

1 MS. HAMERS: And -- okay. So as far as the detective and the
2 interview on the tape, he's going to go home and watch it. He'll pick out --

3 THE COURT: Here's what's happening: You and Ms. Nyicos and he
4 are going to go outside, and you're going to reach some agreement on exactly
5 what you want done and whether you want somebody there or you don't want
6 somebody there and what you want to do in the morning. We're going to try
7 to get him on and off in a few minutes at 9:00 in the morning. So you guys go
8 out and figure out what you want.

9 MR. BATEMAN: Ron and I don't have to be a part of this; do we?

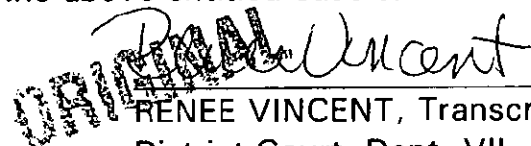
10 THE COURT: Well, I mean, at least one counsel -- at least one counsel
11 from each side. You can have two. You can have an investigator. Do
12 whatever you want, but Ms. Hamers is driving the train. I want her to be
13 satisfied that he can either point out or say, I can't hear this or do whatever. I
14 mean, she's entitled to kind of get into that. So let her sort of decide how it's
15 going to go, and then let's make sure everybody is on the same page of how
16 it's going.

17 MS. HAMERS: Thank you, Judge.

18 THE COURT: Okay. Have a good night. We'll see you at 8:45.

19
20 [Proceedings adjourned at 4:42 p.m.]

21
22 ATTEST: I hereby certify that I have truly and correctly transcribed the
23 audio/video proceedings in the above-entitled case to the best of my ability.

24 
RENEE VINCENT, Transcriber
District Court, Dept. VII
25 (702) 671-4339

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ORIGINAL

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1 TRAN
2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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CLERK OF THE COURT

5 STATE OF NEVADA,)

6 Plaintiff,)

CASE NO. C226586

7 vs.)

DEPT. VII

8 FREDDY MARTINEZ,)

9 Defendant.)
10)
11)

12 BEFORE THE HONORABLE STEWART L. BELL, DISTRICT COURT JUDGE
13 THURSDAY, APRIL 12, 2007

14 RECORDER'S PARTIAL TRANSCRIPT OF
15 JURY TRIAL and VERDICT
16 DAY 2 - VOLUME II

17 APPEARANCES:

18 For the Plaintiff:

NOREEN C. NYICOS, ESQ.
Deputy District Attorney
SAMUEL G. BATEMAN, ESQ.
Deputy District Attorney

21 For the Defendant:

KATHLEEN M. HAMERS, ESQ.
Deputy Public Defender
RONALD S. PAULSON, ESQ.
Deputy Public Defender

RECORDED BY: RENEE VINCENT, COURT RECORDER

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1 Thursday, April 12, 2007 - 9:04 a.m.

2 [Out of the presence of the jury.]

3
4 THE COURT: Okay. Let's go on the record in Case C226586, State
5 of Nevada versus Freddy Martinez. Morning.

6 MS. NYICOS: Morning, Your Honor.

7 THE COURT: Let the record reflect that Mr. Martinez is present with
8 the court-appointed interpreter. Ms. Hamers, Mr. Paulson, Ms. Nyicos, Mr.
9 Bateman. Absence of the jury.

10 Okay. This is the time for settling instructions. I have given you
11 a proposed packet. Last night Ms. Hamers submitted some additional
12 instructions. I intend to add to the proposed packet their request for an
13 instruction on false imprisonment right after the definition of kidnapping. I
14 intend to give their instruction that, you know, they have to have 12 people
15 think it's first degree or it's second degree. They have to have 12 people think
16 it's second degree or it is false imprisonment, and then -- right behind that.

17 And then the instruction that reads, In order for you to find the
18 Defendant guilty of both first degree kidnapping and then an associated offense
19 of sexual assault, I think if you delete "both first degree," those three words,
20 then it's -- then it's both first degree and second degree have to be distinct
21 from the sexual assault to make it good. I think that cures their issue.

22 And I know you've got a couple you want to submit that I'm not
23 going to give, but -- is the State familiar with the proposed instructions
24 including the addition of the two and the correction of the one?

25 MS. NYICOS: We are, Judge.

1 THE COURT: Does the State object to the instruction -- any of the
2 instructions now that the Court intends to give?

3 MS. NYICOS: No, Your Honor.

4 THE COURT: Does the State have any additional instructions to
5 propose?

6 MS. NYICOS: No, Your Honor.

7 THE COURT: Is the Defense familiar with the proposed set of
8 instructions now, including two of your latest proffered instructions and the
9 correction of one to conform to the possibility that the allegation of kidnapping
10 could be something other than first degree kidnapping?

11 MS. HAMERS: Yes, Judge.

12 THE COURT: And do you have any objection to any of these now?

13 MS. HAMERS: Yes.

14 THE COURT: You do?

15 MS. HAMERS: Yes.

16 THE COURT: Okay. Go ahead.

17 MS. HAMERS: Starting on what -- what would be -- it's page 11. It's
18 the definition of first degree kidnap. I'd ask that that instruction be limited to
19 sex assault. That's what's charged here. Not for any other reason, for
20 ransom, reward, all these listed things. It's the 11th one.

21 THE COURT: And what -- there's only really two objections to a jury
22 instruction. One is, you know, not supported by the facts; two, it's not the
23 law. You're saying this isn't supported by the facts?

24 MS. HAMERS: That's correct.

25 THE COURT: Don't you think the jury is entitled to know that there's a

1 number of ways you can have first degree kidnapping? In this case there's only
2 one State's theory, but that it isn't just limited to sexual assault?

3 MS. HAMERS: Well, the State hasn't put us on notice of any other
4 theory, and so for the jury to --

5 THE COURT: The State isn't going to argue any other theory, I'm sure.

6 MS. HAMERS: So there's no reason for the instruction.

7 THE COURT: Okay. Your objection is denied, but the State has
8 ordered that they cannot argue any other theory than the predicate is for the
9 purpose of committing sexual assault. Go ahead.

10 MS. HAMERS: What would be page 14, it -- a person -- they say sex
11 assault definition. It refers to the word "victim" twice. I'd ask that we use
12 either "person" or something else other than the word "victim." It
13 presupposes that a crime has been committed.

14 THE COURT: Wait a minute. Where is it?

15 MS. HAMERS: It starts with, A person who subjects another person to
16 sexual penetration against a victim's will. I think it's -- it was three pages
17 further.

18 THE COURT: Okay. I mean, when you objected to them saying
19 "victim," you're sort of saying to the jury that that's your decision, and I've
20 kind of sustained your objection. But in this case, it is -- it's assumed that -- I
21 mean, if there's a sexual assault, this is what -- they are a victim. I mean, if
22 you do this against their will, they are definitionally a victim.

23 MS. HAMERS: Right. If one person does this to another person, then a
24 sexual assault has occurred, then there's a victim.

25 THE COURT: Right.

1 MS. HAMERS: I mean, to put "victim" earlier in that transaction, if
2 someone does this to a victim, I think it's prejudicial and presupposes a crime.

3 THE COURT: I've agreed with you as to the testimony. We should try
4 to say "alleged victim," but in this, it says, Hey, if you do this, then they are a
5 victim. Overruled. Go ahead.

6 MS. HAMERS: Okay. The next instruction, I'm aware of the Court's
7 position. This is the no requirement that the testimony of the victim of sexual
8 assault be corroborated. I'd object to this instruction. It unfairly focuses the
9 jury on the testimony of one witness. It also --

10 THE COURT: Okay. Are you saying it's not the law?

11 MS. HAMERS: It may be the law right now. The law -- it's a law -- it's
12 an appellate standard is what it is. It's an appellate standard that's true, but it
13 doesn't mean that that's an instruction that needs to be submitted to the jury.

14 THE COURT: Or are you saying that I should take it upon myself to
15 decide that the Supreme Court is wrong here and upon review is going to
16 change this?

17 MS. HAMERS: Well, Judge, I think I need to make a record about the
18 possibility here --

19 THE COURT: Oh, you can. But, I mean, the point is, when you're a
20 trial judge, you have to take the law as the Supreme Court tells you. In rare
21 cases they get stupid, and they actually reverse a case even though you applied
22 the law that was existent at the time. What they should do, of course, is if
23 they want to change the standard, change it prospectively, but no trial judge
24 should take it upon themselves not to follow the law that the Supreme Court
25 says is the law at the time you have a trial.

1 But your record is that you think that they should change this
2 standard, and you're going to argue that on appeal of this case if you get a
3 conviction, and they certainly have every right to do whatever the hell they
4 want to.

5 MS. HAMERS: So three things: It, again, refers to victim, presupposes
6 that a crime has been committed. It is the jury's determination whether or not
7 there's credibility to focus on this -- on one witness, and that credibility of that,
8 I think, is prejudicial to the client, and it violates his due process right.

9 In addition, I think every time that this instruction is given, that
10 there should also be a converse instruction that states that if there's nothing
11 but testimony and you don't believe that testimony beyond a reasonable doubt,
12 then you can't convict him of a sexual assault.

13 THE COURT: Well, those are the same. That's like saying two bits and
14 a quarter. You don't have to say the same thing twice.

15 MS. HAMERS: And then -- well, I think --

16 THE COURT: It does tell them that, and you certainly have every right
17 to argue that and say, Ladies and gentlemen, this is what it says. What that
18 means by definition, ladies and gentlemen, is that if you don't find this, you
19 can't convict. That's your job. Not my job. Go ahead.

20 MS. HAMERS: Well, and I think *State versus Crawford*, the Supreme
21 Court has said that we are entitled to an instruction on our theory of defense,
22 so I can argue that as well as having an instruction on that.

23 THE COURT: What is your theory of defense in this case?

24 MS. HAMERS: If it -- if it is a theory of defense, if there's any evidence
25 at all that --

1 THE COURT: Okay. Here's what I'm asking you, I mean, a theory of
2 defense means consent. A theory of defense could be someone else did it. A
3 theory of defense could be that coerced -- what is your theory of defense here
4 that I'm not instructing on?

5 MS. HAMERS: With regard to this instruction, it would be a theory of
6 the Defense that if you have nothing else but the victim's testimony and you do
7 not believe that testimony beyond a reasonable doubt, then you cannot find
8 him guilty of a sexual assault.

9 THE COURT: Well, that is an argument you can make based on this.
10 That isn't a theory of defense. What is the theory of defense? The theory of
11 defense is self-defense -- I mean, articulate in one word the theory of defense.

12 MS. HAMERS: Judge, I don't think that it has to be one theory to the
13 whole case. There are multiple charges, there are multiple evidence in line with
14 theory with regard to each.

15 THE COURT: Well, okay. No, I mean, articulate the theory of defense
16 to the sexual assault that I'm not instructing them on.

17 MS. HAMERS: That if they don't believe her testimony beyond a
18 reasonable doubt and they don't have anything else, then they can't find him
19 guilty.

20 THE COURT: That's your job. You argue that.

21 MS. HAMERS: I had submitted as an instruction that --

22 THE COURT: We're at this level. Would be objections to these. I'm
23 going to let you make a record on any others you want to add, but as to
24 these --

25 MS. HAMERS: You have an instruction that seems to have

1 encompassed part of my instruction and didn't encompass them. That's why
2 I'm commenting on that.

3 THE COURT: What number?

4 MS. HAMERS: It's two forward. It says it's a defense to the charge of
5 sexual assault.

6 MS. NYICOS: The *Huneycutt* instruction.

7 THE COURT: Okay.

8 MS. HAMERS: And the thing that I think is missing from there is that
9 the State must prove lack of consent beyond a reasonable doubt. I think
10 *Huneycutt* and *Carter* both entitle us to that instruction, and that's not in there.

11 THE COURT: What do you think it should say? I mean, it seems to me
12 every one of these is said, and you're saying, Well, we have to say that -- not
13 only that it's up, but that up is knocked down.

14 MS. HAMERS: Well, actually in this one, I think I'm saying it in the
15 positive. I'm not saying if they don't prove it --

16 THE COURT: What does it say? It is a defense to the charge of sexual
17 assault if he entertained a good faith belief of consent. That's the standard. If
18 he thought she consented, then he's not guilty, even though they may think
19 objectively that he did not. What am I supposed to say?

20 MS. HAMERS: The State must prove lack of consent beyond a
21 reasonable doubt. It's an element of the crime and that nowhere does it point
22 out that the State has to prove that element. And to say it's a defense to the
23 charge, sure, it might be the same thing, but it's a burden shifting.

24 THE COURT: There's no burden shifting. Okay. I mean, I tell them
25 that in the definition of sexual assault --

1 MR. BATEMAN: Right.

2 THE COURT: -- that it's against the consent. I mean, you only have to
3 say things once. You don't have to say them four times. Okay. Go ahead.

4 MS. HAMERS: I'd object to the flight instruction. That's further back. I
5 don't think there's been evidence of flight.

6 THE COURT: Well, there was some testimony that he was taking off in
7 a white truck with some other people, and they got pulled over and made a
8 felony stop. I mean, whether that is flight or not is for the jury to determine.
9 I'm not determining it is, I'm not determining that it isn't, but I think they're
10 entitled of the law.

11 MS. HAMERS: And we'd just argue that they haven't met the threshold
12 that he was fleeing a crime scene. That wasn't even alleged to be a crime
13 scene.

14 THE COURT: It is -- again, when there is no possible way that a jury
15 conclude that there's flight, they don't get this instruction. This is certainly
16 one that they could conclude yes; they could conclude no. So they get the
17 instruction. They can do whatever they want.

18 MS. HAMERS: The instruction that starts, A credibility or believability
19 of a witness should be determined by his manner upon the stand, this entire
20 instruction is phrased in the "his." I just ask that it be "his" or "her" or
21 "his/her," so that we're not just focusing on his testimony, her testimony. It
22 certainly is subject to the same.

23 THE COURT: I don't think it makes any difference, but I'll do that.

24 MS. HAMERS: Okay.

25 THE COURT: In civil cases -- in a criminal case I've never seen it done,

1 but in civil cases, they have one that says -- that the masculine is used in the
2 instructions, and the masculine and feminine are deemed the same. You could
3 put one of those civil instructions in any criminal case, if you want. Okay. I'll
4 do that for you.

5 MS. HAMERS: So that's the extent of my objections to the packet that
6 the Court has submitted.

7 THE COURT: Okay.

8 MS. HAMERS: In addition, I assume the Court has made part of the
9 record the instructions I submitted.

10 THE COURT: Well, you've submitted a number of instructions. The
11 majority of them I've given. There are a couple of them that I haven't given
12 because they were actually already submitted by the State, and you didn't
13 know, or they are within an instruction given by the State.

14 But there are four instructions that you submitted where you
15 want me to -- where I say they have to prove beyond a reasonable doubt
16 kidnapping or they can't convict, and you want me to say, well, by the way, if
17 they didn't prove beyond a reasonable doubt the kidnapping, then you have
18 acquit. I think that's silly. I think it's saying the same thing twice.

19 And if the State failed, if the State failed, if the State failed, if the
20 State failed as to any of -- how many other dozen charges we have -- in this
21 case four -- but I will mark those as Defense proposed exhibits and make them
22 part of the record and note that you think that under *Crawford* that those have
23 to be given. I think that's a misreading of *Crawford*, and you can make
24 anymore record you want.

25 MS. HAMERS: And I just want to make sure that all of them were

1 included.

2 THE COURT: There's four.

3 MS. HAMERS: There were four of them, one with regard to burglary,
4 one with regard to sexual assault, one with regard to kidnapping, and one with
5 regard to --

6 THE COURT: Yeah, I was going to put one in on doing business
7 without a license. I just couldn't find any facts to support it.

8 MS. HAMERS: -- battery. Okay. They're there. Anything else?

9 MS. HAMERS: No, Judge.

10 THE COURT: Okay. These are good to go. Are our jurors here,
11 Vinny?

12 MS. NYICOS: Yes.

13 THE BAILIFF: Yes.

14 THE COURT: Let's bring them in. Okay. The verdict form, it's okay
15 now that we've added false imprisonment?

16 MS. NYICOS: Yes, Judge.

17 MR. BATEMAN: That's right.

18 THE INTERPRETER: If the interpreters could get a copy of the jury
19 instructions, please, Your Honor.

20 THE COURT: Pardon me?

21 MS. GORD: Let me go get one.

22 THE COURT: You bet. Okay. We will have a copy of the instructions
23 for each counsel, the Interpreter. Have the jurors ready in about ten minutes.

24 MS. NYICOS: Judge, just a couple of housekeeping matters based
25 on --

1 THE COURT: Well --

2 THE BAILIFF: They're in the room.

3 THE COURT: Too late.

4 MS. NYICOS: Oh, I thought they said about ten minutes.

5 THE COURT: Do it later or come up here.

6 MS. NYICOS: Okay.

7 THE COURT: Come up here, if you need to.

8 MS. NYICOS: We're fine.

9 THE COURT: Okay.

10 [Jury returns to the courtroom at 9:17 a.m.]

11 THE COURT: Okay. Good morning. Back on the record in Case
12 Number C226586, State of Nevada versus Freddy Martinez. Let the record
13 reflect the presence of the Defendant, his counsel; counsel for the State. All
14 ladies and gentlemen of the jury are back in the box. Are we ready to proceed,
15 Ms. Nyicos?

16 MS. NYICOS: We are, Judge.

17 THE COURT: And we were going to put, first thing, the detective back
18 on the stand, and that isn't going to take too long?

19 MS. NYICOS: I believe Ms. Hamers has him on cross.

20 THE COURT: Okay. Let's call him in, and let's finish up with that.
21 It's my understanding, ladies and gentlemen, that after review of the transcript
22 and comparing it to the tape, which was in Spanish, there appears to be some
23 section that was not transcribed and that -- again, we all collectively work to
24 respect your time. What they have agreed to do is have that section, which is
25 five or six minutes long, played for you with one of the interpreters to interpret

1 it for you. That will -- no?

2 AN INTERPRETER: Your Honor, that's not feasible. We would put
3 ourselves in --

4 THE COURT: Well, not you. I'm just talking about somebody other
5 than you guys that are here.

6 AN INTERPRETER: No --

7 THE COURT: You can't do that?

8 AN INTERPRETER: We can't put ourselves in a position where we --
9 that's something appealable because the tapes are so difficult and to
10 transcribe --

11 THE COURT: How are we going to get that -- how are we going to get
12 that transcribed?

13 AN INTERPRETER: I believe we have somebody who would separate --
14 we always do it beforehand.

15 THE COURT: I know, but -- so here we are now. I respect that. What
16 are we going to do?

17 AN INTERPRETER: Your Honor, we would not provide service in that
18 situation because we could make errors that would fall back on the
19 responsibility of the interpreter and --

20 THE COURT: What do you want me to do?

21 MS. HAMERS: Judge, I have an interpreter from my office. I'd be
22 happy to have her do it.

23 THE COURT: Well, that's not going to work.

24 MR. BATEMAN: Why don't -- why don't you just ask him what the six
25 minutes said.

1 MS. HAMERS: Well, Judge, the problem is, first, what the Court was
2 saying was that we've all agreed that something's missing, and that's not true
3 at this time. I cannot understand the Spanish, and I'm not in agreement that
4 something's missing. However, if the Detective claims that something's
5 missing, I'm certainly happy to play that for the jury so that we -- there's no
6 doubt about what's there.

7 THE COURT: How about this? How about we go with some -- we've
8 got three or four more witnesses. We're going to get this done. How about if
9 you've got an interpreter and he speaks Spanish, they go out together and play
10 it and listen, and if they can agree on what was said, then I don't care whether
11 he says it or she says it. Let's see if we can do that. If they can't agree, I
12 don't know what we're going to do, but if they can agree, then that's a simple
13 way to do it. Fair enough?

14 MS. HAMERS: If we can agree. I don't find that to be --

15 THE COURT: Well, I mean --

16 MS. HAMERS: -- feasible, but we can -- yeah, I'd certainly give it a try,
17 Judge.

18 THE COURT: Listen. I don't know much Spanish, but I know *dinero*
19 means money, and nobody's going to disagree with that.

20 MS. HAMERS: That's true.

21 THE COURT: So if they're both -- all right. Let's take a try at that.

22 MS. HAMERS: Okay.

23 THE COURT: You guys go do your work while we're doing something
24 else, so we're not wasting the jury's time, and let's see if we can come up with
25 a conclusion. Or if we can agree on 98 percent of it and they can both say,

1 We disagree on this, then we can tell them what we disagree on. This
2 should've been done two weeks ago. Okay.

3 MS. HAMERS: Well --

4 THE COURT: That's all right. I'm not faulting anybody. I'm just saying
5 it should've been done two weeks ago. Call your next witness.

6 MS. NYICOS: Okay. Your Honor, the State would call Debbie Young.

7 THE COURT: Okay. Come up here, ma'am. Come on up here.

8 ***DEBORAH B. YOUNG,***

9 having been first duly sworn, testified as follows:

10 THE CLERK: Thank you. You may be seated.

11 THE COURT: State your name, and spell your name for the court
12 reporter, please, ma'am.

13 THE WITNESS: Deborah Young, B. Young.

14 THE COURT: Spell it.

15 THE WITNESS: D-e-b-o-r-a-h, B. Young, Y-o-u-n-g.

16 THE COURT: Thank you. Go ahead, Ms. Nyicos.

17 ***DIRECT EXAMINATION***

18 ***BY MS. NYICOS:***

19 Q Ms. Young, how are you employed?

20 A I am currently employed as a SANE nurse, sexual assault nurse
21 examiner with SW SANE.

22 Q And how long have you been so employed?

23 A I have been doing sexual assault exams for five years. I'm a
24 co-owner also of the SW SANE, and we incorporated in 2005.

