District Court, City and County of Denver, Colorados City and County Building, Room 256 1437 Bannock Street Denver, CO 80202	(’.tsL: NURil1l'It: 20 IGC *307.38
7HE PEOPLE OF THE STATE OF **COLORADO,** **Plaintiff-Appellee,** v. **KENDALL ROBERTSON,** Defendant-Ap pellant.	Case Number: **16CV030738**
Victoria M. Cisneros, Reg.No.45519 Deputy District Attorney For: Beth McCann DISTRICT ATTORNEY 201 West Colfax Ave., Dept. 801 Denver, CO 80202 Phone Number: 720-913-9014 Fax Number: 720-913-9035 E-mail: victoria.cisneros@qdenverda.org	[Defendant’s Crim. P. 37 Appeal from County Court: Case No. 15M04518] Div.: Civil Ctrm: 368
PEOPLE'S STATEMF.NT CONCEDING REVERSAL OF CONVICTION	

The People respectfully state the following in lieu of a formal answer brief:

1. This case is the defendant’s direct appeal, pursuant to Crim.k. 37, from his conviction by a jury on October 2t, 2011 for criminal invasion of privacy for sexual gratification, section 18-3-405.6, a class 1 misdemeanor. (CF. Vol. I, p. 3, Vol. II, p. 121).

2. 'the appellate record was certified to the district court on June 29, 2016.

Defendant's opening brief was filed on November 16, 2016.[1]

3. Defendant raised one issue on appeal, whether section 18-3-405.6 makes it a crime to observe a video another person ha.s taken of her own intimate parts. The People concede the defendant's conduct does not fall within the statute.

4. The defendant in this case was employed by Denver Public Schools and was supervising in-school suspension (ISS) on May 6, 2015, The victim, I.H., was in ISS on May 6, 2015 and turned her cell phone over to the defendant as required by ISS rules. During ISS, the defendant looked through I.H.'s phone and found a video of I.H. masturbating. After he watched the video, he had I.H, stay after class so he could speak with her. The defendant asked I.H. why she was 'such a freak" and when she asked what he meant, he replied, "you're in here rubbing your pussy." (R. Tr. 10/27/15, p. 199). The dCfendant asked if he could watch the video again and I.H. refused. At trial, the defendant denied looking at I.H.'s phone.

5. After the People rested, the defendant moved for judgment of acquittal. The defendant argued that the statute does not say "knowingly observed photography of someone's intimate parts." (R. Tr. 10/28/15, p, 43). The defendant argued that he did not observe I.H.'s actual intimate parts, but rather a video that she took of her intimate paris. The defendant argued that under section 18-3-405.6 actual observation is required and

1 4 he record consists of: Volume 1: Court tle (bates-stamped pp. 1-92); Volumc 11: Suppressed/Sealed Documents (batcs-stamped pp. 93-123); Volume III: Exhibits (pp. 1 24•132); Volume IV: Trial and Sentencing Ftearing Transcripts (individually paginated).

that the statute does not cover items "people have voluntarily put on their computer." *Id.*, pp. 44, 46).

6. The People responded that the statute and model jury instructions made no distinction about how the observation of another person's intimate parts is made. The People argued that I.H.'s vagina is an intimate part and was observed by the defendant. *Id.*, pp. 47-48). The trial court agreed with the People and denied the defendant's motion for judgment of acquittal. *(Id.* , p. 50).

7. The People concede that the plain language of the statute does not cover the defendant's conduct. Violation of the statute requires that the offender observe a person's intimate parts or take a photograph of a person's intimate parts. Here, the defendant was going through someone else's phone when he discovered the video of that person masturbating. The defendant did not take the video himself, nor was he there observing that person when the video was made.

WHEREFORE, the People respectfully concede that defendant's conviction for criminal invasion of privacy for sexual gratification should be reversed, and the case remanded to the trial court for the entry of a,judgment of acquittal.

Respectfully submitted: January 18, 2017.

Respectfully submitted,

FOR THE DISTRICT ATTORNEY:

BY/s/ Victoria M. Cisneros
Victoria M. Cisneros
Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that on January 18, 2017, I E-served through CCE a true and complete copy of the foregoing to:

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