

1 CASE NO. C173970

2 DEPARTMENT NO. 7

3 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP  
4 COUNTY OF CLARK, STATE OF NEVADA

5 -000-

6 STATE OF NEVADA,  
7 Plaintiff,

8 vs.

9 LAWRENCE SCHWIGER,  
10 Defendant.  
11  
12

**COPY**

CASE NO. 01F02703X

13  
14 REPORTER'S TRANSCRIPT

15 OF

16 BIND-OVER

17 BEFORE THE HONORABLE JENNIFER F. TOGLIATTI  
18 JUSTICE OF THE PEACE

19 WEDNESDAY, MARCH 14, 2001

20 APPEARANCES:

21 For the State: TAMI PETERSON, ESQ.  
22 Deputy District Attorney

23 For the Defendant: NANCY LEMCKE, ESQ.  
24 Deputy Public Defender

25 Reported by: Loree Gallegos, CCR #426

LOREE GALLEGOS, CCR 426  
JUSTICE COURT DEPARTMENT 7, 455-4561

1 LAS VEGAS, NEVADA, WEDNESDAY, MARCH 14, 2001

2 9:00 A.M.

3

4 \* \* \* \* \*

5 THE COURT: I'm going to call Mr. Schwiger's  
6 matter which is a continuation from yesterday.

7 THE BAILIFF: Your Honor, do you want him at  
8 the table?

9 THE COURT: Sure.

10 This is the time set for continuing  
11 of the preliminary hearing in State versus Lawrence  
12 Schwiger, 01F02703X. I appreciate the patience of  
13 counsel. I basically trailed this until the end of  
14 the calendar for Mr. Schwiger's benefit.

15 THE DEFENDANT: I appreciate that, your  
16 Honor.

17 MS. LEMCKE: I explained that to him, your  
18 Honor.

19 THE COURT: With that said, I think we left  
20 off yesterday with the defense resting, and we were  
21 just going to do oral argument. And any motions for  
22 discovery and everything that was raised yesterday I  
23 asked you to bring it up today, because there was  
24 something about CPS statements. I can't imagine the  
25 State would mind giving that to you.

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1 MS. PETERSON: Absolutely, Judge.

2 Just so you know, I spoke to  
3 Mr. Abood yesterday and told him I would provide  
4 those. I talked to the detective this morning and  
5 asked him to get those transcribed. I believe it was  
6 Chelsey's statement is what we needed.

7 MS. LEMCKE: That's correct.

8 MS. PETERSON: And I'm having that sent over  
9 to me. As soon as I get that, I would provide that  
10 to them.

11 THE COURT: Is there anything else in the  
12 discovery that you were looking for?

13 MS. LEMCKE: Not that I recall. I remember  
14 the statements from Chelsey were the main thrust of  
15 any discovery issues.

16 THE COURT: Okay. I also think grandma --

17 MS. LEMCKE: My client's --

18 THE COURT: Grandma spoke to Ms. Hammack.  
19 Do you have that one?

20 MS. LEMCKE: No.

21 THE COURT: Are you wanting that one?

22 MS. LEMCKE: Yes.

23 MS. PETERSON: I would like that as well.

24 MS. LEMCKE: What we are looking for is  
25 anybody they spoke to in connection with this

1 investigation. And I realize there is a somewhat  
2 collateral investigation ongoing relative to CPS  
3 stuff. We want anything that was compiled in  
4 connection with that.

5                   And as I stand here this second I  
6 can't remember exactly every interview that every  
7 person did with everything, but any interviews that  
8 were taken in connection with any investigation of  
9 Mr. Schwiger on any appearances such as those set  
10 forth here or those possibly involving Chelsey. I  
11 would like any interviews, transcriptions, or  
12 otherwise that were compiled in connection with that  
13 investigation.

14                   THE COURT: Sure.

15                   MS. PETERSON: I have no objection, Judge.

16                   THE COURT: I'm sure you want it too, right?

17                   MS. PETERSON: Yes.

18                   MS. LEMCKE: Just for the record, if I can,  
19 because my client is bringing it to my attention, he  
20 also said he gave a statement to the detectives in  
21 the jail, and if we could get that.

22                   MS. PETERSON: I'm aware of that as well.  
23 And again, the detective told me he hasn't yet had  
24 that transcribed.

25                   MS. LEMCKE: That's fine.

1 MS. PETERSON: And he told me this morning  
2 he would send that also over.

3 THE COURT: Okay. So with all that  
4 resolved, they will agree to give you everything they  
5 can get their hands on from Ms. Hammack and the  
6 detective, so now we can get to the heart of the  
7 argument on the charge.