25 Q And in order to be a sex assault nurse examiner, do you have to

1 be a nurse first?

2 A I do, yeah. I'm a registered nurse, yeah, also.

3 Q And how long have you been a nurse?

4 A I have been a registered nurse -- I've had my RN since 1991.

5 Q Okay. And what type of training did you have to go through to
6 get your nursing license -- or just your nursing license?

7 A Just my nursing license? I had to go to an accredited nursing
8 school after completing prerequisites for the nursing program, and I graduated
9 with an associate degree in nursing and -- to practice as a RN, and I've since
10 then received my bachelor's degree in nursing.

11 Q And when did you receive your bachelor's degree in nursing?

12 A 2005.

13 Q Now, as a sex assault nurse examiner, are there additional
14 requirements you have to undergo?

15 A They are. I have to go through a 40-hour, one-week course,
16 classroom course, and also 40 hours of clinical orientation time.

17 Q Okay. What I'm going to ask you -- I'm having a little bit of
18 trouble with what's going on in the courtroom. Can you just pull that
19 microphone a little bit closer to you.

20 A Yeah. There you go.

21 Q And talk a little bit louder. Okay. And is there a separate
22 certification process for sex assault nurse examiners?

23 A There is. I have acquired the national certification. It was a
24 national test, a 300-question, and I received that in 2004.

25 Q Okay. And approximately since you became certified, how

1 many sex assault examines have you performed?

2 A I've done approximately 60.

3 Q 60?

4 A Uh-huh.

5 Q And have you previously testified in a court of law --

6 A I have, uh-huh.

7 Q -- reporting your findings?

8 A Once, I have, yeah.

9 Q And were you certified as an expert when you testified?

10 A Yes.

11 MS. NYICOS: Okay. Judge, I understand we don't certify here, but
12 may I proceed with the questioning as regards to this case?

13 THE COURT: Yeah, sure.

14 MS. NYICOS: Okay.

15 BY MS. NYICOS:

16 Q Now, Debbie, you said that you're a co-owner of SW SANE?

17 A Uh-huh.

18 Q Is that a business that you run specifically for sex assault nurse
19 exams?

20 A Yes. We have a total of seven nurses, including myself, and the
21 co-owner -- the other co-owner, and we all do sexual assault exams.

22 Q Now, where is your business located?

23 A We are located out of St. George, Utah. I cover Mesquite,
24 Nevada. Nevada requires that you have to have the national certification to do
25 sexual assault exams in Nevada, and right now I'm the only one who's able to

1 do that.

2 Q So your coverage would include Mesa View Hospital, which is
3 located in Mesquite, Nevada, here in Clark County?

4 A Yes.

5 Q Okay. Now, directing your attention specifically to August 16th
6 of 2006, do you recall performing an exam on a person by the name of Bianca
7 Hernandez?

8 A Yes.

9 Q Now, let's talk about overview of what a sex assault exam
10 contains. Are there two portions, if I understand right, a medical and a forensic
11 type portion?

12 A Yes.

13 Q Let's start with the medical.

14 A Okay. .

15 Q What is that exam?

16 A Okay. That entails -- the whole process of exam takes about
17 two to three hours to get done. The first part -- part of it is the medical, and
18 we go over, you know, general appearance of the victim, review vital signs, ask
19 for a medical history, are they allergic to anything, immunization status, that
20 kind of thing.

21 Q And then you also have your forensic portion?

22 A Yes.

23 Q And what does that entail?

24 A That entails collecting more information about the assault.
25 Collecting evidence -- trace evidence samples, swabbings, hair samples, things

1 like that.

2 Q Now, with regard to the medical, is the -- what's the sole
3 purpose of that?

4 A The medical is to make sure that the victim is stable --

5 MR. PAULSON: I'm sorry. I'm going to object to the term "victim" for
6 the same reasons that we've always objected to that, Judge.

7 THE COURT: Yeah, that's fine, but --

8 MR. PAULSON: It's an -- it's an allegation.

9 THE COURT: We'll try to use word "alleged victim," but if we don't,
10 it's kind of natural, so it's --

11 THE WITNESS: Okay.

12 THE COURT: Okay. Go ahead.

13 BY MS. NYICOS:

14 Q Okay.

15 A It's to make sure that the alleged victim is stable enough to have
16 a forensic exam at that time, so -- and also it helps to --- not only reviewing
17 vital signs and things like that, but immunization status, medications that
18 you're going to give afterwards, you know, if you need to give different
19 medications, if they have allergies, that kind of thing, so --

20 Q Now, when you're performing this medical portion, is this when
21 you would determine any external injuries?

22 A Yes. I mean, I look at the general appearance. Is this person
23 pale? Diaphoretic? Do they have any obvious bleeding injuries that I can see?
24 Yes.

25 Q Okay.

1 A And I also do a head-to-toe assessment on a patient.

2 Q And the forensic, obviously, is the internal examination?

3 A The swabbings? It includes a vaginal exam, general exam. Also,

4 I take hair samples and swabbings, you know, in the mouth, look for bruising,

5 that kind of thing. Take photography of injuries that I see.

6 Q And you said the vaginal exam. Does this consist of your normal

7 everyday girl exam?

8 A It involves a speculum exam, yes. So the alleged victim is in the

9 stirrups, and we are looking at the genitals, external genitalia, for any signs of

10 bruising, injury, bleeding, that kind of thing.

11 Q Now, with regard to Bianca Hernandez specifically, did you

12 perform both the medical portion and forensic portion of that exam?

13 A Yes.

14 Q Okay. And while you're performing the medical portion, did you

15 note any injuries externally?

16 A Yes. She had, starting with her head, some mild bruising and

17 tenderness -- oh, excuse me. Mild swelling and tenderness on her right

18 cheekbone. She had some light abrasion marks on her -- her forearms. On her

19 right outer thigh, she had some scratch marks. There was three scratch marks.

20 Q Now, part of your examination also includes an interview --

21 A Yes.

22 Q -- with the alleged victim? Now, without telling me what she

23 said, were the injuries that you observed consistent with what was being told

24 to you in the interview?

25 A Yes.

1 Q Okay. While that's warming up, I'm going to show you these.
2 Showing you what's been marked for identification as State's Proposed
3 Exhibits 26 through 32. If you could just flip through those briefly and tell me
4 if you recognize those.

5 A Yes.

6 Q And what are those that I'm showing you?

7 A These are pictures of Bianca at the time of her medical and
8 forensic rape exam, and these are the photographs that I took during those.

9 Q And do those pictures fairly and accurately depict how she
10 presented to you on the day of the exam?

11 A Yes.

12 MS. NYICOS: Okay. Move for admission.

13 THE COURT: Any objection?

14 MR. PAULSON: No objection.

15 THE COURT: Admitted.

16 MS. NYICOS: Thank you.

17 [State's 26 through 32 admitted.]

18 BY MS. NYICOS:

19 Q Let me just -- you've got a screen in front of you.

20 A Okay.

21 THE CLERK: Which photographs are those?

22 MS. NYICOS: 26 through 32.

23 THE CLERK: All of them?

24 MS. NYICOS: Yeah.

25 BY MS. NYICOS:

1 Q Okay. I'm showing you what's now been admitted as 26. Let
2 me zoom out a bit. Now, do you normally just take a full-on headshot --
3 A I do.
4 Q -- just for identification?
5 A Uh-huh.
6 Q Okay. And this is Bianca?
7 A Yes.
8 Q Okay. Now 27. And actually on the screen in front of you, it
9 works kind of like Don Madden football. You can actually draw a circle.
10 A Oh, okay.
11 Q What are we looking at here?
12 A These are the scratch-like marks on her right outer thigh right
13 there [indicating].
14 Q Okay.
15 THE COURT: And you push the button and the --
16 MS. NYICOS: And Mr. Bateman can help me out here.
17 BY MS. NYICOS:
18 Q Okay. Now, also showing you 28, is that a --
19 A This is a close-up --
20 Q Let me pull the other one out because that came out really, really
21 bright. Okay. Got it.
22 A This is a close-up of those scratch marks that I observed on her
23 right outer thigh.
24 Q And, again, this is consistent with her version of --
25 A Yeah. She -- her -- she said that these were caused by a knife

1 being poked at her, and those are consistent with that.

2 Q You keep calling them scratch marks. Could they also -- I mean,
3 did you note in your report puncture marks?

4 A This one right here [indicating] looks like a puncture mark and a
5 cut, and this one looks more like an abrasion type cut.

6 Q Okay. Now, I'm also showing you 29.

7 A Okay.

8 Q And what are we looking at here?

9 A This one -- this is her right forearm. The next photo you'll -- you
10 should be able to see some very light red marks.

11 Q And that's here on 30?

12 A Uh-huh. Those are right there [indicating]. There's two of them.

13 Q And, again, is this an injury that she reported to you?

14 A Yes. She had told me that she had been grabbed by her arm,
15 and so --

16 Q Okay. And also showing you 31.

17 A This is a picture of her right cheekbone where she was
18 complaining that it was tender. She just had some very mild swelling.

19 Q You say "mild swelling." Was it noticeable to you?

20 A Yeah.

21 Q Okay. And, again --

22 A This is a close-up.

23 Q -- this is another shot of that?

24 A Uh-huh.

25 Q Okay. And, once again, with the swelling to the right

1 cheekbone, did she indicate some type of force being used on her at that point?

2 A Yes, she had told me that she had been hit in the face.

3 Q Okay. Now, you move on to a genital exam?

4 A Uh-huh.

5 Q Okay. And you performed that on her as well; correct?

6 A Yes.

7 Q What are you looking for when you're performing the genital
8 exam because this is now the forensic part of it; correct?

9 A Well, it's part of the forensic part. The forensic is collecting
10 trace evidence samples, and that's definitely part of the forensic exam.

11 Q Okay.

12 A So I'm looking for tears, lacerations, redness, abrasions, swelling,
13 tenderness.

14 Q Now, let's start with trace evidence.

15 A Uh-huh.

16 Q What are you looking for? When you talk about trace evidence,
17 what kinds of things are you trying to find?

18 A I'm looking for foreign hairs. I'm looking for any foreign matter
19 that might be present. Maybe dirt. I'm taking swabbings of the vaginal vault
20 and the perilabial -- external genitalia area. I'm taking swabbings of that to be
21 sent to be processed at the crime lab for evidence of sperm, DNA, that kind of
22 thing.

23 Q Now, all of this trace evidence you collect, do you put that
24 together in some sort of kit?

25 A I do, yeah.

1 Q Okay. And showing you what's already been admitted as
2 State's 21, is this the sex assault kit to the best of your knowledge that you
3 were able to collect from Bianca Hernandez at Mesa View Hospital on the 16th?

4 A It was in a big manila envelope.

5 Q It would probably be inside there?

6 A It would probably be inside.

7 Q Okay. Well, we won't open it.

8 A Okay.

9 Q But you did collect all these, put them all together --

10 A Yes.

11 Q -- in a manila envelope --

12 A And sealed it.

13 Q -- and marked it for identification?

14 A Uh-huh, uh-huh.

15 Q And those are later collected by the police department?

16 A Yes, I give those to the police department.

17 Q Okay. And when you're looking for trace evidence, what types
18 -- do you use any instruments to do that?

19 A I use Q-tips to swab the areas for any -- look for DNA. I use a
20 speculum to exam the cervix and the vagina. I use -- we can take clippings of
21 the hair, pubic hair and head hairs. We swab the cheeks for cheek cells.

22 Q And that's called a bucal swab?

23 A Right.

24 Q Do you use some type of light source also to know what to look
25 for?

1 A Yes, a Woods lamp. I use that on -- in her exam. And in the
2 genital part, I did observe some speckled areas around the labia, which I --
3 which I swabbed and sent in the kit.

4 Q Now, a Woods lamp, is this like what we see on CS/ where it's
5 almost like a fluorescent light?

6 A Right.

7 Q And it's something that glows?

8 A Right.

9 Q Okay. All right. Now, after collecting all the swabbings, you
10 also were looking for abrasions, tearing and things like that?

11 A Yes.

12 Q Did you find any on Bianca Hernandez?

13 A She in her -- in her fossa vanicularis, which is right before you
14 enter into the -- by the hymen and go into the vagina, she did have a small
15 abrasion at 6:00 o'clock. We describe --

16 Q When you talk about 6:00 o'clock --

17 A Yeah, we describe that on a clock. So if you're looking at it
18 straight on, it would be right at the bottom.

19 Q And this would be the bottom to the -- just to the inside of the
20 vagina?

21 A Yes.

22 Q Okay. And what causes an abrasion?

23 A An abrasion is when there's been friction between tissues, and
24 there's some rubbing of the top layer, that comes off of the top layer of skin,
25 and so it's from friction.

1 Q And are there certain things that can counteract the friction that
2 would cause an abrasion?

3 A Lack of lubrication, lack of the normal sexual response. You
4 know, usually a woman in that situation -- you know, in a sexual situation
5 where it's consensual would be relaxed, and there would be a pelvic tilt, and
6 there would be lubrication. So if those things are absent, it definitely can
7 contribute to an abrasion or any kind of injury down there.

8 Q So when you see an abrasion type injury, would that be in your
9 training and experience consistent with a sexual assault?

10 A Yes.

11 Q And, again, why is that?

12 A Because of the lack of lubrication, lack of the pelvic tilt and the
13 relaxed muscles.

14 MS. NYICOS: Okay. I have nothing further.

15 THE COURT: Mr. Paulson?

16 MR. PAULSON: Thank you, Judge.

17 **CROSS-EXAMINATION**

18 **BY MR. PAULSON:**

19 Q Good morning, ma'am.

20 A Morning.

21 Q Just a couple of questions. First of all, just to clarify, your role
22 as a sex assault nurse examiner is basically to do the exam and collect
23 evidence; correct?

24 A Yes.

25 Q Okay. And that evidence is given to the police?

1 A Yes.

2 Q And submitted for prosecution?

3 A Uh-huh.

4 Q So basically your role is to collect evidence to eventually get
5 down the line for possible prosecution and your testimony as you're testifying
6 today; correct?

7 A Yes.

8 Q Your particular role isn't to offer an opinion; you just provide a
9 summary, and a doctor reviews your report; correct?

10 A I offer what I find, yeah. I state in my documentation what I
11 have found in the exam.

12 Q In your report you don't actually give an opinion; you give a
13 summary of findings; correct?

14 A Yes, uh-huh.

15 Q Okay. Now, I am going to refer to things that are in the report.
16 I'm sure you've reviewed it prior to your testimony today?

17 A Yes.

18 Q If there's things that you're not sure about, I'll have you look at
19 it, but --

20 A Okay.

21 Q As far as when you did your initial physical exam, you noted the
22 general physical appearance of the clothing. Do you remember that?

23 A Yes.

24 Q And the clothing in this part, do you remember if it had any
25 tearing or anything of that nature?

1 A I didn't observe any tears that she -- it was generally a little bit
2 dirty, but I didn't notice any obvious tearing.

3 Q Okay. And going on to the physical exam part, you earlier
4 testified about a few scratches and abrasions and those types of injuries that
5 you noted in your report?

6 A Uh-huh.

7 Q The first one I'm going to refer to is the scratch marks that you
8 noted on the right anterior thigh?

9 A Uh-huh.

10 Q Now, earlier your testimony --

11 THE COURT: Did you say "interior" or "anterior"?

12 THE WITNESS: Anterior.

13 MR. PAULSON: Anterior.

14 THE COURT: Okay.

15 BY MR. PAULSON:

16 Q You noted, if you recall in your report, that those were superficial
17 scratch marks. Do you recall --

18 A Yes.

19 Q -- that was your findings? Now, if these -- if your wording is
20 "superficial," we're talking about injuries located near the surface, you didn't
21 note anything about puncture wounds? You said superficial scratch marks;
22 correct?

23 A They were -- they were not that deep, no.

24 Q They weren't penetrating?

25 A There -- if -- the one picture of -- there was one that was a little

1 bit deeper than the other one, if -- I don't know if you want to put that one
2 back on the screen, but there was one that was -- was slightly deeper than the
3 other two.

4 Q Okay. But they were not penetrating, deep injuries? They were
5 superficial as you report in your report?

6 A They didn't need sutures or anything like that.

7 Q Very little bleeding?

8 A They -- I didn't --

9 Q Actually, there was none?

10 A When I saw them, they were scabbing over, so --

11 Q Okay. Now, in regards to those particular injuries, if Ms.
12 Hernandez earlier had testified that during a struggle, she was poked in the
13 thigh with a knife, that this didn't occur anytime during the alleged sexual
14 assault, would that be consistent with those types of injuries?

15 A Can you repeat that again?

16 Q If she had testified that those marks came from an earlier
17 struggle when she was inside the vehicle --

18 A Uh-huh.

19 Q -- but not during any sexual activity, would that be consistent
20 with those findings?

21 A Yes.

22 Q Going on to the second injury that you note, is the abrasions on
23 the wrist.

24 A Uh-huh.

25 Q These abrasions, you noted in your report that there are light

1 pink, red abrasions on the right wrist. Again, if Ms. Hernandez had testified
2 that earlier in the day she had been grabbed on the wrist and pulled, would that
3 be consistent with the type of abrasion you might see on the wrist?

4 A Yes.

5 Q And then regarding the tenderness, mild swelling on her right
6 cheek, again, if she had testified that prior to the sexual activity in that car that
7 she was struck in the face, would that be consistent with your findings?

8 A Yes.

9 Q Let's move on to the actual pelvic exam and the findings of that.
10 You noted in your report that the only finding or at least significant finding that
11 you noted was this small -- you noted a small abrasion at 6:00 o'clock?

12 A Yes.

13 Q And earlier you testified that an abrasion is from -- can come
14 from rubbing. It's just a small abraded area of the skin, or in this case,
15 membrane? It's just from rubbing?

16 A Yes.

17 Q Correct. And I believe you also testified that that would be
18 consistent with sexual assault?

19 A Yes.

20 Q But, in fact, that could be consistent with consensual sex? My
21 question is, it is consistent with recent sexual contact; correct?

22 A The abrasion?

23 Q Yes.

24 A It's -- well, it depends -- if there was lubrication there or not --

25 Q Okay.

1 A -- and cooperation, the relaxation of the muscles that you
2 would --

3 Q Well, let me -- so is it your testimony that you would never see
4 something like that during consensual sex?

5 A You could see something like that in consensual.

6 Q You could see something like that --

7 A Uh-huh.

8 Q -- during consensual sex? So that type of finding, in and of itself,
9 is not absolutely indicative of sexual assault?

10 A It's consistent with her history.

11 Q Let me ask the question again.

12 A Okay.

13 Q That finding, in and of itself alone, is not absolutely indicative of
14 sexual assault; it could be consent; correct?

15 A It could be.

16 Q Also, in your particular -- in your pelvic exam, I notice that
17 there's no other abnormal findings noted; is that correct?

18 A Yes.

19 Q There was no tears?

20 A Yes.

21 Q There was no lacerations?

22 A Right.

23 Q There was no multiple injuries? No bruising?

24 A In the genital area you mean?

25 Q Correct.

1 A Yes.

2 Q Yes, there was bruising or no, there wasn't bruising?

3 A You're correct. There was only that one finding in the genital

4 area.

5 Q So no other -- no other trauma was found during your exam?

6 A In the -- well, there was --

7 Q In the genital area.

8 A -- but not in the genital area. There was only that one --

9 Q Separate from the stuff we talked about, the wrist and --

10 A Yes.

11 Q -- the knife marks? We're talking about the pelvic exam itself?

12 A Yes.

13 Q No other -- no other findings. Okay. And just to clarify, when

14 you're looking with the Woods lamp, those speckled areas, those speckled

15 areas don't indicate trauma; correct?

16 A Right. They can be sperm. Semen can fluorescent. That's the

17 purpose of why we use an alternative type light source, to be able to swab that

18 area.

19 Q Right. Normally when you use the stain, that's to bring out some

20 type of liquid --

21 A Right.

22 Q -- that you would see, just so you can --

23 A Right.

24 Q -- visualize it for collection purposes?

25 A Right.

1 Q It has nothing to do with bruising or trauma or anything along
2 those lines?

3 A Right.

4 Q Okay. And then just to -- during your exam you get a -- I guess
5 a summary of the events, and there's a long summary here that, I assume, you
6 wrote?

7 A Yes.

8 Q Now, during this particular exam, you had the aid of an
9 interpreter; correct?

10 A Yes, from the Rape Crisis Center.

11 Q Okay.

12 A Uh-huh.

13 Q So you don't speak Spanish yourself?

14 A No.

15 Q Okay. Now, do you recall in the summary that Bianca told or
16 stated to you, and it's in your summary, that when she was initially taken out
17 of the car, she was -- she was laying on the ground?

18 A She was --

19 MS. NYICOS: I'm going to object. It's hearsay.

20 MR. PAULSON: Well, it's -- what I'm getting at is an inconsistent
21 statement based on her prior testimony.

22 THE COURT: You're saying Bianca said to the interpreter who told her
23 this is what she understands Bianca had said?

24 MR. PAULSON: Yes.

25 THE COURT: Let me think. Inconsistent statement.

1 MS. NYICOS: Yes.

2 THE COURT: All right. Overruled. Go ahead, Mr. Paulson. I don't
3 know that is or isn't, but I think he has the right to ask.

