indiscernible)?

A. If her signature is not on there, her signature is not on there.

Q. So that's the thing, I don't have the actual form. I just have what you typed up into your report.

A. Okay.

Q. So if that form was sent, would it be in Spillman?

A. It would be in Spillman.

Q. Would the DA's office have access to that?

A. Yes.

MS. BOSKOVICH: Your Honor, may I approach the witness?

THE COURT: Sure.

MS. BOSKOVICH: And I'm on page 4 in the middle.

MS. ORWOLL: Thanks.

BY MS. BOSKOVICH:

Q. If you just want to read that part.

A. Oh, I see that. (Indiscernible) you were asking me.

Q. Sorry (indiscernible)?

A. No, that's okay.

Q. Okay. So based on that, does that refresh your recollection of whether the grandmother signed as a witness to the statement?

A. Correct. She was essentially signing as a witness that -- not what she was saying on the written

statement, but that BT was the one that filled out the statement if that makes sense. Yes, what you're saying -- what you just said, yeah. The answer would be yes.

Q. Sorry.

A. You're okay.

Q. I guess at some point I'm just going to have to see if this form exists. The way I'm understanding your report, it does not sound like grandmother witnessed, signed on the form as a witness to the -- to the statement.

Do you -- do you recall the input on it?

A. I recall her grandmother signing her name as a witness on it, but not -- but that was it, nothing as far as, you know, reviewing her work or knows what she -- but, again, I have to review that PDF format in her file, too, so --

Q. And at this point, you're pretty sure that she scanned in the handwritten form to you rather than just typing everything in an email?

A. Yes.

Q. Okay. Were you able to do just a quick comparison of the handwriting from 2018 statement to the 2020 statement?

A. I'm not sure if I like cognitively did it.

Q. Okay.

A. Just comparing them, but I mean, I think I would

-- I would like to think I would notice a difference, but --

Q. You're certainly not a handwriting expert?

A. Exactly.

Q. So after BT sent you the statement, she advised you that she destroyed it?

A. Yes.

Q. Didn't let anybody else read it?

A. Correct.

Q. In comparing the two statements that BT submitted, did you -- actually, let me back up for a second.

When you requested the new statement from her in 2020, had you not found the 2018 statement at that time?

A. No, I believe I had knowledge of that statement.

Q. You just wanted to talk to her again and make, you know --

A. Yes, I wasn't comfortable with just the initial statement.

Q. Okay. Did you notice any inconsistencies with the two statements?

A. Nothing significant as far as -- nothing that I recall that jumped out at me at least.

Q. You didn't find the 2020 statement to be significantly more detailed with the --

A. Well, it may have had more details, yes. As far

as inconsistencies, I don't recall anything inconsistent.

Q. Okay. But --

A. I would presume that it would be more detailed given the fact that it just happened.

Q. The -- you would presume that the 2018 statement would be more detailed?

A. Well, if that's what you're saying, if there's more details in that statement, then that would make sense, too, but --

Q. As you sit here today, though, you can't remember which of the two statements was more detailed or --

A. They both had a lot of details. Some may have been a little different, but nothing that -- you know, that I found to be like of great importance or significance.

Q. (Indiscernible) according to what you gathered in the statements and reports that you have, deputies came to the house or the residence, they responded to a domestic where -- who was the adverse party in that domestic; do you recall?

A. I want to say the mother.

THE COURT: Ms. Boskovich, I'm sorry to interrupt, but Mr. Graham apparently needs to take a short recess --

MS. BOSKOVICH: Okay.

THE COURT: -- to use the restroom.

MS. BOSKOVICH: That's fine.

THE COURT: So we'll break for about five minutes. We'll be in recess until -- we'll come back at 3:10.

(Recess.)

THE COURT: All right. We're back on the record in 20-CR-01499. Ms. Boskovich, you may resume.

MS. BOSKOVICH: Thank you, Your Honor.

BY MS. BOSKOVICH:

Q. And again, you are unsure who the original responding deputies were that BT made the disclosures to?

A. Correct, yes. I believe it's in the -- I mean, I have that information, it's just making sure I don't cross investigations. We go through a lot of --

Q. I'm wondering if -- I mean, it sounds like these two cases, the domestic and this case are very much intertwined. So I'm just kind of wondering out loud if that domestic file or report has a lot of information that might be pertinent to this case? So I --

A. Yes, and that information would have -- it would have probably been best if I had put that Case Number down.

Q. And at this point, you do believe you have two handwritten statements from BT from 2018 and --

A. Correct, yes. And I'll go and review and I'll add some additional supplements and try to --

Q. Okay.

MS. BOSKOVICH: Court's indulgence, Your Honor.

THE COURT: Sure.

MS. BOSKOVICH: I pass the witness, Your Honor.

THE COURT: Okay. Ms. Orwoll.

MS. ORWOLL: Just very briefly.

THE COURT: Sure.

REDIRECT EXAMINATION

BY MS. ORWOLL:

Q. Detective Fancher, in either of the two statements or in any of your conversations with BT, did she give any impression that she wanted any of these acts to occur?

A. No.

Q. Okay. Can you remember if she said anything specifically that would support that idea?

A. That would support that she wanted this to happen?

Q. Or that she -- either way, that would support either?

A. She was extremely uncomfortable about, you know, like her grandmother, for one, seeing what she wrote down. You know, she was uncomfortable about having to obviously go -- undergo another like forensic interview and

uncomfortable situation for her. But other than like -- off the top of my head, I can't think of it.

Q. Okay. Let me back up a little bit. In the statement, other than describing the three acts that we talked about, did she describe what they were doing before that point?

A. Yes.

Q. Okay. And what was that?

A. It was some type of a chat room or text message or whatever on the iPad.

Q. Whose iPad?

A. It was her iPad and he was in the other room, I believe, on some other device. And they -- he had changed the name to "Daddy," and she was uncomfortable with that.

Q. He had changed the name meaning the contact in her phone?

A. Yes.

Q. Or her iPad rather?

A. So he had told her to -- through this chat, whatever form they were using, he had told her to come into the master bedroom bathroom to get measured and that he also changed her -- his name to "Daddy." She saw that, was uncomfortable with it and changed it back to "Dad."

Q. I just want to make sure I understand where he

changed the name. It was -- it was on his own phone or her phone or her iPad?

A. It was on her or iPad.

Q. All right.

A. He had changed the name on her iPad.

Q. And she said she was uncomfortable with the name "Daddy"?

A. Yes.

Q. Okay. After they went in the bathroom, is that when all the events we previously talked about occurred?

A. Correct.

Q. Okay.

MS. ORWOLL: And I have nothing further for this witness, Your Honor.

THE COURT: Okay. Ms. Boskovich, any recross?

MS. BOSKOVICH: Just a couple cleaning up issues I forgot to --

RECROSS-EXAMINATION

BY MS. BOSKOVICH:

Q. Was there a SAIN exam performed on BT?

A. No, there wouldn't have been.

Q. Neither an acute, nor a nonacute?

A. Correct. There was -- there was not any of the -- none of those were done, no.

Q. Okay. Were -- as detectives, you are -- you wear body worn cameras; correct?

A. Correct.

Q. Was it standard procedure to wear body worn cameras in April or May of 2018?

A. As far as for detectives, I want to say not yet. It was probably not too long after that. But I wasn't even ever on scene, so I would not have had any -- I wouldn't have any body cam footage.

Q. Did the patrol deputies have body cams?

A. Yes.

Q. At that point in time?

A. Yes.

Q. And I'm not entirely sure how the body cam footage is saved, but have you -- or is it even possible for you to pull up with your body cam software and put in the original ATNYLA number and see if anything comes up to that?

A. Absolutely. So I have to -- for me to request body cam footage, I have to go through my boss.

Q. Right.

A. And they can release that and then I can review the body cam footage.

Q. So I guess there is at least a way to figure out if any body cam exists for this original call?

A. Yes. And I -- there must -- there should definitely be body cam footage.

Q. But you haven't done that yet?

A. No, I haven't done that.

Q. And at one point, you on your original direct, you said something about -- I think the phrase was "second most recent statement." How many statements has BT given to you?

A. Two written statements. Yeah, two statements.

Q. Okay. So those two we discussed, those are the only two she's given?

A. Off the top of my head, yes.

Q. Okay. Do you recall who else, if anyone, was home during the time these incidents were alleged to have occurred?

A. Yes. So the initial was that the twins, they had twin sisters.

Q. Okay.

A. She initially stated that -- oh, I wish I could think of their names. Anyways, one of the twin sisters was there, but she had mixed the two up.

Q. Okay.

A. The -- you know, twins and she was -- it was just right after the domestic so, you know, she may have gotten

confused.

Q. Okay. So that would be an inconsistency at least whether major or minor?

A. Yes.

Q. (Indiscernible)?

A. Yes.

Q. Did both of her statements address the iPad name being changed to "Daddy"?

A. I know the recent one, the second one, but I don't recall the first one, if there was -- may or may not be, but I do -- I think the most recent one was.

Q. And do both her statements reference Sankona wanting to measure BT?

A. I believe that was in both, but pretty sure. And that may not have been in the first one, but yeah.

Q. Did she say anything about -- do you recall rather if she said anything about having to do this or else she would be -- or else she would be abused?

A. Yes.

Q. Was that in both statements?

A. Not in those exact words, but I believe that's -- there was -- they -- there was by force, but not physical force by way of -- she in fear of what would happen if she --

Q. But she indicated that he, meaning Sankona, he

didn't say he would abuse me, but I had a feeling?

A. Correct.

Q. So he had never made any threats that she disclosed to you about being abused?

A. Correct.

Q. It was just a feeling that she had?

A. Yes.

MS. BOSKOVICH: I will pass the witness.

THE COURT: Okay. Ms. Orwoll?

MS. ORWOLL: No further questions, Your Honor.

THE COURT: Okay. Is the witness excused?

MS. ORWOLL: Yes, Your Honor.

THE COURT: Okay. Thank you so much for coming in, Deputy Fancher. You're free to go.

Ms. Orwoll, do you have any other witnesses?

MS. ORWOLL: No, Your Honor.

THE COURT: Okay. The State rests?

MS. ORWOLL: Yes, Your Honor.

THE COURT: Okay. Ms. Boskovich, the State has rested. Have you talked to your client about testifying today?

MS. BOSKOVICH: I have, Your Honor. Against my recommendation and judgment, Mr. Graham will take the stand.

THE COURT: So, Mr. Graham, before you testify, I

just need to understand that by testifying, you are, in fact, waiving your Fifth Amendment right to remain silent and your Fifth Amendment right against self-incrimination.

You do have a right to testify, but by invoking that right today, you're, in fact, waiving other constitutional rights and it appears against the advice of counsel.

MS. BOSKOVICH: Okay. He's decided that he will waive that right.

THE COURT: He will waive the right to testify?

MS. BOSKOVICH: Yes.

THE COURT: He's going to invoke his right --

MS. BOSKOVICH: He is.

THE COURT: -- to remain silent and against self-incrimination?

MS. BOSKOVICH: Yes, I'm sorry.

THE COURT: That's okay.

MS. BOSKOVICH: With that, we have no other witnesses and we will rest as well.

THE COURT: Okay. All right. Closing arguments?

MS. ORWOLL: Yes, Your Honor.

In this case, Mr. Graham is charged with three separate sex offenses with a child under the age of 16. I'll briefly go through the elements.

Your Honor, under NRS 200.366, a sexual assault with a child under the age of 16 occurs when a person willfully and unlawfully subjects another person, a minor under the age of 16 years to sexual penetration against the victim's will or under conditions in which said Defendant knew or should have known the victim was mentally or physically incapable of resisting or understanding the nature of the conduct.

So, Your Honor, we have three -- two separate incidents of sexual assault in this case. The first being the act of cunnilingus that I have detailed in Count II, and, Your Honor, it does not matter pursuant to several Nevada Supreme Court cases, including Hutchins and Mays v. Sheriff that no amount of penetration into the vaginal canal is necessary. Contact of any kind that can be called cunnilingus is sufficient.

So, Your Honor, the State would submit that it's met its burden as to Count II. The sexual assault with the act in Count I, Your Honor, it would be the insertion of either a thumb or a penis into the victim's vagina. That would be penetration, however slight.

We heard from Detective Fancher that BT described a sensation of burning or stretching and, Your Honor, I would submit that is slight or marginal evidence that penetration

occurred with a penis or thumb.

And if Your Honor would permit me, I might -- if I might -- I'm sorry, amend that where it says by an -- the second to last line on the first page, "by inserting his penis and/or fingers and/or thumb and/or an unknown object into her vagina."

And I know we didn't -- we had testimony essentially that there was a towel over her face and she felt the stretching, but didn't know what exactly it was at this point. And so I would submit that the idea that it could be an unknown object, a dildo or some other thing, I would submit. If Your Honor will permit me, I would like to amend that Count I.

THE COURT: Okay. One second, Ms. Orwoll.

Ms. Boskovich?

MS. BOSKOVICH: I'm going to object to that. We -- on that specific allegation, we did get testimony from Detective Fancher that she indicated that it was either his, to quote her directly, "thumb or dick" that were entered. She did not make any reference to any other potential objects. She knew it was either one or two things, so I would object to that amendment.

THE COURT: Okay. Ms. Orwoll?

MS. ORWOLL: Yes, Your Honor. I would -- I would

say that her statement that it was either his thumb or his dick is not specific enough to preclude the possibility. She was 14 years old. This was a sensation that was painful. She doesn't know exactly what it was and there was a towel over her face.

She did hear him grunting, making some kind of noises of effort, but she does not potentially have enough information to know exactly what parts other than to make an educated guess with the senses she had access to.

THE COURT: I'm going to go ahead and grant the State's motion to include that language under Count I. So do you want me to interdelineate, Ms. Orwoll, the original complaint?

MS. ORWOLL: Yes, the Amended Complaint.

THE COURT: The Amended Complaint. Okay. So I'm going to -- between lines 23 and 24 of the Amended Criminal Complaint filed today, after the words "and/or thumb," I'm going to insert -- going to have to be outside of the margin because there's not enough room, "and/or foreign object." Is that the --

MS. ORWOLL: I don't --

MS. BOSKOVICH: Unknown object.

MS. ORWOLL: An unknown object.

THE COURT: And/or unknown object.

MS. ORWOLL: Correct. Thank you.

THE COURT: And that will be -- obviously you'll have to include that in your Information, Ms. Orwoll, but I have made that amendment for you.

MS. ORWOLL: Thank you very much.

THE COURT: Okay. Go ahead.

MS. ORWOLL: And with regard to the last count, Count III, which actually chronologically sounds like it was possibly the first event was the lewdness count. Now, technically, I believe I have enough information to amend this to a sexual assault as well.

Detective Fancher testified that BT stated that he digitally penetrated her. So penetration, however slight, I would argue would be a sexual assault. However, I'm not going to do that.

I'm going to leave it as lewdness and I will -- I will say that I believe we've met the evidence -- the burden under NRS 201.230, that an act of lewdness with a child under 16 took place because of this verbiage, he did willfully, unlawfully and lewdly commit a lewd or lascivious act upon the body of BT.

I would argue that inserting your fingers into a vagina is a lewd or lascivious act with the intent of arousing, appealing to gratify the lust or passions of the

self or the said child.

And, Your Honor, I would argue that that is shown because not only did he commit this act, go under, you know, her clothing and penetrate her, but then he continued the act of cunnilingus, the act of unknown sexual penetration where he was making sounds of effort and, Your Honor, I think we can all infer what those sounds would have been.

I would say that with regard to all the acts, the State has met its burden that these acts occurred. We did get testimony that BT was 14 years of age in 2008 (sic) in April, May, the time period in which this event would have occurred, Your Honor, and with regard to the enhancements that I included, the ACC, I do believe that the -- Exhibit 1 that was admitted is enough to show that there was a prior sexual offense with a child, specifically the statute discusses, I'm sorry (indiscernible).

Your Honor, I'm sorry.

THE COURT: Sure. That's okay.

MS. ORWOLL: It -- the statute discussing enhancements does contemplate if it would have been a sexual assault pursuant to 200.366 or any other sexual offense against a child.

That's very broad language in the statute, Your Honor, so I would argue that even if unlawful sexual

intercourse with a minor more than three years younger can be classified as statutory sexual seduction or something similar in this jurisdiction, I submit that that is still a sexual offense against a child. A minor, a child, it's the same verbiage, Your Honor.

And finally just with regard to BT's statements, regardless of the level of detail, three acts disclosed were the same. Detective Fancher testified in the 2018 statement as well as in the 2020 statement.

And, Your Honor, I believe that that consistency regarding the three acts is enough for the State to meet its burden by slight or marginal evidence that these three separate acts occurred, two acts of sexual assault and one act of lewdness with a child under the age of 16.

THE COURT: Okay. Thank you, Ms. Orwoll.

Ms. Boskovich.

MS. BOSKOVICH: Thank you. I don't believe the State has met its burden of slight or marginal evidence here today for a number of reasons.

First of all, we have -- and I don't know this objection was overruled, and I understand the statute and everything. We have no testimony today from BT herself. We have statements that she has given to a third party and that third party relayed those statements here today.

But we have two different statements given two years apart that while some of the Information contained in them is consistent across the two years, we have several inconsistencies.

We have several inconsistencies, we have several added details that if, in fact, they happened would very likely have been included in the original statement.

The fact that there apparently was a CAC interview conducted, it has since been lost. So we don't have the information or interview to see what exactly BT disclosed during that interview.

There was no SAIN exam that was ever performed on BT, so we don't know if there was any physical DNA evidence to support any of these allegations. Indeed, BT, herself, according to Detective Fancher, indicated that she didn't tell anybody about this for a month or more later.

The -- no disrespect on Nye County Sheriff's Office, but the police work in this case, the fact that this allegation as serious as this just kind of fell into some abyss, never to be seen for two years, I mean, that's shocking. And the fact that in that two-year time, we've had, you know, lost DVD's, we've lost reports from the responding deputies.

Deputy -- or Detective Fancher indicated that

there are two different handwritten statements from BT. I don't have those. I've never seen those, I don't even think the State has seen those. Up until today, I didn't know they existed.

As far as I -- anybody could tell from the report and what, you know, prior testimony today, it was -- it seemed as though BT just drafted an email and sent something to Detective Fancher. If, in fact, those handwritten documents actually exist, I would love to see them.

The -- again, I don't think we can rely on Detective Fancher's statements and representations as to what BT told everybody allegedly about these incidents to meet the burden of slight or marginal evidence in these charges. Thank you.

THE COURT: Thank you, Ms. Boskovich.

Well, after hearing the testimony and seeing the evidence presented by the State, and noting that, again, it is slight or marginal evidence, I'm going to make a finding that the State has met its burden of proof on Counts I, II and III. I'm going to bind those over to the District Court for arraignment hearing.

Let's go ahead and get an arraignment date, Madam Clerk.

THE CLERK: You want the same date?

MS. BOSKOVICH: Yes, please.

THE CLERK: May 27th at 9:00 a.m. in Department I.

THE COURT: All right. And I've got Exhibit 1, so I will put that in my file.

Now, we have the 0153 case, which I think was the misdemeanor charge to the other battery by prisoner. Do we want to set that out maybe six months for a status?

MS. ORWOLL: I would prefer that. I believe we talked about it.

MS. BOSKOVICH: That's fine.

MS. ORWOLL: Okay. Yeah.

THE COURT: Okay. Six months?

MS. ORWOLL: Yes, please.

THE COURT: Okay. Let's get a status in the 0513, please.

THE CLERK: November 4th at 9:00 a.m.

THE COURT: All right. Well, thank you, everybody. Thank you, Mr. Graham.

(Proceedings concluded at 3:36 p.m.)

I, LISA CHAMLEE, Justice of the Peace of Pahrump Justice Court, sitting as Committing Magistrate in Pahrump, Nevada, hereby certify;

That Shellie Loomis, a Certified Court Transcriber was duly appointed by me to transcribe the proceedings had in the JAVS-recorded preliminary hearing in the case of THE STATE OF NEVADA, Plaintiff versus SANKONA LOVELEE GRAHAM, Defendant;

That when the examination of the witnesses and the presentation of evidence was closed, it appearing from the evidence adduced at said preliminary hearing that there was reasonable cause and sufficient grounds to believe that said Defendant committed such crimes as charged.

The said Defendant was therefore bound over to District Court for trial.

LISA CHAMLEE,
Justice of the Peace

STATE OF NEVADA)
)
CARSON CITY)

I, SHELLIE LOOMIS, do hereby certify:

That on April 29, 2021, a preliminary hearing was held in the within-entitled matter at the Pahrump Justice Court, State of Nevada;

That said preliminary hearing was recorded on JAVS CD-ROM, and said JAVS CD-ROM was delivered to me for transcription;

That the foregoing transcript, consisting of pages 1 through 74, is a full, true and correct transcript of said recorded JAVS CD-ROM performed to the best of my ability.

Dated at Carson City, Nevada, this 26th day of May, 2021.