8 MS. PETERSON: I'm going to reserve  
9 rebuttal, your Honor.

10 THE COURT: They're reserving rebuttal.

11 Ms. Lemcke?

12 MS. LEMCKE: Your Honor, the argument I'm  
13 going to make on the charges is really only as to the  
14 fellatio count, the count alleging fellatio. That  
15 was one of the new amended charges on the sexual  
16 assault counts.

17 I believe the testimony yesterday was  
18 that there was no penetration in that there was no  
19 penile penetration of the mouth, but there was  
20 testimony that she put her mouth on the penis, and,  
21 if I recollect correctly, that she kissed the penis,  
22 but I specifically asked her on cross-examination if  
23 the penis went into her mouth, and she said no.  
24 Based on that I would ask your Honor to not find  
25 probable cause as to that particular sexual assault

1 count.

2 THE COURT: Okay. With the understanding --  
3 I'm sorry, were you going to go on?

4 MS. LEMCKE: No.

5 THE COURT: Okay. With the understanding  
6 that it's slight or marginal evidence that a crime  
7 was committed and that the defendant committed it, I  
8 have notes here, was there not testimony from nana  
9 about Count IV admitted under NRS 51.285?

10 MS. PETERSON: Correct, Judge.

11 THE COURT: Because I was very careful to  
12 listen to what she said, listen to what the adults  
13 said, because whether these things are true,  
14 Mr. Schwiger, you know, that's not for me to decide.  
15 I am not here to decide if they are true or not.

16 I mean the Supreme Court has said  
17 that it is my job to make a determination as to  
18 whether there's probable cause, slight or marginal  
19 evidence, that a crime was committed and you  
20 committed it, and if there is, I have to send it for  
21 a jury to decide. That's all we are talking about  
22 today.

23 THE DEFENDANT: I understand.

24 THE COURT: All I have to hear is the magic  
25 words "mouth, penis." That's all I need. Whether I

1 believe it or not doesn't matter. That's what I need  
2 as far as the statutes and the case law is concerned.

3 State, do you want to address that?

4 MS. PETERSON: Judge, you are correct. I  
5 had when I had asked Linda Simone, she indicated as  
6 well that the child had told her that the defendant  
7 made her kiss his weiner, and that was the testimony.

8 THE COURT: So I guess the question is, is  
9 it your argument or what are you relying on to say  
10 that no, that kissing, if a child is alleged to have  
11 to be forced to put her lips on a man's penis that is  
12 a sexual assault, or is that a lewdness?

13 MS. LEMCKE: That's exactly where I'm at.

14 MS. PETERSON: Judge, and I don't believe  
15 that there is any case law saying otherwise. I think  
16 that that's enough to show fellatio under the  
17 statute. Ms. Lemcke hasn't cited any, I'm aware of  
18 none. I think that's enough to show fellatio.

19 THE COURT: I also think it's a question of  
20 fact. I mean not to get, I really don't want to get  
21 too far into this discussion, but the level of  
22 contact and oral and what parts of the mouth and all  
23 that stuff are questions of fact I think for a jury.

24 I certainly think you would be in a  
25 position to ask for, you know, if I'm mistaken and

1 there is a case I am not aware of one, I'm going to,  
2 I'm going to make an analogy to the definition of  
3 cunnilingus for the purposes of sexual assault, which  
4 is there doesn't have to be penetration. There may  
5 not be a case on this. Maybe this will be the first  
6 one, I don't know, but I will make that analogy  
7 because I'm not, I'm drawing the analogy that you  
8 don't have to have penetration, you don't have to  
9 have the actual genital in the orifice.

10 MS. PETERSON: That's true. There is a case  
11 out that just references cunnilingus, and it  
12 indicates that as well.

13 THE COURT: Right.

14 MS. PETERSON: And I don't believe there is  
15 any cases regarding fellatio that Ms. Lemcke can cite  
16 that exist in Nevada, and I believe we have shown  
17 slight or marginal evidence on that count.

18 THE COURT: As a result of that,  
19 Mr. Schwiger, I am going to find probable cause as to  
20 all the charges and hold you to answer to them,  
21 specifically Count I, Lewdness With a Child Under the  
22 Age of 14; Count II, Lewdness With a Child Under the  
23 Age of 14; Count III, Lewdness With a Child Under the  
24 Age of 14; Count V, Sexual Assault of a Minor Under  
25 14 Years of Age -- excuse me, that was Count IV.



1 Count V, Sexual Assault With a Minor Under 14 Years  
2 of Age; Count VI, Lewdness With a Child Under the Age  
3 of 14.