4 BY MR. PAULSON:

5 Q Specifically, if she -- you wrote down everything that she told
6 you; correct?

7 A That -- as it was interpreted to me, yes.

8 Q Okay. As it was interpreted. And during your documentation of
9 the events surrounding, do you recall her telling you that when she was pulled
10 out of the car, she was on the ground and that Freddy had stood over her for
11 about five minutes?

12 A Yeah. I -- that's what I wrote down. I then -- after I had finished
13 that part of the interview, I asked her about -- specific questions about the
14 assault. Was there penetration of his penis to your vagina? And she said yes.
15 So I backed up and I said -- because she hadn't told me that in the initial event
16 surrounding when I was going over that part. So I asked her then, What --
17 when did this happen? And if you turn to that page, you'll see my comments.
18 It was -- and I probably have to refresh my memory by looking at them, but --

19 Q You need to look at your report?

20 A Yeah.

21 MR. PAULSON: May I approach, Judge?

22 THE COURT: Sure.

23 BY MR. PAULSON:

24 Q Would it be one of these two pages?

25 A No.

1 Q Let me see your entire report. I'm sorry.

2 A This one right here. That's okay. It's this page, page four.

3 Q Just read -- just read it to yourself first, and then I'll --

4 A Oh, okay. [Reading document]. And that was the question I
5 was asking.

6 THE COURT: Well, she can explain this a little. Go ahead.

7 THE WITNESS: Can I?

8 BY MR. PAULSON:

9 Q Yes, do that. Sure.

10 A Okay. So I had asked her to tell me what had had happened
11 first, and that's -- that was these two pages right here on pages two and the
12 addendum. And then I went to page four, and that's when I asked specific
13 questions about the assault such as was there actual penetration of his -- of the
14 suspect's penis to your vagina? Those kind of questions. And she answered
15 yes. And she -- I said, Well, you know, tell me about that more because she
16 had not told me about that when I -- when I was writing my narrative.

17 Q Okay.

18 A And she said when they were stopped and she had -- her pants
19 were pulled down, she was on the ground and underwear were pulled down,
20 and it was before -- he sexually assaulted her -- there was penetration from his
21 penis to her vagina at this time, and then he stood over her for the five minutes
22 with his knife -- with the knife in his hand.

23 Q And then as I kind of alluded to earlier, after you do your exam,
24 you basically have a summary of your findings; correct?

25 A Yes.

1 Q And in your summary you note the superficial scratch marks on
2 the thigh, scratch marks on -- or the right wrist, the mild swelling and
3 tenderness, the abrasion at 6:00 o'clock, and your finding is reported sexual
4 assault; correct?

5 A Right.

6 Q And this report gets reviewed by a physician; correct?

7 A This report gets -- I make copies to go with the crime lab, and I
8 give a copy to the detective, and I consult with the medical doctor that was on
9 -- there at the facility that day, Dr. Fuller.

10 Q Okay. And so does Dr. Fuller ultimately make the, I guess,
11 diagnosis or the opinion?

12 A No.

13 Q Who does that?

14 A I do.

15 Q Okay.

16 A Dr. Fuller was there as a medical consult. He was not there in
17 the -- in the exam itself.

18 Q But as a nurse --

19 A Uh-huh.

20 Q -- you're required to have a physician supervisor; correct?

21 A Right. And we do have a medical director for our nurses.

22 Q Okay.

23 A Uh-huh.

24 MR. PAULSON: I have no further questions.

25 THE COURT: Anything else?

1 MS. NYICOS: Just very briefly.

2 ***REDIRECT EXAMINATION***

3 BY MS. NYICOS:

4 Q When Bianca was giving you her recollection of the events, what
5 was her demeanor?

6 A She was teary at times. She was controlled at times, meaning
7 that she was able to tell me the story, maintain eye contact, but there were
8 parts when she was telling me what happened that she did get tearful.

9 Q And Mr. Paulson had -- keeps alluding to whether or not a
10 medical doctor has to sign off on your findings in any way, shape or form. Is
11 the doctor there in case there's some additional medical attention --

12 A Right.

13 Q that is necessary?

14 A The exam is done in the emergency room, and so they're there to
15 do a type of medical screening exam to make sure there's not an emergency
16 condition that exists.

17 Q Okay. So these findings that you give are your opinions, your
18 and yours alone?

19 A Right.

20 Q And that's your responsibility?

21 A Right. And I did -- I do discuss with the emergency room doctor
22 my findings, but they are not in the room during the exam.

23 Q Okay. Again to rephrase, your finding of that abrasion at 6:00
24 o'clock, in your opinion is consistent with a sexual assault?

25 A With her -- with what she told me, yes, I believe it was -- is

1 consistent with a sexual assault.

2 MS. NYICOS: Thank you. Nothing further.

3 THE COURT: Okay.

4 MR. PAULSON: Very briefly, Judge.

5 **RECROSS-EXAMINATION**

6 **BY MR. PAULSON:**

7 Q Your opinion is based on two things then, if I'm hearing you
8 right, your findings from your exam and what she tells you? You put those
9 things together?

10 A Uh-huh.

11 Q In this particular case, your only finding was an abrasion at 6:00
12 o'clock, correct, other than the other marks that we talked about? I mean the
13 pelvic exam.

14 A Yes.

15 Q So your opinion has to be based on her honesty; correct?

16 A Yes. With what she's told me, uh-huh.

17 Q So if she's telling you something that is not true, your opinion as
18 far as whether it's a sexual assault or not would be affected; correct?

19 A If she told me something else, yes, but -- yes.

20 Q And as I alluded to before, an abrasion at 6:00 o'clock with no
21 other significant findings could be consistent with consensual sex; correct?

22 A Yes.

23 MR. PAULSON: No other questions, Judge.

24 THE COURT: Okay. Thanks. You're excused. Have a nice day.
25 Okay. Yes, sir.

1 THE WITNESS: Am I excused or do I need to wait?

2 THE COURT: No, we've got a couple questions for you.

3 THE WITNESS: Okay. Okay.

4 THE COURT: What would be the normal healing time for a vaginal

5 abrasion of the type and severity that you noticed on Ms. Hernandez?

6 THE WITNESS: What I saw appeared acute, that it had recently

7 happened. So I would say within -- within a day.

8 THE COURT: Okay. It happened within a day?

9 THE WITNESS: Uh-huh.

10 THE COURT: That afternoon?

11 THE WITNESS: Within a few, yeah, hours to a day.

12 THE COURT: Do you take any blood for alcohol or drug testing of the

13 person reporting?

14 THE WITNESS: We do sometimes. I -- I don't believe I did with

15 Bianca. I'd have to refresh my memory with the notes, but --

16 THE COURT: Did you have any visual observations that would give you

17 as a nurse reason to believe that there was impairment?

18 THE WITNESS: No. She was awake, alert, oriented. I didn't smell any

19 alcohol.

20 THE COURT: Okay. How long did it take before she kind of got into

21 telling you about the penetration?

22 THE WITNESS: I had gone through my whole narrative, and it's when I

23 was asking the specific questions about the assault, but --

24 THE COURT: Is that -- is that common or uncommon?

25 THE WITNESS: Yeah, that's common, and that's why I said -- I needed

1 to back up and say, you know, You didn't tell me this before, but I'm clarifying
2 this did happen, and she said yes.

3 THE COURT: That wouldn't be out of the ordinary?

4 THE WITNESS: That would not be out of the ordinary.

5 THE COURT: Okay. You're excused. Call your next witness.

6 MS. NYICOS: Judge, I believe we're just waiting for the detective.

7 That was --

8 THE COURT: Okay. That's fine. Then you're ready to rest?

9 MS. NYICOS: Yeah. If I can just take a moment to confer with the
10 Clerk.

11 THE COURT: Okay. Mr. Paulson, do you want to double check the
12 evidence with her or are you okay with it?

13 MR. PAULSON: I better make sure.

14 [Attorneys conferring with the Clerk.]

15 MS. NYICOS: Judge, I believe we have a stipulation as to 33 and 34,
16 which are the transcript and the DVD of the statement that's being reviewing
17 right now, if I'm correct.

18 THE COURT: I believe that's right, Mr. Paulson, isn't it?

19 MR. PAULSON: That's correct.

20 THE COURT: Okay. 33 and 34 will be admitted.

21 [State's 33 and 34 admitted.]

22 MS. NYICOS: And with that, Judge --

23 THE COURT: That is the DVD of the interview with the Defendant that
24 is in Spanish, and a transcript that is either whole or partial --

25 MS. NYICOS: And the English translation transcription, yes.

1 THE COURT: -- but is transcribed. Okay.

2 MS. NYICOS: Yes. And with that, subject to the fact that we're still
3 waiting for the detective at this time, we will rest.

4 THE COURT: Correct. We'll do that last. We need to give him some
5 time to work. Mr. Paulson.

6 MR. PAULSON: Judge, we actually have a witness, I believe, because
7 Ms. Hamers is tied up right now. That's her witness. If you could just give me
8 a couple minutes.

9 THE COURT: A couple. Go get her and tell her to get in here, and let's
10 go.

11 THE BAILIFF: Judge?

12 THE COURT: By the way, obviously Lisa isn't here today. Lisa is off
13 today. This is Vinny, and he'll be doing all the same things that Lisa did
14 yesterday. So if you have anything you need to do, you just work through
15 Vinny. Yeah.

16 THE BAILIFF: This witness has an infant and a two -- three-year-old
17 with her.

18 THE COURT: Well, they have to stay outside.

19 THE COURT: Mr. Silverstein, I understand the witness has an infant,
20 and they can't bring them in, so maybe you could do a little babysitting for us.
21 I can tell you're a natural just looking at you.

22 MR. SILVERSTEIN: Where is the infant?

23 THE COURT: I don't know. Right out there.

24 MR. SILVERSTEIN: All right.

25 [Court at ease.]

1 THE COURT: Call your first witness.

2 MS. HAMERS: Judge, I believe we're ready to go on the Detective. If
3 we could approach briefly beforehand.

4 THE COURT: Sure. That would be fine, if everybody's ready.

5 [Bench conference.]

6 THE COURT: Do you want the officer or detective -- okay. Come on
7 up, Detective. You're still under oath. I guess we've got the issues resolved
8 between the transcript that you had and the tape.

9 **ARTURO CHAVEZ,**

10 having been previously sworn, testified as follows:

11 THE COURT: Go ahead, Ms. Hamers.

12 MS. HAMERS: Thank you.

13 ***RECROSS-EXAMINATION [CONTINUED]***

14 ***BY MS. HAMERS:***

15 Q We spoke, and originally you had thought that maybe there was
16 a missing portion, about six minutes that didn't get transcribed at all; is that
17 correct?

18 A That is correct.

19 Q But now that we've both looked these things over, it was just a
20 matter of pages you didn't have, and there isn't an entire segment of time
21 that was missing from that transcript; right?

22 A That is correct.

23 Q Okay. And --

24 THE COURT: Am I to understand that the transcript that has been
25 admitted by stipulation is complete and wasn't missing the pages the

1 Detective's was missing?

2 MS. HAMERS: That's correct.

3 THE COURT: Right? Okay.

4 BY MS. HAMERS:

5 Q Okay. So I'm going to kind of back us up to where we were all
6 the way yesterday for the jury. We were talking about -- you made some --
7 you testified on direct examination yesterday that Freddy had repeatedly
8 stated that he forced sex because the woman was his; right?

9 A That he was angry, and he -- and I asked him if he raped her,
10 correct.

11 Q Yesterday you testified on direct that he repeatedly told you
12 that he forced the sex because she was his; right?

13 A Correct.

14 Q Okay.

15 A I believe so.

16 Q And I had asked you to point out in the transcript where that
17 had happened; is that correct?

18 A Correct.

19 Q And you weren't able to find anywhere in the transcript where
20 that -- those actual words were exchanged?

21 A Not to the exact words, but the meaning of the transcription or
22 the way of the communication.

23 Q Okay. So can you tell me where the meaning of the
24 translation, where that's conveyed.

25 A Sure. We looked on -- now we're looking at new pages

1 because I have the old pages.

2 Q Right. We're both on the same page now, which is perfect.

3 A Correct. We are looking on page now, I believe is -- on 11. I
4 asked him if she was -- why he rape her. Was it 11? Was that page 11 that
5 we discussed that, ma'am?

6 Q Well, I think your position --

7 THE COURT: She wants you go in there and find it and tell us where
8 it is and tell us what it said. That's what she wants you to do.

9 MS. HAMERS: Thank you, Judge.

10 THE WITNESS: I understand. We have two copies here, and it was
11 on page 11.

12 BY MS. HAMERS:

13 Q Let's just go off the same copy that we're both looking at, that
14 we both went through it, that we both agree on, so we're -- no further
15 confusion.

16 A It's going to be -- probably it's a little difficult on the way -- of
17 the way things are actually said, however, on page -- it's going to be page 12
18 of the new form. It's going to talking --

19 THE WITNESS: Excuse me one second, Your Honor. [Reading
20 documents]. Okay. Here we go. We start talking about -- there we start
21 talking -- page 12.

22 BY MS. HAMERS:

23 Q Yes, sir.

24 A Okay. We slowly start going into, you know, where did you
25 guys have sex? And he starts saying, Well, we had sex, you know, just

1 leaving Las Vegas before Logandale in the backseat of the car. And then we
2 go further down, you know, You're telling her, you know, why you're angry. I
3 just pretended to be upset because I wanted to -- at the bottom of the page.
4 Because I wanted to, you know, get the truth out of her, but never to hurt --
5 never, never, never to hurt her. Okay.

6 Why did you get out of the car very upset? I'm on page 13
7 now. Why did you get out of the car very upset? Yes, yes. Then I told her --
8 he continued, You are, well, apparently, apparently, it looks like, I was very
9 upset. And then if you continue going down the page, he's talking about
10 being angry with her, of why those actions were done, of having sex with
11 Bianca because, you know, Bianca truly loves you. Yes, yes.

12 And then we continue to page 14. In the middle of page 14,
13 once again, I asked him, you know, that she wants to know, that she wants
14 to know the truth, and she wants to know why you rape her today. And he
15 goes, No, no, it wasn't -- it wasn't from the heart maybe. Maybe what I did,
16 but it wasn't because of any anger towards her. It's maybe because I feel
17 angry towards that person, towards the man that I don't know. He's like this,
18 no, no, no. Just to clarify, it's more like minimizing something where you
19 start Spanish --

20 Q Okay. Wait, wait. Let's back up because I just want to be
21 really clear when you get off the transcript and you're actually saying --

22 A Okay. I'm sorry.

23 Q Now you have some clarification because what's actually said
24 there, and I'm just going to read your question and his answer: What she
25 wants to know, why I believe I ask her, but I told her that I was going to tell

1 the truth. She wants to know, yes, she wanted to know the truth, and she
2 wanted to know why you raped her today.

3 And Mr. Martinez answers, No, no, it wasn't from my heart
4 maybe what I did, but -- and it wasn't because of anger towards her. If not,
5 maybe because I feel anger towards that person, toward that man. I don't
6 know who he is. I have not investigated his life yet. I don't know what
7 significance he has in her life because she doesn't tell me anything. Why
8 doesn't she introduce him to me? Tells me he is a friend, like that. Why not?

9 That's what we're referring to, that section right there?

10 A That is correct.

11 Q Okay. And so what you're saying is, your own interpretation
12 of that or the way that should be interpreted is, he's saying that he raped her
13 because he was angry?

14 A Correct.

15 Q Okay. So there's no point in this interview where you ask him
16 flat out, Why did you rape her, and he says, Because I was mad; right?

17 A Well, I mean, the bottom of page 14, that's what we agreed on.
18 It states, you know, Why did you rape her? You go to the top of 15 --

19 Q Right. What you stated, and I think we can agree on this, you
20 and I both listened to this tape --

21 A Uh-huh.

22 Q -- and the jury will have this to see because they're going to
23 have their own transcript, and at the bottom of page 14, it says, Illegible
24 coughing; right?

25 A Correct.

1 Q And you're saying that there was missing from that a question
2 where you asked, Why did you rape her, and you can't hear it because he's
3 coughing; is that right?

4 A You could hear it because we were all -- we all heard it. Are we
5 in agreements with that?

6 Q Well, I wouldn't know. I don't speak Spanish. But I am in
7 agreement that we're sticking with one question right there you say is
8 missing, Why did you rape her; right?

9 A Correct.

10 Q Okay. So that question would read, and this is you speaking,
11 Bianca, she told me one thing. She said, I love him a lot. He is my family, but
12 I feel very dirty with what he did and what got in his mind. What did he
13 want? And then it says, Illegible coughing. And you're saying what is there
14 is, Why did you rape her?

15 A Correct.

16 Q And then the answer that he gives you is, In all of this, Officer,
17 my only intention was to get a reaction from the man, if there was something
18 between them. Right?

19 A Correct.

20 Q So that, again, is where you're saying that you asked him why
21 did he rape her and that he's telling you that he raped her; right?

22 A Correct.

23 Q So it's not a matter of what's quoted in the police report where
24 it says, Because I was mad?

25 A Correct. But at the bottom of the page -- in the middle of page

1 15, though --

2 Q Yeah, I know page 15.

3 A When he answers, when Martinez answers, The action what I
4 did was just -- I did jokingly.

5 Q Where are you referring to?

6 A In the middle of the page.

7 Q On page 15? Okay. So -- but that -- let's be real clear because
8 that's in response to a different question; right? It was this, She was very
9 scared because of what you did to her today. She had never seen you in that
10 way in your life, in her life, and, well, with the knife, threatening her with the
11 knife, telling her, I'm going to kill you. Let's talk. We're leaving Las Vegas.

12 So that wasn't a question particularly to rape. That was a
13 different question, and what he says is, Everything that would have been said
14 was jokingly because there's 16 years of proof of what I did for her, proof of
15 16 years, I believe. Right?

16 A Well, two pages approximately. We're all talking about sex, and
17 here it says, What you did to her today, which is referring to the rape.

18 Q Okay. And so the jury will have their own transcript to look at,
19 and they can draw their own conclusions. It's just a matter of your taking
20 these words, and you're saying that that's an admission to raping her because
21 he was mad? It's not a matter of those words actually being said?

22 A He did -- he said jokingly in the particular answer, correct.

23 Q Okay.

24 THE COURT: Okay. I think we've got that -- everybody's point, and
25 the jury is going to decide. Let's move on. Anything else with him?

1 MS. HAMERS: No, Judge.
2 THE COURT: Anything else?
3 MS. NYICOS: No, Judge.
4 THE COURT: Thanks, Detective. Appreciate your time, and I know
5 you worked overtime last night. Thank you very much. Any Defense
6 witnesses?
7 MS. HAMERS: Yes, Judge. The Defense -- Court's indulgence.
8 THE COURT: Old what's-her-face is waiting out in the hall?
9 MS. HAMERS: That's correct, Judge.
10 THE COURT: Well, go out and get her.
11 MS. HAMERS: Maria.
12 THE COURT: Maria. Can we have Maria, Vinny, please.
13 MS. HAMERS: And, Judge, Maria needs the use of an interpreter.
14 That's why we had to -- it looks like one's disappeared.
15 THE COURT: Maybe the interpreter is out there with her.
16 MS. HAMERS: And it's Miss Maria Diaz.
17 MR. BATEMAN: We have to call for another interpreter.
18 THE COURT: Okay. Call somebody else, and we'll get Ms. Diaz --
19 Ms. Diaz, just wait outside a second because -- oh, we have an interpreter?
20 MS. HAMERS: Well, she's our interpreter, Judge.
21 THE COURT: No? Oh, okay. Martin is getting us an interpreter.
22 Have Ms. Diaz wait outside. Call somebody else, and we'll call Ms. Diaz on as
23 soon as we get an interpreter. Go ahead.
24 MS. HAMERS: Judge, that's our last witness.
25 THE COURT: You've only got one? Okay. Then we'll just be at ease

1 for a second.

2 MS. HAMERS: And, Judge, I don't know if it was clear, we admitted
3 by stipulation the statement.

4 MS. NYICOS: Mr. Paulson and I did that.

5 THE COURT: That's correct. While you were out talking to your
6 witness, we cleared up the record on that with your co-counsel.

7 MS. HAMERS: Thank you, Judge.

8 [Court at ease.]

9 THE COURT: Ms. Nyicos, Ms. Hamers, come up here a second. I just
10 want to touch bases on scheduling.

11 [Bench conference.]

12 THE COURT: Okay. Well, all we're doing, ladies and gentlemen, is
13 trying to figure out the time schedules, and it looks like we're actually well
14 ahead of schedule, and we're going to be able to have this witness, take a
15 quick break. In fact, we'll take a quick break now so that we can have the
16 witness and do the rest of our business.

17 The instructions are all done. We'll go right through that. We
18 think we'll finish -- they'll argue the case and get it to the jury between 11:45
19 and 12:30. So we're going to take a little restroom break, and then we're
20 going to come back and plow through till then.

21 The good new is, that if you are deliberating over a meal, the
22 County has to buy you your meal. So we'll get you that. I'm going to have --
23 I'm going to have -- I'm going to have Chermaine and Vinny get together with
24 you and kind of figure out what you'd like, and we'll -- what we'll do is order
25 lunch and get it ready in the jury room so you can eat and work at the same

1 time, and you don't have to waste an hour doing that, and that will expedite
2 things. Yes, sir, what's your question?

3 JUROR NUMBER 10: I have a question of procedure. When we
4 deliberate, do we get these reports?

5 THE COURT: Yes.

6 JUROR NUMBER 10: Like the report that Franklin made?

7 THE COURT: You will get everything that has been admitted into
8 evidence, and anything that is not admitted into evidence, you can't get even
9 if you ask.