//Shellie Loomis//
Shellie Loomis, RPR

INDEX

Witnesses	Direct	Cross	Redirect	Recross
Detective Wesley Fancher	11	34	57	59

EXHIBITS

Exhibit	Received
1	7

PAHRUMP JUSTICE COURT
BY P. Price
2021 MAY -5 P 3:43
RECEIVED AND FILED

PJC Case No.: 20CR01499
PJC Dept. A

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

STATE OF NEVADA,

Plaintiff

vs

SANKONA LOVELEE GRAHAM,

Defendant(s). /

BINDOVER ORDER

IT APPEARS to the court that a public offense, namely, **COUNT I: SEXUAL ASSAULT WITH A CHILD UNDER 16, in violation of NRS 200.366.3B, A FELONY; COUNT II: SEXUAL ASSAULT WITH A CHILD UNDER 16, in violation of NRS 200.366.3B, A FELONY; COUNT III: LEWDNESS WITH A CHILD UNDER 16 YEARS OF AGE, in violation of NRS 201.230.1a, A FELONY,** have been committed and it further appearing to the court the defendant above-named, **SANKONA LOVELEE GRAHAM**, has committed the same.

IT IS THEREFORE ORDERED that defendant, **SANKONA LOVELEE GRAHAM,** be, and is hereby bound over to the Fifth Judicial District Court, and there held to answer to said charge(s).

IT IS FURTHER ORDERED that defendant, **SANKONA LOVELEE GRAHAM**, appear in the District Courtroom of the Nye County Government Complex, 1520 E. Basin Avenue, Pahrump, Nevada, for arraignment on said charge(s) on Thursday, May 27, 2021 at 9:00 o'clock a.m. in Department No. 1.

IT IS FURTHER ORDERED that the Defendant be admitted to bail in the amount of $75,000.00 cash or bond.

DONE IN OPEN COURT this 29th day of April 2021.

Lisa Chamlee
Justice of the Peace

PAHRUMP JUSTICE COURT
1520 East Basin Avenue
Pahrump, NV 89060

COPY

FILED
FIFTH JUDICIAL DISTRICT
MAY 18 2021
Nye County Clerk
Deputy
Terri Pemberton

Case No. 20CR01499

Department 1

The undersigned affirms that this document does not contain the social security number of any person.

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

SANKONA LOVELEE GRAHAM,

Defendant.

INFORMATION

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

CHRIS ARABIA, District Attorney within and for the County of Nye, State of Nevada, informs the Court that **SANKONA LOVELEE GRAHAM**, before the filing of this Information, did then and there, in Nye County, Nevada, commit the following offenses, to wit:

COUNT I

SEXUAL ASSAULT WITH A CHILD UNDER 16, in violation of NRS 200.366(4), A CATEGORY 'A' FELONY, committed in the following manner, to wit: That **ON OR BETWEEN APRIL 1, 2018 AND MAY 9, 2018**, in Pahrump Township, Nye County, Nevada, said Defendant did willfully and unlawfully subject another person, to wit: **B.T.**, (DOB: 8/11/2003) a minor child under sixteen (16) years of age, to sexual penetration, against the victim's will, or under conditions in which said Defendant knew or should have known that the victim was mentally or physically incapable of resisting or understanding the nature of his conduct, by inserting his penis and/or fingers and/or thumb and/or an unknown object into the vagina of B.T., Defendant having previously been convicted of an offense committed in another jurisdiction that, if committed in this State, would constitute a sexual assault pursuant to

NRS 200.366 or any other sexual offense against a child, to wit: UNLAWFUL SEXUAL INTERCOURSE WITH A MINOR MORE THAN THREE YEARS YOUNGER, in violation of California Penal Code § 261.5(c), on August 8, 2013, in case number RIF1200136 of the Superior Court of California, County of Riverside;

COUNT II

SEXUAL ASSAULT WITH A CHILD UNDER 16, in violation of NRS 200.366(4), A CATEGORY 'A' FELONY, committed in the following manner, to wit: That **ON OR BETWEEN APRIL 1, 2018 AND MAY 9, 2018**, in Pahrump Township, Nye County, Nevada, said Defendant did willfully and unlawfully subject another person, to wit: **B.T.**, (DOB: 8/11/2003) a minor child under sixteen (16) years of age, to sexual penetration, against the victim's will, or under conditions in which said Defendant knew or should have known that the victim was mentally or physically incapable of resisting or understanding the nature of his conduct, by performing cunnilingus upon B.T., Defendant having previously been convicted of an offense committed in another jurisdiction that, if committed in this State, would constitute a sexual assault pursuant to NRS 200.366 or any other sexual offense against a child, to wit: UNLAWFUL SEXUAL INTERCOURSE WITH A MINOR MORE THAN THREE YEARS YOUNGER, in violation of California Penal Code § 261.5(c), on August 8, 2013, in case number RIF1200136 of the Superior Court of California, County of Riverside;

COUNT III

LEWDNESS WITH A CHILD UNDER 16 YEARS OF AGE, in violation of NRS 201.230, A CATEGORY 'B' FELONY, committed in the following manner, to wit: That **ON OR BETWEEN APRIL 1, 2018 AND MAY 9, 2018**, in Pahrump Township, Nye County, Nevada, said Defendant, being eighteen (18) years of age or older at the time, did willfully, unlawfully, and lewdly commit a lewd or lascivious act upon or with the body of **B.T.**, (DOB: 8/11/2003, then fourteen (14) years of age), with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, by rubbing B.T.'s vagina and/or vulva with his hands and/or fingers;

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

All of which is contrary to the form, force, and effect of the statutes in such cases made and provided, and against the peace and dignity of the State of Nevada.

Witnesses and their addresses known to the District Attorney of Nye County, State of Nevada, at the time of the filing of this Information:

DETECTIVE WES FANCHER NYE COUNTY SHERIFF'S OFFICE PAHRUMP, NEVADA	B.T. [ADDRESS REDACTED PER NRS]
SARAH BECHARD 1991 S. PERSHING AVE. PAHRUMP, NEVADA	HAYLEE THOMAS 1991 S. PERSHING AVE. PAHRUMP, NEVADA
KAYLEE THOMAS 1991 S. PERSHING AVE. PAHRUMP, NEVADA	SUNNY THOMAS 6060 SUPERIOR LANE PAHRUMP, NEVADA
CUSTODIAN OF RECORDS NYE COUNTY CHILD ADVOCACY CENTER 621 S BLAGG ROAD PAHRUMP, NEVADA	INTENTIONALLY LEFT BLANK

DATED this 18th day of May, 2021.

CHRIS ARABIA
NYE COUNTY DISTRICT ATTORNEY

By _____ OBO
ANDREA ORWOLL
Deputy District Attorney

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

CERTIFICATE OF SERVICE

I, Renne McKeen, Paralegal, of the Nye County District Attorney's Office, do hereby certify that I have served the following:

INFORMATION in
5TH JDC Case No(s). CR21-0041
STATE v. SANKONA LOVELEE GRAHAM

upon said Defendant(s) herein by delivering a true and correct copy thereof on 5/18/21 to the following:

RONNI BOSKOVICH ESQ.

Via hand deliver at the Nye county District Attorney's Office in Pahrump Nevada.

Renne McKeen

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

CASE NO. CR21-0040 & CR21-0041

DEPT. I

THE FIFTH JUDICIAL DISTRICT COURT - THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE HONORABLE KIMBERLY WANKER, DISTRICT JUDGE,

PRESIDING

THE STATE OF NEVADA,

PLAINTIFF,

v.

SANKONA LOVELLE GRAHAM,

DEFENDANT.

_____ /

TRANSCRIPT OF PROCEEDINGS

ARRAIGNMENT

MAY 27, 2021

COURTHOUSE

PAHRUMP, NEVADA

REPORTED BY: KATHY TERHUNE, CCR #209

APPEARANCES:

FOR THE STATE: KIRK VITTO
Chief Deputy District Attorney
PO Box 39
Pahrump, NV 89041

DEFENDANT PRESENT IN COURT.

FOR THE DEFENDANT: RONNI BOSKOVICH, ESQ
3190 South Highway 160
Suite H
Pahrump, NV 89048

NO OTHER APPEARANCES.

* * * * *

TRANSCRIPT OF PROCEEDINGS

THE COURT: All right. Our next case is Sankona Lovelee Graham, CR21-0040.

So, this is the time and place set for arraignment in Case Number CR21-0040A and CR21-0041.

I did not receive a guilty plea agreement. I'm guessing these matters are not negotiated?

MS. BOSKOVICH: They are not, Your Honor.

THE COURT: Are we ready to move forward today then with the entry of a not guilty plea and set the cases for trial?

MS. BOSKOVICH: Yes, Your Honor.

THE COURT: Okay. All right.

So, obviously, we're going to set these cases separately because they're different instances. So, I'm going to arraign -- well, I'll arraign him separately on each case. Okay?

All right. So, Case Number CR21-0040A, State of Nevada versus Sankona Lovelee Graham.

Mr. Graham, I would advise you that the Information reads just that, "State of Nevada versus Sankona Lovelee Graham". Is that your true name?

THE DEFENDANT: (No audible response.)

THE COURT: No? What is your name then, please?

THE DEFENDANT: Sankona Lovelle Graham.

MS. BOSKOVICH: Any spelling --

THE COURT: Did I just mispronounce it?

THE DEFENDANT: L-L.

THE COURT: We have his name misspelled? That's going to be critical.

MS. BOSKOVICH: We do. It is -- the correct spelling of the middle name is L-O-V-E-L-L-E.

THE COURT: Mr. Vitto, I can either -- I don't like to interlineate, but I can. I -- on these. What do you want done here?

MR. VITTO: I'm fine with an interlineation, Your Honor.

THE COURT: It's L-O-V-E-L-L-E; is that right?

THE DEFENDANT: (Nods head.)

THE COURT: Okay. And it's pronounced Lovelle?

THE DEFENDANT: Yes.

THE COURT: So, it's Sankona Lovelle Graham; is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay.

MR. VITTO: And the spelling is L-O-V-E?

MS. BOSKOVICH: L-L-E.

MR. VITTO: Got it.

THE COURT: Okay. All right.

Well, let me ask you this. Mr. Graham, is Sankona Lovelle Graham your true name?

THE DEFENDANT: Yes.

THE COURT: How old are you, please, sir?

THE DEFENDANT: 29.

THE COURT: How far did you go in school?

THE DEFENDANT: Some college.

THE COURT: Okay. Do you read and write the English language?

THE DEFENDANT: Yes.

THE COURT: Have you ever been treated for a mental disorder?

THE DEFENDANT: Yes.

THE COURT: Does this disorder prevent you from going forward today?

THE DEFENDANT: No.

THE COURT: Okay. Do you have a copy of the Information in Case Number 21-0040A?

THE DEFENDANT: Yes.

THE COURT: Have you read it?

THE DEFENDANT: Yes.

THE COURT: Our Clerk today is Terri. She'd be happy to formally read the Information or you can waive its formal reading. What would you like done today?

THE DEFENDANT: I waive its formal reading.

THE COURT: Okay. You've been provided a copy of the Information wherein you have been charged with Count I, battery by a prisoner. It is in violation of Nevada Revised Statute 200.481. It is a Category B felony.

And Count II, battery by a prisoner, again, it's in violation of Nevada Revised Statute 200.481. It is also a Category B felony.

So, you have two counts of battery by a prisoner. Each count carries a sentence of not less than two or greater than ten years in the Nevada Department of Corrections, plus a fine of not greater than $10,000. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Now, have you discussed these charges in this case with your attorney?

THE DEFENDANT: Yes.

THE COURT: How would you like to plead to Count I, battery by a prisoner?

THE DEFENDANT: Not guilty.

THE COURT: Count II, battery by a prisoner?

THE DEFENDANT: Not guilty.

THE COURT: Okay. You are entitled to a speedy trial within 60 days from today's date, the date of arraignment, or as quickly thereafter as I can place the matter on my congested calendar. Do you wish to invoke your 60 day right to a speedy trial or waive it in this case?

THE DEFENDANT: I invoke.

THE COURT: Okay. All right.

Counsel, how many days are we going to need for trial?

MR. VITTO: On the battery charge, three.

THE COURT: Okay. Does that include a day for a jury selection?

MR. VITTO: Yes.

THE COURT: Okay.

Ms. Boskovich, would you agree with that?

MS. BOSKOVICH: That sounds good.

THE COURT: Okay.

Ms. Raimondo, we need a trial date.

MS. RAIMONDO: (Inaudible.)

THE COURT: Excellent.

MS. RAIMONDO: (Inaudible).

THE COURT: Three, including jury selection.

MS. RAIMONDO: (Inaudible.)

THE COURT: No. This is just on the battery case.

(Discussion between Court and the Clerk.)

THE COURT: Ms. Boskovich, you're not counsel on *** Kaffeejjan, are you? K -- it's --

MS. BOSKOVICH: I am not.

THE COURT: -- K-A-F-F-E-J-J-A-N.

I can tell you that based upon the trial schedule, I've got a two-week jury trial that's going to go on a civil case, and I've set it from September 20th to October 1st.

MR. VITTO: Your Honor, if it helps the Court?

THE COURT: Yes.

MR. VITTO: Counsels Fumo and Pitaro --

THE COURT: Yes.

MR. VITTO: -- inherited King and Butler. We had continued King. Well, we had stipulated to continue King. I don't know if the Judge signed the order, Your Honor, if Your Honor had signed the order.

THE COURT: Was it mine? I think that's Judge Lane.

MR. VITTO: Judge Lane? Okay.

MS. BOSKOVICH: It is.

MR. VITTO: We had continued King because we were trying to preserve Butler.

THE COURT: Okay.

MR. VITTO: But it's my understanding that Fumo and Pitaro are not going to be seeking to renew their contract which is up next week. I anticipate new counsel coming on for Butler. I can't imagine a scenario where a new counsel is going to represent that they could be ready to go for that trial. I'm just throwing it out there as maybe we want to set a secondary set. Butler may go that. But we may want to set a secondary set.

THE COURT: Well, I think Fumo and Pitaro are being pretty presumptuous I'm going to let them out. Because that case has been continued so many times, I'm sick of it.

MR. VITTO: Judge, I don't know what's going to happen. All I'm suggesting is that we set a secondary set because that date may open up. I don't know.

THE COURT: Sure. The other thing that we can do on second -- the other thing that we could do is I am just highly skeptical of my three-week trial in November in Goldfield. I personally am -- I told the

DA's Office in Goldfield that they either get the victim there or they drop the case. And that gentlemen was incarcerated for six years in jail. And either the victim shows up or -- you know, we had a trial, and then I'm the one who let him out pending. But the last time that we had a motion in that case, which is within the last year, I asked whether the victim was coming, and they -- Well, maybe she is and maybe she isn't. She's not coming, we're not -- I mean, that's totally unacceptable to me.

We could put it in December, too. We could put it in December. I mean, we could secondary set it to Butler, and if Butler doesn't go, then we can put it on -- we can put it on another day. We could -- we could do a first trial setting and a secondary setting.

I doubt anybody will want to be here Christmas. Although Judge Davis used to have those jury trials on Christmas Eve.

How about August? You going to be ready? We'll go August 30th, the 31st, and September 1st.

MR. VITTO: It makes no difference to us. Whatever you want to do, we're here to cooperate. We do have another trial date, a longer trial date. The second offense we're here for today to set a trial

date. I'm assuming he's going to invoke. That trial is going to take probably the better part of a week, and we're going to need a trail date for that one as well.

THE COURT: Okay. Well, let me ask this. On the other case, which case do you want to try first?

MR. VITTO: I think the more serious -- the more serious case.

THE COURT: The sexual assault case?

MR. VITTO: Correct.

THE COURT: All right. Well, why don't we try that one if he's going to invoke. I'll arraign him on it here in just a second.

But what if we looked for the date -- it's only going to take a week -- and this would be, maybe my thought, is to do like the jury selection on a Thursday. Go ahead and do our law motion on Friday, and then start with witness testimony. Because it's going to be -- we're going to be back and right on to Labor Day weekend.

MR. VITTO: Fine with me.

THE COURT: So, what if we did that? We've done that before. We could do jury selection. Actually, we could do a couple of things. We could

do -- we could do jury selection on Wednesday. Wednesday or Thursday. Wednesday, Thursday, and then we could jump that way we'd be sure that we got it completed.

25th, 26th. Okay.

What if -- okay. All right.

All right. So, I'm going to -- I'm going to do the other arraignment, and then I'll get the dates set.

So, I know you needed three days, right, on 0040?

MR. VITTO: Yes.

THE COURT: Okay. So, let's go to the other case.

Case Number CR21-0041, State of Nevada versus Sankona Lovelle Graham. So, this is the time and place set for arraignment in that case, 21-0041.

Mr. Graham is represented by his attorney, Ronni Boskovich. We have Chief Criminal Deputy District Attorney Kirk Vitto on behalf of the State.

Mr. Graham, I would advise you that the charging document reads, "State of Nevada versus Sankona Lovelle Graham." Is that your true name?

THE DEFENDANT: Yes.

THE COURT: How old are you?

THE DEFENDANT: 29.

THE COURT: You've gotten some college; is that right?

THE DEFENDANT: Correct.

THE COURT: And you read and write the English language?

THE DEFENDANT: Yes.

THE COURT: You've been treated for a mental disorder in the past, yes or no? I can't remember.

THE DEFENDANT: Yes.

THE COURT: Yes?

THE DEFENDANT: Yes.

THE COURT: Does it prevent you from going forward today?

THE DEFENDANT: No.

THE COURT: Do you have a copy of the Information in Case Number 20 -- CR0 -- I'm sorry, 21-0041?

THE DEFENDANT: Yes.

THE COURT: Okay. And have you read the charges?

THE DEFENDANT: Yes.

THE COURT: Would you -- Clerk today is Terri. She'd be happy to formally read the charges or you can

waive the formal reading. What would you like done?

THE DEFENDANT: I'll waive the formal reading.

THE COURT: Okay. You have been provided a copy of the Information wherein you've been charged with Count I, sexual assault with a child under 16 in violation of Nevada Revised Statute 200.366(4). It is a Category A felony. In this particular case, it carries a sentence of life without the possibility of parole as you have been previously convicted in another of jurisdiction of a similar charge. Specifically on August 8th, 2013, in the Superior Court of California, County of Riverside.

Count II, is sexual assault with a child under 16. It is also a violation of Nevada Revised Statute 200.366(4). It is also a Category A felony. It also carries a penalty of life without the possibility of parole having previously been convicted of an offense committed in another jurisdiction that if committed in Nevada would constitute a sexual assault. Specifically unlawful sexual intercourse with a minor more than three years younger in violation of the California Penal Code on August 8th, 2013, in Superior Court in California, County of Riverside.

Count III, lewdness with a child under 16 years

of age. It is a violation of Nevada Revised Statute 201.230. It is a Category B felony. As a Category B felony, it carries a penalty -- maximum possible -- or a penalty of life with the possibility of parole with parole eligibility beginning after a minimum of ten years has been served, plus a fine of up to $10,000.

So, have you had the opportunity to review these charges with your attorney?

THE DEFENDANT: Yes.

THE COURT: And you understand what you're being charged with in these three cases -- or these three counts? Do you understand what you're being charged with in this case?

THE DEFENDANT: Yes.

THE COURT: Okay. And as to the charges, Count I, sexual assault with a child under 16, how do you plead?

THE DEFENDANT: Not guilty.

THE COURT: Count II, sexual assault with a child under 16, how do you plead?

THE DEFENDANT: Not guilty.

THE COURT: Count III, lewdness with a child under 16 years of age, Category B felony, how do plead?

THE DEFENDANT: Not guilty.

THE COURT: You're entitled to a trial within 60 days of today's date, the date of arraignment, or as quickly thereafter as I can place the matter on my congested calendar. Do you wish to invoke your 60 day right to a speedy trial or waive it?

THE DEFENDANT: Invoke.

THE COURT: Okay. In this case we're going to start the jury trial on August 25th. First day will be jury selection. So, I'm going to do the 25th and the 26th. It is Wednesday, August 25th, Thursday, August 26th.

Then I am going to resume the trial on Monday, August 30th, Tuesday August 31st, Wednesday, September 1st, and Thursday, September 2nd. That gives us Friday, September 3rd as well. My thought would be is we'll -- that would give us six days, possibly seven days in case we need it.

MS. BOSKOVICH: I think that should be sufficient.

THE COURT: Okay. Very good.

So, we'll need a calendar call.

Terri, we're going to need a calendar call in July about 30 days ahead of time.

How about July 23rd?

So, now, let's find -- we wanted to try this case first. Let's see when we can squeeze the other case in. I'm looking -- Terri, I think I might have an answer for that. If we need three days, let's see.

Okay. Like I told you, the Rider trial to me is real iffy. I've set the Rider trial out on my calendar from November 8th through November 24th. So, we set this on November 8th, 9th and 10th, or the flip side of that, if it may not go that long, the 22nd, 23rd, and 24th though are right before Thanksgiving. It always makes me nervous to get a jury.

MS. BOSKOVICH: My personal preference would be early November.

THE COURT: Why don't we do the 8th, 9th and 10th. It's going to be a secondary setting. I'll do 8th, 9th, 10th. The 11th is a holiday. So, we could go 8th, 9th, 10th. 11th is Veterans Day. 12th would be -- I'm just going to block that out. I'm going to keep the law and motion. I don't have a law and motion on that day. So, I'll secondarily set it to there.

And, you know, what else I will do? Let's put it on a couple of places. Wait a minute.

MR. VITTO: 8, 9, 10 and 12.

THE COURT: 8, 9, 10, and 12. I could do it --

you know, I could do it -- this is crazy, but I could do it November 1st, 2nd, and 3rd. Because I'm going to do the Rider -- it looks like I'm going to do the Rider jury selection on the 4th and the 5th. So, we squeeze it in for November 1st, 2nd, and 3rd?

