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The *Happy Thanksgiving!* **Humboldt Sun**

Winnemucca, Nevada

Your Source for Community News

VOLUME 40, ISSUE 94

**WEEKDAY EDITION**



**SNAPSHOTS**

The Denio Library held its annual Arts and Crafts Fair on Nov. 15 in the Denio Community Hall.

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**SPORTS**

The Humboldt County Rodeo Club concluded the fall portion of the Nevada High School Rodeo Association schedule at the Boulder City rodeo.

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**PETS ON PARADE**

Church and 21-month-old Dominick Robles get comfortable together.

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- Classifieds ..... Pages 22-23

**Local Weather**

<b>Tue</b> 11/24	51/16	
Partly cloudy skies. High 51°. Winds light and variable.		
<b>Wed</b> 11/25	56/17	
Abundant sunshine. Highs in the mid 50s and lows in the upper teens.		
<b>Thu</b> 11/26	56/22	
Plenty of sun. Highs in the mid 50s and lows in the low 20s.		

South American Profile Hometown Content Service

**Justin Smartt acquitted of sexual assault**

**Jury delivers verdict after hours of deliberation**

By Jen Anderson  
The Humboldt Sun

WINNEMUCCA — A jury of eight men and four women on Nov. 20 found 22-year-old Justin Smartt not guilty of committing sexual assault on a child under the

age of 16 years. The verdict was delivered following three days of testimony and concluded with closing arguments and almost three hours of deliberations last Friday.

Smartt was also found not guilty of burglary and battery with intent to commit sexual assault.

The trial began Tuesday, Nov. 17, with jury selection and opening arguments. This was the second time in as many years that Humboldt County District Attorney Russell Smith prosecuted the

charges against Smartt.

Smartt was arrested in July 2006 for the alleged crimes against the then 13-year-old female victim, whose name is being withheld. He stood trial in early 2007 and was convicted of all three charges in February of that year. After a successful appeal to the Nevada Supreme Court, the conviction was overturned earlier this year and the case remanded back to the Sixth Judicial District Court for a retrial, just a few years into Smartt's life sentence.

The charges stemmed from an incident that occurred on July 9, 2006, when Smartt, then 18, was accused of unlawfully entering a mobile home in Winnemucca and allegedly sexually assaulting the 13-year-old girl.

The girl, who is now 16, told jurors last week that she was startled awake when Smartt took her blankets off her and then laid on top of her. She said she heard him whisper in her ear, "If you tell anybody what I am about to do to you, I will kill you."

She claimed that after struggling against him, Smartt punched her in the chest and told her to shut up. The charge of battery stemmed from that accusation, according to Smith. The victim also claimed that Smartt held a hand firmly over her mouth throughout the ordeal, which she said prevented her from screaming.

Testimony from the state's expert witness corroborated the victim's account of the evening, according to Smith. Denise Engel, the Nevada State Health Division community health nurse out of Carson City is also a trained Sexual Assault Nurse Examiner and performed the exam on the victim about 12 hours after the incident. Engel stated during last week's trial that the nature of the injuries she documented over three years ago were indicative of non-consensual sex. She admitted that while one or two injuries are possible during an incident of consensual intercourse, several injuries, like the ones she claimed she saw in this case, were indicators of a non-consensual incident.

Defense attorney Kyle Swanson, who also represented Smartt during the first trial 2½ years ago, said the photo documentation failed to adequately show the injuries Engel claimed to have seen and did not indicate a non-

consensual encounter. His expert witness, Judy Malmgren, agreed.

She stated that the photos did not represent Engel's written documented findings and also claimed that the nature of the alleged injuries did not indicate a forced sexual assault. Malmgren is a registered nurse, a Sexual Assault Nurse Examiner and a forensic nurse examiner through the Public Health Department in her California county. Since Malmgren practices in a different state, Swanson had a difficult time qualifying her as an expert prior to her testimony last Thursday. Presiding Judge Richard A. Wagner was hesitant to allow her to directly rebut Engel's findings since California practices are different than Nevada's.

"We're not in California, we're in Nevada and we have a different standard," he said. "I'm not trying to be mean, I'm trying to follow the law. This is a Nevada case with Nevada standards."