10 JUROR NUMBER 10: Okay.

11 THE COURT: Okay. So --

12 JUROR NUMBER 10: Thank you.

13 THE COURT: So everything that's been admitted. What happens is,
14 Vinny brings it in. They'll bring the instructions. They'll bring the verdict
15 form. He'll take care of you. Okay. Let's take a ten-minute restroom break,
16 and then we'll just go.

17 Don't talk about the case. Don't read, watch or listen to any
18 report on the case. Don't think about the case. Don't form any opinion on
19 the case. See you in ten minutes, and we'll be ready to go.

20 After you get to the restroom, kind of hang out there, and I'll
21 have Vinny and Chermaine talk to you and get a flavor for what you want to
22 eat, and we'll have it ready for you.

23 [Jury exits courtroom.]

24 [A short break was taken.]

25 THE COURT: Okay. Bring them in. Let's go.

1 [Jury enters courtroom.]

2 THE COURT: Okay. Back on the record in Case Number C226586,
3 State of Nevada versus Freddy Martinez. Let the record reflect the presence
4 of the Defendant, his counsel; counsel for the State. All ladies and gentlemen
5 of the jury are back in the box. Ms. Hamers, call your next witness.

6 MS. HAMERS: Thank you, Judge. The Defense calls Ms. Maria Diaz.

7 THE COURT: Come on up here, ma'am.

8 **MARIA DIAZ,**

9 having been first duly sworn, testified through an interpreter, as follows:

10 THE CLERK: Thank you. You may be seated.

11 THE INTERPRETER: Thank you.

12 THE COURT: Do me a favor, why don't the two of you switch so that
13 she's not blocking you when you tell the jury --

14 THE INTERPRETER: Your Honor, normally the jury might -- might want
15 to see the witness. That's why sometimes --

16 THE COURT: Okay. State your name, and spell your name for the
17 court reporter.

18 THE WITNESS: [Through the Interpreter] Maria Diaz.

19 THE COURT: Spell it.

20 THE WITNESS: M-a-r-i-a.

21 THE COURT: Diaz.

22 THE WITNESS: D-i-a-z.

23 THE COURT: Ms. Diaz, do you speak some English?

24 THE WITNESS: No.

25 THE COURT: No English at all?

1 THE WITNESS: No.

2 THE COURT: Okay. Go ahead.

3 MS. HAMERS: Thank you, Judge.

4 ***DIRECT EXAMINATION***

5 ***BY MS. HAMERS:***

6 Q Ms. Diaz, where do you live?

7 A [Through the Interpreter] Las Vegas, Nevada.

8 Q At what address?

9 A 4615 Lake Mead, Las Vegas Boulevard. ZIP code, 89115.

10 Q Is that a mobile home park?

11 A Uh-huh. Yes, trailers.

12 Q How long have you lived there?

13 A Two years.

14 Q And do you know Bianca Hernandez?

15 A Yes.

16 Q How do you know her?

17 A Because she was my neighbor before.

18 Q When was she your neighbor?

19 A About -- I don't remember when she left.

20 Q Okay. Did she live in the same trailer park as you?

21 A Yes, she was my neighbor.

22 Q And do you know Freddy Martinez?

23 A Yes.

24 Q Did he also live in the same trailer park?

25 A Yes.

1 Q Who did he live with?
2 A With Bianca.
3 Q How long did he live with her there?
4 A About a year or more.
5 Q And were you at the trailer park first or were they at the trailer
6 park first?
7 A We were there first.
8 Q And did they move in separately or did they move in together?
9 A They came together.
10 Q And after they came together, were they both living inside the
11 trailer?
12 A Yes.
13 Q Was anyone else living there with them?
14 A Her son.
15 MS. HAMERS: I don't have any other questions, Judge.
16 THE COURT: Mr. Bateman?
17 MR. BATEMAN: No, Your Honor.
18 THE COURT: Okay. Thank you.
19 THE WITNESS: [Through the Interpreter] Can I leave?
20 THE COURT: You may. Any other witnesses? Ms. Hamers, any
21 other witnesses?
22 MS. HAMERS: No, Judge. The Defense would rest at this time.
23 THE COURT: Any rebuttal?
24 MR. BATEMAN: No, Your Honor.
25 MS. NYICOS: No, Your Honor.

1 THE COURT: The evidence is in?

2 MS. NYICOS: It is, Judge.

3 THE COURT: Okay. Vinny, will you give each of these to one of the
4 jurors, please.

5 Okay. That's the evidence, ladies and gentlemen. Now, as I
6 told you, is I give you the instructions on the law. As I say, we worked pretty
7 hard simultaneously with you to just update these and have them ready so we
8 don't waste your time at this juncture.

9 What the law says is I have to read these to you. What I found
10 after decades of doing this, the best way to do it is to give each a set. It
11 makes a lot more sense when you're reading along with me. You don't have
12 to try and take notes of what I see. When you get to the jury room, you don't
13 have to pass a set around. You can each have your own set to kind of
14 expedite things and --

15 MR. BATEMAN: Judge, may we approach just very briefly?

16 THE COURT: Yeah.

17 MR. BATEMAN: Thank you.

18 THE COURT: Also, when the lawyers are arguing, sometimes they'll
19 talk about Instruction 12 or 28. It's easy for you to turn to it. That said,
20 because -- oh, we've got a mistake?

21 MR. BATEMAN: No. May we approach?

22 THE COURT: Yeah.

23 [Bench conference.]

24 THE COURT: Okay. What I'm saying is, even though I know that
25 you can all read, and what I'd like to do is say, Read it and raise your hand,

1 that's not the way it works. So bear with me. It'll take about 15 minutes.

2 [The Court reads the instructions to the jury; not transcribed.]

3 THE COURT: Okay. Here's the verdict form. There are four charges
4 as you already know, and each of them have several choices. For example,
5 the first charge is burglary with a weapon, burglary without a deadly weapon
6 or not guilty. The way to approach this is, you take each charge, start from
7 the top and work down. The top obviously is the most serious, and the
8 bottom, the default position, is not guilty, and ask yourself, has the State
9 proved all the elements of this beyond a reasonable doubt? If the answer is
10 yes, you check that box, and you don't have to go on. If the answer is no,
11 you go to the next level, the next level, the next level. And ultimately, as I
12 say, not guilty is always the default position if the State hasn't proven beyond
13 a reasonable doubt the elements of any of the possibilities.

14 So when you have the verdict form completed, you'll have one
15 box checked in each of the four counts, and the other boxes will all be blank.
16 It needs to be dated and signed by the foreperson. When that is done, you
17 will be completed. Mr. Bateman.

18 MR. BATEMAN: Thank you, Your Honor.

19 **STATE CLOSING ARGUMENT**

20 MR. BATEMAN: Ladies and gentlemen, on August 16th of last year,
21 Freddy Martinez was a man with a mission. He woke, obviously, quite early in
22 the morning. Indeed, this began at 5:30 a.m. Waited outside the residence
23 that he had been able to determine Bianca and her new boyfriend Jose' were
24 living in. When Bianca came out to warm up her car, he laid in wait, came
25 from a tree, jumped a fence, had a knife, got in her car, pointed it to her, told

1 her to drive. He did this quite frankly or quite likely for a number of reasons.
2 He was insanely jealous. He was obsessed. Perhaps he loved; perhaps he
3 lusted after Bianca Hernandez.

4 You've heard a lot of evidence about what the relationship was
5 like for the 16 years the Defendant had come from Honduras. You heard
6 evidence that, in fact, Bianca was married to Freddy Martinez's brother David.
7 Had a son with his brother David, not with Freddy Martinez. When the
8 relationship between Bianca and David ended, Bianca was kind enough to
9 continue to allow Freddy Martinez to live with her and help her raise her son
10 Franklin as an uncle and as a brother.

11 But, in any event, regardless of what actually had taken place
12 the prior 16 years between Bianca and Freddy Martinez, what we do know is
13 what happened basically from about a few months prior to August 16th and
14 then what happened on August 16th.

15 Ultimately, your job in this case boils down to whether you
16 believe Bianca Hernandez and what she told you about the current condition
17 of the relationship between herself and Freddy Martinez and what happened
18 on August 16th of 2006. This case turns on Bianca Hernandez and whether
19 you believe her or not.

20 I want to direct your attention to a couple of instructions of law
21 that the Court provided you. First is Instruction Number 16. There is no
22 requirement that the testimony of a victim of sexual assault be corroborated,
23 and her testimony standing alone, if believed beyond a reasonable doubt, is
24 sufficient to sustain a verdict of guilty.

25 Ladies and gentlemen, what that instruction means is, if the

1 State had presented to you Bianca Hernandez and no other evidence and she
2 testified and you believed her rendition of the facts of October -- excuse me.
3 August 16th of 2006, you could convict Freddy Martinez of the charges that
4 we have alleged.

5 Instruction Number 29, ladies and gentlemen, talks a little bit
6 about what you should look for in a witness' testimony. In deciding what the
7 facts are, you may have to decide what testimony you believe and what
8 testimony you do not believe. You may believe all of what a witness said or
9 only part of it or none of it. In deciding what testimony to believe, consider
10 the witness' intelligence, the opportunity the witness has to see -- had to have
11 seen or heard the things testified about, the witness' memory, any motives
12 that the witness may have for testifying in a certain way, the manner of the
13 witness while testifying, whether that witness said something different at an
14 earlier time. The general reasonableness of the testimony. And importantly to
15 this case, ladies and gentlemen, the extent to which the testimony is
16 consistent with any other evidence that you believe.

17 In this case the State isn't asking you to believe Bianca
18 Hernandez all by itself. The State didn't put up Bianca Hernandez and then
19 rest. The State put on a number of witnesses and provided you with exhibits
20 that you'll have to take back with you that were admitted into evidence, and
21 all this evidence corroborates; in other words, it supports what Bianca
22 Hernandez said. That's what I'm asking you to do when you go back and
23 deliberate, to take a look at all this evidence, see if it corroborates what
24 Bianca Hernandez said.

25 Obviously, between the time that the vehicle left Jose's sight

1 and ended up in Mesquite when Bianca Hernandez was able to escape, the
2 majority of that period of time, the only two people that were there were
3 Bianca and Freddy Martinez. But when you're looking at determining what
4 happened in this case and whether Bianca Hernandez is telling the truth, what
5 else in this case do you have to look for?

6 You have an ability to look at evidence about what happened
7 right before this took place, you have an opportunity to some extent to look at
8 what happened during the course of the kidnapping from Las Vegas to
9 Mesquite, and you have evidence of what happened after. This is all evidence
10 that you need to take into account in determining whether Bianca Hernandez
11 was telling the truth.

12 What happened before October 16th -- excuse me. August 16th,
13 2006? It's quite clear from the evidence that, in fact, Bianca Hernandez had
14 moved out of the trailer that she was living in with Freddy and Franklin and
15 had moved in with her current boyfriend of some period of time, Jose', at the
16 Lamont address. It appears clear that Bianca Hernandez did not or was not
17 entirely interested in telling Freddy Martinez her every movement, where she
18 was going, what was going on with Jose'. She believed that was her
19 business.

20 But what is absolutely clear, regardless of what is alleged to
21 have occurred over the previous 16 years, Bianca Hernandez was not living
22 with Freddy Martinez and was, in fact, living with Jose'. There was not any
23 sort of a relationship this period of time right up to August 16th between
24 Bianca and Freddy Martinez.

25 Why is that important? It's important when you take into

1 account the fact of the morning of August 16 when Freddy Martinez is
2 waiting for Bianca outside of Jose's house. He managed to find out where
3 Jose' lives -- obviously it's in a similar area -- and is waiting outside at 5:30 in
4 the morning. Isn't that important? 5:30 in the morning when Bianca and
5 Jose' would be going to work. Why would Freddy Martinez be getting up at
6 5:30 in the morning to go confront anybody at this point? Because he had a
7 criminal intent in mind that morning.

8 He was outside. When he saw Bianca come out of the house,
9 he jumped the wall, charged her car, her car that she says she owns, it's
10 registered to her, and she was in the driver's seat. How do we know that this
11 is the case? Well, Jose' saw it. In addition to what Bianca Hernandez told
12 you that Freddy Martinez got into the passenger side with a knife and
13 threatened her with a knife, Jose' saw it.

14 Jose' comes out of his house, sees Freddy Martinez charging
15 the car, sees Freddy Martinez point whatever it is he had in his hand at him
16 and then get in the passenger seat of the vehicle. He sees Freddy Martinez
17 point the knife towards Bianca, and he said within seconds the two of them
18 took off in the vehicle. Bianca said she didn't want to go.

19 They leave the area, and Jose' has Franklin call 9-1-1. If Jose'
20 is not telling the truth, why would he have Franklin call 9-1-1? Ultimately,
21 this kidnapping began at that particular moment. The burglary of her vehicle
22 began at that particular moment, and the car drives off. It heads towards
23 Nellis to Las Vegas Boulevard, gets on the 15 heading northbound.

24 Bianca tells you that Freddy had a number of opportunities to
25 stop the car. In fact, he did. He pulled her into the backseat. He pulled her

1 into the front seat. She made attempts to get police officers to see what was
2 going on and was unsuccessful. It was at this period of time that Freddy
3 Martinez decided to be physical again with Bianca Hernandez. He hits her.
4 He pulls her hair, and this is in addition to what Bianca tells you, is Freddy
5 Martinez, when he initially gets in the car, stabs her with the knife that he had
6 in his hand.

7 Jumping ahead to the testimony of the nurse in this case,
8 perhaps if Bianca Hernandez's testimony standing alone that Freddy Martinez
9 stabbed her in the leg was all you had, maybe you would, maybe you
10 wouldn't believe her. But she goes into this -- this SANE examination, this
11 sexual assault examination, what does she have on her leg? Exhibit Number
12 28, three wounds, fresh and frequent -- or excuse me. Immediate from the
13 wounds that were inflicted, consistent with her testimony on the stand.

14 She tells you that the car goes towards Mesquite. They end up
15 in Mesquite, but along the way, it's very important to note testimony that was
16 consistent with what she was saying. They pulled off when they ran out of
17 gas. They pulled off at a gas station that Mr. McPheeters came in and
18 testified existed up near Glendale off of the 15.

19 He says that this individual, a Hispanic male, caught his eye with
20 a gas can, had gone up to multiple individuals to get gas to put in the car, that
21 it was unusual that the car parked down the ways a little bit -- and I believe
22 that the juror's question was, was this someplace like out in the open or was
23 it a blocked off wall? Turns out it was a blocked off wall. Why would he park
24 the vehicle there? So that Bianca Hernandez can't get out and go in and try
25 to escape or to try to alert someone of what was going on.

1 What she tells you is this happened. We went to the gas
2 station. Freddy Martinez was trying to get gas. Another witness, a lay
3 witness with no motive to lie, comes in and says, Yeah, I kind of saw
4 something, and it sure seemed a whole lot similar to what Bianca Hernandez
5 said.

6 The bruise -- excuse me. Bianca Hernandez tells you that during
7 the course of this trip from Las Vegas to Mesquite that she was sexually
8 assaulted, and that's ultimately what we're here about in this case, is that a
9 sexual assault took place on the side of the road on the 15 northbound
10 between here and Mesquite.

11 Besides her testimony confirms what took place on the side of
12 the road in Mesquite -- well, first, there's no dispute that there was sexual
13 intercourse that took place. DNA was found in her vagina, that of Freddy
14 Martinez. Freddy Martinez admits that it took place. What's consistent with
15 her claims that this was not something she wanted to do, it was something
16 that was against her will, well, number one, there was a knife.

17 You've seen the knife. She said the knife was with her the
18 whole time -- or excuse me. Freddy Martinez had the knife the entire trip.
19 Indeed, the evidence shows that scratch marks consistent with a knife, Jose'
20 saw the knife, Freddy Martinez, if you'll look at his transcripts, said he had a
21 knife. That's not consistent with consensual sex, but it's certainly consistent
22 with her story that Freddy Martinez had a knife.

23 The knife was found on Freddy Martinez by the police officers,
24 and, ultimately, when Bianca has the sexual assault examination, what's
25 found? It just so happens, an abrasion that's consistent with forcible sex,

1 nonconsensual sex.

2 MS. HAMERS: Judge, I'm going to object. That misstates the
3 evidence. It's also consistent with consensual sex.

4 THE COURT: It doesn't misstate the evidence. You can argue that
5 same thing, but it is a fair statement of the evidence from his point of view.

6 MR. BATEMAN: This is all evidence that you can take into account
7 when judging the credibility of what Bianca Hernandez told you. When they
8 finally arrive in Mesquite, what is consistent again? She gets to Mesquite, is
9 able to escape from the vehicle, finds a woman who directs her to an
10 apartment. Immediately 9-1-1 is called. Immediately police come out. This is
11 an immediate reporting of what basically took place.

12 Also consistent with someone who has just had these crimes
13 committed against her. She didn't wait. She didn't call Jose' and say, Come
14 up and give me a ride. She didn't, you know, report these crimes a week later
15 when maybe she was angry. She did it right then.

16 What did the police officer -- the Mesquite police officers who
17 came in and testified tell you about the demeanor of Bianca Hernandez when
18 they finally came into contact with her? "Hysterical" was the word that one
19 of the Mesquite Police Department officers used. Is her hysterical behavior
20 afterwards, crying -- she was crying during the SANE examination, is that not
21 consistent with her story about what took place, her story that these crimes
22 that were committed against her were proven?

23 All of these facts are independent of what Bianca Hernandez
24 told you, but they all go towards her credibility. They all help you as a jury to
25 determine what actually took place in this particular case, and I hope you look

1 at all of these things in total and make -- when you're making your
2 determination.

3 Now, in this case we've charged the Defendant with four
4 crimes. I'm not necessarily going to go entirely in order. One criminal charge
5 is burglary with use of a deadly weapon. Now, burglary as it's defined in
6 Nevada, is if someone brought in that -- any defendant that enters some sort
7 of an establishment, a building, a structure, a vehicle with the intent to do a
8 particular crime when they get that structure, whether they actually,
9 ultimately commit that crime that they intend to do is guilty of burglary.

10 Now, all these crimes are alleged to have been committed with
11 a deadly weapon. I don't think there's any question in this particular case that
12 the entire time that this all was going on Freddy Martinez had a knife with
13 him. Indeed, the knife was found on him afterward and evidence of use of
14 that knife were found, unfortunately, on Bianca Hernandez.

15 In this particular case what are the facts that surround the
16 burglary charge? The burglary charge is when Freddy Martinez with a knife
17 enters the vehicle, Bianca's vehicle, with the intent to kidnap her. What are
18 some of the facts? The running from -- well, I think the first fact would be at
19 5:30 in the morning. That's kind of an unusual time for this to all be taking
20 place. But in addition to that, you have Freddy Martinez jumping a wall,
21 coming out of a tree, pointing this knife towards Jose', getting in the
22 passenger seat, directing the knife towards Bianca, whether it was at her
23 head, ultimately stabbing her in the leg and telling her to drive.

24 The way you determine someone's intent, ladies and gentlemen,
25 is spelled out for you in Instruction Number 7. The intention with which entry

1 was made is a question of fact, which may be inferred from the Defendant's
2 conduct and all other circumstances disclosed by the evidence. We can't get
3 up here and tell you exactly what was in Freddy Martinez's mind. Only he can
4 say that, but we can certainly look at his actions to determine what it was he
5 was thinking when he entered that vehicle that morning.

6 And isn't the fact that he basically made at knifepoint,
7 demanded, forced Bianca Hernandez to leave that particular area after he
8 stabbed her in the leg, after he pointed the knife at her neck and head towards
9 Nellis, isn't that evidence of his intent to kidnap her?

10 She certainly wasn't allowed to leave. He certainly entered the
11 vehicle. That can easily be inferred with that intent because that's
12 immediately what happened, according to Jose', within seconds they take off.
13 The burglary was committed because he had possession of that knife, he
14 entered the vehicle, and he kidnapped initially right from the get-go Bianca
15 Hernandez.

16 It's important to note that with regard to the burglary charge
17 whether Bianca would have given him consent at the time to enter the vehicle
18 is of absolutely no consequence. It's what's going on in Freddy Martinez's
19 head when he enters that vehicle that's important and his intent when he
20 enters that vehicle. Whether he had the consent of Bianca Hernandez or not,
21 if his intent is to commit a felony kidnap when he enters that vehicle, that
22 crime is committed.

23 Mr. Martinez is also charged with kidnapping with use of a
24 deadly weapon. There are two types of kidnaps. There is a first degree
25 kidnap and a second degree kidnap, and those are explained to you in

1 Instructions 10, 11, 13 and 14. We've charged Freddy Martinez with first
2 degree kidnap, ladies and gentlemen, and Instruction Number 10 tells you
3 what first degree kidnap is.

4 Essentially, every person who abducts, conceals, carries away a
5 person against their will, essentially, by any means whatsoever with the intent
6 to hold or detain the person, in this particular case, for the purpose of
7 committing sexual assault. Second degree kidnapping is essentially the same
8 thing, but without the intent to commit sexual assault.

9 So if Freddy Martinez when he held a knife to Bianca
10 Hernandez, made her drive off, made her eventually get into the passenger
11 seat of the vehicle while he got in the driver's seat, wouldn't let her leave the
12 vehicle, from the entire point that he left Las Vegas to the point where he
13 finally got up to Mesquite, during that period of time he didn't have the intent
14 to commit sexual assault find him guilty of second -- second degree
15 kidnapping.