MR. VITTO: As a primary? Then we don't need the secondary.

THE COURT: Won't need the secondary. 4th and 5th I'm going to do jury -- that is sexual assault case as well. 11 to 1, hung jury after three weeks. And I'm not sure we're going to be able to select a jury in Esmeralda County, just so you know, because it doesn't have that many, you know, jurors. And I got them to sit on a recent case of Mr. Rider, but they go oh, well I don't want to sit on that case. Oh, this is a different case. So, I don't know. That may end up moving to Nye, up in northern Nye. I'm not sure.

But why don't we do November 1st, 2nd, and 3rd. Do you think we can get it all done then?

MR. VITTO: I don't see why not, Judge.

THE COURT: Okay. All right.

MR. VITTO: I'm hearing you say November 1 through 3.

THE COURT: Three. So, let me give you in

October, how about giving you a calendar call for the 24th of September?

MR. VITTO: September 24th.

THE COURT: September 24th.

Terri, you know I'll never remember -- I'll never remember all that. So, if you could send that over to Christel?

MR. VITTO: Got it.

THE COURT: Well, Melissa, you got it, right?

MR. VITTO: Thank you, Your Honor.

THE CLERK: So, okay, to confirm.

(Conversation between Court and Clerk.)

THE COURT: Yup.

THE CLERK: Then the second one you said the primary date is November 1st through the 3rd at 9:00 a.m. with the calendar call on September 24th.

THE COURT: Yes. Thank you. Great job.

MS. BOSKOVICH: Thank you.

THE COURT: All right. Thank you.

(End of Proceedings.)

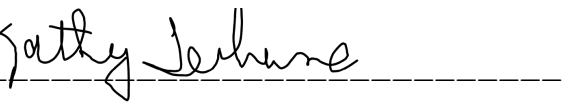
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CERTIFICATE

STATE OF NEVADA)
)SS.
CARSON CITY)

I, Kathy Terhune, CCR 209, do hereby certify that I reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken at said time and place before the Honorable Kimberley Wanker, District Judge, presiding.

Dated at Carson City, Nevada, this
22nd of June, 2021.



CCR #209

CASE NO. CR21-0041

DEPT. I

THE FIFTH JUDICIAL DISTRICT COURT - THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE HONORABLE KIMBERLY WANKER, DISTRICT JUDGE,

PRESIDING

THE STATE OF NEVADA,

PLAINTIFF,

v.

SANKONA LOVELLE GRAHAM,

DEFENDANT.

_____ /

TRANSCRIPT OF PROCEEDINGS

PRETRIAL MOTIONS

AUGUST 6, 2021

COURTHOUSE

PAHRUMP, NEVADA

REPORTED BY: KATHY TERHUNE, CCR #209

APPEARANCES:

FOR THE STATE: ANDREA ORWOLL
Deputy District Attorney
1520 E Basin Ave # 107
Pahrump, NV 89060

DEFENDANT PRESENT IN COURT.

FOR THE DEFENDANT: RONNI BOSKOVICH, ESQ
PUBLIC DEFENDER
3190 South Highway 160
Suite H
Pahrump, NV 89048

NO OTHER APPEARANCES.

* * * * *

TRANSCRIPT OF PROCEEDINGS

THE COURT: All right. Let's get to our last case of the day. The Case that we're really here for is Case Number CR21-0041, State of Nevada versus Sankona Lovelle Graham.

Thank you, Ms. Morton.

MS. MORTON: Thank you, Your Honor.

MS. BOSKOVICH: It's actually Lovelle.

THE COURT: Lovelle. Okay.

MS. BOSKOVICH: L-O-V-E-L-L-E.

THE COURT: Okay. Thank you.

All right. Good morning -- or good afternoon, Mr. Graham. How are you today?

THE DEFENDANT: I'm okay.

THE COURT: Excellent.

So, this is the time and place set for two things today. I've got two motions in front of the Court. One is a pretrial motion to admit the defendant's prior sex related convictions. And the second is to -- is a motion to compel the production of documents. One is a motion by the State. One is a motion by the defense.

Let's deal with the motion to admit defendant's

prior sex related convictions. It says via NRS 48.045(10). I think that's wrong. I think it's 48.045(3). I may be wrong.

MS. ORWOLL: That's correct, Your Honor. It was an oversight. Sorry, Your Honor.

THE COURT: Okay. This is the State's motion. So, I'm ready to proceed forward, Ms. Orwoll.

MS. ORWOLL: Yes, Your Honor. Would you prefer that I stand or sit for the --

THE COURT: For the court reporter, I'd prefer that you sit.

MS. ORWOLL: Okay.

THE COURT: Because -- and speak into the microphone and try not to rustle your papers. We're fortunate enough to have court reporters today. It's Kathy Terhune out of Fallon or Yerington. I can't remember which. But anyway, to be sure that she can hear.

MS. ORWOLL: Okay. Thank you, Your Honor.

THE COURT: Thank you.

MS. ORWOLL: So, the State has a few points it would like to clarify at this hearing. Largely, we're going to be submitting on the pleadings. I tried to layout the history of the statute, the rationale for

the legislature adopting this kind of exception to the typical rule. We do not bring in the defendant's prior convictions. There's a good reason why we do that. But the legislature has found in many states that in cases of sexual assault, which are inherently difficult to prove, often it's a he-said/she-said kind of situation, often sex crimes are conducted in secret. Many, many reasons the legislature has decided this is an exception to the general rule on that.

Apart from that, Your Honor, there are a couple of points. The State did just get the actual police report just this week from the California prior from 2013. The State has disclosed a redacted version of that report to the defense. I believe Ms. Boskovich has gotten it.

MS. BOSKOVICH: I did. I receive it Wednesday.

THE COURT: Okay.

MS. ORWOLL: And I do have a copy here today, Your Honor, if you would like to take a look at it.

THE COURT: I would.

MS. ORWOLL: Okay. And, Your Honor, the reason for the redactions is, as you know, a victim's privacy must be protected. So, any full names, addresses, phone numbers, et cetera have been redacted in that

report. Would Your Honor like me to give you a moment?

THE COURT: Sure. When did you -- I noticed, did you fax this to them on August 2nd? That was -- the trial's like less than a month out. So, we're finally just doing this now?

MS. ORWOLL: Your Honor, as you know, it can take some time to get these records. I actually requested the police report the same time I requested the certified priors. And it's just now that I'm getting them.

THE COURT: Okay. Okay. So, I've got a police report. Okay? Let me take a look at it. So, I've had the opportunity to review that. Thank you.

MS. ORWOLL: Thank you, Your Honor. May I just say, I apologize that you're seeing it for the first time today. I probably should have submitted it with a reply. So, I'm very sorry that we had to take that time just now. That's on me.

Your Honor, with regard to the similarity of the offense that you just read about and the alleged crime that happened in 2018 for which we're going to trial. I would disagree with the defense's characterization of the similarity. I think the crimes are in fact quite similar. Your Honor's just read the

other offense, and I did do the math on his birthday, her birthday trying to line-up the dates how old everyone was. From the best I can tell, Your Honor, the defendant was 18 years old. He seduced a 13-year-old girl. It was essentially a statutory issue.

But, Your Honor, these two individuals were not dating. It was not an ongoing, loving relationship. From what I can tell, it was an adult taking advantage of a young teenage girl. I would argue that the facts here are very similar. An adult taking advantage of a young 14-year-old girl who was in the household where he was living at the time.

And, Your Honor, I do think that it's correct when the defense says that the great bodily injury in the 2013 offense was due to the victim becoming pregnant. And, Your Honor, I would argue it is extreme bodily harm to a young teenage girl, 13-year-old, to have to give birth. I do think that is a violent thing to do when you risk impregnating a 13-year-old girl. You have sex with her, and you don't wear a condom.

That's putting her life in jeopardy at that point. She may not be physically developed enough to even bear a child. So, Your Honor, I would say that

these two offenses are very similar. They should be permitted pursuant to statute. I believe it meets all of the requirements that the rationale for our state having adopt this statute in the first place.

With regard to the 2005 offenses, Your Honor, the State will concede Ms. Boskovich's point that -- I don't have any paperwork regarding those crimes, so I don't know the details of them. Everything I have been able to find from the police department, the County, et cetera says that those records have all been purged from their systems. So, I don't believe I can get any of those. The only thing I would have, Your Honor, is the Triple I that I mentioned where it does show the arrests.

THE COURT: Let that me ask you about that because an arrest is not a conviction. And I will tell you, I've spent a lot of time looking at all of the case law. I even pulled the legislative history to see the change of the statute, and it was addressed in length. When this was part of AB49, it was part of a comprehensive change in 2015. And I did take the time to go -- there were four hearings, four legislative hearings on this. I looked at all of them.

There was the significant discussion of this in

the minutes of the Assembly Committee on the Judiciary talking -- this is Section 21 of that Bill. I looked at that very carefully. And the Senate Committee on the Judiciary on May 8th, 2015, also discussed this very specific section. So, I looked at that. That was my starting point.

And then what I did is, obviously the case that -- the first published Nevada Supreme Court cases is Franks versus State. It's a 2019 Nevada Supreme Court decision, but they relied on a case from the Ninth Circuit Court of Appeals, United States versus LeMay, a 2001 Ninth Circuit Case. I looked at that. I then ran the Franks case and looked at all Nevada cases, published and unpublished, that addressed 48.045(3). So, I'm familiar with all of those.

And one thing that I don't think you're going to get over is a juvenile, if you had a juvenile conviction perhaps, but you don't have any conviction. And an arrest -- I'll give you an example that comes to mind. The CEO of Valley Electric was arrested, and yet never -- never -- so, she's got an arrest on her record, and yet she was -- charges were never brought, and she was never convicted. So, that would be -- I don't know how under any set of circumstances where we

could use that. Now, I will say this, that I don't know how familiar you are with the facts of the LeMay case. I'm very familiar with them.

In the LeMay case, the Court did allow two juvenile convictions, and that was upheld by the Ninth Circuit Court of Appeals. So, it was U.S. District Courts of the District of Montana. It's a Montana case. I looked very closely at the facts of that case and have how they let that in. But I don't think without any sort of conviction that you're going to be able -- you might have been able to get those in if you had had convictions.

But the other thing is -- that I'm concerned about is the fact that you have the NCIC Report. How are you getting that into evidence? That would be -- that would be the next hoop to that, obviously, including this police report here, is hearsay. So, I guess I'm the -- you're conceding the juvenile, and I agree. I don't -- I don't know how under any set of circumstances that juvenile information of an arrest only could come in.

So, then now we're left with the adult case, and the question I have -- I have a question for you here. How are you getting that in?

MS. ORWOLL: How am I getting the prior in, Your Honor?

THE COURT: Yes.

MS. ORWOLL: So, I do have the certified prior in that case. Which would be admissible, I believe, the same way it was admissible in the preliminary hearing before the Justice Court. And sure, Your Honor, that police report you just read, it is hearsay at this point. I have been trying very diligently to get in touch with that victim to see if I can potentially bring her here to talk about the actual characterization, the facts of that prior case. But, Your Honor, I believe the conviction on its own with the certified copies is admissible.

THE COURT: Well, have you read all these cases because I have very, very carefully?

MS. ORWOLL: I have, Your Honor.

THE COURT: And in each of these cases, and in particularly the LeMay case upon which Nevada Supreme Court relies and sets forth the standard in the Franks case -- and just so you know, the history of that case, the witnesses came in and testified. So, in that -- in that particular case, just so if you haven't looked at LeMay, I suggest you do that. There were -- in that

case, there was prosecution had called two witnesses, two minor children. They were seven and nine at the time they testified. At the time of the alleged molestation, they were five and seven. And so, they wanted to bring in proof that several years -- this was a situation where the uncle had been staying with his sister and her husband, and he babysat the kids, and he had performed oral sex on the two boys and told them not to tell, but they did tell.

The only thing is the mother didn't do anything about it. She ordered her brother out of the house but did nothing about it. Later, approximately two years later, it came to the attention of the police department, and the children -- the police department investigated the allegations. They arrested the defendant and charged him with child molestation. And the evidence that they were -- the prosecutor had placed on notice was prior acts of sexual misconduct, specifically a juvenile rape conviction arising from events that had occurred.

In 1989, the first event where the children testified was an event that occurred in 1997. At that time, the defendant, Mr. LeMay, had resided with his aunt in 1989. His aunt had two daughter's that were

two and eight months old at the time. He babysat them. And she had gone to the grocery store, to find -- when she came back, she found her daughter highly upset and bruised. She -- the two-year-old had told her mother that he had put his penis in her mouth.

The mother got out of the -- Mr. LeMay that he had in fact done that. And then when she changed the child's -- eight month old's diaper, found a cream like substance which she implied was semen. And he was subsequently adjudicated and found guilty of rape. And at the trial, the prosecution not only called the two boys to testify, who are now seven and nine, but they called the aunt to testify. And the aunt testified about the abuse that had occurred to her children at the time.

So, what I hear you saying is, Judge -- and that raised a number of issues by LeMay. One was the constitutionality of the -- of the bringing it in, and that's when the Court in LeMay set forth the standard. But they brought that standard from the Glenzar case. So, and the issue was whether or not that that should have come in. But I hear you saying is all you want to do is get a certified copy of the Judgment of Conviction and enter that in on the record?

MS. ORWOLL: Hopefully, at this point, Your Honor, yes with the caveat that I'm still trying to track down that victim, and that I did just receive -- at the same time I received the faxed police report, I received some potential prior phone numbers of that victim, and I haven't been able to determine yet if any of them are still active, if she still lives at that address, and I'm doing my best to get that as -- done as quickly as I can. I know we've got trial coming up very soon.

THE COURT: We do have a trial coming up, and I think whether or not I admit it may depend in part on what I hear. And I will tell you something from the LeMay decision. I want to hear from Ms. Boskovich here. But in the LeMay decision the District Court -- the U.S. District Court judge delayed the ruling until after the opening arguments, until he heard what was presented and what was the defense and then went through those factors.

But like I said, I've spent a lot of time on -- I actually typed up my own synopsis of all of the Nevada case law consisting of 14 pages, single spaced 14 pages. So, I looked very closely at every single case that -- you know, my concern in this case is

providing the right law. I don't favor one side over the other. It's -- the judge has an obligation to apply the law and apply it correctly. And that's the long and the short of the -- of the Court's responsibility here.

So, at this point, I'm assuming that you don't have any witnesses today that you're going to put on the stand to testify about this event? I mean, it looks to me like the police report that you've handed me today is sort of the evidence that you have.

It was a situation where Mr. Graham was 18 or 19-years-old, and I'm a little confused as to the charge and some of the evidence that was presented in this case, and I do have to ask about that. You know, this was a probation charge. Or a probation sentence here on this charge. I think what ultimately resulted him going -- in going into prison was attacks on his mother. And then there was an issue about whether the mother and the caregiver changed their story, I think.

But, I mean, I've spent a lot of time looking at this case to be fair. And then what caught my attention, at first I wasn't sure why you would attach it. But he had appealed his convictions at trial up on a Batson challenge. On a Batson jury challenge for

the -- for the peremptory challenges by the State on I believe it was juror seven and juror number eight. And -- but somehow, somewhere as I read through all of this, I thought that he had, he being Mr. Graham, had challenged the substantial bodily harm portion of the charge.

So, and I thought the court, the Appellate Court addressed that. And I may be wrong, but I thought I highlighted it as I read. Okay. Here we go. This is what was import to me. This is on page 24 of the opinion. It's got a Bates stamp of 039.

"The court sentence in Case Number SWF1301022 included a three year term of great bodily injury enhancement. However, Graham's guilty plea in this case did not include an admission as to the truth of a great bodily injury enhancement allegation. Graham contends, the People concede, and we agree, we must modify the sentence to strike the term for the great bodily injury enhancement. This portion of the sentence was unauthorized because it could not legally" -- could not -- "because it could not be legally imposed." And they cite "People v. Anderson, 2010, 50 Cal 4th, 1926. And we have the power to correct an unauthorized sentence at any time." That's

section 1260, People versus Sanders, S-A-N-D-E-R-S, 2012, 55 Cal 4th, 731, 743, Footnote 13.

So, I am a little concerned here about you saying that you want to -- what exactly it is that you're trying to admit. Because it appears to me -- now, I want to go on and say this. This is at the end of the opinion on page 25 of the opinion.

"Rand contends and the People agree, we should direct the Court to correct this clerical error. While we have the power to order such a correction, People versus Mitchell, 2001, 26 Cal 4th, 181, 185, we need not exercise our power in this instance as the record shows the Court already corrected the error in the Abstract of Judgment filed December 29th, 2014, following the receipt of a letter from the Department of Corrections and Rehabilitation."

So, what I'm saying -- and then it goes on disposition. This was the finality, if you will, of the Court of Appeals decision. "In Case Numbers SWF1303458 and RIF1200136 the Judgments are affirmed. In Case Number SWF1301022, the judgment is modified to strike the three year sentence for the great bodily injury enhancement. The trial court is directed to amend the abstract of the judgment to reflect this

modification and to forward a copy of this amended abstract to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed."

So, I think that that's important here. So, you were talking earlier about the great bodily injury enhancement. That came off according -- so, I'm not sure exactly what you're going to be trying to admit here. But if there's any reference to that, it appears that the Appellate Court dealt with that. So, I'm not sure if you're aware of that or not.

MS. ORWOLL: I am, Your Honor. You brought up many valid points right now. Can I respond to a couple of them?

THE COURT: Sure. Absolutely.

MS. ORWOLL: Thank you. We'll start with that since Your Honor brought that up. It is in the Appellate decision on this case. So, essentially what the State would be doing was admitting these certified prior, but then with the understanding, and the jury would be made very clear on the fact, that the Appellate Court took that element off. The reason I brought up the substantial bodily harm before Your Honor is to deal with the Franks' factors, the

similarity of the charges, et cetera. It's not that I want to present that information to the jury. It's essentially to ask -- to ask Your Honor to admit the charge. There's a difference --

THE COURT: Let me -- let me stop you. Why would you be admitting a charge -- there should be an Amended Judgment of Conviction. Don't you find it -- I would find it highly prejudicial to say yeah, he agreed to this even though the opinion said he didn't agree to the enhancement, and that it is wrong. But yeah, that's what it was initially, but it got overturned. I have a problem with that. I think -- I'm not saying I'm going to admit anything at this point. But I don't think that that -- I think that would be a huge problem.

If I were the Appellate Courts I would say what in the world's wrong with District Court Judge? Why are they allowing that? So, there should be an Amended Abstract of Judgment that has that completely off of it. And if you're intending to admit the one with that on there, I think we've got a problem right from the get-go.

MS. ORWOLL: Right, Your Honor. Everything I received, as far as I know, is the entirety of the

case. But I will myself follow up with the Riverside County Courts and see if there is that amended that shows the proper charge with -- per the Appellate Court's decision. I didn't think any such thing existed, but I will -- I will look into it.

THE COURT: The Court says there is one. It says, "While we have the power to correct it, we don't need to because it shows the Court already corrected the error in an Abstract of Judgment filed December 29th, 2014."

MS. ORWOLL: Your Honor, that refers to the credit for time served not to the great bodily injury.

THE COURT: Okay. Well, that's going to be a problem. Because I think that's highly prejudicial.

MS. ORWOLL: What is highly prejudicial, Your Honor?

THE COURT: Great bodily injury. See, the opinion makes it clear he didn't agree to it, and yet you're taking -- you're not going to -- at this point don't have any witnesses to bring in. You want me to admit that document that I know is false. I know it's been overturned. And we're not going to have a trial within a trial of his -- of his prior convictions. That's going to be problematic.

MS. ORWOLL: And, Your Honor, I am going to do what I can to see if there's an actual on file Amended Judgment of Conviction, whatever California court calls it.

THE COURT: Okay. And I know it's odd. And I have to tell you, first of all, I don't have that great of eyesight. And I could see this, but I thought I was going to have to get a magnifying glass out because they just checked the boxes. Unlike us, who we type everything out and we file it, these aren't necessarily that easy to understand. It took me a long -- I spent a lot of time. I went through these and highlighted and made notes as I -- as I read. But it took me a long time to get through your exhibit, Exhibit 1 and Exhibit 2, your motion. But I am concerned about that.

MS. ORWOLL: I understand that Your Honor.

THE COURT: All right. So, the similarity you see is he was 18 and 13. It was a casual relationship. If I read this correctly, it was, for lack of a better term and I don't mean to be crass, it was like a one night -- or one afternoon stand. Whether you believe the victim or you believe the defendant, it either occurred in the laundry room or it occurred in the apartment of the -- of the victim's family.

MS. BOSKOVICH: And, Your Honor, can I address that real quick?

THE COURT: Sure.

MS. BOSKOVICH: In my opposition to this, I did mention that there was some sort of ongoing either dating or -- dating relationship between Mr. Graham and of the alleged victim in that 2013 conviction. Myself, I'm still a little fuzzy as to how and when the whole thing started. But I do know that Mr. Graham and that alleged victim were together for a total of six years, even after to the 2013 conviction. That first incident did produce one child, a boy. And after that, they went on to have twin daughters together.

So, there was -- again, I'm not quite sure how it started, but it certainly progressed to some form of a consensual relationship where Mr. Graham and the alleged victim had a family together.

THE COURT: Well, if I read the police report, and I read through it pretty quickly. Normally I'd spend ample time reading it. But it was a consensual relationship from the start.

MS. BOSKOVICH: Yes. And granted, you know, there's the issue of whether it --

THE COURT: Statutory sexual seduction.