4 I hereby hold you to answer to those  
5 charges in the Eighth Judicial District Court, State  
6 of Nevada, in and for the County of Clark at the  
7 following date and time.

8 MS. LEMCKE: Before we actually do the  
9 bind-over, can I be heard on a bail reduction or OR  
10 motion?

11 MS. PETERSON: And Judge, I would ask you to  
12 set bail on the other two charges we added yesterday.  
13 That would be my request.

14 THE COURT: Let her go first. She asked  
15 first.

16 MS. LEMCKE: Quick on the draw.

17 My client has very strenuously asked  
18 that I put in front of the court a motion to release  
19 him on his own recognizance, house arrest, or  
20 otherwise reduce his bail.

21 I think the court got a small glimpse  
22 as to what this case is ultimately going to involve.  
23 If nothing else, I can tell the court based on the  
24 discovery we have read and the testimony we have  
25 heard yesterday that the alleged victim in this case

1 has given several different accounts of what  
2 happened.

3 We have got everything from, you  
4 know, you know, fellatio and cunnilingus to he had me  
5 touch his wainer with my foot, a Kleenex, we were  
6 standing up, we were laying down. Also, there's  
7 several inconsistent accounts as to what happened.

8 And in addition to that, we have  
9 several statements from several of the witnesses to  
10 whom this child allegedly made these disclosures  
11 saying, well, you know, she also said, she would give  
12 the disclosure and thereafter say she was lying, she  
13 made it up.

14 So not only do we have the  
15 inconsistencies, but we have at least one or two  
16 people, well, two people that I know of for sure,  
17 based on the discovery I have read and the testimony  
18 I heard yesterday, saying that on several occasions  
19 after the disclosures she would say she was lying and  
20 making this up.

21 We have some real issues and real  
22 concerns as to the viability of this child's  
23 testimony insofar as a beyond a reasonable doubt  
24 standard is concerned.

25 Beyond that, your Honor, my client

1 has next to no record. His scope shows he has one  
2 prior arrest I think on a battery domestic violence,  
3 that's basically it. He's been a near life-long  
4 resident of Clark County, Nevada. He's been here for  
5 about 29 years. His family, as your Honor is aware,  
6 is here. His wife, his child, they are here in Clark  
7 County.

8                   He is the sole proprietor of a soft  
9 bathtub business, so he has some both financial,  
10 familial, and social contacts to this particular  
11 area. I think those would weigh in favor of his  
12 reappearance in court. I don't think he's a  
13 significant flight risk, although he does understand  
14 the nature and severity of the charges.

15                   I would ask your Honor, based on  
16 that, to consider reducing his bail, maybe with a  
17 caveat that if he was released, to only house arrest.

18                   MS. PETERSON: Judge, I strenuously oppose  
19 an OR release in this case. The victim in this case  
20 is a five year old child who told parents and  
21 grandparents that this defendant had said he would  
22 kill her if something, if she were to tell anybody.  
23 She told your Honor yesterday that she was told not  
24 to tell by this defendant on numerous occasions. It  
25 shows a pattern of abuse that happened for about six

1 months.

2                   We have increased the charges, and  
3 you're holding him to answer to those increased  
4 charges. He's facing life in prison with a minimum  
5 of 20 years before parole eligibility on these  
6 charges, and I would ask you to deny the motion for  
7 an OR and set the bail with the additional counts  
8 that we've added.

9                   MS. LEMCKE: Your Honor, my client has  
10 indicated he would like to address the court if the  
11 court would be so inclined.

12                   THE COURT: Sure, Mr. Schwiger, what do you  
13 want to tell me? You can protest your innocence all  
14 day long, and I appreciate you are not convicted of  
15 anything, and I, I don't want to be the one, wouldn't  
16 want to be the one to have to decide this case, quite  
17 honestly.

18                   So if it's not about the facts of the  
19 case, what would you like to tell me?

20                   THE DEFENDANT: I would just like to say,  
21 your Honor, that since the birth of my daughter,  
22 Chelsey, five and a half years ago, she is the only  
23 thing in my life that matters to me. My wife and I  
24 are going through a divorce, and I, I'm innocent of  
25 these charges, and I do intend to, without having her

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1 back in my life without restrictions, nothing in this  
2 world matters to me. You give me the electric chair,  
3 I don't care. She is what's important to me. I'm  
4 not going to leave her.

5 I'm not leaving the State, I will not  
6 flight risk, I will not leave. I'm here to fight for  
7 my right to be with my daughter who I have been the  
8 primary and almost exclusive caregiver of since she  
9 was born. She is the most important thing in my  
10 life, and I will not leave. I will fight to get her  
11 back.