16 But, ladies and gentlemen, I go back to that instruction that I
17 just told you. The intention -- the intentions of Freddy Martinez can be
18 determined by what he does. That kidnapping was effectuated, essentially
19 was committed the moment that that car drove off that morning, and it
20 continued all the way to Mesquite. But if you took a snapshot, if you took a
21 picture as that car was pulling off down the street, the crime is committed at
22 that point. What at that point was Freddy Martinez's intent to do with Bianca
23 Hernandez?

24 Well, his intent had to be what he ultimately decided to do on
25 the side of the road, on the side of the freeway halfway between Las Vegas

1 and Mesquite. He pulled over in an area where nobody could see him. He
2 waited a little while. I think if you remember the testimony, he got outside
3 and probably saw that person walking the dog right there. He may have
4 waited a little bit of time for that person walking the dog to get far enough
5 way. He had the knife in his hand. He demanded that Bianca Hernandez get
6 into the backseat.

7 If this was simply a plan to make Jose' upset such that he -- or
8 in demonstrating that he could take Jose's girlfriend, why ultimately go on the
9 side of the road on 15 and sexually assault Bianca Hernandez? Unless that
10 was his intent right from the get-go, why would you do that? What I would
11 also suggest, ladies and gentlemen, is, some evidence at the end of the
12 kidnapping also demonstrates that that was his intent.

13 Much of the testimony developed talked about what had
14 happened immediately upon being kidnapped, what happened in Las Vegas,
15 getting in and out of the front seat, the backseat, changing the driver's,
16 getting on the 15, and ultimately culminated in the sexual assault that
17 occurred halfway between here and there.

18 What's interesting is, when they finally get up to Mesquite, it
19 sure seems like Freddy Martinez gets off appearance. He gets up to Mesquite
20 and says, I'm going to meet some friends about a job. Stay in the car.
21 Doesn't seem to be too worried about the fact that she's now in an extremely
22 -- or advantageous position to get away from him.

23 Could it be that at that point when he finally got up to Mesquite,
24 Freddy Martinez had done what he had gone there to do that morning? That
25 he had taken what he came there to take that morning and was at this point

1 far less concerned about having Bianca Hernandez with him for the long term.

2 This wasn't a second degree kidnapping, ladies and gentlemen.
3 It certainly wasn't a false imprisonment. If you look at actually taking
4 somebody at knifepoint from Las Vegas to Mesquite, sexually assaulting them
5 along the way, punching them, stabbing them, it amounts to a little bit more.

6 There's some additional instructions that I'll go over briefly with
7 regard to kidnap, ladies and gentlemen. If you'll look at Instruction Number
8 14. In order for you to find the Defendant guilty of kidnapping -- this could be
9 a first or a second -- and an associated offense of sexual assault, you must
10 find the following -- one of the following: That any movement of the victim
11 was not incidental to a sexual assault; that any incidental movement of the
12 victim substantially increased the risk of harm to the victim over and above
13 that necessarily present in a sexual assault. There's a few more there.

14 What this instruction is essentially talking about, ladies and
15 gentlemen, is -- and this would be the same applicability, for instance, if a
16 defendant was charged with first degree kidnap or robbery. If someone goes
17 into a convenience store with a gun with the intent to rob the cashier and
18 makes them, you know, Go get in the backroom so that I can take whatever's
19 in the cash register, there has to be something in addition, some additional
20 movement, some additional risk that you're putting the victim in in that
21 particular case. Some independent significance for moving them from one
22 place to another to effectuate your robbery for you to be convicted of both
23 the robbery and the kidnap.

24 You can't -- if you point a gun, for instance, at somebody that
25 you're robbing, a clerk, essentially that clerk isn't allowed to move. They're

1 not allowed to go anywhere. In a sense they're kidnapped, but you're doing it
2 to effectuate the robbery. You can't be convicted of both.

3 In a case like this when you're talking about the kidnap and a
4 sexual assault and whether you can be convicted of both, there has to be one
5 of these one through five on Instruction Number 14, some evidence to
6 demonstrate that the movement, the taking Bianca Hernandez from Las Vegas
7 to Mesquite, to -- concealing her in the vehicle --

8 MS. HAMERS: Judge, I'm going to object. I think that misstates the
9 law. There has to be more than some evidence. The jury actually has to find
10 that beyond a reasonable doubt.

11 MR. BATEMAN: That's fine.

12 THE COURT: Okay. Sustained.

13 MR. BATEMAN: You do have to find that beyond a reasonable doubt.
14 Did the movement of Bianca Hernandez in this particular case substantially
15 increase the risk of harm to her over and above what was necessary to
16 commit the sexual assault? Technically, technically Freddy Martinez could
17 have sexually assaulted Bianca Hernandez right there in front of the apartment
18 on Lamont. He had the present ability. He had a knife on him.

19 But to effectuate it, he ultimately had to move her a significant
20 distance in order to get alone with her, to make sure that nobody was around
21 to aid her. He, in fact, went so far as basically the middle of nowhere out in
22 the desert. It's certainly sufficient evidence beyond a reasonable doubt to
23 convict of both sexual assault and kidnapping in this case, Your Honor -- or
24 ladies and gentlemen.

25 Briefly, battery. We've charged Mr. Martinez with battery with

1 a deadly weapon. I think that the evidence provided to you from the nurse in
2 this case, State's Exhibit 28, demonstrates quite clearly a battery with a
3 deadly weapon. She said that he specifically -- Bianca Hernandez downplayed
4 it somewhat -- touched her, put pressure on her leg with a weapon.

5 You'll notice in the instruction that battery is the willful and
6 unlawful use of force or violence upon the person by another person -- of
7 another. It doesn't have to actually cut them. Technically, if he simply put
8 the weapon to her leg without producing any injury at all, that's a battery with
9 use of a deadly weapon. He went a little further. He decided to cut her three
10 times.

11 Finally, ladies and gentlemen, sexual assault. Sexual assault
12 boiled down is sex without consent. Your instructions in this particular case
13 include 15, 17 and 18. A person who subjects another person to sexual
14 penetration against the victim's will or under conditions in which the
15 perpetrator knows or should know that the victim is mentally or physically
16 incapable of resisting or understanding the nature of his conduct is guilty of
17 sexual assault.

18 In this particular case, Bianca Hernandez told you that, in fact,
19 she did not want to have sex with Freddy Martinez. That, in fact, he pulled
20 her out of the car at knifepoint, put her in the backseat at knifepoint, had the
21 knife in his hand the entire time and sexually penetrated her with his penis in
22 her vagina.

23 There was a question about whether she had the temerity at
24 that time to say no when she had the temerity to say no when he asked her
25 for money later. There is an instruction, ladies and gentlemen, that I think is

1 important to answer that question. It's Instruction Number 17, physical force.
2 Physical force is not necessary in the commission of sexual assault. The
3 crucial question is not whether a person was physically forced to engage in
4 sexual assault, but whether the act is committed without his or her consent or
5 under conditions in which the Defendant knew or should have known the
6 person was incapable of giving his or her consent.

7 There is no consent where a person is induced to submit to the
8 sexual act through fear of death or serious bodily injury, and the person is not
9 required to do more than his or her age, strength, surrounding facts and
10 attending circumstances make it unreasonable for him or her to manifest
11 opposition to a sexual assault.

12 Bianca Hernandez didn't have to struggle. She didn't have to
13 put up a fight. She didn't have to say "no" ten times for this to be a sexual
14 assault. She had just been kidnapped at knifepoint from Las Vegas, hit,
15 stabbed, her hair pulled, told various things along the way. She wasn't going
16 to see her son again, she wasn't going back to Las Vegas and was pulled off
17 in the desert and sexually assaulted.

18 She immediately reports this sexual assault. She doesn't think
19 about whether it's a sexual assault for some period of time. She immediately
20 reports it when she escapes Freddy Martinez's clutches. She goes to a SANE
21 exam where a nurse conducts -- I believe the nurse said a two- to three-hour
22 examination, an evasive examination that includes taking photographs of her
23 vaginal area. She then comes in, actually this courtroom, in front of this
24 judge, counsel and 13 strangers and tells you that it happened, and she has
25 the injuries to prove it, according to the nurse.

1 And it really doesn't make a whole heck of a lot of sense, ladies
2 and gentlemen, why someone who had just been kidnapped would have been
3 taken all this way at knifepoint would suddenly feel aroused enough at this
4 point, Well, I think I'm going to have sex. Let's pull over on the side of the
5 freeway. If you believe that, if you believe that's the case, find Freddy
6 Martinez not guilty. Mark that box. That makes absolutely no sense, and it's
7 offensive.

8 MS. HAMERS: Judge, I'm going to object to that comment. It's
9 disparaging to the Defense to say that that's offensive.

10 MR. BATEMAN: That's not -- I didn't say anything --

11 THE COURT: It's not disparaging to the Defense, but I'm going to
12 strike the words "it's offensive." They're here to do their job, and they're
13 going to do it the best way they know how. Whatever they decide, we're
14 going to respect. Go ahead.

15 MR. BATEMAN: Thank you.

16 There's one last instruction with regard to sexual assault, ladies
17 and gentlemen. It's Number 18. It is a defense to the charge of sexual
18 assault that the Defendant entertained a reasonable and good faith belief that
19 the alleged victim consented to engage in sexual intercourse. If you find such
20 reasonable, good faith belief, even if mistaken, you can give a defendant the
21 benefit of the doubt and find him not guilty of sexual assault.

22 Importantly in this case, a belief that is based on ambiguous
23 conduct by the alleged victim, it is the product of force, violence, duress,
24 menace or fear of immediate or unlawful bodily injury on that person of
25 another is not reasonable and not in good faith.

1 The entire facts surrounding what took place where the
2 Defendant to say that, I was confused, she gave me mixed signals, is not
3 reasonable. It's not a defense. Sexual assault was committed in this case
4 with use of a deadly weapon because the Defendant had that knife with him
5 the whole time.

6 Ladies and gentlemen, you've heard the evidence in this case.
7 You'll have the evidence to take back with you. I'd ask that you look at the
8 evidence in total as a whole to determine whether the State has proved
9 beyond a reasonable doubt all four charges. It's quite clear that all the
10 evidence is consistent, entirely consistent and supports Bianca Hernandez,
11 Bianca Hernandez's account of what took place.

12 Her account of what took place consists of four crimes, the four
13 crimes we have alleged. We've proven those counts, all four of them, beyond
14 a reasonable doubt. I'd ask you to make a verdict of guilty on all four counts
15 when you come back from the deliberation room. Thank you.

16 THE COURT: Thanks. Ms. Hamers.

17 MS. HAMERS: Thank you, Judge.

18 ***DEFENSE CLOSING ARGUMENT***

19 MS. HAMERS: Mr. Paulson talked to you-all yesterday about getting to
20 the truth. I think he even mentioned to you, The truth will set you free.
21 Right? In this case the truth ends with you guys. You're the fact finders.
22 You decide what's true. You decide what's believable, and you decide what's
23 credible. And what you're left with in this case is the testimony of a woman
24 who's being deceitful.

25 Don't get me wrong. This is not okay. Freddy's actions in this

1 case are not okay. There's no question about that, but you cannot believe
2 Bianca Hernandez's story. She told you that she had this relationship with
3 Freddy where she had at least lived with him. She had at least told us that
4 when she was in here on the stand. Jose' told you, No, Bianca told me that
5 he just lived in a storage and used the shower at my house. Bianca, on the
6 same note, tells Freddy, Nothing's going on with me and Jose'.

7 You know what she's doing here. She's playing both sides.
8 She doesn't want both of these guys to know what's going on. But if she's
9 got nothing going on with Freddy, why is she lying to Jose'?

10 They had a relationship here, and you know that. You know
11 that by the testimony. You also know she's willing to be untruthful about
12 that. When she talked to the police, she called Jose', Oh, the man I live with.
13 I went to rent a room from a family. She's willing to lie about these
14 relationships to make herself look better.

15 Does that mean a sexual assault can't occur? Absolutely not.
16 I'm not for one moment saying that because she had a prior sexual
17 relationship with that man that she couldn't be sexually assaulted. That's not
18 the point. The point is whether or not she's credible and whether or not you
19 can believe her testimony beyond a reasonable doubt when you've seen her
20 tell Jose' lies, Freddy lies, the police lies and then come in here and still deny
21 that relationship. If she's willing to do that, if she's willing to tell all those
22 stories, how can we believe what she says beyond a reasonable doubt?

23 There was no sexual assault in this case. There was sex. We
24 know there was sex. Everybody admits there was sex. DNA backs that up,
25 Freddy admits to that, but there was no sexual assault. Our DNA expert told

1 us, we can't have proof of sexual assault by DNA. The nurse came and
2 testified, Yeah, there's an abrasion. An abrasion can happen with sex assault;
3 an abrasion can happen with consensual sex. We don't have any torn
4 clothing. We don't have any injuries to support a sexual assault. Do not lose
5 sight of that.

6 There are injuries. She was hurt. Bianca's own testimony.
7 That has nothing to do with the sexual assault. These things didn't happen
8 during sex. He poked me with the knife or he stabbed me with the knife. He
9 grabbed my arm. These were things that happened during the sex. These are
10 things that happened in the car. Don't lose sight of that. Don't let this
11 Prosecutor tell you that this picture supports a sexual assault because it
12 doesn't. It supports a knife to her leg. That's what that corroborates. It does
13 not corroborate a sexual assault.

14 The State put her up here and wants you to believe what she
15 says about this sex beyond a reasonable doubt despite the fact that she's
16 being untruthful, untruthful with the police, untruthful with Freddy, untruthful
17 with Jose'. You can't do that. You can't believe her beyond a reasonable
18 doubt, and those are the circumstances we have. It is important to hold
19 someone accountable for what they have done, and clearly that man is in the
20 wrong in this case.

21 So let's talk about what he did. He showed up at their house
22 with a knife. He threatens Jose' with the knife. He gets in the car with
23 Bianca. This isn't okay. This isn't the way you deal with something. He
24 wanted to confront this woman, this woman that he obviously has strong
25 feelings for. Obviously isn't doing what he should. He is obsessed. He is

1 jealous. He is acting crazy. This is not the way you go about things.

2 He gets in the car with Bianca. He scares her. He threatens
3 Jose'. He has a knife with him, and she gets scratches from the knife. None
4 of these things are okay, and the evidence absolutely supports those things.
5 And if you believe that he got in that car, immediately put a knife to her and
6 took off with her, convict him of a kidnapping. If you believe she let him in
7 that car, sat there and talked to him, but at some point wanted to leave and
8 he didn't let her, convict him of a false imprisonment.

9 And Mr. Bateman is right. There's no doubt there was a
10 weapon here, but you cannot convict him of a first degree kidnapping. That
11 difference does revolve completely around Mr. Martinez's intent, and he is the
12 only person that can you tell his intent. You have his statement. You have
13 his words. I know listening to this detective, you can't tell what's in that
14 statement, and I don't blame you, but you'll have it. You'll have it right in
15 front of you, and you can read that, and you can read his words where he
16 over and over repeatedly says, I loved her. I wanted to know what's going
17 on. I wanted to scare that man because if he was a real man and another
18 rooster came around, he'd do something.

19 Yeah, none of this is good stuff, but it's also not having the
20 intent to commit a sexual assault. His intent was to get to the bottom of
21 what was going on, and he cannot be convicted of a first degree kidnapping
22 with the intent to be crazy, to be jealous, to question Bianca, to scare Jose'.
23 That doesn't make a first degree kidnapping.

24 Freddy didn't testify in this case. We talked about that in *voir*
25 *dire*. He didn't get up and testify, but you have the benefit of his story

1 because you have his statement. There's nothing he can add to that. He
2 doesn't have a signed consent-to-sex form. He doesn't have a videotape of
3 what went on. He can't prove to you consent, and he's not supposed to.
4 They're supposed to prove to you that there was no consent. There's nothing
5 more he can give you. You have his statement. Read it. Read his words.
6 They'll tell you exactly what he was thinking. And it's not normal, and it's
7 not okay because he's jealous over this woman, and he's trying to confront
8 her and her new boyfriend with a knife, but it's also not a sex assault, and it's
9 also not a first degree kidnapping.

10 Don't get confused on what the evidence shows here, and don't
11 decide that he's a bad guy and want to convict him of everything that the
12 State charged for that reason. Look at what actually happened, what you
13 actually have evidence of and look at the difference.

14 Do you have evidence of a battery? Do you have proof beyond
15 a reasonable doubt? It looks like it. Do you have that same thing for a sex
16 assault? You don't. So convict him of what they've proved beyond a
17 reasonable doubt, but don't go further than that.

18 Hold Freddy Martinez accountable. Convict him of what he did,
19 but you can't convict him of a sex assault. You can't convict him of first
20 degree kidnapping. You just haven't seen evidence of that. Think about what
21 evidence you have and what that actually proves. Don't decide because
22 there's a photograph and there's a nurse and there's an exam and there's a
23 DNA, so everything they charged must be true. Match that up to what you
24 have and convict him of what he did. Hold him accountable for what he did
25 and nothing more.

1 THE COURT: Thank you. Ms. Nyicos.

2 MS. NYICOS: Thank you, Judge.

3 ***REBUTTAL CLOSING ARGUMENT***

4 MS. NYICOS: I'll make it pretty brief. I don't believe anyone is
5 disputing this is a deadly weapon. It's a knife capable of committing
6 substantial bodily harm or death. Deadly weapon. So on your verdict form,
7 anything that doesn't say deadly weapon, that's not the right choice. I don't
8 believe anyone is disputing battery with use of a deadly weapon. That's the
9 charge. Go ahead and convict on that one, too.

10 So let's talk about what is in dispute, and we'll start with the
11 kidnapping. Ms. Hamers just said to you that if you believe that Bianca let
12 Freddy Martinez into that car and they had a conversation and then she
13 decided to leave, then he's guilty --

14 MS. HAMERS: Judge, I'd just object. That misstates the argument.

15 THE COURT: I think she said "let" and not "led," but I'm not sure. I
16 heard "let."

17 MS. HAMERS: That would make more sense. That I believe.

18 THE COURT: Well, you were the speaker, Ms. Nyicos.

19 MS. NYICOS: I don't remember it word for word, but I know I didn't
20 say she led him anywhere.

21 THE COURT: I think -- I wrote down "let."

22 MS. NYICOS: Thank you, Judge.

23 We don't have any evidence she let him in the car.

24 MS. HAMERS: Judge, I'm going to object. It's burden shifting. It's
25 their burden to prove that the charges happened.

1 MS. NYICOS: Okay. I'll rephrase.

2 THE COURT: You could be wrong on that. I mean, you've argued
3 that arguably she let him in the car, and she's saying there's no evidence
4 which you could conclude that was the case. She's entitled to say that. You
5 don't have to put on any evidence. She's saying the evidence we put on, that
6 isn't a reasonable conclusion. Objection overruled. Go ahead.

7 MS. NYICOS: Okay. In fact, the Defendant doesn't even claim that
8 she let him in the car --

9 MS. HAMERS: Judge, same objection.

10 MS. NYICOS: Let me finish. -- in his statement that he gave to the
11 police.

12 MS. HAMERS: She's promising on the Defendant's --

13 THE COURT: I think the Defendant does claim that, so objection
14 sustained.

15 MS. NYICOS: Okay. Anyway, we'll move on.

16 He gets in the car in front of Jose', points this to her neck area
17 and then within seconds they drive off. That's not a false imprisonment. It's
18 a kidnapping. It's a kidnapping. So now we're in between first degree and
19 second degree, and that's for you to decide whether the purpose of pointing
20 this to her neck and making her drive off was to commit that sex assault.
21 And as Mr. Bateman argued, we don't know. We honestly don't know.

22 He tells the police that he wants to confront Bianca, that he
23 wants to scare Jose'. But if that's really what he wanted, he had Jose'.
24 Stopped him right at the door. He had this pointed at Bianca. Why not have
25 that confrontation right then and there? Why do you have to drive away?

1 MS. HAMERS: Judge, I'm going to object to the Prosecutor waving a
2 knife around in her entire rebuttal.

3 THE COURT: She can show it if she wants. Overruled. Just let her
4 finish her argument.

5 MS. NYICOS: Thank you. I'll put it away.

6 And, also, think about that drive in the car. She's driving at
7 first. When he stops the car the first time, if all he really wanted to do was
8 scare Jose' and confront her, why don't confront her then? What does he
9 do? He pulls her hair, puts her in the backseat, and then he drives off, and
10 then he stops again. Why not confront her then? He pulls her hair again and
11 puts her in the front seat and drives even further.

12 And then she tells you at some point she sees that there's a cop
13 car two cars ahead, and she's trying to grab the steering wheel and swerve
14 the car, and he pulls into a mobile home park. Why not confront her then?
15 He doesn't. What does he do? He hits her, tells her to shut up and then
16 keeps driving. And he drives halfway to Mesquite, pulls off on the side of the
17 road, puts her in the backseat, pulls down her pants and penetrates her
18 sexually.

19 And now let's talk about the argument that there was no sex
20 assault. Let's talk about how we get to this point because Defendant is
21 asking you to believe that after having a knife pointed at her neck, that after
22 being --

23 MS. HAMERS: Judge, I'm going to object. The Defendant isn't asking
24 them to believe anything. It's the State's case. It's the State's charges. It's
25 the State's burden to prove the charges.

1 THE COURT: No, you got up -- it is the State's burden, and they
2 understand that. But you got up and made this argument, and what she's
3 saying, you're asking them to believe this. That's what she's saying, and
4 that's what you're arguing.