MS. BOSKOVICH: Yes.

THE COURT: If I were to look at this, reading what I saw, it suggests it's -- kind of smacks of a statutory sexual seduction case.

MS. BOSKOVICH: Uh-huh. And again, Mr. Graham has informed me that when the relationship actually started he was 17. I briefly read through that police report as well, and I tried to do the math as Ms. Orwoll did. I couldn't really figure out when it officially started, how old Mr. Graham was.

Because your birthday's in January?

THE DEFENDANT: December.

MS. BOSKOVICH: Okay. Your birthday's in December.

So, I'm not quite sure about that. But Mr. Graham has said -- stated to me all along that he was 17 when the -- when that relationship began.

THE COURT: So, did the relationship continue after the prosecution?

MS. BOSKOVICH: Yes. Yes.

THE COURT: So, what were the -- what were -- what was the length of the relationship?

MS. BOSKOVICH: They were together for six years. Mr. Graham -- I mean, they raised children

together for a while. Mr. Graham still has contact with his children and their mother, the alleged victim in that case. So, it has been a consensual relationship from the get -- go. And Mr. Graham has informed me that perhaps he and the alleged victim were not truthful with the police from the get-go because -- we'll I don't quite no why. But just I assume the optics of the situation.

By Mr. -- her dad you said (inaudible speaking to client).

I lost my train of thought. I apologize.

But regardless, it was a consensual relationship in some form or fashion that produced three children.

THE COURT: But I think those facts are relevant in the sense that -- my understanding of the case at hand -- and I will tell you I read the preliminary hearing transcript, I read the file, and I felt like I was in the middle of a paragraph. But my understanding is that Mr. Graham was in a dating relationship with this alleged victim's mother.

MS. BOSKOVICH: Correct.

THE COURT: And that an incident or incidents occurred in 2018.

MS. BOSKOVICH: Correct. One thing, they were actually married. They were married for a quick time. The alleged victim in the instant case's mother and Mr. Graham were married.

And you wanted --

THE DEFENDANT: Annulment.

MS. BOSKOVICH: Mr. Graham wanted an annulment shortly after they were married.

THE COURT: When were they married?

THE DEFENDANT: About February.

MS. BOSKOVICH: Of 2018?

THE DEFENDANT: Yes.

MS. BOSKOVICH: February of 2018. And you wanted an annulment months later?

THE DEFENDANT: Yes.

THE COURT: Where were you married?

THE DEFENDANT: We came out here and got married.

THE COURT: In Las Vegas or in Nye County?

THE DEFENDANT: Pahrump. We bought the certificate things or whatever, and then went and had a --

THE COURT: I'm sorry. I can't hear you, and I'm sure if I can't, my court reporter can't hear you

either.

THE DEFENDANT: We went --

THE COURT: Can you put your mask down just and speak into the microphone, please?

THE DEFENDANT: We came here somewhere to the records and bought the certificates, and then we went and had someone marry us with -- we had witnesses. It was my first time experience. I don't really know too much about it. I was rushed into it, but we were legally married.

THE COURT: Okay.

THE DEFENDANT: Here in this town.

THE COURT: All right. I can find it if it's been recorded. I'm looking right now.

What is kind of odd here, I'm trying to search it through the Recorder's Office because all of the -- all of the marriage certificates, if they're recorded, are now available online through the Nye County Recorder's Office. I'm trying -- it's searching. I -- you said that you had that marriage annulled?

THE DEFENDANT: Yes.

THE COURT: Was that annulment here in Nye County?

THE DEFENDANT: Yes.

THE COURT: So, it would had to -- it would of had to have been through the District Court in 2018.

THE DEFENDANT: I received the papers in jail, so.

THE COURT: Okay.

THE DEFENDANT: So, I did -- it was all here off of Radar Road or whatever.

THE COURT: Okay. That's our courthouse here in Nye County. That's the -- okay. Just give me a minute. I've got -- I was -- I searched the last name Graham.

What's that?

THE CLERK: (Inaudible.)

THE COURT: Did you? Is it online so I can pull the pleadings?

THE CLERK: (Inaudible.)

THE COURT: Is the file down here?

THE CLERK: It is.

THE COURT: Can you have it pulled and brought over, please?

THE CLERK: I sure can.

THE COURT: All right. So, we have located -- ah, let's see what we got here.

THE CLERK: (Inaudible.)

THE DEFENDANT: Yes.

THE COURT: We'll see what we can get here. All right.

So, you were -- you were married in February. Well, I'll find out specifically. But so, you were actually married to the alleged victim's mother? Okay.

THE DEFENDANT: Yes.

THE COURT: All right.

MS. BOSKOVICH: And because of that, Your Honor, that's another reason that I am distinguishing the two, the prior conviction and this current conviction -- I said current conviction. I'm sorry.

This current case that we're set for trial on. The 2013 conviction was a consensual relationship between Mr. Graham and the alleged victim. These allegations before Your Honor today stem from the daughter of Mr. Graham's then wife. So, I don't believe the facts and circumstances are similar.

THE COURT: Okay. All right.

MS. ORWOLL: May I respond to --

THE COURT: You respond to me not to Ms. Boskovich.

MS. ORWOLL: No. If she has more to say I didn't want to interrupt her, Your Honor.

THE COURT: Sure. I appreciate that.

MS. ORWOLL: I would argue that the facts that were just relayed to Your Honor, that this relationship was ongoing, is actually much worse for Mr. Graham. And the reason why is, if she's 13 years old, Your Honor, she's in the seventh or eighth grade. So, he's a high school senior, at the youngest, if not graduated from high school, taking advantage of a little girl. And then not using that as realization oh, I made a mistake by impregnating a 13-year-old. He actually doubled down and continued to impregnate her.

Your Honor, I would argue that this is extreme evidence that he has a type for young, teenage girls. As an adult, he takes advantage of his position to get himself into sexual situations with them.

THE COURT: What about the fact that they had a six year relationship and he was -- it was 13 and she would have been an adult once herself at the end of the relationship?

MS. ORWOLL: Your Honor, a 13-year-old can't consent. She could not --

THE COURT: Six years later she's 19.

MS. ORWOLL: She could not consent at the beginning of the relationship, Your Honor. She's a

young, vulnerable girl.

THE COURT: Well, those details certainly are left out of the police report that I reviewed.

MS. ORWOLL: What details, Your Honor?

THE COURT: About the ongoing relationship.

MS. ORWOLL: That's true. I did not know that until Ms. Boskovich enlightened us on it.

THE COURT: Just now, that was the first you learned of it?

MS. ORWOLL: That's the first -- I did read it in her motion, but I did not know the surrounding facts other than what she put in her opposition.

MS. BOSKOVICH: And again, I've continued to learn facts as we go.

THE COURT: I granted this divorce. I'm the judge on the divorce. So, it's not annulment. It's a decree of divorce with no children.

MS. ORWOLL: Your Honor, I'm sorry, that just -- that strikes a little cord in me. Does that created problems for Your Honor hearing this criminal case?

THE COURT: How would it?

MS. ORWOLL: I don't know. But I need a -- I need to bring it up just in abundance --

THE COURT: How would it --

MS. ORWOLL: -- of caution.

THE COURT: -- how -- it was an uncontested divorce that I signed my name to that I never had a hearing on. So, what would be the --

MS. ORWOLL: That's fine. That's why I'm asking, Your Honor. So, there was no hearing? You didn't hear anything about the --

THE COURT: It was a joint -- it was a complaint for annulment or in the alternative a divorce.

MS. ORWOLL: For the record, Your Honor, that's all I needed.

THE COURT: You know, please forgive me. But if I were the attorney on this, I'd have known everything I could know about Mr. Graham, including running him through the system here in Nye County to find out if he had any other civil or criminal cases. And I'm somewhat at a loss for the lack of knowledge by the Nye County Sheriff's -- or Nye County District Attorney's Office about this particular defendant. That's really troubling to me.

In fact, he defaulted, and I -- and I granted -- I set a hearing on it for annulment, hearing

on annulment. Nobody showed up. Got an address. This is my order back on August 28th of 2018.

"On August 21st, 2018, the above caption matter came before the Court for hearing on a complaint for annulment. The Court, having reviewed all pleadings and papers on file and information presented at that said hearing, finds this matter has not met the requirements for an annulment pursuant to the Nevada Revised Statutes. Therefore, with good cause appearing, the complaint for annulment is denied. Plaintiff may submit a proposed decree of divorce for consideration."

Which she actually did because he -- there was a default, and I grand the decree of divorce. But there was no -- it doesn't appear that there were appearances by -- 8-21-18, I was the judge. The clerk was Veronica Aguilar. My bailiff was Greg Curtain.

"Plaintiff is present in proper person. The plaintiff explains the reason for annulment, filing a request to proceed since she wants to move on after suffering from domestic violence. The Court refers the plaintiff to Nevada Legal Services Self-Help Center. The Court instructs the plaintiff she will take the matter under advisement."

It appears -- so, that seems to be what I did.

MS. BOSKOVICH: Your Honor, the date of that divorce was August 28th or was that the hearing on the annulment?

THE COURT: The Decree of Divorce was -- let's see. When did I sign it? September 16th, 2018.

MS. BOSKOVICH: Thank you.

THE COURT: Well, this is interesting. There's apparently, over on the left-hand side, there's actually Mr. Graham sent the letter. Oh, because I think she tried to say that she didn't know of his prior convictions. And Mr. Sankona Graham wrote me this letter. Wrote it to the Court, and I put it on the left-hand side.

"My wife, Sarah, played an active role in my parole proceedings. By stating as much, I'm informing the Court she knows about my prior convictions and pleas I've taken in the past. She knows my mom personally and knows the plea is different than truth. My mom and a few other family members have talked to Sarah and still are. She is hurt. She doesn't wish to go through with this. All she wants is me to put her first.

"The other girl has lied to my wife, and now my

wife is using what she knows about me to file this annulment. I do believe that if we attend counseling, we will be fine. Sarah came and got me from California, and we got married. I am willing to take classes and/or anything else I have to do to save the marriage. Please send me a court date to where we can discuss this matter. This is my formal response.

"I'm incarcerated until July 20th, 2018. I managed to get the application, proceed in forma pauperis. Please serve a file of this response to the plaintiff. I can be reached through e-mail. Just in case, my mom's address is -- I declare a penalty perjury of the law that the foregoing is true and correct."

So, again, my suggestion would be, probably should have looked into this before coming in today. But regardless, so, I'm hearing stuff that's a little different now about the case for the first time today in court. So, apparently Mr. Graham was married to the victim's mother, and they got, it looks like a divorce. I found that there wasn't grounds for annulment. And apparently I had sent something to Mr. Graham, and it was returned undeliverable. Probably a copy of the -- in fact my clerk in the courtroom -- I've got a couple

of letters it looks like from Mr. Graham. I do. One from jail. He sent me -- so, I don't know. Okay. So, anyway, there's that out there.

So, is there anything else you want to advise the Court with regard to this prior conviction for Mr. Graham?

MS. BOSKOVICH: No. I think we've covered a lot. I mean, the only thing I was going to address again was with the juvenile arrests. At this point they're arrests. We don't have any information as to whether they're convictions, so I don't believe those should be admitted at trial.

And I'm still of the position that even if the 2013 is deemed relevant, I believe that as it is right now, especially including the great bodily injury aspect of it, it would be extremely prejudicial, unduly so to the -- to Mr. Graham at trial. So, I believe that it should not be admitted as well. And I'll submit everything else on the pleading.

THE COURT: Okay.

How about you, Ms. Orwoll? Is there anything you -- else you want to tell the Court on this?

MS. ORWOLL: Just one final thing, Your Honor --

THE COURT: Okay.

MS. ORWOLL: -- with regard to the great bodily injury issue. If Your Honor is inclined to wait until I can get that Amended Judgment of Conviction to make your decision on whether or not it would be unduly prejudicial, the State would very much appreciate that. And as I was saying, I will do everything I can to get that as soon as humanly possible.

THE COURT: Let's talk about the requirements of the statute. Clearly, I don't have to have a Petrocelli type hearing. The law's been pretty clear about that in Franks. But what it does say, that the State must proffer -- "The State must request the District Court's permission to introduce the evidence of the prior sexual offense for propensity purposes outside the presence of jury.

"The State must then proffer its explanation of how the prior sexual offense is relevant to the charged offense, i.e., tends to make it more probable that the defendant engaged in the charged conduct.

"Second, we note that the relevancy of a prior sexual offense also depends on the fulfillment of a condition of fact. Wherein in judge shall admit it upon the introduction of evidence sufficient to support

a finding of the fulfillment of the condition.

"In light of the nature of prior sexual act evidence, federal courts require district courts to make a preliminary finding that a jury could reasonably find by preponderance of the evidence that the other act occurred.

"Therefore, prior to the admission of prior sexual offense evidence for propensity purposes, under NRS 48.045(3), the district court must make a preliminary finding that the prior sexual offense is relevant for propensity purposes, and that a jury can reasonably find by preponderance evidence that the bad act constituting a sexual offense occurred.

"Finally, while all relevant evidence is inadmissible if it's probative value is substantially outweighed by the danger of unfair prejudice, other courts have cautioned to pay careful attention to both the significant probative value and the strong prejudicial qualities of that evidence due to the inherent strength of prior sexual act evidence. In order to address the highly probative yet prejudicial nature of this evidence, the Ninth Circuit Court of appeals in LeMay set forth a modified balancing analysis stating that the district court must consider

several non-exhaustive factors prior to allowing its admission.

"One, the similarity of the prior acts to the acts charged. Two, the closeness in time of the prior acts to the acts charged. Three, the frequency of the prior acts. Four, the presence or lack of intervening circumstances. And five, the necessity of the evidence beyond the testimonies already offered at trial. Those are the five factors the court has to consider.

'But therefore, after defendant challenges the state's intent to introduce prior sexual offense evidence for propensity purposes, the district court should evaluate whether that evidence is unfairly prejudicial under the LeMay factors prior to admitting such evidence."

Beyond Franks and LeMay, the court listed a number of unpublished decisions. And the decisions that the court looked -- well, first I wanted to look at the definition of unfair prejudice. There is a published Nevada Supreme Court decision on that, and it is Randolph versus State. It's 477 Pacific 3d, 342, 349. It's a 2020 Nevada Supreme Court decision, and it's talking about unfair prejudice. And this was a case that -- it's had a lot of publicity. It was on

either Dateline or 20/20.

It is -- it's the Randolph v State. That was the gentleman who his sixth wife, the allegations are that he hired a hitman to kill his wife for the insurance money, and then he killed the hitman. And there were five prior wives that had -- many of which had met similar fates. And so, they were talking about all of the prior bad act evidence that had come in at the trial.

And the Supreme Court said, "Unfair prejudice as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged. In assessing unfair prejudice, we look to the basis for the admission of prior bad act evidence and to the use to which the evidence was actually put.

"When balancing probative value against the danger of unfair prejudice, courts consider a variety of factors, including the strength of evidence as to the commission of the other crime, the similarities between the crimes, the interval of time that has elapsed between the crimes, the need for the evidence, the efficacy of the alternative proof, and the degree

to which the evidence probably will rouse the jury to overmastering hostility."

Then they cite State versus Castro, 69 Hawaii 633, 756 Pacific 2nd, 1033, 1034, 1988. Quoting E.W. Cleary McCormick on Evidence, Section 190, 3rd Edition 1984. "See also Franks v State, 135 Nevada 1643 Pacific 3rd, 752, 756, 2019. Applying similar factors to the admission of prior sexual offenses to show propensity under NRS 48.045(3)." And it says, "citing United States versus LeMay."

So, I thought that was an interesting talk -- or discussion by the Nevada Supreme Court of what we are looking at with regard -- I'm always looking for definitions of unfair prejudice.

Then there was the Gentner case. It's an unpublished decision from the Nevada Supreme Court. The date of that decision is July 24th of 2019. It is found in the table at 445 Pacific 3d, 221. But that challenged the constitutionality of 48.045(3). And the Nevada Supreme Court found it was constitutional. They talked about there are limited circumstances where propensity evidence could violate the constitutional rights of a defendant.

And it is -- if the evidence is of no relevance

or its potential for prejudice far outweighs what little relevance it might have. And again they cited LeMay on that determination. And what the Nevada Supreme Court said in that case as well, "If the district court, weighing the factors against other factors in making the determination, it's given great difference because it's generally within the discretionary authority of the district court judge."

Then there's another decision out there, Thomas versus State. It's also an unpublished decision from January 4th of 2019. It's found in the table at 432 Pacific 3d, 759. Actually, the certiorari was denied by the U.S. Supreme Court on that case in 2020. And it went through the LeMay factors. And this was an appeal from a Judgment of Conviction pursuant to a jury verdict of three counts of sexual assault with a minor under the age of 14, eight counts of lewdness with a child under the age of 14, and two counts of -- two counts of attempted lewdness with a child under the age of 14.

And in that case, the Nevada Supreme Court said the district court did not abuse its discretion in admitting evidence of Thomas' prior bad acts. There were two prior acts constituting sexual offenses that

apparently had been committed against one of the victims. What the Nevada Supreme Court said in looking at the factors set forth in Franks, "We conclude the district court properly admitted the evidence because it was relevant to show the defendant's propensity for specific sexual acts and did not present a risk of unfair prejudice. Substantially outweighing its probative value because of the substantial similarity between the acts and their closeness in time and frequency. Consequently, district court did not abuse its discretion in permitting a victim to testify regarding prior sexual acts."

And then there is an unpublished decision from, its called Ward versus State, 456 Pacific 3d, 601. It's a 2020 Nevada unpublished decision. It's dated dated February 5th of 2020. In that decision, again, the defendant was arguing that the district court erred in admitting his prior statutory sexual seduction conviction.

The Nevada Supreme Court said, "We find no abuse of discretion in the district court's assessment. In particular, the prior sexual offense was less serious than the current charge, and therefore not as emotionally charged or inflammatory. The incidents

were similar enough, victim's ages and locations of the offenses, to be relevant to show propensity as allowed by NRS 48.045(3) and to bolster the victim's credibility. And there was not a significant time lapse between events without intervening alleged misconduct that would undermine the evidence as probative value."

Then we had a Campbell versus State. It is an unpublished Nevada Supreme Court decision from 2021. April 29th of 2021. It's found in the table at 45 Pacific 3d, 213. In that case, Campbell contended that the district court improperly admitted evidence of prior sexual offenses under NRS 48.045(3).

And the Nevada Supreme Court said, "District court did not abuse its discretion." It said, "First the district court properly found the bad acts evidence testimony by two victims of prior lewdness and other sexual abuse relevant, a low hurdle. Backup, Effective the district court found that the same evidence proven by clear and convincing evidence and a higher burden of proof that's required." Because under Franks it is a preponderance of the evidence. "And then third, the district court made a clear record concerning its decision whether or not to admit such evidence," and

went through the five factors set forth in Franks.

At that time, the defendant was arguing that the prior acts were remote in time and more aggravated than those of which he was charged involving sexual assault and lewdness acts ending about 17 to 20 years before. And the court went on to say what was significant about that case was there is no bright-line similarity or remoteness rule. As Campbell acknowledges, the prior bad act evidence if taken as true, qualified as frequent.

The record also demonstrated that Campbell's familial circumstances may have intervened to prevent him from having access to young children for some time, explaining away some of the remoteness of the events.

Finally, the State had a great need for this evidence because the state's only direct witness to the crime, the victim, testified to events that occurred when she was six or seven years old, over a decade before trial and faced substantial impeachment.

And then there's a final main -- May case of 2021, from the Nevada Supreme Court. May 14th, 2021, also an unpublished decision. It's Gillen versus State found in the table at 486 Pacific 3d, 725. And in that case was a case where the court held a Petrocelli

hearing. It was before the Franks decision had come out. The state presented evidence at that hearing from a Colorado victim, and both the investigating officer and the victim of that Colorado offense testified. And the court found that that evidence was relevant, and the court also noted -- I always highlight the things that I think are significant for those decisions.

"While the Colorado acts occurred approximately 16 years before the instant offenses, there is no bright-line rule concerning remoteness in time." So, those were -- I did look at all of that before coming in today. You know, I think it's very difficult at this point for me to make a decision on whether or not I'm going to allow that. I may do as they did in the LeMay case and wait until the case is started. I can make that decision outside the presence of the jury.

MS. BOSKOVICH: And, Your Honor, can I ask a question?

THE COURT: Yes.

MS. BOSKOVICH: Would you be reserving your decision on both -- I'm sorry -- on both the 2013 conviction and the juvenile arrests or?

THE COURT: Well, the juvenile arrests are arrests at this point. If there's different evidence

that comes forward that there's been some convictions. But in fact in the police that I read pretty quickly, it seemed like some of that evidence had been destroyed. So, but I clearly don't think today -- if I were to rule today -- if I were going to rule today, I would deny the use of the evidence based upon the fact that the judgement that has been offered contains, in my opinion, highly prejudicial information.

Specifically, the tail of that charge, the judgment that has been presented to the court contains that substantial bodily harm that the Court of Appeals overturned. I'm not going to have a trial within a trial. And like I said, I think I need to see in part what the defense is going to do, and that may effect how I rule on those factors that I just listed. At this point, I don't have enough information I think to really -- to give a good ruling.

And of course, if I were -- if I had to make a ruling today, I think I would have to deny it based upon what I've said and based on what I've reviewed of the record. So, I'm inclined to keep that matter open. I also would like to have a better look at this other file based upon the information that's been presented to the court today.