Malmgren said an alleged bruise on the chest of the victim as shown in Engel's photo documentation appeared to resemble a mark left by oral suction (a hickey) rather than a bruise left by a punch.

In addition, it was pointed out that there were no documented injuries noted by Engel in regards to the victim's face, where possible bruising could have materialized from Smartt allegedly placing his hand over the victim's mouth.

In his cross examinations of additional state witnesses, Swanson noted that the only other eyewitness to the incident failed to hear any noises that he said could corroborate a non-consensual act. The witness only heard "pushing sounds" and whispers, according to her testimony, but did not hear screams (muffled or otherwise) or struggling.

— See SMARTT, Page Two —

**Talkin' turkey —**



TIM TORELL • Special to the Sun

Turkeys roam the Big Canyon Ranch in western Nevada. The Nevada Department of Wildlife reports that a small number of families will be lucky enough this year to sit down at the table and enjoy a wild turkey harvested in Nevada. For more Thanksgiving-related stories, see Pages 9-10.

**Train traffic through city to increase**

**U.P. official updates county on derailment**

By Heather Gula  
The Humboldt Sun

WINNEMUCCA — Changes to Union Pacific rail lines will route more traffic through the immediate area and Winnemucca proper.

United Transportation Union State Director Rod Nelms and Union Pacific Railroad Public Affairs Director Wes Lujan came before the Humboldt County Commission Nov. 16 to discuss that issue and others that affect the railroad's relationship with the community. Lujan explained that Union Pacific has put a lot of emphasis on this market in the past year and plans to continue doing so. "We are doing a lot of things to invest in our infrastructure in Nevada," he said. "We have \$2.6 billion capital spent on a network-wide basis, and we are going to continue to invest aggressively even in this down economy this next year in our infrastructure throughout Nevada and northern California."

He was very clear about the fact that despite recent rumors, U.P. is not going to close the Feather River route. Lujan point-



HEATHER GULA • The Humboldt Sun

United Transportation Union State Director Rod Nelms (left) and Union Pacific Railroad Public Affairs Director Wes Lujan came before the Humboldt County Commission Nov. 16 to discuss recent activities and upcoming changes to rail transportation in the county.

ed out that the company is not building any new lines at the present time and as such they are certainly not going to abandon any of the ones they have in existence.

Lujan stated that part of what is fueling that rumor is the U.P. activity to upgrade the Donner Pass route.

Union Pacific is near comple-

ted on the retrofitted tunnels over Donner Pass that will facilitate the double-stacked train cars that have currently run over the Feather River route through Portola. Those trains will soon be rerouted over Donner Pass, through Reno and then through Winnemucca.

Nelms stated that from the union's point of view, the project

would significantly reduce the number of trains coming through Portola but make no major changes to the Winnemucca area. There may be a relocation of some employees out of Portola possibly, which could impact employees in this area due to seniority issues.

These are truly operational changes made by Union Pacific

in a low economy to provide better service and maintain transportation. In short, Nelms offered the union's support for the changes.

"Basically it is a considerable cost savings for us from an efficiency standpoint," Lujan said. "We are shaving 73 miles off of the route, gaining a great level of fuel economy from assisted velocity, so anything we can do to improve that we are going to."

The transfer of these routes is a multi-phase project and the first phase is expected to be completed by the end of this year.

He went on to explain that Union Pacific is looking at investing millions of dollars on their northern Nevada route between Winnemucca and Reno in order to enhance what is already a highly efficient transportation line.

"There is tremendous opportunity for efficiency and velocity improvements. I think it's important to note that for every 1 mile per hour increase on our line on a system-wide basis that is 200 locomotives," he said.

"So from an air quality standpoint and from a truck competitive standpoint we think we have a great story there that we are more focused on private infrastructure there than on your highways — meaning I-80 — and the impact that trucks have on your infrastructure," he added.

— See TRAINS, Page Two —

**NEWMONT**  
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**Spot metal prices**  
New York Mercantile Exchange closing, metals prices:

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## Nevada counties fight for share of geothermal money

FALLON (AP)—Nine Nevada counties are pressing Congress to repeal a provision in a federal appropriations bill that could cost counties in at least six Western states millions of dollars in lost revenues from geothermal activity.