5 MS. HAMERS: That's shifting the burden.

6 THE COURT: No, it's not. Overruled. Go ahead.

7 MS. NYICOS: Okay.

8 Being stabbed, cut, scraped, however you want to word it, not
9 once, but three times in the leg. And then after having your hair pulled and
10 dragged into the backseat of a car and having her hair pulled and then dragged
11 into the front seat of the car, that after being struck in the face and being
12 told, Forget about Las Vegas, you're never going to see your son again, she
13 suddenly felt amorous. If no sex assault occurred, if this is consensual, why
14 did he still have that [indicating knife] in his hand?

15 Now, let's talk about after the sex assault -- after the alleged
16 sex assault. If that's what she wanted, if that was consensual, why would
17 she go through a SANE exam? I know we have some men on the jury, but I
18 know we have enough women to know that a vaginal exam, not something
19 you look forward to. I wouldn't exactly call that the highlight of Bianca's day.
20 And if it wasn't a sex assault and if they were running off together to have a
21 rendezvous, why not book a room at one of the resorts in Mesquite?

22 It's a sex assault, folks. Use your common sense. And that
23 was his intent. His intent when he entered the car was to take her. His intent
24 to take her from Jose' was to take her. She's his. And it doesn't matter
25 whether there was some relationship they were having in the past, and it

1 doesn't matter if she was lying to him about where she lived, about her
2 relationship with Jose'. It doesn't matter. What matters is what he did on
3 that day. So let's hold him accountable for what he did on that day.

4 Burglary with a deadly weapon. He entered that car to commit a
5 kidnapping, and he had that knife with him. First degree kidnapping. He took
6 her because he wanted her. Sex assault and battery with use of a deadly
7 weapon, which no one's disputing. I agree with Ms. Hamers. Let's hold him
8 accountable for what he did. Find him guilty as charged. Thank you.

9 THE COURT: Thanks. Ms. Clerk, will you swear the officer to take
10 charge of the jury, please, and pick the alternate at random.

11 [The Clerk administers the oath to the Bailiff.]

12 THE CLERK: Juror Number 11, Ms. Rodriguez.

13 THE COURT: Okay. You guys go -- that means that you're going to
14 be the alternate pending whether we need one or not. If these people reach a
15 verdict, then that's the way it goes. I'm telling you, I've had situations where
16 somebody gets ill in the middle of deliberation, and you go in, so you're sort
17 of the backup quarterback. You're kind of Vinny's date for the afternoon, as
18 it were.

19 You guys go with Vinny. He'll take you to the jury deliberation
20 room. Lunch is supposed to be here in about 30, 40 minutes. She'll bring in
21 all the exhibits, the verdict form. All you need to do is tell him when you're
22 done. If you need a cigarette break or a restroom break, you just tell Vinny,
23 and he'll take care of it. You cannot deliberate while anybody is gone, so if
24 somebody needs to go to the restroom, kind of everybody goes or everybody
25 stops. All 12 people have to be together when anything about the case is

1 discussed. Just follow Vinny, and he'll take you.

2 [Jury exits the courtroom to start deliberation at 11:49 a.m.]

3 THE COURT: Okay. The record should reflect the jury has exited.
4 Anything else?

5 MS. HAMERS: No, Judge.

6 MS. NYICOS: No.

7 THE COURT: Tina will be back in a second. She's making sure
8 they're situated right. Leave her your numbers, and we'll call you.

9 [Court at ease.]

10 [Out of the presence of the jury at 5:05 p.m.]

11 THE COURT: We've got a couple of notes that I'm making part of the
12 record. They were not much of anything, but one was -- they wanted the
13 Spanish translation of the interview between Detective Chavez and Freddy
14 apparently because one of them speaks Spanish and decided they were going
15 to do it themselves. I answered, The jury is not allowed to do its own
16 translation, Love, Judge Bell. And I'm making that a part of the record.

17 MS. NYICOS: Love, Judge Bell?

18 THE COURT: And it -- it doesn't say that. Then they asked this: Can
19 we find the Defendant guilty of first degree kidnapping, but not guilty of
20 Count 4? And I wrote back, Each count has to be considered separately.
21 That's all I was going to tell them. Not what to do or what to not, but that's
22 the law. And so who knows what they're going to do, but we'll make those
23 part of the record.

24 [Court at ease.]

25 [Jury returns to courtroom after deliberation at 5:38 p.m.]

1 THE COURT: Okay. Back on the record in Case Number C226586,
2 State of Nevada versus Freddy Martinez. Let the record reflect the presence
3 of Mr. Martinez, his counsel; Mr. Bateman for the State. All ladies and
4 gentlemen of the jury are back in the box, including the alternate.

5 Ladies and gentlemen, I am very sorry you had to wait. I can't
6 tell you how angry I am that that is the case. That should never happen, and I
7 can't take care of it tonight; I'm going to take care of it tomorrow.

8 But that neither here nor there, who would be the foreperson?

9 JUROR NUMBER 10: I am.

10 THE COURT: Sir, have you reached a verdict?

11 JUROR NUMBER 10: Yes, sir, we have.

12 THE COURT: Would you give it to the Bailiff, please. Okay. Ms.
13 Clerk, will you read the verdict into the record, please.

14 THE CLERK: District Court, Clark County, Nevada. The State of
15 Nevada, Plaintiff, versus Freddy Martinez, Defendant. Case Number
16 C226586, Department Number VII.

17 Verdict: We, the jury, in the above-entitled case find the
18 Defendant Freddy Martinez as follows: Count 1, Guilty of burglary while in
19 possession of a weapon.

20 We, the jury, in the above-entitled case, find the Defendant
21 Freddy Martinez as follows: Count 2, guilty of battery with use of a deadly
22 weapon.

23 We, the jury, in the above-entitled case, find the Defendant
24 Freddy Martinez as follows: Count 3, guilty of first degree kidnapping with
25 use of a deadly weapon.

1 We, the jury, in the above-entitled case, find the Defendant
2 Freddy Martinez as follows: Count 4, not guilty.

3 Dated this 12th day of April 2007, Jim Egan, Foreperson.

4 Ladies and gentlemen of the jury, are those your verdicts as
5 read so say you one, so say you all?

6 THE COURT: Is that your verdict?

7 THE JURY: [en masse] Yes.

8 THE COURT: Okay. Does either side desire to have the jury polled?

9 MR. BATEMAN: No, Your Honor.

10 MS. HAMERS: No, Judge.

11 THE COURT: Okay. It's late. I'm not going to give you a speech
12 about what a nice job you did, which I usually do. You've got to get home
13 and get to dinner, and I've got a meeting to go to. But, you know, it's a hard
14 job sitting in judgment of other people, and it's very important. It's the
15 greatest system in the history of the world because we take citizens sitting in
16 judgment of each other, and you can be proud of the fact that you took your
17 turn and did it. We've held the paymaster. Are you going to take them
18 down?

19 MS. GORD: I'll go down with them.

20 THE COURT: Okay. If you'll go with Chermaine, she'll take you
21 down. We've held the paymaster so you can get paid tonight and get out of
22 here. I know it was a long, long day. It was 45 minutes longer than it should
23 have been. Thanks.

24 MR. BATEMAN: Thanks, Judge.

25 MS. HAMERS: Thank you.

1 THE COURT: By the way, you can talk about the case if you want.
2 You don't have to talk about if you want. That includes your lawyers and
3 your spouses. If you're sick of it, you don't have to.

4 [Jury exits the courtroom at 5:41 p.m.]

5 THE COURT: Okay. Mr. Martinez, you'll be remanded and held
6 without bail pending sentencing. Give us a sentencing date.

7 THE CLERK: May 24, 8:30.

8 THE COURT: May 24, 8:30. See you then.

9 [Proceedings concluded at 5:42 p.m.]
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16 ATTEST: I hereby certify that I have truly and correctly transcribed the
17 audio/video proceedings in the above-entitled case to the best of my ability.

18 *Renee Vincent*
19

20 RENE VINCENT, Transcriber
21 District Court, Dept. VII
22 (702) 671-4339
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2
3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

CLERK OF THE COURT

5
6 STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 FREDDY A. MARTINEZ,

10 Defendant.

CASE NO. C226586

DEPT. VII

11
12
13 BEFORE THE HONORABLE STEWART L. BELL, DISTRICT COURT JUDGE

14 THURSDAY, MAY 24, 2007

15
16 RECORDER'S TRANSCRIPT OF SENTENCING

17
18 APPEARANCES:

19 For the State:

DAVID J. RICKERT, ESQ.
Deputy District Attorney

20
21 For the Defendant:

KATHLEEN M. HAMERS, ESQ.
Deputy Public Defender
RONALD S. PAULSON, ESQ.
Deputy Public Defender

22
23 RECORDED BY: RENEE VINCENT, COURT RECORDER

RECEIVED
AUG 10 2007
CLERK OF THE COURT

1 Thursday, May 24, 2007 - 8:22 a.m.

2
3 THE COURT: State of Nevada versus Freddy Martinez, Case Number
4 C226586. Martinez present in custody. Court-appointed interpreter.
5 Kathleen Hamers. And David Rickert for the State. Ron Paulson. This is the
6 time set for entry of judgment, imposition of sentence. Any reason that
7 judgment should not be imposed?

8 MS. HAMERS: No, Judge.

9 THE COURT: You know, there's a slight mistake in the PSI that
10 doesn't have anything to do with anything, but we probably ought to have it
11 on the record, and, that is, he was not charged with substantial bodily harm,
12 so you can't consider this under the substantial bodily harm statute, and I
13 didn't. I mean, it's just a five to life, and there's a weapon, so it's always
14 times two. That's the way it is. It isn't 15 to anything.

15 MS. HAMERS: Thank you for clearing that up.

16 THE COURT: Okay. You know, I heard the trial, and I'm ready. If
17 there's something you want to say, say it.

18 MS. HAMERS: Well, Judge, the only thing that I would ask, I would
19 ask that the other counts run concurrent to the --

20 THE COURT: I intend to do that.

21 MS. HAMERS: -- kidnapping --

22 THE COURT: I'm giving him, you know, 60 to life, 60 to life on the
23 kidnapping and run the other stuff concurrent. I think that's a fair sentence
24 for what happened.

25 MS. HAMERS: And we'll submit it on that.

1 MR. RICKERT: We'd submit it, Judge.

2 THE COURT: Anything you want to say, Mr. Martinez? I will say this,
3 had he been convicted of the sexual assault, I might have run that consecutive
4 because I think -- but this -- I mean, all this is really part and parcel to the
5 same thing, and I think under sentencing theory, they're entitled to be run
6 consecutive.

7 MS. HAMERS: Thank you.

8 THE COURT: And he wasn't convicted of that, and so we can't
9 consider that.

10 MS. HAMERS: Thank you, Judge.

11 THE COURT: Anything you want to say, Mr. Martinez?

12 THE DEFENDANT: [Through an interpreter] I do apologize for what
13 happened that day, and I promise I won't -- I will not do it again in the name
14 of Jesus Christ.

15 THE COURT: \$25 AA; \$150 DNA fee, plus testing. Count 1, 60 to
16 180; Count 2, 48 to 120; Count 3, 60 to life, plus an equal and consecutive
17 60 to life for use of a weapon. Counts 1 and 2 and 3 will run concurrent to
18 one another. Credit for time served, 281 days.

19 MS. HAMERS: Thank you.

20 THE COURT: Okay. Okay. That's all.

21 [Proceeding concluded at 8:24 a.m.]

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4 ATTEST: I hereby certify that I have truly and correctly transcribed the
audio/video proceedings in the above-entitled case to the best of my ability.
5

6 *Renee Vincent*

7 RENEE VINCENT, Transcriber

8 District Court, Dept. VII

9 (702) 671-4339
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3 DISTRICT COURT

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4 CLARK COUNTY, NEVADA

CLERK OF THE COURT

5
6 STATE OF NEVADA,

7 Plaintiff,

CASE NO. C226586

8 vs.

DEPT. VII

9 FREDDY A. MARTINEZ,

10 Defendant.

11
12
13 BEFORE THE HONORABLE STEWART L. BELL, DISTRICT COURT JUDGE

14 THURSDAY, NOVEMBER 30, 2006

15 RECORDER'S TRANSCRIPT OF DEFENDANT'S
16 MOTION TO COMPEL DISCLOSURE
17 AND CALENDAR CALL

18 APPEARANCES:

19 For the State:

NOREEN C. NYICOS, ESQ.
Deputy District Attorney

20
21 For the Defendant:

KATHLEEN M. HAMERS, ESQ.
Deputy Public Defender

22
23 RECORDED BY: RENEE VINCENT, COURT RECORDER
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CLERK OF THE COURT

AUG 10 2007

RECEIVED

1 Thursday, November 30, 2006 - 8:42 a.m.

2
3 THE COURT: State of Nevada versus Freddy Martinez. Is Freddy
4 here?

5 MS. HAMERS: He is. He's present in custody. He has the assistance
6 of an interpreter.

7 THE COURT: Freddy Martinez present in custody, Case Number
8 C226586. With Ms. Hamers; Ms. Nyicos for the State. This is, first of all,
9 Defendant's motion to compel and a calendar call. Let's deal with the motion
10 to compel.

11 Issue number one, compensation. That's granted. The State
12 says there isn't any, but if they've made any promises or any kind of
13 compensation, they have to tell the Defense forthwith. Number two, record
14 Scope is denied. The Defense has Scope.

15 NCIC. If the State has run one and has the advantage of that
16 knowledge, they got to give it to the Defense. If the State has not run one
17 just because the State has access, they don't have to give that to the
18 Defense. If they did that, NCIC would be out the window.

19 Number three, inconsistent statements by any witnesses.
20 That's, of course, granted. The State says the Defense has it, but right.

21 Number four, scientific reports, that's granted.

22 MS. HAMERS: Judge, just to make a record on a couple of things.
23 First, the State had said that, with regard to any compensation, that any
24 counseling or assistance given by Victim Witness Assistance Center wouldn't
25 be part of compensation --

1 THE COURT: Well, that isn't compensation.

2 MS. HAMERS: Well --

3 THE COURT: I'm talking about if they give a guy a break on a case, if
4 they give a guy money, that I wouldn't allow you to ask any questions about
5 what Victim Witness Center did anyway, so that isn't compensation.

6 MS. HAMERS: Well, Judge, are you saying no matter what Victim
7 Witness Center gives this person? That's not something I can go into? That's
8 something that would cause bias or a reason for her to testify for the State?

9 THE COURT: Yeah, probably. I mean, they take victims. They get
10 them into counseling. There is a certain statutory fund that people get. That
11 isn't what we're talking about here. What we're talking about is, if a witness
12 gets a break on a case in exchange for testimony, that's sort of bargained for.
13 Or if the witness gets compensation in exchange for testimony, that could be
14 bias. But everybody is entitled to the services of Victim Witness Center.
15 That's what they're there for.

16 MS. HAMERS: Well, what I'm asking is to know exactly what is being
17 provided by Victim Witness, and then I'd know whether I have an issue about
18 something to request this Court that I'd be allowed to ask about.

19 THE COURT: I don't think you're entitled to that, so you can't have
20 that.

21 MS. HAMERS: And as far as --

22 THE COURT: And a lot of times the actual prosecutor didn't have any
23 idea that that's going on.

24 MS. NYICOS: Yeah.

25 MS. HAMERS: Well, it's certainly information available to them.

1 THE COURT: But they -- it's not compensation if they don't have any
2 idea what's happening. Victim Witness is almost the -- an entity unto itself
3 from the D.A.'s Office from the prosecution's stuff. It could be an entity unto
4 itself. I agree with the State on that.

5 MS. HAMERS: Okay. I mean, my position is that it's a State agency,
6 whether or not it's the District Attorney's Office.

7 THE COURT: Okay.

8 MS. HAMERS: But separate and aside from that entire issue, Judge,
9 we requested a statement by the Defendant. We've been requesting it for
10 months. Last month what I got -- I mean, last week what I got was a DVD.
11 It's a Spanish on Spanish interview of the Defendant that I just got -- received
12 last week. The Metropolitan Police force apparently at this time says,
13 Inaudible, cannot be transcribed. Cannot be translated. We can't hear this
14 well enough to do that. So that's what's actually been turned over at this
15 point.

16 THE COURT: Okay.

17 MS. HAMERS: So aside from the motion as far as calendar call goes,
18 I'm not ready because of that. I feel I have an obligation based on what my
19 client is telling me to independently see if I can have that cleaned up in a way
20 that we can hear it, and we can --

21 THE COURT: Okay. I don't have any problem with that theoretically
22 in concept except this: If it is self-serving and helps the Defendant, it's not
23 admissible anyway by you, and if it hurts the Defendant, it -- you know, how
24 can you win this?

25 MS. HAMERS: Judge, this is the issue: There's a police report, an

1 officer that says, I spoke to Defendant, and Defendant admitted this,
2 Defendant admitted that, Defendant admitted this.

3 THE COURT: And is this --

4 MS. HAMERS: If this officer gets up and testifies to that and I have a
5 recording of the interview that says that's not what he said --

6 THE COURT: And that's this interview with this officer?

7 MS. HAMERS: Yes.

8 THE COURT: Is that what the interview is?

9 MS. HAMERS: Yes.

10 THE COURT: Okay. I think you're right. I think you would be
11 entitled to get into evidence anything that impeaches what the officer would
12 say.

13 MS. HAMERS: Or what's put in that report.

14 THE COURT: Right. Well, the officer can testify to what's in the
15 report, I think.

16 MS. HAMERS: I have him.

17 THE COURT: So if he does that and it is impeached by what's on the
18 tape, that's admissible. If the officer doesn't say anything, you can't just put
19 on the tape that your client -- put into evidence that your client said, I didn't
20 do it. That's not admissible.

21 MS. HAMERS: No, that's not admissible.

22 THE COURT: All right. Mr. Martinez, do you wish to have this matter
23 continued a little bit so that they can --

24 THE DEFENDANT: [Through an interpreter] Yes. Yes, sir.

25 THE COURT: Any objection?

1 MS. NYICOS: No, Judge.

2 THE COURT: All right. How long is it going to take you, Ms. Hamers?

3 MS. HAMERS: I'm asking for 30 days. My investigator is looking
4 through it right now. I don't know how long it's going to take.

5 THE COURT: Sounds reasonable.

6 MS. NYICOS: Judge, if we could -- 30 days, I believe, puts us at the
7 January 8th date. I know I have a trial with Vickie Monroe that's a murder trial
8 that week.

9 THE COURT: How about the 22nd?

10 MS. NYICOS: That would be perfect, Judge.

11 THE COURT: January 22nd; calendar call, January 18th. Okay.

12 THE CLERK: Interpreter?

13 THE COURT: Mr. Interpreter, your name?

14 THE INTERPRETER: Diego Trujillo, T-r-u-j-i-l-l-o.

15 THE COURT: I would suggest, Ms. Hamers, that you actually go to
16 the court interpreter's office and ask them to do it because if you do it on
17 your own, you know, you don't want anybody to know, it's okay strategically,
18 except it's probably not going to be admissible if you don't have somebody
19 independent actually doing it.

20 MS. HAMERS: Right. And actually what would seem to be more
21 feasible is getting into the audible rather than getting it translated. If we can
22 get the DVD to be something that can be heard, then we could definitely have
23 the court interpreter's office.

24 THE COURT: Okay.

25 MS. NYICOS: Thank you.

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2 [Proceeding concluded at 8:48 a.m.]
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15 ATTEST: I hereby certify that I have truly and correctly transcribed the
16 audio/video proceedings in the above-entitled case to the best of my ability.

17 

18 RENEE VINCENT, Transcriber
19 District Court, Dept. VII
20 (702) 671-4339
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3 Aug 13 9 46 AM '07

4 IN THE EIGHTH JUDICIAL DISTRICT COURT

5 CLARK COUNTY, NEVADA

CLERK OF THE COURT

6
7 STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

Case No. C226586

Dept. No. 24

10 FREDDY MARTINEZ,)

11 Defendant.)

12 HEARING

13
14 Before the Honorable James M. Bixler

15 Thursday, February 8, 2007, 8:30 a.m.

16 Reporter's Transcript of Proceedings

17
18
19 APPEARANCES:

20 For the State of Nevada: Noreen Nyikos, Esq.
21 Deputy District Attorney
22 Las Vegas, Nevada

23 For the Defendant: Kathleen Hamers, Esq.
24 Deputy Public Defender
25 Las Vegas, Nevada

26 REPORTED BY: BILL NELSON, RMR, CCR No. 191

27 NELSON & NELSON, CERTIFIED COURT REPORTERS
28 Office: 702.360.4677 Fax: 702.360.2844

Las Vegas, Nevada, Thursday, February 8, 2007

* * * * *

THE COURT: Freddy Martinez.

The Defendant is present in custody,
represented by the PDs office.

This is on for entry of plea, is that
correct?

MS. HAMERS: That was the intent, Judge.

This was almost negotiated, and that's what
we are here for.

However, in speaking with him, he wants a
trial, so we will need to reset the trial date today.

MS. NYIKOS: Correct, Judge.

The offer is revoked.

THE COURT: Mr. Martinez, I want you to put
on the record whatever the offer was that you made to
resolve this.

MS. HAMERS: The offer was, one count of
sexual assault without use.

THE COURT: One count.

He's facing charges of burglary and
possession of deadly weapon.

What does that carry?

MS. NYIKOS: That is a two to ten, with

1 another two to ten, plus burg and possession, just
2 the two to ten, and then first degree kidnapping with
3 use, which is a possible life sentence, with five on
4 the bottom, plus equal and consecutive five to life,
5 and sexual assault with use, which is ten to life,
6 plus equal and consecutive ten to life.