So, I think that's what I'm going to do. I'm going to reserve my ruling, and I'll rule on it on -- obviously before the end of the trial. But I think that makes the most sense here.

Now, we have issues with regard to discovery. There is one thing here that I want to make mention of after reading the preliminary hearing transcripts and after reading everything in this case to get ready for today. Apparently the DVD is missing from the forensic interview. When I read the preliminary hearing transcript, it raised more questions than answers. What are we doing to try to find this? Oh, it wasn't somehow booked into the evidence. But every time we have a forensic interview, we have certain people that are there.

We have a forensic interviewer in the room with the alleged victim. But generally there's a Deputy DA who is viewing the evidence. Viewing the interview from another room. There's generally law enforcement that has. What have -- what have we done -- you know, this -- what have we done -- I have to tell you, I thought the efforts to try to locate that DVD were pretty dismal from what I could see unless somebody can enlighten me in what we're doing to try to find that

thing. Oh, we couldn't find it.

Well, I think we have an obligation to look. So, is -- what's been done to try to -- who was -- there was probably a Deputy DA. Maybe it was Katrina Samuels that was at the interview.

MS. ORWOLL: Your Honor, from my understanding of the -- I'm not sure if Your Honor knows that nowadays we do those forensic interviews, and they automatically go online. So, the disks can't be lost. They're digitally stored. That was not --

THE COURT: Okay.

MS. ORWOLL: -- the case until just about a year and a half ago I believe. And then everything was stored physically on a DVD because the Child Advocacy Center doesn't maintain any of those recordings for security purposes. So, the DVD -- and I mean, I don't want to throw any other offices under the bus, Your Honor. But I think that the Sheriff's Officer mishandled evidence in this case with regard to the DVD in particular and lost it.

When there were other detectives, who are now no longer with the Nye County Sheriff's Office, and then when Detective Fancher took over the case, he did his best to find everything that was existing with

regard to the prior investigation.

THE COURT: Okay. But my understanding is Fancher was the one at the -- at the interview. He says he doesn't remember it, but his name is on it. Apparently there's some reports that I don't have access to that says Fancher's -- Fancher was -- he doesn't remember being there, but his name's the one that's listed as the officer that's there.

So, you know, I understand that they were transitioning systems. I will give you an example. We're transitioning systems too. As of December 31st of 2019, we no longer use whatever that old dinosaur system -- AS400, right? I couldn't even get in.

So, we've transitioned to Pioneer Benchmark. So, but I can still look. Like today, the files for -- may or may not have ever been scanned, but one thing we know is they're not uploaded into our system. But much like Detective Fancher, he found this case somehow between -- so, there's got to be -- I mean, I was kind of appalled by the lack of efforts that have been made to determine who was at the interview, what efforts have been gone to go and look in the evidence vault.

We have a lieutenant who's in charge of evidence. I mean, what have we done other than say oh,

I went and I couldn't find it. Therefore, we've lost it. That was kind of a not a very good answer. Where was the chain of custody on this thing? I mean, where's the chain of custody on the other evidence in this case? To me, I'm just, I'm appalled quite frankly. And that's not on you, Ms. Orwoll. That's on the Nye County Sheriff's Office.

But as an arm of them, if that is something, that just saying it's loss, and, you know, the other thing is it could result in a jury instruction for the jury at the time of jury instructions about the State losing the evidence. So, I would be -- I would be trying to figure out who was there in 2018. I remember when Ross Armstrong had your position, and then it went from Ross to Katrina Samuels.

So, somebody at your office would have, in all likelihood, been at the forensic interview in the interview room with her -- with the -- on the other side of the interview. But who did the interview? I mean, we have a Child Advocacy Center in 2018, they can't tell me who did the interviews?

MS. ORWOLL: Your Honor --

THE COURT: I'm curious.

MS. ORWOLL: I can tell you who -- it was -- it

was Emily Smith who attended the interview.

THE COURT: Okay.

MS. ORWOLL: Emily Smith, as I think you know, does hundreds of these types of interviews. So, as far as remembering the specifics, I highly doubt she'd be able to remember unless she reviewed the video, which we don't have.

THE COURT: There were no notes? She doesn't take any notes when these things are done? I've seen a number of these interviews with Emily Smith. So, I know exactly what you're talking about. But there's no notes, no nothing kept by Ms. Smith. No -- nothing kept by the Nye County Sheriff's Office when they are reviewing the -- not a single note kept by anyone? The Deputy DA that would have been there, nothing?

MS. BOSKOVICH: And, Your Honor, I have lots of thoughts on this. I'm not sure how best to organize everything. But the CAC interview, that DVD, is by far the most crucial piece of evidence.

THE COURT: For both sides. It's either --

MS. BOSKOVICH: Yes.

THE COURT: It's either very damning to Mr. Graham or it's very exonerating to --

MS. BOSKOVICH: Yes.

THE COURT: -- Mr. Graham.

MS. BOSKOVICH: Yes. And the -- I mean, the State's admitted we know for a fact that there was an interview. We know that Detective Fancher was the one present at the interview. And we know that that disk no longer either exists or is lost in the abyss somewhere.

THE COURT: They recorded on something.

MS. BOSKOVICH: Recorded on DVD. My understanding is the CAC facility, they don't actually keep physical recordings.

THE COURT: Makes sense because of the highly confidential --

MS. BOSKOVICH: Yes.

THE COURT: -- nature of them.

MS. BOSKOVICH: Correct.

THE COURT: So, and --

MS. BOSKOVICH: I'm sorry.

THE COURT: Go ahead.

MS. BOSKOVICH: As far as the notes, I know that in some of the interviews that I've watched, usually the interviewer there, you know, they're taking notes of what's said. That gets passed on to the Sheriff's Office, the deputy or detective, whoever is

there. As Your Honor mentioned they -- you know, they take their own notes as they're doing this. And it's my understanding that all of that has been lost.

And that's one of the other things that I requested in my motion for discovery was the original police report from the 18NY case. Which I still am unclear of what the last four of that number was. But that original police report. I will hand it to the State, they did find I think it was three original statements from 2018, when the incident was reported. So, I do have those in my possession now. But I don't have the police report. I don't know what kind of investigation was done by the Sheriff's Office to -- I just don't know.

And, you know, typically in these cases, the police report is extensive. I mean, it's pages of information. And in this case, there are -- there's I think a page and a half of a police report.

THE COURT: Let me ask you, this supposedly, if I read the facts correctly when I was preparing for today, the alleged victim brought this to the attention after a domestic violence incident at the house. So, there's got to be some recorded call into the Nye County Sheriff's Office. When you call, you're

calling on a recorded line of either a 311 call or a 911 call. Okay? And somebody went out there, and it's from that incident that this -- that this incident, if you will, arises.

MS. BOSKOVICH: That's my understanding.

THE COURT: So, did anybody search that other? Do we have another case number? What was the deal with that? Was there ever a prosecution for that? Was the file ever turned from the Nye County Sheriff's Office over to the DA's Office? Did it go from the DA's Office down to Justice Court for -- I don't have access to the records. We have a completely different system.

MS. BOSKOVICH: I don't know if there was an investigation or not. That would be a question for the State. And I don't know. But that is my understanding, that that's how this alleged conduct was reported.

And I, in my motion as well, I requested any 911 or 311 calls. However, the State didn't respond to that portion as it was deemed overly broad. However, the -- like I said, the main piece of discovery that I care about is CAC interview. And with -- I mean, there's a case law that I've read that indicates if discovery violations are egregious enough, that quite

frankly dismissal is the appropriate remedy. And I would -- I would proffer that this would be one of those cases.

I mean, the -- in any child sexual assault case, the CAC interview is excruciatingly important. I mean, those -- the forensic interview are trained to elicit -- to elicit the truth by trying to ask questions in a certain way that the children feel comfortable enough to be truthful with them and honest about the situation. So, while there may be statements from the alleged victim saying that such and such conduct occurred, she has told Emily Smith I believe, that none of this occurred, that she made it up because, you know, mom was mad that they were getting divorced or something.

I mean, that is a possibility that that evidence exists, and the State's failure to preserve their evidence properly, Mr. Graham should not be punished by that. So, I think dismissal would be appropriate for a piece of evidence such as this.

THE COURT: Well, that's not in front of the Court today. That wasn't briefed to the Court today. What was briefed to Court is the discovery. So, I told you on the motion to admit the prior sex acts, I'm

going to reserve my ruling on that.

But let's talk about the discovery. I do want to talk about that. I was just shocked that I think this -- you can't just say oh, we went and looked and it's lost. What efforts have been made to try to find it is the bigger issue for the Court. What are we doing to try to find the CAC interview? What has been done? I can tell you if this were my case and I were the DA, I'd be over the Sheriff's Office looking myself.

I'd be trying to figure out who all was involved in that interview. I would be asking questions. I would be trying to find this disk and anything else that went with it. You know, is it -- they had -- they used to have Sheriff's Auxiliary Volunteers that worked the evidence room. Well, maybe it's just misfiled. I mean, maybe it's filed in that other case. Has anybody looked? I mean, to me that's -- that's -- well, we better get on that.

But we just, oh, I can't find it, therefore is not acceptable. You know, if you come to court and tell the judge, you know what, Judge, we can't find this and these are the efforts that we've made to try to locate that, then maybe it is irretrievably lost. I

don't know. But it's just we can't find it is not acceptable to me. I mean, we need to get off the stick and look for it, and sooner than later. You know, I don't want it to appear like the third day of trial. I mean, we have an obligation as the State to look for something that's lost. And I -- but I -- that was just something that snagged at my attention.

Now, let's talk about your specific. It's your motion. You tell me exactly what you -- you know, I'm not a big fan of just I call them boiler plate motions. But what is it -- and some of your statements are very over -- in my opinion overbroad. What is it that you're looking for that you don't have?

MS. BOSKOVICH: Your Honor, since the motion has been filed, the State has provided me with additional discovery that I had requested. A couple of the things that I specifically was asking about was the CAC interview we already covered. The original police report.

THE COURT: Do you have that?

MS. BOSKOVICH: No. Wait, I do not have that. The -- from the 18NY case. I received jail calls, text messages that Mr. Graham had made since he's been in custody. I requested any of the original handwritten

statements from either the alleged victim or anyone involved that the Sheriff's Office had collected, and I did receive those. The State has also provided me additional information that I didn't even receive. Which was the -- that I didn't even request. I'm sorry. That was the original police report that Ms. Orwoll provided to you today.

THE COURT: Okay. One could argue that might be though exculpatory evidence.

MS. BOSKOVICH: Potentially.

THE COURT: But go ahead. Okay.

MS. BOSKOVICH: I did request 911 calls or 311 calls. I have not been provided those. I requested any criminal histories, if any, of witnesses or alleged victims that they intend on calling.

THE COURT: Have you gotten that?

MS. BOSKOVICH: No.

THE COURT: Okay.

MS. BOSKOVICH: As far as Brady materials, I received an two page copy of a letter that Ms. Orwoll provided -- or sent to the Sheriff's Office requesting them to turn over any Brady material for Detective Fancher.

THE COURT: Okay.

MS. BOSKOVICH: So, I haven't received anything on that, but I know the request was made.

THE COURT: Is there something that you believe that exists on Detective Fancher?

MS. BOSKOVICH: I don't believe so. It's just more of a precaution.

THE COURT: Okay.

MS. BOSKOVICH: I think for -- on my behalf.

As related to the 911 calls, I requested the complete CAD log, which I have not received. I requested any DNA information, and Ms. Orwoll explained in her reply -- or her opposition, rather, that no testing was conducted of that. Nothing was collected as far as tablets, cell phones. So, that's fine.

THE COURT: Has the State though -- apparently this was done through some communication. Has the State gotten a subpoena out to whatever --

MS. ORWOLL: Yes, Your Honor.

THE COURT: -- software? Have you gotten that?

MS. ORWOLL: It's from Facebook, and we have had that pending for some time now.

THE COURT: Okay.

MS. ORWOLL: Still waiting on results.

THE COURT: Okay. I can't imagine the size of

their legal department to deal with all this. Okay.

MS. BOSKOVICH: Okay. I covered -- I received the potential witness statements. I did request any medical records that came as the result of the reporting of this alleged conduct. I haven't received any, so I don't believe -- I'm assuming those don't exist.

THE COURT: Am I wrong? It's my understanding that this was reported in 2018, and basically Nye County Sheriff's Office dropped the ball, and then in 2020, they're like going through, and they're like oh, yeah, well, somebody reported a -- we have a victim who reported alleged sexual assault. Well, we better get back on that? That was -- that's how -- I mean, quite frankly it seemed pathetic to me.

MS. BOSKOVICH: The way I envision it in my head is that they were moving desks and found an old filed underneath the desk. I mean, it just seems that -- and, you know, no disrespect to the Sheriff's Office, but it definitely seemed odd the way the case came back. I mean --

THE COURT: I certainly seemed like there was an old file. I mean, I don't know. Oh, yeah. Oh, you know, I was going through my stuff. Well, guess what.

I haven't done anything with this.

MS. BOSKOVICH: And the other question I have since receiving the copies of the handwritten statements from 2018, is if they have the statements, where's the rest of the police report? And it could be that maybe those statements were tied to the domestic battery case. The --

THE COURT: That's what I'm wondering.

MS. BOSKOVICH: Yes.

THE COURT: If there's a domestic battery number. But if it came out on a call of domestic battery, there' got to be a 311. Probably a 311 call. There's got to be some call that was -- sheriffs -- police don't just show up and say you have domestic battery today? I'm driving around the neighborhood. Was wondering what's going on. So, obviously, there's a reason that they came out.

MS. BOSKOVICH: Beyond that, Your Honor, that -- those are my specifics.

THE COURT: So, we're looking for the CAC interview, which I have some concerns about getting on the stick and finding that. The original police report again, the NY case, the jail calls and handwritten statements you have those, right?

MS. BOSKOVICH: Yes.

THE COURT: Okay. And you're looking for the original police report. So, you want the evidence to see if these cases are tied, the domestic -- the domestic and the reporting and then this reporting?

MS. BOSKOVICH: Correct. And I also would like any, you know, statements or police reports from the original deputies or detectives that were involved in this. So, at this point, I don't know who responded to the initial call. I don't know who took the handwritten statements. I know that Detective Fancher watched the CAC interview, but I don't know if he was involved from the get-go or if he inherited it from somebody as a detective.

THE COURT: He didn't seem to know at the preliminary hearing.

MS. BOSKOVICH: No. He -- his memory was not the best at the preliminary hearing.

THE COURT: He didn't act like he knew whether he was the original detective. He didn't think he was at the CAC interview, but his name was on it. So, maybe he was, maybe he wasn't. I don't know. All right.

So, all right. Ms. Orwoll, so respond to some

of these things. And I know what the issue is with the CAC interview, but have you gotten on that? I mean, if not, I would be leaving this courtroom and going over to the Sheriff's Office and beating the bushes or getting your investigator on this.

MS. ORWOLL: And, Your Honor, I have done everything that I can personally to look for this. When I first got this case, when I first started as the granted(phonetic), I had conversations with Detective Fancher. I made efforts to look in evidence vault, any place I could think of. It bothers me too. I would love to have the CAC. But I can't give you answers I don't have. I don't know what happened to it at this point.

THE COURT: But you inherited the case, obviously. So, who was the attorney this case was assigned to in your office?

MS. ORWOLL: I don't think I actually was. Well, I -- if I recall -- because it was filed in -- he had been to warrant. So, he didn't get picked up for even a formal arraignment until I want to say December.

Was it December of last year that you came to Nye County.

THE DEFENDANT: January 14th.

MS. ORWOLL: January 14th of last year, and I think that's when --

THE DEFENDANT: Of this year.

MS. ORWOLL: Of this year. You're right.

THE COURT: January 14th of 2021?

THE DEFENDANT: (Nods head.)

THE COURT: Okay.

MS. ORWOLL: Your Honor, it was Mr. Allmon that charged the complaint on May 20th.

THE COURT: Okay.

MS. ORWOLL: I'm sorry, May 29th of 2020.

THE COURT: Okay.

MS. ORWOLL: So, Mr. Graham failed to appear at the formal arraignment for that.

THE COURT: Okay.

MS. BOSKOVICH: Eventually a warrant was issued, and he got picked up and came here on January 14th of 2021.

THE COURT: Okay. So Mr. -- there's got to be a conversation with Mr. Allmon. He had to have some basis to charge a -- we just don't charge people with crimes. You know, we have to act in good faith as attorneys as well. So, I mean, I don't know what he had or didn't have, but have we had the discussion,

Ms. Orwoll with Mr. Allmon?

MS. ORWOLL: Yes, Your Honor, we have discussed the case at great length when I first got to the office, and then again when the case was bound over and set for trial. Before it was bound over.

THE COURT: Okay.

MS. ORWOLL: But the discussions with Mr. Allmon have been extensive, and quite frankly, Your Honor, we have been ranting to each other about the handling of the CAC and at a complete loss for why it ended up the way it ended up.

THE COURT: But let me ask you something. Has anyone sat down -- I do a -- my staff will tell you, I do a lot of my own thinking in my own office. And like this file, I took it home last night and spent hours on it because I was in Tonopah yesterday. And when I got home, I thought a lot about it. I read everything. I came in. I was on a B line to be focused on this thing today. But, you know, I realize that there's only so much time in the day, and that's why I end up having to work crazy hours.

But I guess my question is what efforts have been made to find out who was at that interview? Besides -- we know who the interviewer was, but was it

only Detective Fancher? Because usually -- I mean, you know, who were the deputies that responded to start this case? Do we know that? I mean, otherwise, I'm wondering do I have way too much time slotted for this case because who are we going to call as witnesses? Well, Detective Fancher and the alleged victim? Because that will take a day.

MS. ORWOLL: I feel like you've --

THE COURT: I'm shocked and --

MS. ORWOLL: -- asked the one question. I don't know which question you want an answer to, Your Honor.

THE COURT: Well, I'm just trying to figure out what efforts we've -- I guess I hear we've made -- Judge, we've made great efforts to find the DVD. And I'm asking what is it that we've done to try find the DVD?

MS. ORWOLL: There were e-mails that were sent. There were visits.

THE COURT: Who were they sent to?

MS. ORWOLL: To Detective Fancher in addition to the people at the Sheriff's Office who handle the evidence.

THE COURT: Okay. Has anybody asked who was at

the interview?

MS. ORWOLL: Your Honor -- sorry -- these are some -- they sound to me like different questions. I'm trying to answer what Your Honor is asking. The --

THE COURT: Okay. What I'm trying to find out is what diligent efforts -- I'll just -- I'll condense again. What diligent efforts have been made by the Nye County District Attorney's Office working with the Nye County Sheriff's Office to find this DVD? And I think it boils down to the first start. Who was there? Have we looked at who was there? What happened to the disk as soon as it was done? What system was it put on? Those kinds of question.

MS. ORWOLL: And, Your Honor, it was not put on any system. It's just the hardcopy of the DVD. It was never burned anywhere else.

THE COURT: It was recorded on something. What was it recorded on? What was the recording device?

MS. ORWOLL: The way the CAC has handled it in the past before -- the current system --

THE COURT: Sure.

MS. ORWOLL: -- it's called Videx. So, all the things that are recorded are then stored on the Videx, I believe is a cloud based system. Before that

everything -- so, when this 2018 interview was completed, everything was burned directly onto a DVD. That memory was not stored anywhere else. Your Honor, I think probably this case is a big reason why they don't have that system anymore.

THE COURT: Okay. That's what -- see, nobody made it'd clear to me what they did.

MS. ORWOLL: Okay.

THE COURT: So, they basically recorded it on a disk and made no copies --

MS. ORWOLL: Correct.

THE COURT: -- of that video. Well, that's just idiotic. Let's just think about that.

MS. ORWOLL: Uh-huh.

THE COURT: What happens if the disk is corrupt? You know, that doesn't make any sense. I can't even believe that would pass evidentiary standards. Just think about that a minute. If they recorded an interview and they simply burned it on one disk, and the disk was corrupt or something, then they lost the whole interview. Maybe there needs to be some follow-up on that. I'm just trying to get -- I think this -- it could be the State's best evidence or it could be the State's worst evidence. But it sort of a

piece that's in the middle.

It could benefit one side or benefit the other side. So, I'm just trying to get the evidence. I have never had one of these cases where the forensic interview was not shown to the jury. That's why I'm asking. So, I've seen many of these interviews, either shown by the State or by the defense to the jury. So, that's why I'm asking, hey, let's think about this. I'm not familiar with their system, but is truly just a one-off, and that it's -- if the disk gets corrupt, it's not any good? There's no type of backup whatsoever? I'm asking --

MS. ORWOLL: That's --

THE COURT: What I'm asking is can we look into that?

MS. ORWOLL: I can look into, Your Honor, and -- you know, but just for your knowledge now, that is my understanding. That's --

THE COURT: Okay. Wow, that's scary.

MS. ORWOLL: It is.

THE COURT: That's super scary that we used -- you know, as much money as the Nye County Sheriff's Office gets and the fact that they're a 141 to 150 percent over budget every budget cycle, and you're

telling me that they can't do any better work than this is frightening. It's actually disheartening. I'm sure it's very disheartening for you trying to try these cases.

MS. ORWOLL: Yes, Your Honor.

THE COURT: Disheartening. Okay. All right.

So, what about the other stuff they're asking for, 911 calls, 311 calls?