12 THE COURT: Okay.

13 MS. PETERSON: Judge, I want to remind the  
14 court of some of the testimony yesterday with regards  
15 to what Alexis had testified to.

16 THE COURT: I really don't need to be  
17 reminded. The bottom line is, you know, I'm not  
18 going to decide.

19 MS. PETERSON: And Judge, my concern,  
20 obviously, would extend to his own five year old  
21 daughter as well. With the clarity of the  
22 description that this victim gave who was a neighbor,  
23 I think there's also an additional danger to his own  
24 child as well.

25 THE COURT: Well, I am not going to give an

1 OR, because I think Ms. Lemcke is realistic enough to  
2 know that it's not my inclination in this type of  
3 case.

4                   You know, it's a tough case with the  
5 allegations being of a young child. I mean she  
6 testified with certain specificity and particularity.  
7 I realize there's been inconsistent statements, but  
8 when your mom tells you I'm going to spank you, I'm  
9 going to spank you, I'm going to spank you, finally  
10 the kid is like, okay, I'm lying.

11                   I could go back and forth all day  
12 long. That's why I'm really glad I won't be deciding  
13 this case, but the bottom line is due to the nature  
14 of the charge I'm not inclined to give the defendant  
15 an OR; however, I have to recognize the difficulties,  
16 even if the State doesn't, you know. It's a  
17 difficult case.

18                   And you know what, what bail is about  
19 is protecting the community and making sure the  
20 defendant makes his court appearances. I'm not here  
21 to punish for conduct that hasn't been proven beyond  
22 a reasonable doubt. It may happen, it may not, I  
23 don't know. But as far as I'm concerned, I'm less  
24 convinced that he's a flight risk and more worried  
25 about if the allegations are true what kind of risks

1 he poses, so what I'm inclined to do is set bail at a  
2 total bail of \$20,000, with the understanding that  
3 there's to be --

4 MS. PETERSON: Judge, I beg your pardon,  
5 what was bail previously?

6 THE COURT: 40.

7 MS. PETERSON: Judge?

8 THE COURT: With house arrest, with the  
9 understanding that he has to qualify for house arrest  
10 and has to be placed on house arrest.

11 MS. PETERSON: I would ask your Honor to  
12 reconsider that bail setting. We have now added  
13 three additional counts that your Honor has found  
14 enough probable cause to hold him to answer to trial  
15 for. I have the concern not only of the five year  
16 old victim in this case, but his own daughter, and I  
17 would ask you not to reduce his bail any further.  
18 I'm asking instead that you set a reasonable bail on  
19 the additional charges.

20 THE COURT: I'm setting the bail at a total  
21 bail of \$20,000.

22 MS. PETERSON: Would that be cash only,  
23 Judge?

24 THE COURT: Total bail, cash or surety, with  
25 the condition of house arrest. Now, the house

1 arrest, you know, part of the problem is I'm about to  
2 order a no contact order with children and no  
3 unsupervised visits with his daughter. He can have  
4 the trial within 60 days if he wants. He can have no  
5 contact with any children, he cannot go to her  
6 school. That's not part of the house arrest.

7                   The bottom line is this, you could  
8 either be an innocent man who's wrongly accused or  
9 you could be a man obsessed with your daughter so  
10 much because you're a pedophile, I don't know, you  
11 know that. Maybe you would never leave her because  
12 she is your one link to a problem that you have and  
13 the only chance you are ever going to get to exercise  
14 that problem. I don't know that, you know. That's  
15 what makes it tough about being in the robe.

16                   As far as I'm concerned, if your  
17 child is the most important thing in your life, you  
18 invoke your 60 day trial rights, because I will order  
19 you have no contact with any children and no  
20 unsupervised visitation with that child as part of my  
21 order. Do you understand? I mean Chelsey.

22                   THE DEFENDANT: More than fair, your Honor.

23                   THE COURT: If it turns out you are  
24 acquitted, you know what, I was overly cautious for  
25 your daughter, Chelsey, so be it if that's the worst



1 thing that ever happens to you. Do you understand?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: If you post the \$20,000, you  
4 have to be qualified for house arrest. It has to be  
5 set up before you are released. You are under a no  
6 contact order with children. You are not to be  
7 around any schools, not to have any possession of any  
8 alcohol or drugs, and not to have any unsupervised  
9 contact with Chelsey while you are out on this case.