7 I offered just the one ten to life.

8 THE COURT: Mr. Martinez, before we pass
9 this up, do you realize the charges that you have
10 pending against you carry some mandatory prison time,
11 the possibility of life in prison?

12 The charge the State offered to reduce
13 these charges to is one charge that would be --

14 MS. NYIKOS: It's a ten to life I offered.

15 THE COURT: It is one count of ten years to
16 life.

17 Before we -- or before the State revokes
18 the offer they have made to you, I want to make
19 certain you understand what you are doing because we
20 are not going to go back and do this all over again.

21 Have you thoroughly discussed this with
22 your attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: And you are absolutely certain
25 that you want to go to trial instead of taking

1 advantage of the offer the State made?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. You got it.

4 The State's revoking their offer, and we
5 can try this this stack.

6 MS. HAMERS: He waived sometime ago.

7 I think we prefer the next stack.

8 MS. NYIKOS: Yes, because family members
9 had assumed he was taking a deal, so I need to call
10 them and have the very hard conversation.

11 THE COURT: Okay.

12 MS. NYIKOS: If we could do April 9th,
13 would I be able to get that as firm?

14 MS. NYIKOS: Do we want to try for the next
15 two weeks?

16 I know Judge Bell, if he's still working
17 without a criminal calendar, will probably do this in
18 two days.

19 MS. HAMERS: My only concern is, part of
20 those nine set I have one on each of those weeks.

21 MS. NYIKOS: In April?

22 MS. HAMERS: No, the next couple weeks.

23 THE COURT: How flexible are you with your
24 witnesses, if we set it for the 9th, had to move it
25 to the 23rd or something?

1 MS. NYIKOS: My witnesses are pretty
2 flexible.

3 I only have one out-of-stater, and she is
4 the nurse, so she's over in Utah.

5 THE COURT: Let's set it for the week of
6 the 9th and see how we can fit it in.

7 THE CLERK: April 9th at 10 a.m. for jury
8 trial.

9 Calendar call Thursday, April 5th, at 8:30.
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C E R T I F I C A T E

STATE OF NEVADA)

) ss.

CLARK COUNTY)

I, Bill Nelson, RMR, CCR 191, 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 Hon. James Bixler, District
Court Judge, presiding.

Dated at Las Vegas, Nevada this 7th day of
August, 2007.



Bill Nelson, RMR, CCR 191,
Certified Court Reporter
Las Vegas, Nevada

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CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE HON. JAMES M. BIXLER, DISTRICT JUDGE, PRESIDING

THE STATE OF NEVADA,
Plaintiff,

v.
FREDDY A. MARTINEZ,
Defendant.

Case No. C-226586-X
Dept. 24

TRANSCRIPT OF PROCEEDINGS

Calendar Call

COURTHOUSE

April 5, 2007

Las Vegas, Nevada

Reported by:

Lee M. Bahr, CP, CCR 173

RECEIVED

NOV 30 2007

CLERK OF THE COURT

Lee M. Bahr, CCR 173

702-243-3386

1 APPEARANCES:

2
3 For the State:

NOREEN C. NYICOS, ESQ.
Deputy D. A.
200 Lewis Ave.
Las Vegas, NV. 89155

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7 Defendant present in court.

8 For the Defendant:

CASEY LANDIS, ESQ.
Deputy Public Defender
309 South Third Street
Suite 226
Las Vegas, NV. 89101

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18 No other appearances.

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TRANSCRIPT OF PROCEEDINGS

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18 past, and I did clarify with Charmaine. They are fine with
19 overflow with out-of-state witnesses.

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25 my problem is that I have to put this witness on Thursday,

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5 a.m. with Judge Bell.

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8 THE CLERK: So both of you are trying this case?

9 MR. LANDIS: No, it is actually Ms. Hamers for
10 our office.

11 MS. NYOKOS: I am, and Kathleen Hamers.

12 THE CLERK: And you are and Bill?

13 MS. NYOKOS: Kathleen Hamers from the P. D.'s office.
14 I have Sam Bateman with me.

15 THE CLERK: Okay. How many days?

16 THE COURT: Three days.

17 MS. NYIKOS: Two in Bell's.

18 THE COURT: Two days.

19 THE CLERK: Okay.

20 MS. NYIKOS: Two and a half in here, two in
21 Judge Bell's.

22 THE COURT: I haven't had enough practice yet.

23 MS. NYIKOS: You will get there, Judge.

24 MR. LANDIS: It's not necessarily a good measure
25 though.

1 THE CLERK: So you need to go tomorrow morning
2 at nine a.m., April 6, at nine a.m., before Judge Bell.

3 MS. NYIKOS: Thank you. That does it for me.
4 Thank you, Judge.

5 MR. LANDIS: Thank you, Judge.

6 THE COURT: Thank you.

7 *****

8 (End of proceedings.)

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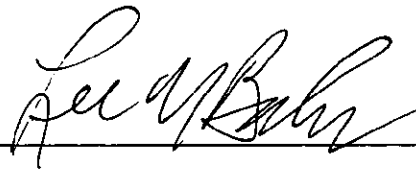
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CERTIFICATE

STATE OF NEVADA)
) ss.
CLARK COUNTY)

I, LEE M. BAHR, CP, CCR 173, 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
Hon. James M. Bixler, District Judge, presiding.

Dated at Las Vegas, Nevada, this
21st day of September, 2007.



LEE M. BAHR, CP, CCR 173

TRAN

ORIGINAL

FILED
JAN 11 4 03 PM '07

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
FREDDY MARTINEZ,)
)
Defendant.)

Case No. C226586
Dept. No. 24

HEARING

Before the Honorable James M. Bixler
Thursday, February 8, 2007, 8:30 a.m.

Reporter's Transcript of Proceedings

APPEARANCES:

For the State of Nevada: Noreen Nyikos, Esq.
Deputy District Attorney
Las Vegas, Nevada

For the Defendant: Kathleen Hamers, Esq.
Deputy Public Defender
Las Vegas, Nevada

REPORTED BY: BILL NELSON, RMR, CCR No. 191

NELSON & NELSON, CERTIFIED COURT REPORTERS
Office: 702.360.4677 Fax: 702.360.2844

1 Las Vegas, Nevada, Thursday, February 8, 2007

2
3 * * * * *

4 THE COURT: Freddy Martinez.

5 The Defendant is present in custody,
6 represented by the PDs office.

7 This is on for entry of plea, is that
8 correct?

9 MS. HAMERS: That was the intent, Judge.

10 This was almost negotiated, and that's what
11 we are here for.

12 However, in speaking with him, he wants a
13 trial, so we will need to reset the trial date today.

14 MS. NYIKOS: Correct, Judge.

15 The offer is revoked.

16 THE COURT: Mr. Martinez, I want you to put
17 on the record whatever the offer was that you made to
18 resolve this.

19 MS. HAMERS: The offer was, one count of
20 sexual assault without use.

21 THE COURT: One count.

22 He's facing charges of burglary and
23 possession of deadly weapon.

24 What does that carry?

25 MS. NYIKOS: That is a two to ten, with

1 another two to ten, plus burg and possession, just
2 the two to ten, and then first degree kidnapping with
3 use, which is a possible life sentence, with five on
4 the bottom, plus equal and consecutive five to life,
5 and sexual assault with use, which is ten to life,
6 plus equal and consecutive ten to life.

7 I offered just the one ten to life.

8 THE COURT: Mr. Martinez, before we pass
9 this up, do you realize the charges that you have
10 pending against you carry some mandatory prison time,
11 the possibility of life in prison?

12 The charge the State offered to reduce
13 these charges to is one charge that would be --

14 MS. NYIKOS: It's a ten to life I offered.

15 THE COURT: It is one count of ten years to
16 life.

17 Before we -- or before the State revokes
18 the offer they have made to you, I want to make
19 certain you understand what you are doing because we
20 are not going to go back and do this all over again.

21 Have you thoroughly discussed this with
22 your attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: And you are absolutely certain
25 that you want to go to trial instead of taking

1 advantage of the offer the State made?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. You got it.

4 The State's revoking their offer, and we
5 can try this this stack.

6 MS. HAMERS: He waived sometime ago.

7 I think we prefer the next stack.

8 MS. NYIKOS: Yes, because family members
9 had assumed he was taking a deal, so I need to call
10 them and have the very hard conversation.

11 THE COURT: Okay.

12 MS. NYIKOS: If we could do April 9th,
13 would I be able to get that as firm?

14 MS. NYIKOS: Do we want to try for the next
15 two weeks?

16 I know Judge Bell, if he's still working
17 without a criminal calendar, will probably do this in
18 two days.

19 MS. HAMERS: My only concern is, part of
20 those nine set I have one on each of those weeks.

21 MS. NYIKOS: In April?

22 MS. HAMERS: No, the next couple weeks.

23 THE COURT: How flexible are you with your
24 witnesses, if we set it for the 9th, had to move it
25 to the 23rd or something?

1 MS. NYIKOS: My witnesses are pretty
2 flexible.

3 I only have one out-of-stater, and she is
4 the nurse, so she's over in Utah.

5 THE COURT: Let's set it for the week of
6 the 9th and see how we can fit it in.

7 THE CLERK: April 9th at 10 a.m. for jury
8 trial.

9 Calendar call Thursday, April 5th, at 8:30.
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C E R T I F I C A T E

STATE OF NEVADA)

) ss.

CLARK COUNTY)

I, Bill Nelson, RMR, CCR 191, 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 Hon. James Bixler, District
Court Judge, presiding.

Dated at Las Vegas, Nevada this 7th day of
August, 2007.



Bill Nelson, RMR, CCR 191,
Certified Court Reporter
Las Vegas, Nevada

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | C | F | MARTINEZ (1) - 1:10 Martinez (3) - 2:4, 2:16, 3:8 members (1) - 4:8 move (1) - 4:24 MS (13) - 2:9, 2:14, 2:19, 2:25, 3:14, 4:6, 4:8, 4:12, 4:14, 4:19, 4:21, 4:22, 5:1 |
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| see [1] - 5:6 sentence [1] - 3:3 set [3] - 4:20, 4:24, 5:5 sexual [2] - 2:20, 3:5 shorthand [1] - 6:12 sometime [1] - 4:6 speaking [1] - 2:12 ss [1] - 6:5 stack [2] - 4:5, 4:7 STATE [2] - 1:7, 6:4 State [4] - 1:20, 3:12, 3:17, 4:1 State's [1] - 4:4 stater [1] - 5:3 still [1] - 4:16 | waived [1] - 4:6 wants [1] - 2:12 weapon [1] - 2:23 week [1] - 5:5 weeks [3] - 4:15, 4:20, 4:22 witnesses [2] - 4:24, 5:1 |
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| ten [8] - 2:25, 3:1, 3:2, 3:5, 3:6, 3:7, 3:14, 3:15 THE [14] - 1:3, 2:4, 2:16, 2:21, 3:8, 3:15, 3:23, 3:24, 4:2, 4:3, 4:11, 4:23, 5:5, 5:7 thoroughly [1] - 3:21 Thursday [3] - 1:15, 2:1, 5:9 today [1] - 2:13 toyou [1] - 3:18 TRAN [1] - 1:1 Transcript [1] - 1:16 trial [4] - 2:13, 3:25, 5:8 | years [1] - 3:15 |

NELSON & NELSON, CERTIFIED COURT REPORTERS
 Office: 702.360.4677 Fax: 702.360.2844

ORIGINAL

FILED

JAN 23 10 57 AM '08

Craig SRS
CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE HON. JAMES M. BIXLER, DISTRICT JUDGE, PRESIDING

THE STATE OF NEVADA,
Plaintiff,

v.

FREDDY A. MARTINEZ,
Defendant.

Case No. C-226586-X
Dept. 24

TRANSCRIPT OF PROCEEDINGS

Calendar Call

COURTHOUSE

April 5, 2007

Las Vegas, Nevada

Reported by:

Lee M. Bahr, CP, CCR 173

RECEIVED

JAN 23 2008

CLERK OF THE COURT

Lee M. Bahr, CCR 173

702-243-3386

S3

1 APPEARANCES:

2
3 For the State:

NOREEN C. NYICOS, ESQ.
Deputy D. A.
200 Lewis Ave.
Las Vegas, NV. 89155

4
5
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7 Defendant present in court.

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5 MR. LANDIS: Thank you, Judge.

6 THE COURT: Thank you.

7 *****

8 (End of proceedings.)


9 *****

CERTIFICATE

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CLARK COUNTY)

I, LEE M. BAHR, CP, CCR 173, do hereby certify
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LEE M. BAHR, CP, CCR 173

CERTIFICATE OF ACKNOWLEDGEMENT

ORIGINAL

FILED

JAN 23 10 57 AM '08

Chaf
CLERK OF THE COURT

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IN AND FOR THE COUNTY OF CLARK

THE HON. JAMES M. BIXLER, DISTRICT COURT JUDGE, PRESIDING

FREDDYS A. MARTINEZ, aka
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Appellant,

v.
THE STATE OF NEVADA,
Respondent.

C226586
Case No. ~~49608~~
Dept. 24

TRANSCRIPT OF PROCEEDINGS

Calendar Call

COURTHOUSE

January 18, 2008

Las Vegas, Nevada

Reported by:

Lee M. Bahr, CP, CCR 173

RECEIVED

JAN 23 2008

CLERK OF THE COURT

Lee M. Bahr, CCR 173

702-243-3386

S20

1 APPEARANCES:

2
3 For the Appellant: CASEY LANDIS, ESQ.
4 Deputy P. D.
5 309 South Third Street
Suite 226
Las Vegas, NV. 89101

6 Appellant present in court.

7
8 For the Respondent: NOREEN C. NYICOS, ESQ.
9 Deputy D. A. Defender
200 Lewis Ave.
Las Vegas, NV. 89155

10 Also a cc will be supplied
11 to: CATHERINE CORTEZ, ESQ.
Deputy A. G.

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16 No other appearances.

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TRANSCRIPT OF PROCEEDINGS

State of Nevada)
) ss.
County of Clark)

I hereby acknowledge that I am Mr. Lee Bahr, not Ms. Lee Bahr; that on September 21, 2007, I filed a certified transcript of proceedings in the matter of the above-entitled case, Case No. C-226586-X; Sup. Ct. No. 49608, and that the original of said transcript of proceedings was filed with the Clerk of Court of Clark County as of on or about the 21st day of September, 2007; that copies were mailed to counsel for appellant and respondent on or about the 21st of September, 2007, and that a duplicate original (copy), file stamped duplicate original, will be filed again with the Clerk of the Supreme Court on January 23, 2008.

I also acknowledge that I am refiling the original and two copies of said six page transcript so that everyone will again have a copy of this six page transcript.

Dated this ____ day of _____, 2004.

Lee M. Bahr, CCR 173

Attachment: 4/5/07 duplicate copy of transcript previously filed on or about 9/21/07.

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Dept. 24

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19 April 5, 2007

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6 THE COURT: Thank you.

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8 (End of proceedings.)

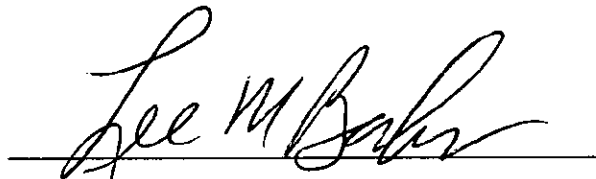
9 *****

CERTIFICATE

STATE OF NEVADA)
) ss.
CLARK COUNTY)

I, LEE M. BAHR, CP, CCR 173, 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
Hon. James M. Bixler, District Judge, presiding.

Dated at Las Vegas, Nevada, this
21st day of September, 2007.

A handwritten signature in cursive script, reading "Lee M. Bahr", is written over a horizontal line.

LEE M. BAHR, CP, CCR 173

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

FREDYS A. MARTINEZ A/K/A FREDDY MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 49608

2008 JUN -6 A 7:51

District Court Case No. C226586

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 7th day of May, 2008.

IN WITNESS WHEREOF, I have subscribed my name and affixed
the seal of the Supreme Court at my Office in Carson City,
Nevada, this 3rd day of June, 2008.

Tracie Lindeman, Supreme Court Clerk

By: _____

Deputy Clerk

A. Ingersoll



JUDGMENT ENTERED

JUN 9 2008

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JUN 05 2008

CLERK OF THE COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY
MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49608

FILED

MAY 07 2008

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary while in possession of a weapon, one count of battery with the use of a deadly weapon, and one count of first-degree kidnapping with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On May 31, 2007, the district court sentenced appellant Fredys A. Martinez to serve concurrent prison terms of 5 to 15 years for burglary, 4 to 10 years for battery, and 5 years to life for first-degree kidnapping plus an equal and consecutive term for the deadly weapon enhancement.

Martinez raises three issues on appeal. First, he argues that the convictions for battery and kidnapping are redundant and impermissible under the Double Jeopardy Clause of the U.S. Constitution. This court has repeatedly affirmed that it will apply the test set forth in Blockburger v. United States¹ to determine whether multiple convictions

¹284 U.S. 299 (1932).

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CLERK OF THE COURT

for the same act or transaction are permissible.² Under the Blockburger test, "if the elements of one offense are entirely included within the elements of a second offense, the first offense is a lesser included offense and the Double Jeopardy Clause prohibits a conviction for both offenses."³ If two convictions are found to be separate offenses under the Blockburger test, this court has stated that it will reverse "redundant convictions that do not comport with legislative intent."⁴ However, when a defendant is convicted of numerous charges arising from a single act, redundancy does not necessarily arise.⁵ The issue to be considered by this court in such cases "is whether the gravamen of the charged offenses is the same such that it can be said that the legislature did not intend multiple convictions."⁶ "[A]n examination of whether multiple convictions are improperly redundant begins with an examination of the statute."⁷

Applying the Blockburger test in this case indicates that battery and kidnapping are separate offenses with elements unique to each, and therefore battery is not a lesser included offense of first-degree

²Salazar v. State, 119 Nev. 224, 227, 70 P.3d 749, 751 (2003); see Williams v. State, 118 Nev. 536, 548, 50 P.3d 1116, 1124 (2002); Barton v. State, 117 Nev. 686, 694, 30 P.3d 1103, 1108 (2001).

³Barton, 117 Nev. at 692, 30 P.3d at 1107.

⁴Salazar, 119 Nev. at 227, 70 P.3d at 751 (citing State v. Koseck, 113 Nev. 477, 479, 936 P.2d 836, 838 (1997)).

⁵Skiba v. State, 114 Nev. 612, 616 n.4, 959 P.2d 959, 961, n.4 (1998).

⁶Salazar, 119 Nev. at 227, 70 P.3d at 751 (citing State v. Dist. Court, 116 Nev. 127, 136, 994 P.2d 692, 698 (2000)).

⁷Wilson v. State, 121 Nev. 345, 356, 114 P.3d 285, 293 (2005).

kidnapping.⁸ Accordingly, this court must next consider whether the gravamen of the crimes of battery and kidnapping are such that it can be said that the legislature did not intend multiple convictions. The text of the respective statutes makes it clear that the two are intended to punish different behavior.⁹ The battery statute is intended to protect a victim's bodily integrity interest, punishing the use of force or violence upon a person, while the kidnapping statute punishes a defendant for depriving a victim of his or her liberty interest. We conclude that Martinez's convictions for first-degree kidnapping with the use of a deadly weapon and battery with the use of a deadly weapon are not redundant.

Next, Martinez asserts that the prosecutor committed misconduct by disparaging the defense when the following underlined statement was made during closing argument:

MR. BATEMAN: . . . And it doesn't make a whole heck of a lot of sense, ladies and gentleman why someone who has been kidnapped would have been taken all this way at knifepoint would suddenly feel aroused enough at this point, well, I think I'm going to have sex. Let's pull over on the side of the freeway. If you believe that, if you believe that's the case, find Freddy Martinez not guilty. Mark that box. That makes absolutely no sense, and it's offensive."

⁸See NRS 200.481(1)(a) (defining battery as "any willful and unlawful use of force or violence upon the person of another"); NRS 200.310(1) (stating that first-degree kidnapping occurs when a person "willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away a person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person" for various statutorily enumerated purposes).

⁹See id.

Defense counsel objected, and the district court, while finding that the statement was not meant to be disparaging to the defense, struck the words "it's offensive."

It is improper to ridicule or denigrate a defense theory.¹⁰ However, "[an] appellant must have been prejudiced in respect to a substantial right before this court will reverse the judgment of the lower court."¹¹ On several occasions, this Court has declined to reverse a conviction despite prosecutorial misconduct far in excess of the comment quoted above.¹² In the present case, there was only one allegedly disparaging remark, and the district court immediately struck the challenged comment from the record. Nor can the prosecutor's comment be said to have been prejudicial, as the jury found Martinez not guilty of sexual assault. We conclude that if there was error in this case, it was harmless.¹³

Finally, Martinez complains that there was insufficient evidence to support a conviction for first-degree kidnapping. The standard

¹⁰U.S. v. Sanchez, 176 F.3d 1214, 1225 (9th Cir. 1999).

¹¹Polito v. State, 71 Nev. 135, 140, 282 P.2d 802, 803 (1955).

¹²See Barron v. State, 105 Nev. 767, 779-80, 783 P.2d 444, 451-53 (1989) (several instances of misconduct by the prosecutor did not warrant reversal); Pickworth v. State, 95 Nev. 547, 550, 598 P.2d 626, 627-28 (1979) (prosecutor's remark in closing that defendant's drug intoxication defense to homicide was a "red herring" was highly improper, but defendant was not prejudiced).