MS. ORWOLL: And, Your Honor, I'm happy to -- so, my basic understanding of the overview of the motion, I have given Ms. Boskovich everything that I have in my possession right now. I will do continued investigation to see if there are calls that I do not have, including related to these domestic violence, and that I will make it a point to look at those, Your Honor. That's specific enough. I'm very happy to take a look at that.

THE COURT: Do we know the '18, whatever it is, what the case number is, the incident number? Because every time that they go out, they give you an event number. Do we have an event from 2018 on the domestic violence?

MS. ORWOLL: Just one moment, Judge. I think I can find it. Yes, Your Honor. It is 18NY1853.

THE COURT: Oh, so -- and now, that is on the domestic, right?

MS. ORWOLL: Correct, Your Honor.

THE COURT: So, I want everything -- yes.

MS. BOSKOVICH: I'm sorry. I have -- I have a follow-up with that.

THE COURT: Okay.

MS. BOSKOVICH: In one of the written statements that I was provided --

THE COURT: Okay.

MS. BOSKOVICH: -- on the top where it has like the event info, we have case type domestic battery, an event number 18NY1474.

THE COURT: Well, what I would recommend is we search for both of those. Maybe the disk is in a different event number. But let's look at both of those and get everything on both of those event numbers.

So, we're going to look. We're going to do renewed efforts on the CAC interview. We're going to get everything we've got on the 911, 311 call log for -- now, I don't know if these event numbers are attached to the call log or not. But for both of those events and any other events that may be out there.

When you mentioned we're trying to get the Facebook --

MS. ORWOLL: Yes.

THE COURT: -- stuff and share that. And then the criminal history of the witnesses and victims. You know, always in the past, obviously you cannot print out the history and give it to the defense. It would violate. But the defense and prosecution have always gotten together, defense or prosecution has run it and told the defense yeah, this is -- if there's something in the -- in the -- in the victim and/or the witnesses who are going to testify at trial's background.

And that's what I'm going to ask be done here. Just get together and you can say, hey, Ms. Boskovich, witness so-and-so has such-and-such. That's easy enough to do. In fact, your investigator could run that -- run that, and then just verbally disclose that to Ms. Boskovich.

Is there anything else? I'm all about we put -- the facts are what the facts are. The law is going to be what the law is. The jury's going to decide, and I'm going to decide whether they've complied with the law. I mean, it's pretty simple as we move forward. But I don't like to -- I don't like trial by ambush, and I don't like being in the middle

of a paragraph. Those are two things as a judge I really hate. And I guarantee you, my position as the judge should be the most prepared person in the courtroom. And I will be as prepared as I possibly can to hear this case.

But is there anything else other than that that we've talked about?

MS. BOSKOVICH: No. I believe the State's answered all my other specific requests.

THE COURT: Okay.

MS. BOSKOVICH: I do have just a follow-up couple questions or points, Your Honor.

THE COURT: Okay.

MS. BOSKOVICH: So, if we cannot find CAC interview, I have one of two thoughts. I mean, I mentioned potential dismissal. Obviously, that's not been briefed. That's not in front of the Court today, so I was not expecting an answer or anything on that. But if that CAC interview cannot be found, that is certainly something I would be contemplating filing a motion for.

If Your Honor's not inclined for that, certainly I would be requesting a Sanborn instruction for that CAC interview and the original police reports.

Mainly the CAC interview, but I just wanted to put the State and the Court on notice --

THE COURT: Okay.

MS. BOSKOVICH: -- for that as well.

MS. ORWOLL: So, I guess should we have a follow-up hearing or are we fine to address everything amongst ourselves unless we need a decision from Your Honor?

THE COURT: I think that that would be fine. I mean, I can -- this is set for September 20 -- or I'm sorry, August 25th, right? We've got two independent trials going back to back.

MS. ORWOLL: Yes.

THE COURT: So, we have this -- the sex charges and then we have battery by a prisoner, right?

MS. BOSKOVICH: It doesn't start until November something.

MS. ORWOLL: Right.

THE COURT: All right. So, I'm happy to -- you know, I -- this is set for August 25th. So, we're getting close on the -- on the date on this. What I'm thinking is, I'm really not going to be in a position until I hear the evidence, until I hear the opening statements to make a decision with regard to what we

are -- what -- whether I'm going to allow it, whether I'm not. And besides, I just got that. And I know Ms. Orwoll just got it too. But I got to sit down and take a closer look. I mean, I glanced through it. But you'd be surprised how much I miss on a first glance. I like to think about things.

So, the trial, I'm looking here on my calendar. Hang on just a second. You know, hard to believe it's already the 6th of August. I will say this. I'm still -- I was supposed to leave next Friday for the National Association of Drug Court Professionals. I'm not going. So, I am around that week. However, I need a -- generally need a court reporter. What I'm going to tell you, if you run into some difficulties, let me know. I will be happy to meet with counsel. I'd be happy to get something scheduled then for a court reporter.

If not, I'm going to go ahead and pull the jury today or tomorrow. I'm going to pull the jury. I'm going to need to do that. So, we're going to start Wednesday and Thursday's jury selection. And after the jury goes home, we may have time Friday to discuss some of this on the 20 -- starts on the 25th, which is a Thursday. Goes on to the 26th. To discuss this

outside the presence of the jury as well. Okay?

MS. BOSKOVICH: That's on Wednesday, right? Wednesday, Thursday?

THE COURT: It's Thursday -- yeah, I'm sorry. Did I say Thursday, Friday? I probably did. Wednesday, Thursday, and I'm going to go ahead and do my law and motion on Friday. So, Wednesday, Thursday. But I think there would be time to talk about this really before the start of -- well, if there's issues that we need to -- and like I said, I may reserve my opinion on the other charge. A lot's going to depend on what I see between now and then. Okay?

I mean, obviously, I can't let in a Judgment of Conviction that has things that aren't correct. I just can't do that.

MS. BOSKOVICH: If the -- hypothetically, if the State finds the Amended Judgment of Conviction, would you want us to come speak with you well in advance or just wait until morning of trial? I mean --

THE COURT: I think morning of the -- well, if -- you might let me know that you have it.

MS. BOSKOVICH: Okay.

THE COURT: But I still think it's going to depend on what I hear probably after opening arguments.

And I will make a ruling before the State has finished their case in chief.

MS. BOSKOVICH: Sounds good.

THE COURT: Okay? Anything else we need to talk about? Now's the time. I got -- I can sit here all the rest of the afternoon. But anyway, I want to thank everybody for coming in today. I think there's some really interesting issues here. Very, very disappointed just in general about not safeguarding the evidence a little better. It's not Ms. Orwoll's fault. It's not your fault. It's just kind of disheartening that we can't keep better track of our stuff at the Nye County Sheriff's Office.

So, with that, enjoy your weekend. I will see you back for, I guess for the start of jury selection.

THE CLERK: Your Honor, the jury (inaudible).

THE COURT: We didn't talk about that. What -- how are we going to do our jury selection here? You know, I don't know what -- how you feel about -- I'm a little nervous about having all those people in such close quarters. I did a civil case, civil trial, I can't remember if my criminal trial.

We -- did we just a civil?

THE CLERK: Yes.

THE COURT: We could -- I can check. I have not checked. I rented the Pahrump Nugget, $400 for a day. It's just -- but they can -- they can get -- I'm not -- they could get -- easily seat those folks. It's a little bit of a logistic nightmare, but we made it happen in a civil case. Got all of our stuff there, did jury selection at the Pahrump Nugget.

MS. BOSKOVICH: And --

THE COURT: Why don't I check on that and let counsel know.

MS. BOSKOVICH: The other option --

THE COURT: If it's available.

MS. BOSKOVICH: The other option too is for the Angleson trial, we -- I don't know how many jurors you're pulling, but we did groups of -- we had three groups of 50 and had it at the Commission Chambers.

THE COURT: Yeah.

MS. BOSKOVICH: But --

THE COURT: I prefer to have everybody. You know, there's two different methods of selecting a jury, and neither's right or neither's wrong.

THE CLERK: (Inaudible.)

THE COURT: I understand that needs to be on the summons. But I -- no, I cannot until I know that

that is secured from the Pahrump Nugget.

THE CLERK: (Inaudible.)

THE COURT: Yeah. So, it's same rate.

But -- I'm sorry. I prefer to have all the jurors in at one time.

MS. BOSKOVICH: Okay.

THE COURT: And the -- if the jury Commission Chambers aren't -- or the Commission Chambers -- you know, I just prefer, they can -- they can space out. I can have the entire ballroom. I can get 150 people in there easily, and I prefer that.

MS. BOSKOVICH: Okay. Sounds good.

THE COURT: They have -- they have all the AV stuff that we need, and I would just prefer that. So, we'll see if that's available. If it's not, I'll let you know.

MS. BOSKOVICH: Okay.

THE COURT: I'll let you know on Monday. Okay?

MS. BOSKOVICH: All right, thank you.

THE COURT: All right. Thank you. Enjoy the rest of your weekend.

(End of Proceedings.)

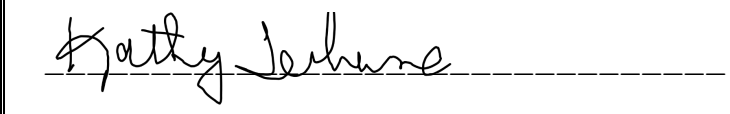
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CERTIFICATE

STATE OF NEVADA)
)SS.
CARSON CITY)

I, Kathy Terhune, CCR 209, do hereby certify that I reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken at said time and place before the Honorable Kimberly Wanker, District Judge, presiding.

Dated at Carson City, Nevada, this
5th day of September, 2021.



KATHY TERHUNE, CCR #209

CASE NO. CR21-0041 SUPREME COURT CASE NO. 86876

DEPARTMENT I

FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

BEFORE THE HONORABLE DISTRICT COURT JUDGE

KIMBERLY WANKER

-oOo-

THE STATE OF NEVADA,

PLAINTIFF,

-vs-

SANKONA LOVELEE GRAHAM,

DEFENDANT.

_____/

TRANSCRIPT OF PROCEEDINGS

MOTION FOR PRIOR BAD ACTS

AUGUST 20, 2021

COURTHOUSE

PAHRUMP, NEVADA

REPORTED BY: SUZANNE KUES ROWE

Nevada CCR #127

APPEARANCES

FOR THE STATE OF NEVADA:	BRENT PERCIVAL
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FOR THE DEFENSE:	RONNI BOSKOVICH
	ALEXIS DEUCKER
	ATTORNEYS AT LAW
	PAHRUMP, NEVADA 89049
FOR THE DEPARTMENT OF PAROLE AND PROBATION:	NOT PRESENT

FRIDAY, AUGUST 20, 2021 PAHRUMP, NEVADA, 12:23 P.M.

-oOo-

THE COURT: All right. We have one case left. 21-0041, State of Nevada versus Sankona Graham.

Good afternoon, Mr. Graham. How are you today?

THE DEFENDANT: Good.

THE COURT: We are here on Case Number 21-0041, State of Nevada versus Sankona Lovelee Graham. Mr. Graham is present with his attorney, Ronni Boskovich.

We also have attorney, um, can't think of your first name, Ms. Deucker.

MS. DEUCKER: Alexis.

THE COURT: Alexis Deucker. I'm going to call you Amelia. Alexis Deucker is at defense counsel table.

Present on behalf of the State is Deputy District Attorneys, plural, Brent Percival, and I'm drawing a blank. Give me a second. Andrea Orwoll.

All right. So, there was a stipulation to place the matter back on calendar to clarify the Court's position on a prior bad acts motion. I'm not sure I understand what you wanted it on calendar for, but obviously jury selection is set for Wednesday and Thursday of this week.

None of my notes made it, by the way, to this file.

MS. BOSKOVICH: Your Honor, Ms. Orwoll is the one that

requested the stipulation to put it on calendar.

THE COURT: Okay.

MS. BOSKOVICH: And then as far as Ms. Deucker, I just want to note for the record that she is going to be second chairing this jury trial with me. So, for the Court's edification: --

THE COURT REPORTER: Could you put the microphone in front of you, please?

THE COURT: It's important. Suzy's a great reporter. We don't want to, I'm very fortunate that Suzy will come and do this for me, so I don't want to, you know, in any way make it so difficult she calls me up and says I'm done with this.

Okay. So, let me tell you what I heard that you guys have all said. What I heard is, so, Judge, this was the prosecution's motion. The prosecution's stipulation. We just went ahead and agreed to it, so I'm not sure exactly why we're here.

My notes weren't full, because we weren't sure what you wanted today.

MS. ORWOLL: May I remove my mask?

THE COURT: Sure.

MS. ORWOLL: Thank you. Your Honor, I want to try to make this as quick and painless for everybody as possible. At our hearing last time when we spoke about my motion to admit the

prior sex offense, Your Honor had pointed out that the great bodily injury enhancement was removed from the judgment.

However, in reviewing that case, if Your Honor will look at the Bates stamped number eight.

THE COURT: Let me stop you for just a minute. This is why, when you just put a stipulation and don't give me any notice of what's it's on it's very difficult for me, because my notes weren't pulled.

I have, if you go in our back hallway, it's just jammed with file cabinets. Every note I make my staff files, and they pull it out. But, when I get a stipulation, I actually called my staff at home at 10:30. Do you know what this is about? This file is not in the group of files that I have. Do you think I need the drive out to work tonight and get this?

And we were clueless as to what we were doing today. So, right now I might need to take a short break to see if I can find my notes for this file. They may be in my office. I don't know.

If you guys could give me about ten minutes, we'll take about a five, ten-minute break, and let me see if I can find my notes. That have the statement that you provided in Court when we were here last time. I just want to be on the same page that you're on, okay? That's all I'm asking.

What you are referencing is an attachment that I have

in my notes which was a decision from the Fourth Appellate Division from the State of California, saying that they were overturning that portion of his Judgment of Conviction for Substantial Bodily Harm. That's what I think you're talking about.

MS. ORWOLL: Yes, Your Honor.

THE COURT: Let me see if I can find that.

(Whereupon a recess was taken.)

THE COURT: I'm ready for you now. I can't stand not being on the same page.

MS. ORWOLL: I understand. I'm sorry. I didn't realize you wouldn't even have the -- all right.

THE COURT: Thanks. I really appreciate you letting me get my notes. You didn't even get a chance to sit down back there.

All right. Now we're ready. Okay. Ms. Orwoll.

MS. ORWOLL: Thank you, Your Honor. In the exhibit on my motion to admit the prior, Bates stamp page eight, Your Honor will see that the Case Number for the prior sex offense is RIF-1200136.

THE COURT: Okay. Let me get caught up, okay? I've got a lot of research.

All right. I have your Motion to Admit Defendant's Prior Sex Related Convictions. Now direct me again.

MS. ORWOLL: It is the certified prior Bates stamped page eight?

THE COURT: Okay.

MS. ORWOLL: And does Your Honor see at the top right corner, it says Case Number RIF?

THE COURT: Yes.

MS. ORWOLL: So, the last three digits are 136.

THE COURT: I am on the same page as you.

MS. ORWOLL: Now, if Your Honor will turn to the same exhibit, the Bates stamp 181.

THE COURT: Okay. I don't have a 181. Hang on. Let me keep looking.

MS. ORWOLL: That's the Appellate Court's decision, Your Honor.

THE COURT: My appellate decision is Bates stamped page?

MS. ORWOLL: Bates stamp 46, Your Honor.

THE COURT: That might help. All right. I'm there.

MS. ORWOLL: Your Honor will see section three on that Bates stamp page 46, 24 of the Appellate Court's decision, the Court sentence in Case Number SWF1300122 included the three-year term for the Great Bodily Injury. That is the case in which the California courts took off the Great Bodily Injury enhancement. That was the case against his mother, Your Honor.

THE COURT: Okay. Let me stop you. I'm not on the same page. I'm on page 046. Direct me now where you are.

MS. ORWOLL: It is section three Your Honor, towards the middle of the page.

THE COURT: Okay. I have:

"12/29/14, state prison packet mailed to the division of adult instruction." That's my Bates stamp 46, the middle of the page. I'm looking at the case print.

MS. ORWOLL: Um, I'm not sure why we would have a difference on the same page.

THE COURT: That's why I wanted to be sure where we're at here.

MS. ORWOLL: It's the Appellate Court decision.

MR. PERCIVAL: Which is exhibit what, one? So, is it the only exhibit?

MS. ORWOLL: I had thought it was the only exhibit.

THE COURT: On page 25 of the Appellate decision under Disposition, it says, "In case numbers SWF1303458 and RIF1200136, the judgments are affirmed."

"In case SWF1301022, the judgment is modified to strike the three-year sentence for the Great Bodily Injury enhancement. The trial court is directed to amend the Abstract of Judgment to reflect this modification, and to forward a copy of this Amended Abstract to the Department of Corrections and Rehabilitation."

MS. ORWOLL: Yes. And what the state is pointing out is that the part where the Great Bodily Injury enhancement was removed, that case is not the prior sex case.

THE COURT: That case is the case where apparently he took the walker and this his mother.

MS. ORWOLL: Correct. Essentially, Your Honor, the state's hope would be that this would make it easier for Your Honor to make a decision on the prior bad acts motion, because I know Your Honor had reservations when you thought that the Judgment of Conviction of the prior had an element that had been removed. But, that's not the case, Your Honor.

THE COURT: Well, I have to tell you, I have thought a lot about this. I have spent a lot of time researching this myself. And I have some serious concerns.

So, let's talk about this. We're talking about 48.045(3). The position has been from the Nevada Supreme Court and series of authority, probably the latest case has been the Big Pond case.

But, you start from a position of inadmissibility, and then in 2015, they passed the statute, and I pulled up the legislative history of the statute, and it went from, on prior sex offenses, instead of a presumption of inadmissibility, to allowing those to be admissible.

So, it sort of changed that series of cases for a

reason. And if you look at the legislative history, what the legislature said is oftentimes on these sex cases, and I have had a number of them in trials in my courtroom, that often it's the word of a victim versus the word of a defendant. That's all you really often have.

But, there are cases where things have happened in the past, and so when the legislature passed NRS 48.045(3), it allowed that information to come in in sex cases.

However, it didn't automatically come in.

But, it took it from propensity evidence for not being admissible, to being admissible in a sexual case.

However, and unlike, if you use the old test, of it used to be that you had to show relevancy, you had to show by clear and convincing evidence. I'm talking prior bad act evidence.

But, actually it's not that stringent of a test under the sex propensity cases. It's a preponderance of the evidence.

In fact, I looked at all the unpublished Nevada Supreme Court decisions. In fact, I read all of them. There were a number of appeals that were taken up that were unpublished.

So, now we are looking at the Franks V State standard in this case. But, the court said, you know, I have looked at what the other District Court judges did, and that was before the Franks decision came out. But, they have actually considered it

under a tougher standard and allowed it in, and we are affirming those decisions. And there's a whole series of unpublished Nevada Supreme Court decisions. I read them all before coming in.

But, this propensity started with the United States versus Lamay. The Ninth Circuit case. That's kind of where it grew legs for the Nevada Supreme Court.

So, the concern I still have is, and I haven't, I told you I would decide at trial, but I have some serious concerns about the, you were trying to admit two different things.

One was arrests as juveniles and I said arrests, how many times do people get arrested and no charges are brought? There's a reason that you can't use on employment applications arrests. You look at convictions, but not arrests.

So, I said that stuff is not coming in.

The issue I think that I'm still weighing in my own mind is there's still a balancing test here. And the evidence that the state is trying to get in is when Mr. Graham, when he was 18, he got a 13-year-old pregnant. The rest of the story is, however, that that relationship continued, he was charged with Statutory Sexual Seduction Causing Substantial Bodily Harm. He was convicted of that. You were, according to the record.

MS. BOSKOVICH: It was Unlawful Intercourse With a Minor.

THE COURT: Well, they want to allow that in. And the reason they want to allow that in is to obviously bolster the testimony of their witness, their victim.

But, the flip side of it is, that that tells half the story. If you look at the offense, it tells half the story. He had a six-year relationship and other children with her.

MS. ORWOLL: May the state make a record about the usefulness of the prior?

THE COURT: I'm just saying, that's part of the test. The Court hasn't made a decision.

MS. ORWOLL: I understand.

THE COURT: I made a decision as to the juvenile matters, and I said absolutely not.

Remember, during court last time, and the Court has not picked this up since, you provided a police report of the entire offense. And this was the offense from the sexual -- and I read it, and that's where it was giving me the victim, the 13-year-old said she had consented to the relationship, and then it continued on past.

So, I have to make that relevancy decision. I have a couple decisions to make. I have a relevancy decision to make, and whether the probative value outweighs the undue influence, or unfair prejudice to the defendant. And I hadn't done that, because I will be honest with you. I haven't picked this up. I

heard this last Thursday, I flew to Dallas Thursday night. I had court Monday, Tuesday, Wednesday and Thursday, and in preparation I haven't had a chance to go back and look at this. I didn't know what it was that you wanted today. So, in all fairness, I am not prepared to say I'm going to do X with it or Y with it.

MS. ORWOLL: Just two brief points. The one point is, Your Honor did specifically say that you had reservations about admitting the prior JOC, because you believed the Great Bodily Injury was removed, but it wasn't.

THE COURT: Right. I was confused. You are absolutely right.

MS. ORWOLL: I just want to make sure it's clear.