Tim Josi, president of the National Association of Counties Western Interstate Region, said the Energy Policy Act of 2005 gave counties a 25 percent share of geothermal revenues to deal with impacts of geothermal activity.

He said the recent passage of the 2010 Interior Department appropriations bill effectively redirects the county's share of geothermal revenues back to the federal government.

Josi estimates the change will hurt at least 31 counties in six states: Nevada, California, Idaho, New Mexico, Oregon and Utah.

In Nevada, geothermal production takes

place in Churchill, Elko, Esmeralda, Humboldt, Lander, Mineral, Nye, Pershing and Washoe counties.

"This will have a significant impact to all geothermal counties," Churchill County Manager Brad Goetsch told the Lahontan Valley News and Fallon Eagle Standard newspaper.

Churchill Comptroller Alan Kalt said his rural county stands to lose as much as \$100,000 for the quarter ending Dec. 31. The county has seven geothermal plants.

"We average between \$25,000 to \$40,000 per month based on the energy produced," Kalt said.

Churchill Commissioner Norm Frey is working with other Nevada counties and Josi to repeal the provision.

"If the U.S. government is serious about

developing geothermal energy, communities should be considered in the plans," he said.

Sen. Harry Reid, D-Nev., and Rep. Dean Heller, R-Nev., have introduced bills to repeal the provision relating to geothermal energy receipts.

Reid and the rest of Nevada's congressional delegation also have introduced legislation to extend the counties' geothermal revenue share permanently and to create a new county revenue share for wind and solar development on public land.

"This will ensure Nevada counties benefit from these renewable energy projects," Reid spokesman Jon Summers said.

"I am pushing as hard as I can ... No other state is affected as much by this provision," Heller said.

## SMARTT

(Cont. from Page One)

Although the young witness was in the room at the time of the incident, she did not see what happened because she was covering her head with a blanket, she said. Swanson argued that if the witness was able to hear whispers and sounds that resembled pushing, she should have been able to hear a punch to a chest, muffled screams and sounds of struggling. The fact that she didn't, he argued, was because the intercourse was consensual and there was no struggle.

The victim's mother also testified during the trial and said she was the one who walked in the room while the alleged assault was taking place. She claimed that as she turned on the bedroom's light, she saw Smartt's hand over her daughter's mouth. She said she asked him what he was doing and he responded that he was sorry and then ran out of the home's back door as she yelled for her husband.

Smartt's account of the incident differs, as he claimed during his testimony Thursday that the act was consensual. He argued that he did not unlawfully enter the home as the victim claimed, but that he was let inside by the victim and pulled into the room where intercourse took place. He testified that she had flirted with him earlier

that day and said their relationship seemed to be heading in a direction other than friendship. It was also revealed during the course of the trial that Smartt and the victim are related, although not by blood.

"It was like friendship leading into something else," he said during direct questioning.

Smartt said he had been invited earlier the previous day by the victim's mother to stay the night at the house — a claim the victim's mother denied during her testimony. Smartt said he and another family member had been drinking alcohol outside behind the home late into the night July 8, 2006, and into the early morning hours of July 9. They had at some point gotten locked outside of the house and knocked on a bedroom window to be let in to use the bathroom. Smartt claimed the victim let them in the house, an allegation she denied. He said that while his companion used the bathroom, the victim grabbed his arm, led him into the room where she was staying and persuaded him to have intercourse.

While on the stand Smartt began recounting a conversation he had had with the victim on the day prior to the alleged assault. Due to the nature of the testimony, the jury was excused for about 30 minutes while Smartt answered questions from Swanson and Wag-

ner about the conversation.

Due to Nevada Revised Statute 50.090, Smartt's testimony of the victim's alleged past sexual conduct was given outside the presence of the jury since the rape shield law protects a victim's credibility by not allowing such matters to be considered by jurors.

The victim maintained throughout her testimony that she had no desire to sleep with Smartt and that intercourse happened without her consent. She said she did not open the door of the home for Smartt and the other man and claimed she did not know how they got inside the house. Winnemucca Police Det. Dave Garrison was the responding officer the night of the incident and said he found pry marks around the back door and Smartt's fingerprints on a nearby bedroom window. No pry tools were ever found and fingerprints were not taken on the door — Garrison said the surface was not conducive to gathering prints. He also said he wasn't sure if the pry marks were there prior to the incident or were fresh from that night.