10 MS. PETERSON: Judge?

11 THE COURT: Yes.

12 MS. PETERSON: In addition, I believe he had  
13 access to a computer in this case. I would ask you  
14 also order he have no contact on the computer.

15 MS. LEMCKE: Let me just say this relative  
16 to the computer, I understand that they executed a  
17 search warrant and pulled all the stuff out of his  
18 house and looking for kiddy porn and found goose egg,  
19 zero, nada, nothing. I don't see why, if there's no  
20 history or no indication that he's doing anything  
21 sinister on the computer on the internet, I don't  
22 know why we would impose that.

23 MS. PETERSON: Actually, Judge, they are  
24 still in the process of going through that computer  
25 analysis. It takes some time. They had the warrant,

1 they have --

2 THE COURT: There's no computer at his  
3 house?

4 MS. LEMCKE: There is no computer at his  
5 house.

6 MS. PETERSON: I don't know whatever kind of  
7 access he has anywhere else, Judge. That's my  
8 concern.

9 MS. LEMCKE: Okay.

10 THE COURT: As far as I'm concerned --

11 MS. LEMCKE: I don't think we have a  
12 problem.

13 THE COURT: My orders are in order to  
14 protect the community and to protect what I perceive  
15 to be any potential threat against Chelsey, if there  
16 is any, this satisfies a couple goals on my part,  
17 which is to protect our community, the children in  
18 our community, and this kid. If in fact she's at  
19 risk, there is to be no unsupervised visitation with  
20 her. An unsupervised visit with her is a violation  
21 of my order and you will be subject to an immediate  
22 revocation of the bail. Do you understand that?

23 MS. LEMCKE: My client was talking to me,  
24 Judge. I'm very sorry.

25 THE COURT: Okay. A violation of my no

1    unsupervised visits with this child is a violation of  
2    my conditions of bail, and you will be subject to  
3    revocation of the bail. Do you understand?

4               THE DEFENDANT: Yes, ma'am.

5               THE COURT: You can argue all day about  
6    computers, or you can represent to me that you are  
7    not going to be going out and buying a computer, and  
8    if you are going to agree to it as a condition,  
9    that's fine; otherwise, I will decide. I don't know,  
10   I would have to think about it.

11              THE DEFENDANT: May I speak, your Honor?

12              THE COURT: Sure.

13              THE DEFENDANT: My business is entirely on  
14   my computer. I have never dealt with any kind of  
15   pornographic material through the internet or on my  
16   computer in any way.

17              THE COURT: If he makes bail and gets on  
18   house arrest and you find something, I'm confident  
19   you could come before Judge Bonaventure, A, with new  
20   charges, and B, with a request to revoke his bail if  
21   in fact he makes the bail. I mean that's something  
22   that's, you know, he has to get approval to go  
23   shopping for a computer on his house arrest.

24              THE DEFENDANT: May I?

25              THE COURT: What?

1 THE DEFENDANT: Again, my computer has all  
2 my business records.

3 THE COURT: You are not getting the computer  
4 back.

5 THE DEFENDANT: I was wondering if they can  
6 copy the hard drives which would give them all my  
7 information, and I can work and earn a living. My  
8 business --

9 THE COURT: Can I tell you something?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Charges of sexual assault with a  
12 minor can be a huge inconvenience in your life and  
13 your business. I cannot compel, nor will I compel,  
14 nor do I have the jurisdiction to compel the district  
15 attorney to return your computer. I don't have the  
16 authority to do it.

17 I don't have the authority to order  
18 discovery prior to preliminary hearing. I'm just  
19 getting her to agree to it on the record to make  
20 things easier for your lawyer because you are  
21 probably going to invoke your 60 day trial rights and  
22 move this case along, but I don't have the authority  
23 to do it.

24 You can tell me all about your  
25 computer, it's not going to make a difference. Not

1 that I don't care, but it's really not my concern.  
2 And quite honestly, sir, in your big list of  
3 problems, it's the least of your problems, okay?

4 Anything else?

5 MS. PETERSON: I would ask you to reconsider  
6 your order about setting the bail.

7 THE COURT: I know. I reconsidered it.  
8 That's going to be my order.

9 THE CLERK: March the 28th at 8:00 o'clock  
10 in Department VI.

11

12

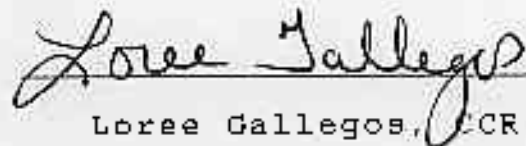
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14 ATTEST: Full, true, and accurate transcript of  
15 proceedings.

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Loree Gallegos, CCR #426

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