THE COURT: So, at the hearing that we held last Thursday, I was concerned because of the Appellate opinion that said removing Substantial Bodily Harm and I believe -- you know, I have to tell you the records aren't really well developed from California and I think counsel also believed the Substantial Bodily Harm was as a result of her getting pregnant.

Basically, frequently throughout this in the course of reading that Appellate issue, is Mr. Graham had taken a walker, or something, and beat his mother with it. And then the mother sort of recanted her story, and the caregiver recanted her story, if I recall it.

Anyway, I read the Appellate opinion, and I was under

the impression that the Great Bodily Injury was as a result of the pregnancy.

So, that's clarified for me, and I'm glad you clarified that. That very well could make a difference for me.

MS. ORWOLL: I just wanted make sure that was clear.

The only last thing is that Mr. Graham is charged with two sex assaults where an actual element of the crime is that he was charged with a prior sex offense against a child.

THE COURT: Okay.

MS. ORWOLL: And, Your Honor, I just, I'm not sure that the state can meet its burden in proving that prior, unless I am permitted to introduce the Judgment of Conviction from the prior.

MS. BOSKOVICH: And, Your Honor, my quick retort to that would be that I don't think -- the crime itself is sex assault. I mean, that's the base crime that Mr. Graham is charged with. And as far as I'm concerned, the enhancement with the prior, that is something that only Your Honor should know because at the end of the day you are going to be the one making the decision.

My arguments as far as his priors coming in are the same as I laid out in my bad acts motion. So, I don't believe that the -- or my opposition. I don't believe that the prior is relevant. I don't believe that the factors weigh in favor of Mr. Graham. So, I believe it should stay out.

And I think that the state could still meet its burden without the jury knowing about the prior. Because the prior itself is an enhancement that's written into the statute for sentencing purposes only, as far as I'm concerned.

THE COURT: I'm trying to think about when we have had trials in the past where there have been, where being a prior convicted felon is part of the charge. And I think that is kept out of the determination for the jury until after a verdict has been reached.

MR. PERCIVAL: Judge, the one time that I can think of that that happens is if you have, for example, a robbery case.

THE COURT: Yes.

MR. PERCIVAL: And the person who performs the robbery is in possession of a firearm when he commits the robbery, and he is charged with Ex-felon in Possession of a Firearm, as well as Robbery.

THE COURT: Right.

MR. PERCIVAL: You never try the Ex-Felon in Possession of a Firearm at the same time as the Robbery with of the Use of a Deadly Weapon, because it tells them he's already a felon. However, this is a little bit of a different animal.

THE COURT: It is.

MR. PERCIVAL: As I understand it. And I was kind of keeping up with the debate of where the amendment is it's 43.045,

I believe.

THE COURT: It's 48.045(3).

MR. PERCIVAL: And the reason that Ms. Lusage was propounding the amendment to the statute so vehemently, was that in her experience, and she spent many years as one of the team chiefs for the sex assault team in Clark County, the sex offenders had a great propensity to be recidivists. If they did it once, they did it over and over and over.

That's why the statute now says, nothing in this statute will preclude evidence of a prior sex conviction. I'm paraphrasing from the statute. But, nothing in the statutes prevents the introduction of a prior conviction, or prior acts, of sex offenses. And I think that you know, Big Pond was decided well before the amendment of the statute.

So, I'm of the opinion, and I have had judges follow it, unfortunately, against me when I was practicing defense law, that the Petrocelli balancing act of the relevance and clear and convincing evidence, and danger of unfair prejudice has been completely wiped out, has been completely superceded by the amendment of the statute.

THE COURT: Actually, that still applies to all of the other reasons that you want to use in subsection two. I have actually, you did a pretty good job of the legislative history, because I went through and pulled all of the testimony. I spent

a lot of time trying to figure out what does this mean. What is? Admissible, what isn't admissible?

And the testimony that was presented both to the committees and the senate and the assembly, and, you know, it was always before under subsection two. So, motive, intent, opportunity. It was presumptively inadmissible. We went through a Petrocelli hearing. The Court had to find certain things in order to allow the evidence in.

They don't start from that presumption of inadmissibility on a sex offense. They start with the presumption that it could be admissible.

However, it's not automatically admissible. And then the Court looks at the Franks factor. It's not required to have a Petrocelli hearing, but it is required to go through the factors in making a determination, the Franks factors. That's how I understand it.

And there were a number of unpublished decisions between 2015, when the legislature enacted this, and 2021. You know, most of the things that the Nevada Supreme Court does and, quite frankly, the Court of appeals too, is they render unpublished decisions.

But, I think those decisions are instructive, because for me they are instructive because it gives me an idea of what the Court's thinking. What is their rationale? Obviously why

don't they publish them is known to the Court of Appeals and the Supremes.

And I actually, in preparation for all of this, typed up a summary of each one of them.

So, starting with Franks and Lamay, not only the synopsis of the facts of the case, but the holdings from the case.

And then after that, I put them in chronological order of how the Nevada Supreme Court and the Court of Appeals had ruled.

There is one published decision, and I find the decision interesting. It's the Randolph versus State case. I don't know if you ever watched 2020 and Dateline and 48 Hours, but that was featured.

He's the gentleman out of Clark County that is accused, he had like six prior wives, all of which had been killed. And the question about whether he staged his wives' murders and then the guy, the homeless person he had kill his wives, he turned around and killed him.

And so the, and the Nevada Supreme Court, what I thought was so interesting about that case, is they define unfair prejudice, and I grabbed that definition out, because I thought it was good.

But, there's a case, Gessner versus State, it's a July

24th, 2019 case that talks about 48.045(3).

There's Thomas versus State. It actually had cert denied at the Supreme Court.

There's a Ward versus State, that's a 2020 unpublished decision.

There's a Campbell versus State, which is April 29, 2021.

There's a Gillen versus State, April 5th, 2021, unpublished decision.

So, I've looked at all of those to see what they were talking about in terms of what should the District Court do.

In many of those cases, they were cases where the District Court Judges had decided the case before the Franks case had come down.

But, they said, gee, they even held a higher standard. They used clear and convincing evidence.

But, it just gave me a feel for what is the parameters of that section of the statute.

And again, I pulled the legislative history and read the comments that were made and the amendments as the bill was going through to try to figure out what.

But, I want to make clear that United States versus Lamay and the Nevada Supreme Court decision in Franks vs. State, that was the 2019 Nevada Supreme Court decision which applied

Lamay, what I think is interesting there is that the evidence does not automatically come in. There's still balancing by the District Court. And the District Court's decision will not be overturned, absent an abuse of discretion.

So, the District Court is given great leeway in making a decision about whether or not to remove the evidence.

And, so they talk about the Lamay factors. In that decision prior to the admission of prior sexual offense evidence for propensity purposes under NRS 48.045(3):

"The District Court must make a preliminary finding that the prior sexual offense is relevant for propensity purposes and that a jury could reasonably find by a preponderance of the evidence that the bad act constituting a sexual offense occurred."

Then, finally, "While all relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, other courts have cautioned to pay careful attention to both the significant probative value and the strong prejudicial qualities of that evidence, due to the inherent strength of prior sexual act evidence.

"In order to address the highly probative yet prejudicial nature of this evidence, the Ninth Circuit Court of Appeals set forth a modified balancing analysis, stating the District Court must consider several more exhaustive factors

prior to allowing its admission.

"One, the similarity of the prior act to the acts charged.

"Two, the closeness in time to the prior acts to the acts charged.

"Three, the frequency of the prior acts.

"Four, the presence or lack of intervening circumstances.

"And five, the necessity of the evidence beyond the testimony already offered at trial."

Now, there's one thing I know in this case, and sort of when we were here last Thursday, the evidence was kind of developing itself.

But, one of the things that I had learned for the first time was that with regard to the alleged victim in this case, Mr. Graham and the alleged victim's mother, were married.

Now, I brought this to the attention of the parties when we were here last time. I handled their divorce. It's a small, one judge, one party. I handled the divorce in that case.

And Mr. Graham had written to the Court. I think -- I can't remember it's been so long ago, I see so many cases.

But, I believe when we pulled that case here in court, that he had written something like, well, I was in prison, and she helped me get out of prison and on parole. And it was never

presented to me that Mr. Graham was married to the victim's, the alleged victim's mother.

And then my understanding was that the alleged victim did not simultaneously report this offense, but reported this offense after Mr. Graham and his wife got into a domestic dispute, the Nye County Sheriff's Office was called. And then at some point she came forward and said that she had been in the past sexually assaulted.

Now, it gets even more difficult by the lack, the poor handling of the investigation by the Nye County Sheriff's Office.

I don't know whether -- it was my impression from the hearing that we had last time, and you can correct me if my impression is wrong, the Nye County Sheriff's Office never interviewed the victim. Instead, they had obtained a written statement from the victim at some point in time. There had been a forensic interview, and it's not even clear who from the Nye County Sheriff's Office was present at the forensic interview.

From the preliminary hearing transcripts, the person who came and testified, the deputy, and I can't remember off the top of my head who it was, said, hey, my name was on the interview, but I don't remember anything about it.

Apparently the disk was lost. There's no recording. It can't be found. In fact, he was actually, this report was made in 2018. In 2020 he's cleaning up his desk, and he

discovers, oh, wait. Here's a report of a Sexual Assault. I haven't followed up on this, I'm going to follow up on it. At that point in time, he reached out to the victim, who I think, through her grandmother, and again the victim wouldn't speak to the detective. Instead she e-mailed or faxed a statement.

So, it was my distinct impression from everything that had been presented to the Court, was the victim had never spoken directly to the detectives. That the only time the victim was interviewed about any of this was at the forensic interview that was lost. And as I said to both sides, that forensic interview is critical. It's either going to convict Mr. Brown -- I'm sorry Mr. Graham, or it may exonerate Mr. Graham.

And I had said, wow. We need to get on this to see if we can find this. Did it get placed in somebody else's evidence? There were a couple, I think last time we were here, we talked about the fact there may have been different LEA numbers, and maybe looking for this forensic disk under another LEA number to see if we could locate it.

I think it's critical. And I'm going to say this. I have sat in here where people have been convicted of sexual assaults. I have sat in here where people have been acquitted of sexual assaults.

I can tell you that, you know, this case is really a he-said-she-said more than anything. Especially in light of the

fact that we don't have the forensic interview.

We don't have any forensic evidence, because it wasn't reported within a time frame where we could have had a SANE Exam.

So, there's no forensic evidence in that regard. I mean there's a period of time that's passed. So, you know, I'm weighing all of that. I'm weighing the fact that the facts and circumstances of the prior conviction are very different, in my mind, versus the fact that there's no other evidence, really. And I want to say this. This is not the fault of the Nye County District Attorney's Office.

This was such poor police work. That's the great thing about being the judge. You can call it like you see it. What I call about this is, man. How can you lose the forensic interview? I mean, you know, you left a file on your desk for a couple of years? I mean what about the chain of custody?

This is like a question, you make the facts up for this question, and you place it on the, as a final question on the bar exam and you have somebody spot all the issues that have arisen in this case.

But, that's my understanding. So, that's what I'm still mulling around in my own head. I'm like, holy cow. There is a lot to this. You know? I did look at what I had from the preliminary hearing transcript, but obviously you are going to put on minimal evidence at a preliminary hearing. You don't put

on your whole case. That would be crazy. All you need is slight or marginal evidence to bind it up. This a very interesting case.

My point is, I wasn't sure why we were here today. I have not looked at that statement. One thing that I am so glad that we came in front of me today is clarifying, because my take when I left the bench last Thursday was that Mr. Graham had been convicted of Statutory Sexual Seduction With Substantial Bodily Harm, because he gotten a 13-year-old pregnant. And that may be, but it hadn't been removed by the Appellate decision. That was something that had to do with Mom and the walker and the caregiver and that story.

So, I mean if I haven't gotten the facts right, I have tried to do my best of understanding this whole thing. This is fascinating to me.

I mean, I still have to shake my head. We all have to as attorneys going, really? You did what? The evidence went where? It's just crazy.

MR. PERCIVAL: If I may for just a moment?

THE COURT: Yes.

MR. PERCIVAL: You are correct that Ms., that Briana did not make a statement to the detective, being Detective Fancher at the time of the incident. It was roughly a month afterwards, when a domestic violence was reported, and a female

police officer appeared on the scene, along with a couple of other deputies when Briana asked, may I please talk to the female officer? And that was who she disclosed to, was the female officer, Monique Mendoza.

THE COURT: Okay.

MR. PERCIVAL: Then she was asked, there was some time passed. They asked her to do, to have the detective come out and do a tape recorded interview. She didn't want to do a tape recorded interview. However, he took a voluntary statement form to her at her, at the house where she lived with her mother and grandmother.

THE COURT: Okay.

MR. PERCIVAL: And she filled out, did a hand-written statement within a reasonably short period of time after the initial report.

THE COURT: Is there a report --

MR. PERCIVAL: And then aren't there two handwritten reports? And then after Fancher found the file in his desk unpursued, two years later, he had asked her to make another interview, or to make another handwritten statement. She made another handwritten statement which was very consistent with the first handwritten statement.

THE COURT: I have seen both of the handwritten statements.

MR. PERCIVAL: While they were in there, she gave a statement to Emily Smith, Emily Smith was the interviewer that did the CAC interview.

THE COURT: Right. But, that's the one that's missing.

MR. PERCIVAL: Correct. And the tape recording, or the DVD, actually, of that interview was lost.

Our understanding is that, it boggles my mind to understand, to accept this as true, that there was, at that time, the practice was only to make one copy of the DVD.

THE COURT: Right.

MR. PERCIVAL: And then that copy was supposed to be given to NCSO.

Now, what isn't clear to anyone is whether the DVD remained with the forensic interviewer or whether it was ever given to NCSO.

THE COURT: Did we ever serve a subpoena on Strand? She was the forensic interviewer. Was a subpoena ever served on her?

MR. PERCIVAL: It's Emily Smith. Not Emily Strand, the PD.

THE COURT: Okay. I'll tell you where the wrinkle in all of this is for me. The courts have taken a real second fiddle to the Nye County Sheriff's Office.

We have no security at our courthouse. Yesterday we

very nearly averted an active shooter here at the courthouse. That was my case. And, actually, that active shooter was supposed to be in my courtroom.

But, we have continued to provide every service known to man to the Nye County Sheriff's Office, including huge salaries. And I see this kind of police work, and it's just, it leads me to one specific conclusion. Throwing money at a problem doesn't do any good. It is all about training. And, quite frankly, the lack of protocols here. We have a lieutenant, who is a six figure employee, over the evidence. And this is the quality of evidence? This is the quality of evidence handling we have?

I'm very critical. Because when the courts want something, it takes an act of God. Including the safety and security of each and every one of us here. And I wouldn't want to be in anybody's position, whether I'm trying the case or the defense of this case.

I mean, I have sat here and watched juries and I will tell you what's going to happen. They're going say to themselves, oh, my God. What in the world? That is the craziest thing I've ever heard. You've lost something? I mean it boggles my mind that -- I'm with you. It just boggles my mind for as long as I've practiced law that you would make one copy of something so critical.

What would have happened if this is corrupt? Then the case is over? I mean, the other question in the back of my mind I went to the U.S. Secret Services all that dark web, deep web, to keep up on current technology.

Is there any way that Chris Fonseca, I mean, do we just not have that recording equipment anymore? I don't quite understand how they deal with it.

MS. BOSKOVICH: Your Honor, can I have a few moments?

THE COURT: I will absolutely give you the opportunity to say something.

But, this whole thing is just -- I mean, good heavens. It just bothers me.

MR. PERCIVAL: Emily Smith was at Nevada Outreach. And I assume, without knowing this specifically, I assume that the equipment used to record the interview was equipment belonging to Nevada Outreach.

Fred Lopez of DCFS was present for the interview, but wasn't the one performing the recording. That's my understanding.

So, if there was a -- I mean I know the District Attorney's Office has contacted Nevada Outreach. We don't have it. We don't know where it is, we can't find it. NCSO doesn't have it, doesn't know that they ever did have it.

Mr. Lopez has his own handwritten note, or actually

doesn't have them, because he is no longer with DCFS, but they are at DCFS and he is trying to get them for us right now.

But, he doesn't have a copy of the disk, because he left the interview, and they never gave him one. So, why in the world, Nevada Outreach wouldn't have an original and Nye County Sheriff's Office have a duplicate and DCFS have a duplicate, I have no idea. And I don't know that any of us can hope to explain that.

THE COURT: Can I ask this? Did they even press the record button? Because it's my understanding that we have had a number of instances and the record button didn't get pushed. I don't know.

MR. PERCIVAL: I hate to giggle, but, you know.

THE COURT: Senator Catherine Cortez Masto was our summer law clerk here in Nevada. And when she was Attorney General, she had, she was responsible for getting us that interview room up in Tonopah. I think Barrick Gold had donated that. But, I went up then, and had dinner with her, I guess I had known her since she's been in law school.

And so this just boggles my mind. Good heavens. If that's what we needed, we could have written a grant. This is the craziest story. But, I believe it. The truth is crazier than fiction. There's no doubt about it. I know you guys are looking for it. At this point there has not been any headway on

that at all?

MS. ORWOLL: No, Your Honor.

THE COURT: Wow. Okay. So, have I got kind of the facts correct? So, there's not like a recorded interview with Detective Fancher or Detective Mendoza, or anyone else?

MS. BOSKOVICH: There is body cam footage, which is one of the things I wanted to cover.

THE COURT: Okay.

MS. BOSKOVICH: As we have gone over today, there have been a lot of, I'm not going to outright call all of them violations, but there's been a lot of discovery issues with this case.

We have had the CAC interview.

THE COURT: Which isn't the state's -- in fairness to the state, they can only get what they can get. They can't give you something they don't have.

MS. BOSKOVICH: I am not by any means blaming the DA's office.

THE COURT: All right.

MS. BOSKOVICH: If Fancher was there, if he wrote a report, if he made notes, handwritten or otherwise, of this interview, he doesn't have those anymore, so they're just in the wind somewhere.

When we were here on August 6th, actually, so it was a

couple Thursdays ago, we had discussed the potential discovery issues. We talked about the two different LEA numbers for the Domestic Battery.

THE COURT: Right.

MS. BOSKOVICH: So, on August 13th, last Friday, I received a disclosure from the state of body cam footage from the domestic incident.

THE COURT: Okay.

MS. BOSKOVICH: Along with that, I was out of my office that day, but I received a text from Ms. Orwoll, saying she reviewed it. The victim in that body cam was what the victim allegedly disclosed, and her statements pretty well match.

THE COURT: Was the statement to deputy or Detective Mendoza, was that on the body cam?

MS. BOSKOVICH: Yes. It was on the body cam.

THE COURT: Great. Okay.

MS. BOSKOVICH: Nowhere in the disclosure e-mail did it mention, hey, there could be potential exculpatory information in this body cam video. So, I watched it as soon as I could, and that happened to be yesterday morning.

THE COURT: Okay.

MS. BOSKOVICH: So, I got it on August 13th. On this Tuesday I was at the DA's office having conversations with them about this case.

One of the questions I asked was whether the alleged victim here, had ever been a victim before of these types of charges. Neither of the deputies, Ms. Orwoll or Mr. Percival, gave me an answer on that. Mr. Percival said they could figure that out.

Wednesday I followed up with an e-mail on that, um, and then yesterday morning I was watching the body cam. As soon as the alleged victim told Deputy Mendoza about the, this incident that allegedly occurred a month prior, just a minute, maybe, later she said basically, oh, by the way, my dad molested me when I was eleven.

THE COURT: Which Dad?

MS. BOSKOVICH: Her biological father, not Mr. Graham. So, that immediately raised red flags in my mind, and I got on the phone with Mr. Percival.

A couple hours later he was able to give me information that, in fact, there had been a report, and the alleged victim's biological father is now doing 25 to life in a California state prison because of her allegations in 2014, I think it was.

THE COURT: Okay.

MR. PERCIVAL: Not because of her allegations; because of his guilty plea.

MS. BOSKOVICH: He ended up confessing and was convicted of those.

THE COURT: Was it by jury trial or did he plead guilty?

MS. ORWOLL: He pled guilty, Your Honor.

THE COURT: Of course, now we are scrambling, because we have got the body cam at the last minute. So, now we're hearing this, we're scrambling on all parts to see what we can get out of California, right?

MS. BOSKOVICH: So, two other issues I have.

THE COURT: Yes.

MS. BOSKOVICH: I want to know what the allegations were in California, because if this story here, if it matches the California story identically, that raises some concerns for me.

And I think that could potentially weigh on her credibility in front of a jury.

My other concern is when I, on August 17th, when the state filed its Notice of Witness, so, Tuesday, they filed their Notice of Witness, it listed two new individuals, Monique Mendoza, and Fred Lopez.

THE COURT: Okay.

MS. BOSKOVICH: Nowhere in the discovery had Fred Lopez' name been mentioned. Ever.

THE COURT: Okay.

MS. BOSKOVICH: Nor had deputy Mendoza's name. Actually, I take that back. I think she was the witnessing

deputy on one of the handwritten statements from 2018.

THE COURT: Okay.

MS. BOSKOVICH: So, I did, I guess, know that she was somewhat involved in the case. But, I still at this point don't have the report from Deputy Mendoza that she wrote.

THE COURT: Did she write a report?

MR. PERCIVAL: Yes. For the domestic violence case.

MS. BOSKOVICH: But, I would assume somewhere in that report she said something about, oh, by the way, alleged victim told me about this incident that occurred a month prior.

So, I would like to see that.