"There's no way to tell if the pry marks led to someone entering the residence," he said.

After questioning the accounts of seven state witnesses and five defense witnesses, attorneys for both sides gave their closing argu-

ments Friday morning.

Smith asked jurors to consider the evidence in the case — particularly the documentation provided by Engel. He reiterated several of the 40 juror instructions given by Judge Wagner, highlighting the fact that the victim was 13 years old at the time and likely mentally and physically incapable of resisting Smartt's advances.

Swanson challenged the jurors to closely examine the photos taken by Engel and find the alleged injuries that she documented. He argued that they would be hard-pressed to find any indication of injuries sustained during non-consensual intercourse because none existed. He also reminded them that if they had any doubt whatsoever that the intercourse was non-consensual, that they must acquit Smartt of all charges. He noted that the other two charges of burglary and battery with intent to commit sexual assault were related to the first of sexual assault of a child under 16 years and could not stand on their own. He said it all came down to the question of consent and whether or not the district attorney was able to prove beyond a reasonable doubt that the incident was non-consensual.

The jury returned with three not-guilty verdicts less than three hours after deliberation.

## TRAINS

(Cont. from Page One)

"So, we hope to have a more aggressive truck competitive service in that respect."

Commissioner Mike Bell asked for a quantitative figure of how many more trains per day local residents would see coming through the Bridge Street crossing, but Lujan was unable to give him an accurate figure.

"You know that is truly a product of the economy commissioner," he said.

Lujan told commissioners that the trench that was built in the Reno area lifted a lot of restrictions on their ability to travel that route effectively. With the trench system running through the urban center, Union Pacific is looking to make that one of their major routes in the future.

Later Lujan provided a statement that gave more insight into the lack of an estimated figure:

"Current and future train volumes are purely dependent on the economy and customer needs," he said. "This route will become one of our premium routes between northern California and Chicago. The scheduling of the

trains is dependent on the needs of our customers."

While U.P. does not plan to make any infrastructure changes or upgrades at the Bridge Street crossing, they have indicated to city officials a desire to discuss safety issues associated with the crossing.

While this project will bring more trains through Winnemucca proper, they do not anticipate an increase in the local employee base.

Nelms recognized the role the change will play in the traffic flow across the Bridge Street tracks, stating that he felt Union Pacific's early discussions with the city and county are a promising sign that these issues will be dealt with.

"Certainly the Bridge Street crossing will be impacted as more and longer trains will traverse this crossing," he said.

"That is why I am glad Mr. Lujan is here today to alleviate and possibly help mitigate any concerns the county and the city may have."

A discussion of the changes that may or may not have on the

transportation of the refuse to the proposed Jungo Landfill followed.

Lujan asserted again that the Feather River route would not be closing and that that would be the most likely route, avoiding the city of Winnemucca altogether. However, that decision would not be made until after the local deliberation was complete. He indicated that Union Pacific views the Jungo Landfill as a local issue between Humboldt County and Recology. Under federal law Union Pacific is defined as a common carrier and is obligated to serve all customers. He said the company is aware of the sensitivity of the issue and will consider that if they develop the transportation plans for that facility.

The final issue addressed by Lujan was a briefing on the derailment that had occurred near Valmy in late October.

Lujan explained that Union Pacific had a 13-car derailment with approximately 40 containers leaving the tracks on Oct. 26. The company is still working on their federal railroad administration

report and therefore he could not speak to the specifics of the incident. However, he did indicate that it was a track issue related to switching at the switch that goes into the Valmy power plant. More information will be available on what happened and what the planned remedies are once the report becomes official with the federal administration.

"I just want to commend the first responders who were out there," Lujan said, explaining that both Sheriff Ed Kilgore and Undersheriff Curtiss Kull were on scene and worked in cooperation with Union Pacific officials.

He reiterated that the safety record of U.P. has improved by 70 percent since 1980 and they are continually working to improve the safety of rail transport.

"We do feel we have had a lot of success in your community here over the last year with the fence project that we worked on with Mayor (Di An) Putnam and (city Manager) Steve West," Lujan said. "That was a tremendous safety improvement for the community."

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