The moral -- my point is at this time I think need more time. I don't think I can be --

THE COURT: What you're telling me is, in light of the things that have come up, that you don't feel like you are prepared to go forward?

MS. BOSKOVICH: Correct. I can scramble as much as I can. I got on the phone with my investigator yesterday as soon as I heard about the allegations against bio Dad. I forwarded them bio Dad's name, so they're working on it. But, I just don't think I can be effective if I, without investigating this further.

And I hate to say that, because we have done, everybody has done so much preparation to get ready for this. And it's

frustrating to me that the, that this body cam footage has existed since 2018, and we just got it Friday. A week ago.

MR. PERCIVAL: I think it has been on G Tag since 2018.

MS. BOSKOVICH: I haven't had access to it.

MR. PERCIVAL: When I was doing Public Defender work, when they tagged us on G Tag, we were notified that a body cam, et cetera. All you have to do is go on and look at the Case Number, and there it is.

MS. BOSKOVICH: I looked through my e-mails to see when I was notified of that G tagging, and it was August 13th. It was Friday. Because I wanted to make sure it wasn't something I missed.

The other thing too is with Fred Lopez now, if he, from what I heard from the state, he remembers specifically the forensic interview?

THE COURT: He does remember the interview?

MS. BOSKOVICH: Allegedly.

MR. PERCIVAL: He remembers being present. He remembers the nature of the interview. But, as far as the substance of what she said, the specifics of the statement, he doesn't remember that. He had it, and as I said, he's no longer employed with DCFS, so he has to go to DCFS to get his notes. He said they'll probably refresh my recollection if I'm on the stand, but I don't remember right now.

MS. BOSKOVICH: I guess my other question is when did Fred Lopez come into the picture? Obviously the state wants to talk to him to see what, if anything, he remembers.

THE COURT: How does he come into the picture? I'm so curious as to how the Division of Child and Family Safety, Kristen, my law clerk, used to work over there before she went to law school. I'm just curious.

MR. PERCIVAL: I'll tell you that according to Detective Fancher, they all went out to the residence on a domestic violence. The young girl, Briana, asked to speak to the female deputy, because she didn't want to make disclosures of a sexual nature to a man.

THE COURT: I understand that.

MR. PERCIVAL: She spoke to Detective Mendoza, who then reported the allegations of sexual misconduct to Detective Fancher, who made arrangements for the CAC, and contacted the DCFS.

Now, who it was that made the appointment to get her to Emily Smith and get the interview done, I don't know. But, it went from the child, to Deputy Mendoza, to Detective Fancher, who then contacted DCFS.

And I assume, without knowing this for certain, but this is the usual process, DCFS would then contact the appropriate kind of forensic interviewer, because they apparently

don't employ people with the right letters after their name.

And take them to the Outreach and have the interview done there.

THE COURT: What a crazy story about why wouldn't you have, somebody reports to the Nye County Sheriff's Office that they have been, reports to a female deputy, I understand the deputy reporting it to her supervisor. But, wouldn't it be scheduled to be handled all through the Nye County Sheriff's Office? I realize you might have experts in interviewing.

But, when I read the preliminary hearing, I thought Fancher is the one who supposedly had all this training on interviewing techniques. And then the next question I have, I mean obviously we have a number of female deputies and sergeants and stuff through the Nye County Sheriff's Office. But, it just seemed like this convoluted, good heavens. It's a wonder they get anything done.

MS. BOSKOVICH: I guess my question about Fred Lopez is in this setting, when did the state learn that he was going to be a potential witness? How did they even learn that he was going to be a potential witness? Were you just calling random DCFS employees? And if there was an actual DCFS employee there, is there a DCFS file? And should that be disclosed in discovery with potential information?

THE COURT: What I don't understand about Fancher is my

understanding is that Fancher understood, or his name is on the forensic interview, but he doesn't remember anything about it. So, he doesn't know if he was the person or not. Well, maybe Lopez will remember who the Nye County person was.

But, I would have thought that it would have been Emily Smith and the alleged victim in the interview room, and then behind those two-way mirrors, if you will, would have been, and I'm kind of surprised, Mr. Percival that there wouldn't have been a representative from the Nye County District Attorney's Office. In 2018, was that still Ross? Or no.

MS. BOSKOVICH: It was Mr. Ogoshioko.

THE COURT: Who?

MR. PERCIVAL: No, it was Katrina Samuels.

THE COURT: Was Katrina Samuels in on the interview? Has anybody talked to her?

MS. ORWOLL: She was not.

MR. PERCIVAL: Are you kidding? Do you think they would allow us in assisting in investigating a case? I will assure you, Judge, when I am appointed the emperor of Nye County, there are going to be some changes.

THE COURT: Well, when I'm the emperor of Nye County, I will be sure that the Nye County Sheriff's Office is fully instructed as to the law. Because a lot of these mistakes, it doesn't benefit anybody from Nye County.

Either side. If you go out and you make all kinds of legal mistakes, and I see them constantly, whether it's arresting somebody, or before you arrest them, detaining them and violating their Constitutional rights and stuff.

So, you know.

MR. PERCIVAL: It makes for good TV.

THE COURT: Yeah, it makes for good TV, but it makes it very stressful for all the other parties involved when some of these things are so simple.

MS. BOSKOVICH: Your Honor, going back to the Fred Lopez thing, one of the reasons that's just such I guess an issue for me is, you know, I would like my investigators to have the chance to talk to Fred Lopez on their own.

I would like to interview Fred. And if the state has known they are going to use Fred for the last two months, hypothetically, and they didn't bother to disclose that until the final day of Notice of Witnesses, that's an issue.

I'm not saying that happened, I'm just curious. When did the state realize that Fred Lopez was involved in this case and needed to be a witness?

MS. ORWOLL: Does Your Honor want me to answer that question?

THE COURT: Sure.

MS. ORWOLL: I'm not sure what you need right now.

THE COURT: Sure.

MS. ORWOLL: Your Honor, when we filed the Information in May of 2018.

THE COURT: Okay.

MS. ORWOLL: My understanding at that point was that --

THE COURT: I have 2020.

MR. PERCIVAL: 2021.

MS. ORWOLL: 2021. Too many dates.

THE COURT: When did Katrina leave?

MS. BOSKOVICH: She left, I would say, February 2019.

THE COURT: There was a lag though. When did Ms. Orwoll start?

MS. ORWOLL: October of 2020.

THE COURT: So, we have what. Ten months or so.

MR. PERCIVAL: Ogoshioko was in there.

THE COURT: Oh, I forgot about him.

MS. ORWOLL: So, in the May 2021 Information, when we disclosed the potential witnesses, we included the custodian of records for the Nye County Child Advocacy Center. Because my understanding was that that they would have had any record of the CAC, who was there, et cetera, et cetera.

When we did come to Court and discuss renewed efforts, essentially, to look into the CAC, I have good contacts at Nevada Outreach, which is the umbrella organization.

THE COURT: Right.

MS. ORWOLL: And I was able to find out from their, you know, informal notes that they keep on who's at what meeting. We have a big excel spreadsheet that says who was in each interview, and Fred Lopez was the individual from DCFS.

THE COURT: Who was involved in that interview?

MS. ORWOLL: It was Detective Fancher. It was Mr. Lopez, I believe Todd Arms was the individual from the DA's office.

MR. PERCIVAL: The investigator.

THE COURT: Has the defense known that Todd Arms, who is no longer there. I actually performed a wedding and he was the photographer last Friday.

MS. BOSKOVICH: The victim in case, she actually is still a minor. So, are we, I don't know if there's is I'm just a little concerned.

(People entered the courtroom.)

THE COURT: I have a 1:30 hearing. They may be here on the 1:30 hearing.

MS. BOSKOVICH: I have a little concern, because I know we were using her birth name a couple times today.

MS. ORWOLL: For the record, Your Honor she did turn 18 on August 11th.

THE COURT: You know, my 1:30 won't take long. We may

want to just take a short break, and let me get that taken care of.

Unfortunately my 1:30 hearing for today was the gentleman who was engaged in the shootout with the Nye County Sheriff's Office yesterday.

So, I need to handle that, and that won't take very long. But, that's my, I had set it for 1:30.

MR. PERCIVAL: I don't know if you asked for a continuance or not.

MS. BOSKOVICH: I did ask for a continuance on this trial.

THE COURT: Have you talked to your client about that, he's okay with that?

MS. BOSKOVICH: Yes. I mean, he did invoke.

THE COURT: When he asks for the continuance and he's invoked, it waives his right to speedy trial. I just want to be sure that everybody understands that up front.

Because I have a pro se up in Esmeralda who has gotten five or six continuances, and is just sure I violated his constitutional rights every single time by granting his continuance I still haven't made it speedy.

MS. BOSKOVICH: My concern at this point, I feel I would be ineffective without following the rabbit hole of the prior incident with the victim.

I think that's something that I need to investigate further.

THE COURT: Did you ever get the spreadsheet for who was at the --

MS. BOSKOVICH: No.

THE COURT: It's so fascinating. I learn something new every day.

MS. BOSKOVICH: No.

THE COURT: So, there's a spreadsheet that the DA's office keeps of every, like, forensic interview?

MS. ORWOLL: That the CAC keeps.

THE COURT: That would be the Child Advocacy Center.

MS. ORWOLL: Correct.

THE COURT: I don't quite understand that. The Child Advocacy Center is it under the control of the District Attorney's Office? No.

MS. ORWOLL: It is under the umbrella of Nevada Outreach.

THE COURT: Which is Kathy McKenna.

MS. ORWOLL: Correct, Your Honor.

THE COURT: Okay. All right.

MS. BOSKOVICH: So, before we -- so, Emily Smith, Fred Lopez, Detective Fancher, Todd Arms, and was there anyone else?

MS. ORWOLL: I don't believe so.

MR. PERCIVAL: Not that we know of.

MS. BOSKOVICH: Other than the alleged victim. And when, if Your Honor would be so kind, when did the state find out about this spreadsheet with these listed attendees? That's something that we could ask for.

THE COURT: Is that something we can produce? Is that something in the possession of the District Attorney's Office or the Sheriff's Office?

MR. PERCIVAL: The spreadsheet?

My understanding and belief is that the only person that actually has the spreadsheet, or the only organization is CAC or Nevada Outreach. That's all part of the same thing.

THE COURT: Okay.

MR. PERCIVAL: I have only been involved in this case for a couple weeks. But, I haven't been made aware that we actually have a physical copy of it. We don't do we?

MS. BOSKOVICH: And I don't even necessarily need the copy, I am just curious for my own sake when they found out that Fred Lopez was going, had been at this interview.

Because if he was, if they knew he was going to be an important witness a month ago and I just was told about it two days ago, three days ago, I have some issues with that.

THE COURT: Okay, you know what? I am going to give you a chance to talk about that for just a few minutes, and I am

going to adjourn this case for just a minute and I am going to hear my 1:30, because there's no need for me to keep everybody on that.

I don't know, counsel, maybe we should chat in my jury room? Maybe not. You know, Melissa, I have got COVID issues at the Drug Court right now. Let's take about a ten-minute break and I will be back with you guys in about ten minutes.

In the meantime, Jamele, could you bring the other case in?

(Whereupon a recess was taken and other matters were heard.)

THE COURT: If you, Jamele, could bring my criminal matter back in, I would appreciate it.

Let me ask the state. The defense counsel has indicated to me in light of some of the things that they have heard, that they aren't going to be ready.

Are you opposed to a continuance of this? And if so, why. Have you guys have the opportunity to talk about that at all?

MS. BOSKOVICH: We did, Your Honor. I spoke with Mr. Percival yesterday and told him that that was most likely what I would be doing. And I informed Ms. Orwoll of that this morning as well. Neither of them expressed any opposition at the moment or at that time.

But, I will defer to them.

MR. PERCIVAL: I would prefer not to, Judge. I've spent a lot of time. But, I don't want to -- I understand that some of the state agencies that have been custodians of the evidence in this case have let all of us down.

And I don't want to place Ms. Boskovich in the position of being subject to an ineffective assistance of counsel claim because she couldn't get evidence.

And I'm not saying that it's her fault that she couldn't get evidence. Obviously, due to circumstances of no one in this room's creating. So, you know, I would object for the record, but just to preserve that, really. I understand the position she's in. Or that defense counsel, both of them, are in.

And so I don't think that I can say, no, we can't do that. We can't do a continuance.

MS. BOSKOVICH: And for all I know, I mean my investigation is going to, it could make a huge difference, it could change absolutely nothing for my case.

But, at this point I think it's best that we overturn every stone we can in order to best prepare for Mr. Graham's defense, and with the information I just learned yesterday, I don't think it's feasible for me to be ready to go by Wednesday.

MR. PERCIVAL: Judge -- I'm sorry. I didn't mean to

interrupt. We do, or Mr. Graham does have a Battery By a Prisoner case, I believe, in this courtroom, in November. For jury trial.

THE COURT: Let me take a look. My guess, the fourth and fifth is jury selection. I face some incredible hurdles in that case. But, just when you think you can't, I tried another case involving Mr. Rider. I didn't think we would be able to seat a jury in March. We had absolutely no trouble seating a jury. But, the jurors kept saying, which case is it? That's also a Sexual Assault on a Child case, because that resulted in a hung jury. And they are like, we don't want to sit on this case, but the other case we're happy to sit on it.

I don't even know if I can seat a jury. Now, we are talking about a re-trial in a county of 300 registered voters. I may be gone the whole month of November, and I may be here the second day of jury selection.

MR. PERCIVAL: Is that the one up in Goldfield? Ryker?

THE COURT: And I have Kevin Alley, it looks like, set right behind it. And then it looks like Heyer is set right after that one. I'm not sure when I can try this.

He is set for three days. November 1st, 2nd and 3rd, he's set on his other case, and then the 4th, and 5th I am going Goldfield to do jury selection.

MR. PERCIVAL: Hopefully we could have Judge Estes come

up here.

THE COURT: Let's talk about that. The problem is, he's the one who ruled that Nye County didn't have sufficient facilities to try the old, we're moonshiners, whatever that means. That got overturned, because he held the trial in Clark County, and the Supreme Court reversed it and made it come back to Nye.

I'm going on vacation. Notice I said that, vacation. Not trip. I go on a lot of trips. Trips involve family. Vacations are, we don't have to do more family. So, I'm going on a vacation on that I haven't been on for like 20 some years. And I am scheduled to leave Sunday, October 17, and I'm scheduled to come back on Monday, October 25th, and I have been planning this vacation for over a year. And so I would really like to go.

Is the Caffejian trial going? Let me tell you how my trial schedule looks. The Tuesday after Labor Day, it looks like I'm pretty free. Then I've got Esmeralda County, Esmeralda and Tonopah Wednesday and Thursday, I'm not sure whether we are doing, we've got criminal law and motion on Friday.

And then I start a two-week civil trial, Faith versus Desert Trails. It's not going settle.

And then I've got the Caffejian trial.

And then I'm going on vacation for a week.

And then I've got Sankona's trial, and Rider's trial.

Now I have set the Alley trial on part of the Rider trial and the Heyer, but then I've got Bonetti trial.

Let me stop and ask you guys. How much time do you need, do you need to get ready, and I'll see what I can do.

MS. BOSKOVICH: My thought was, if I, I think by the end of October I could absolutely be ready.

My thought is I don't know what Your Honor's calendar looks like. I know you get back from vacation on August 25th.

THE COURT: October 25th.

MS. BOSKOVICH: Then we have, I think, Nevada Day, which is on that Friday, the 29th.

THE COURT: What if we did that.

MS. ORWOLL: I can't do that, Your Honor. I'll be out. And the Rider trial starts on the 4th of November?

THE COURT: It does. You know what? I am setting that monthly to find out, because it's a three-week trial. I have signed the certificates of material witness. It's going or that silly case is done -- we've got either get the victim here and she's got the testify. If she's not going to testify, I mean, this case has drug on for years. If I looked beyond that who's Heyer? Is that your trial? It says ten days.

MR. PERCIVAL: I know it's not mine. I was his Public Defender for a while. That's the case where the allegations are that he tried to drown his mother in the bathtub, and tried to

hit his brother with an axe.

But, he was found to be mentally incompetent in the beginning and was sent up to Lake's Crossing for sometime. 180 days, I believe. And then came back. I don't know who has it now.

THE COURT: The earliest really for my December calendar is the 20th. And let's face it. Nobody wants to be here the week of Christmas.

MR. PERCIVAL: I can't think of a better way to spend the week of Christmas.

THE COURT: You know, I have this thing from like the 20th to January 3rd I try to like hear emergencies. Because I like people to spend time with their family.

The Bradley versus Baker I've got a five-day trial. I've got a calendar call November 30th. That starts January 10th and then we have Martin Luther King, and then I've got the Roxanne Marchand trial.

MS. ORWOLL: Your Honor, I doubt if the Roxanne Marchand trial is going to go. That one is mine.

THE COURT: Okay. I mean, we could second set it for that week. Do you want to set it on top of the Roxanne Marchand trial, the 24th to the 28th, and we could even go through the 31st. The 28th of January of 2022.

MR. PERCIVAL: I'm fine with that.

MS. BOSKOVICH: Could we have a secondary or primary, but for the November 1st through 3rd, if the Rider trial doesn't go, could we just make it November 1st through 5th? If, depending on the outcome of this trial, it may have an impact on the other two. I'm not certain. I'll defer to the state on that, I guess.

MR. PERCIVAL: It certainly would place greater importance on this trial than on the Battery By a Prisoner trial.

THE COURT: Well, we could, I think, you know, I'm going to tell you. I'll have a better feel I think in October of what Rider is going to do, and maybe we just hold off. We take this January, put it on top of Marchand and then I know Suzy Rowe, my court reporter, is in the same boat I am, because we're like she and I are the two, at the last Rider trial that we were gone from home so much that when we finally had the opportunity to go home, I drove home and got home and like five in the afternoon, an and got up at four the next morning to go back. I just wanted to come home for an evening.

But, basically it's going to be our whole month of November through Thanksgiving, if that case truly goes, if it goes like it did last time. But, we don't really know.

MR. PERCIVAL: Why don't we do this. Why don't we set it for January, and then sometime at the beginning of October, we have a status check with you to see if there is an available date

earlier.

THE COURT: I think that after the law and motion in October, and I have to tell you, I have really been pressing Esmeralda to say are the witnesses coming, are they not? Because if they're not, 24 days, or 22 days is a lot of days to free up, you know, and I can do a lot of stuff in there.

I have had to hire outside counsel in Texas to domesticate stuff. I have had to do a lot of things to get that case moving, and I've just got to know whether it's going or it's not.

So, why don't we do this. Why don't we have a regular law and motion on September 17th, why don't we just set it for a status check for a trial date.

I am going to set this on top of the other trial in January.

This is sort of how I feel. The facts are what the facts are. The law is what the law is. But, I want everybody to have the opportunity to argue the facts in their manner and argue the law in their manner.

I'm going to say this. I truly do not believe, and I may be wrong, that the state is trying to hide anything. This is about as half put together and transmitted over to the DA's office as I have seen.

MS. BOSKOVICH: And just for the record, I am not

accusing them of doing that. I know this whole case has been a cluster. I'm just trying to figure out, I'm trying to get to the bottom of it and make sure I have all the information I need.

THE COURT: I used to say if I got a case and something got screwed up in it, it was screwed up from the beginning to the end. And we couldn't wait fast enough for the case to be over.

This is kind of one of those cases.

You know, in fairness to the Nye County Sheriff's Office, and I'll just throw this out there. A lot of times they are shorthanded. What would be nice is, again, if they had instruction from attorneys on, hey, we're in the courtroom, we're trying these cases. Why don't you listen to the people, you know, there's a chain here, hey. We've got DA's, so the DA's are gonna say, hey, guys, when you're out on the scene, be looking for X Y Z and W.

But, there has to be that cooperation back and forth and that would be very nice between the DA's office and the Sheriff's Office, if we had that.

So, you know, or if they had a question, they could call a deputy DA when they were out in the field to say, hey. I've got this. But, time. It takes time.

So, I am going to reset this on top of the Marchand case, right? So, we will set this right now for January 24th through Friday the 28th. And if we need to I can bleed over on

Monday the 31st of January.

I'm going to do a calendar call. I'm going to do the calendar call on this case as a status check on September 17th and then I will set another calendar call closer. But, let's just see what's going on with the Goldfield case, because I might have a couple, be able to give you a few options.

If Goldfield should go forward, again, you know, we have set Thursday and Friday for jury selection and we may find that we can't seat a jury. I'm not going to say that we definitely are going to be able to seat a jury, because I don't know. That one is going to be tough.

We will set this for a status check, calendar call on September 17th. You can tell me what you've got, what you still need. And again, I am going to wait on my ruling. There's no need to get my ruling right now. Let's see if we can figure it out.

MS. BOSKOVICH: Thank you, Judge.

THE COURT: And I appreciate you guys clarifying some of the facts. Thank you. Thank you, Rachel.

(Whereupon proceedings concluded at 2:08 p.m.)

STATE OF NEVADA)
) Ss
COUNTY OF DOUGLAS)

I, SUZANNE KUES ROWE, Certified Court Reporter, licensed in the State of Nevada, License #127, and a Notary Public in and for the State of Nevada, County of Douglas, do hereby certify that the foregoing proceeding was reported by me and was thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing proceeding and caption named, or in any way interested in the outcome of the cause named in said caption.

Date: September 12, 2021



SUZANNE KUES ROWE, CCR #127