¹³See Yates v. State, 103 Nev. 200, 206, 734 P.2d 1252, 1256 (1987) ("When a guilty verdict is free from doubt, even aggravated prosecutorial remarks will not justify reversal.").

of review when analyzing the sufficiency of evidence in a criminal case is whether, after viewing the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."¹⁴ Martinez was charged with first-degree kidnapping, rather than second-degree, because he had allegedly kidnapped the victim "for the purpose of committing sexual assault."¹⁵ Martinez argues that because he was acquitted of sexual assault, the first-degree kidnapping conviction cannot stand. Martinez's argument is without merit.

"When a defendant is charged with committing two criminal offenses that involve different elements, a jury may find him guilty of one crime and not guilty of the other."¹⁶ The elements of first-degree kidnapping¹⁷ differ from the elements of sexual assault.¹⁸ Therefore, the jury's verdict acquitting Martinez of sexual assault, but convicting him of first-degree kidnapping, is not inconsistent. Even if the verdicts were inconsistent, we have held that inconsistent verdicts are permissible in Nevada.¹⁹

¹⁴McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

¹⁵See NRS 200.310.

¹⁶Burks v. State, 92 Nev. 670, 672, 557 P.2d 711, 712 (1976) (citing State v. Amerson, 518 S.W.2d 29 (Mo. 1975)).

¹⁷See NRS 200.310(1).

¹⁸See NRS 200.366(1).

¹⁹See Bollinger v. State, 111 Nev. 1110, 1116-17, 901 P.2d 671, 675 (1995).

Furthermore, review of the record finds sufficient evidence to support a conviction for first-degree kidnapping. In particular, testimony was given that on the morning of April 16, 2006, Martinez was waiting outside Bianca Hernandez's home. Martinez was the brother of Hernandez's ex-husband. As Hernandez was warming up the car, Martinez jumped out of a tree in the yard, got into the passenger seat of Hernandez's car, poked her in the leg with a knife, and told her to drive off. Shortly thereafter Martinez threw Hernandez in the back seat of the car by her hair, and drove the car himself. He later pulled her back into the front seat by her hair. Hernandez testified that during the trip she tried to get the attention of a nearby police car and Martinez struck her in the face. Martinez then drove the car onto the freeway and headed north. During the trip, Martinez told Hernandez to forget about her son and her boyfriend because she was not going to be returning to Las Vegas.

Hernandez testified that at some point Martinez turned off the freeway, threw Hernandez in the back seat of the car, took off Hernandez's clothes, and, with the knife still in his hand, had sexual intercourse with her. Hernandez testified that she did not want to have sex with Martinez, but that she was afraid to say anything. DNA evidence proved that sex had occurred, but Martinez claimed it was consensual. Martinez stopped and got out of the car in Mesquite, Nevada, and Hernandez was able to ask someone to contact police.

The officer who subsequently interviewed Martinez testified that Martinez told the police that he was not acting out of anger toward Hernandez, but toward Hernandez's boyfriend, Jose Quiroz-Castillo. Martinez expressed his frustration that Hernandez had not told him about Quiroz and his anger about the fact that he did not know anything about Quiroz. Martinez admitted the purpose of his actions was to get a reaction

from Quiroz. Specifically, Martinez stated, "[w]hen a man has sexual relations with a woman, you have to react when another rooster comes and takes a woman when she is with you. He has to respond, react . . . [a]nd I did it, but he did not react." We conclude that based on the evidence presented at trial, a rational trier of fact could have found the essential elements of first-degree kidnapping beyond a reasonable doubt.

Having considered Martinez's arguments and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

Maupin J.
Maupin

Cherry J.
Cherry

Saitta J.
Saitta

cc: Hon. Stewart L. Bell, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk



CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: June 3, 2008
Supreme Court Clerk, State of Nevada

By A. Ingersoll Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY MARTINEZ,
Appellant,
vs.

THE STATE OF NEVADA,
Respondent.

Supreme Court No. 49608

District Court Case No. C226586

REMITTITUR

TO: Charles J. Short, Clark District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: June 3, 2008

Tracie Lindeman, Clerk of Court

By: A. Ingersoll
Deputy Clerk

cc (without enclosures):

Hon. Stewart L. Bell, District Judge
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Public Defender Philip J. Kohn

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUN 05 2008.

BRANDI J. WENDEL

Brandi J. Wendel
District Court Clerk

08-120120

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jun 01 2011 03:40 p.m.
Tracie K. Lindeman

FREDDY MARTINEZ,
Appellant(s),

vs.

STATE OF NEVADA,
Respondent(s),

Case No: 06C226586
SC No: 58023

RECORD ON APPEAL VOLUME 2

ATTORNEY FOR APPELLANT
FREDDY MARTINEZ # 1003276
PROPER PERSON
P.O. BOX 7000
CARSON CITY, NV 89702

ATTORNEY FOR RESPONDENT
DAVID ROGER, ESQ.
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NEVADA 89101

06C226586

STATE OF NEVADA VS.
FREDDY MARTINEZ

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1 A I got up to take Jose' to work.
2 Q Were you working at that time as well?
3 A Yes, but on those days I was laid up from work because I didn't
4 have a car to go to work.
5 Q Did you own a car at that point in time?
6 A Yes.
7 Q What type of car did you own?
8 A It was -- it was a 2003 or 2004 Ford Focus.
9 MS. NYICOS: Judge, may I approach the witness?
10 THE COURT: Sure.
11 BY MS. NYICOS:
12 Q Bianca, I'm showing you State's Proposed Exhibits 15 -- I mean,
13 16, 17 and 18. Do you recognize those pictures?
14 A [Through an Interpreter] Yes.
15 Q What are those pictures of?
16 A My car.
17 Q Okay. I'll do my best with the language barrier. Are those
18 pictures a fair and accurate --
19 MS. HAMERS: We'll stipulate to those.
20 MS. NYICOS: Thank you. Move to admit, Judge.
21 THE COURT: Okay. Any objection?
22 MR. PAULSON: No objection.
23 THE COURT: 16, 17 and 18 will be admitted.
24 [State's 16, 17 and 18 were admitted.]
25 THE COURT: What that means, ladies and gentlemen, is under the

1 rules, this is a fair piece of evidence for you to consider. They may well pass
2 them around or show them on the screen. At the very least, you will have
3 them to take back with you to jury room to look at them. Okay.

4 MS. NYICOS: Thank you.

5 BY MS. NYICOS:

6 Q Now, Bianca, on the morning of August -- that morning in August
7 that we're talking about, were you in your car that morning?

8 A [Through an Interpreter] Yes.

9 Q Okay. And was Jose' in the car with you?

10 A No.

11 Q Where was Jose'?

12 A Jose' was inside the apartment, and I walked out to turn the
13 engine on of the car to heat it up.

14 Q Were you in the driver's seat?

15 A Yes.

16 Q Then what happens?

17 A I didn't see Freddy when he crossed the street. Jose' is saying
18 that --

19 Q That's okay. We're not going to talk about what Jose' said.
20 When did you first see Freddy?

21 THE COURT: When did you first see Freddy? That was a good
22 question. I couldn't say it better myself.

23 THE WITNESS: [Through an Interpreter] That day in the morning when
24 that happened.

25 BY MS. NYICOS:

1 Q Okay. What did you see Freddy do?

2 A He opened the door of the car, of my car, with a knife in his
3 hand. He told me to turn on the car and -- and to go. And I ask him what was
4 happening, what did he have in mind, what's going on? Let's talk. And he told
5 me to move the car, and with the knife, he stabbed me in the leg.

6 Q Where in the leg did he stab you?

7 THE COURT: Stand up.

8 THE WITNESS: The right side.

9 THE COURT: Stand up and kind of point to it for the jury, please.

10 THE WITNESS: Over here on this side.

11 THE COURT: Okay. Thanks.

12 MS. NYICOS: For the record, it's the right thigh on the outside.

13 THE COURT: Yeah.

14 BY MS. NYICOS:

15 Q Now, Bianca, before he told you to move -- move the car, did he
16 do anything else with the knife?

17 A [Through an Interpreter] Yes, he continued with the knife until I
18 moved the car to a stop.

19 Q Okay. Where did you stop the car?

20 A Okay. When we came out of that stop, we continue on Owens,
21 and before we got to Nellis, he told me to stop.

22 Q And you said he continued with the knife. How long was he
23 stabbing you in the leg with the knife?

24 A He just stabbed me the first time, but he was holding the knife in
25 his hand all the time.

1 Q And you said you got to Owens, and he told you to stop?

2 A Yes, and he put me in the backseat. He pulled my hair and put
3 me in the backseat.

4 Q In the backseat of the car?

5 A Uh-huh.

6 Q And where did he go from there? When he put you in the
7 backseat, what did he do?

8 A He just grabbed the car and left.

9 Q Did he drive?

10 A Yes.

11 Q While you're in the backseat, where did he drive to at that point?

12 A He drove about three more blocks from where we were. He
13 stopped again, and then he forced me again to go back to the front seat.

14 Q You said he forced you. How did he force you?

15 A Well, he grabbed me by the hair and pulled me to the front seat.

16 Q Was he saying anything to you when he grabbed you by your
17 hair and pulled you in the front seat?

18 A He just told me to be quiet and not to speak.

19 Q And what happened next?

20 A He continued driving. He went off of Nellis before he got to Las
21 Vegas Boulevard. He was driving, and in front of our car, there was another
22 car, and in front of that car, there was a police car. I went -- I saw police. I
23 tried to honk, and he got very upset. I tried to drive -- to get the steering wheel
24 going to the right, but he went to the left.

25 Q Why did you try to honk?

1 A I wanted the police to see.

2 Q Were you able to get the police's attention?

3 A No, I don't think the police saw what was happening because if
4 he would have seen what was happening, if he could have seen that the car
5 was doing a strange movement, he would have done something.

6 Q After you tried to get the police officer's attention, you said
7 Freddy hit you?

8 A Yes. And when he saw the police was in front of us, he moved
9 the car to the left, and he went inside of a trailer park.

10 Q Did Freddy say anything to you?

11 A Yes, yes. I told him to get out of there, and that was when he
12 hit me on the face, and he said, Be quiet. If you don't be quiet, I will hit you.

13 Q I'm sorry. I what?

14 THE COURT: Hit you.

15 THE INTERPRETER: Hit you.

16 BY MS. NYICOS:

17 Q What happened next?

18 A [Through an Interpreter] And then he continue. He took Las
19 Vegas Boulevard all the way to Nellis and to that freeway. I don't know what -
20 - what street is that.

21 Q That's okay. He got on a freeway?

22 A Yes.

23 Q Do you know what direction you were going?

24 A I just know that he took the freeway going to Mesquite.

25 Q Okay. Did he say anything to you on the freeway?

1 A He was talking many things. He told me forget about my son, to
2 forget about Jose', to forget about David, that I was not going to come back to
3 Las Vegas.

4 Q How did that make you feel?

5 A Well, bad. I didn't know what to do in a situation like this. I
6 would have jumped from the car. I didn't do it because my son doesn't have
7 family here. He doesn't have anybody.

8 Q When you say jump from the car, what do you mean?

9 A Like open the door and -- and leave, come out.

10 Q Now, Bianca, while you were on the freeway, did Freddy stop at
11 some point?

12 A Yes.

13 Q Can you describe the area where he stopped?

14 A It was a desert area.

15 Q Was there a town nearby or anything?

16 A No, where he went it was like a street, just an old -- just a street.

17 Q And what happened when he stopped there?

18 A He went inside -- he went towards the desert. He looked
19 everywhere, and then he grabbed my hand and put me in the backseat.

20 Q What hand did he grab?

21 A The right one.

22 Q Now, did he grab your hand or some other place on your arm?

23 A Just my hand.

24 Q You said he put you in the backseat?

25 A Yes.

1 Q Did Freddy still have the knife?
2 A Yes.
3 Q What happened when he put you in the backseat?
4 A He took my clothes off, my shorts, my underwear, panties.
5 Q And this was summertime; right?
6 A Yes.
7 Q So you were wearing shorts?
8 A Yes, I had shorts on.
9 Q After he took off your shorts and panties, what did he do?
10 A He penetrated me sexually.
11 Q Now, Bianca, I have to ask. You say he penetrated you sexually.
12 What do you mean by that?
13 A He abused me sexually.
14 Q Did part of his body touch part of your body?
15 A Yes.
16 Q Okay. What part of his body?
17 A His penis inside of mine.
18 Q And what part of your body?
19 A My body, my breasts, the vagina.
20 THE COURT: Go ahead. Just ask her a leading question.
21 MS. NYICOS: Okay.
22 BY MS. NYICOS:
23 Q Did his penis go inside your vagina?
24 A Yes.
25 Q About how long was he inside of you?

1 A About 15 minutes.

2 Q Did you say anything to Freddy?

3 A No.

4 Q Did you want Freddy to do this to you?

5 A No.

6 Q Why didn't you say anything to Freddy?

7 A I was afraid.

8 Q Okay. Now, after Freddy did this to you, what happened next?

9 A He got up; I put my clothes on.

10 Q Bianca, did Freddy ejaculate?

11 A I believe so. I was told that the DNA was positive.

12 Q Now, you got dressed again. Bianca, do you remember what

13 you were wearing on your feet that day?

14 A I don't remember that. I don't know if I was wearing some

15 white sandals.

16 Q Do you know what happened to you sandals?

17 A No.

18 Q Okay. Now, after you guys put your clothes back on, what did

19 Freddy do next?

20 A He kept going, and it seemed to me that he went to a gas

21 station.

22 Q Do you remember where this gas station was?

23 A No.

24 Q What happened when you got to the gas station?

25 A He went out from the car to get some gas. He asked me if I

1 had money, and I told him no.

2 Q When he went to get gas, did he pull up to a pump?

3 A No, he left the car in one of the parking spaces, and he walked
4 towards the pumps.

5 Q Now, where that parking space was, was there any people
6 around you?

7 A Just the person that was giving him the gas.

8 Q And how did Freddy get the gas?

9 A I believe that he asked someone for it.

10 Q What I mean was, did he actually pump gas in the car or did he
11 put the gas in something?

12 A No. He put it in a gallon container, a gas gallon container.

13 Q Okay. And where did he get the gas can from?

14 A That I really don't -- I don't remember. I don't know.

15 Q Now, I'm showing you on your screen --

16 THE COURT: You might have to show it to her to get it admitted first.

17 MS. NYICOS: It's already in. This is one of the three that --

18 THE COURT: Oh, I'm sorry.

19 MS. NYICOS: That's okay.

20 BY MS. NYICOS:

21 Q State's 18, is the gas can in that picture?

22 A [Through an Interpreter] Yes.

23 Q Okay. Now, Bianca, while you were at the gas station, did you
24 try and get help from anybody?

25 A Yes. Somebody went to the public telephone, and I was trying

1 to get their attention. I really wanted to get out and run towards the gas
2 station, but I was afraid. I was afraid because he was high on drugs, and he
3 had a knife.

4 Q Okay. Now, Bianca, after you got gas, what happened next?

5 THE COURT: There wasn't an objection, but I'm going to at this point
6 order the jury to disregard her opinion as to whether he was high on drugs. I
7 mean, maybe he was, maybe he wasn't, but she's not an expert. Just forget
8 that, but he did have a knife. Go ahead.

9 BY MS. NYICOS:

10 Q Okay. Where did you go next?

11 A [Through an Interpreter] He went to the city of Mesquite to an
12 apartment complex.

13 Q And what happened when you got to the apartment complex?

14 A He came out of the car, and he walked towards a -- one of the
15 apartments.

16 Q When he got out of the car, what did you do?

17 A There was a woman that worked in cleaning, and I ask her if she
18 could help me get out of the car because Freddy was -- kidnapped me. And
19 she called another person to come and help her, and she told that person to --
20 to take me to an apartment upstairs and call the police.

21 Q Do you know this woman's name?

22 A No.

23 Q Now, after the police were called, where did you go?

24 A To the hospital.

25 Q And what happened when you're at the hospital?

1 A They did tests on me, a vaginal test.
2 Q Did you talk to a detective?
3 A Yes, I talked with Detective Chavez.
4 Q And did you tell Detective Chavez everything you're telling us
5 today?
6 A Yes.
7 Q Now, Bianca, did you want to drive with Freddy up to Mesquite?
8 A No.
9 Q Did you want to have sex with Freddy?
10 A No.
11 Q Did you and Freddy ever have a sexual relationship?
12 A No.
13 Q While you were driving up in the car to Mesquite, did you have a
14 conversation with Freddy about what was happening?
15 A I was trying -- I was talking to him to calm -- to calm down, but
16 he was obsessed with me, and he told me to be quiet.
17 Q What do you mean by obsessed?
18 A It was like someone that loves someone by force.
19 Q Do you feel that Freddy loves you?
20 A I don't know, but the way that he behaved that day, I think so.
21 Q Do you love Freddy?
22 A No. I love him as a brother.
23 MS. NYICOS: Nothing further.
24 THE COURT: Defense?
25 MR. PAULSON: Thanks, Judge.

1 **CROSS-EXAMINATION**

2 **BY MR. PAULSON:**

3 Q Good afternoon, Bianca.

4 A [Through an Interpreter] Hi.

5 Q Would you prefer I call you Bianca or Ms. Hernandez?

6 A As your desire.

7 Q Okay. Bianca, I want to talk to you initially a little bit about your
8 relationship with Freddy. You testified and I think we've heard that initially
9 Freddy moved in with you and David; correct?

10 A Correct.

11 Q And this was about 16 years ago?

12 A [Nods head.]

13 Q So would that have been prior to Franklin being born or right
14 about the same time?

15 A Franklin was already born. He was about three months old.

16 Q And so Franklin is the son that you had with David?

17 A Yes.

18 Q You and David weren't actually ever married, though; correct?

19 A No.

20 Q And at some point, I believe you testified that David and yourself
21 separated, and it would've been about three years ago now; is that correct?

22 A No, about four years ago.

23 Q So it was about three years ago when this actually happened?
24 It's more like four years now?

25 A Yes.

1 Q At the time that you and David separated, David left; correct?
2 A Correct.
3 Q At that time were you living in the mobile home on Lake Mead?
4 A Yes.
5 Q When David left, you continued to live in that home with Freddy
6 and your son?
7 A Yes.
8 Q And you lived in that home, yourself, Freddy and Franklin, for
9 almost three years; correct?
10 A Yes.
11 Q And at that time Freddy worked; correct?
12 A Sometimes he worked, and sometimes he did not.
13 Q And you were working off and on, you said?
14 A No. For a while, I didn't -- I didn't work, but I had my work, my
15 job all the time.
16 Q But it was the three of you living together; correct?
17 A Yes.
18 Q At some point you meet Jose'?
19 A Yes.
20 Q And would that have been prior to or after David left?
21 A That was after David left.
22 Q Okay. Just after David left then because you met Jose' about
23 four years ago; correct?
24 A Yes.
25 Q And you began dating Jose' as your boyfriend about three years

1 ago; right?

2 A Yes.

3 Q But during this time, you were living in the mobile home with
4 Freddy and your son?

5 A Yes.

6 Q Did there come a time, actually about two, two and a half years
7 ago, where you left the trailer and briefly moved in with Jose'?

8 A For how long?

9 Q Well, I don't know how long. I'm saying at some point, did you
10 move in with Jose', and it would've been about two years ago or two and a
11 half years ago?

12 A Yes.

13 Q But at some point you moved back into the motor home with
14 Freddy again?

15 A Wait. When I moved, that wasn't the first time. I didn't have
16 my -- my trailer yet.

17 Q So you didn't -- you didn't live in the motor home yet?

18 A No, because I -- at that time I didn't have it. I didn't buy it yet.

19 Q Where were you living at that time?

20 A I was with Jose', and then I bought the trailer, and then I left
21 Jose', and I went to live at the trailer.

22 Q Okay. I guess I want to get one thing straight because I think
23 your testimony, and if I'm misunderstanding you, correct me, when David left,
24 it was Freddy, yourself and Franklin; correct?

25 A Yes.

1 Q And that would've been at least three years ago now?
2 A Yes, but David never lived in the trailer with us. He lived in the
3 apartment.
4 Q He lived in an apartment with yourself, Freddy and Franklin?
5 A Yes.
6 Q Okay. So when he left, then it was you, Freddy and Franklin
7 still in the apartment?
8 A Yes. And then I moved from there with Jose', and then I bought
9 the trailer, and then I went back to live at the trailer.
10 Q Okay. At some point you left the motor home and Freddy, and
11 it would've been about four months before this incident in August; is that
12 correct?
13 A Yes.
14 Q And you went there to live with Jose'?
15 A Yes.
16 Q Now, at that point did Freddy know about Jose'?
17 A No.
18 Q He wasn't aware of your relationship with Jose' at all at that
19 point?
20 A Freddy, no.
21 Q But you had been dating Jose' for at least two to three years at
22 that point?
23 A Yes.
24 Q During this time did you go spend nights, time over at Jose's
25 place?

1 A Yes.

2 Q But Freddy didn't -- you said Freddy didn't know where you were
3 going and obviously didn't know about Jose'?

4 A I don't believe so.

5 Q And when you left, you didn't tell Freddy where you were going?

6 A I didn't have a reason to tell him. He was not my husband.

7 Q In fact, even when you spoke to Detective Chavez, to the police,
8 you told him that you went to live just with a family in an apartment?

9 A When that happened, when I was speaking with Chavez?

10 Q Yes. You remember speaking to Detective Chavez?

11 A Yes.

12 Q You had testified earlier that he spoke to you, and you gave him
13 a statement?

14 A Yes.

15 Q Do you remember, did Detective Chavez tell you that he was
16 going to record that statement?

17 A Yes.

18 Q So you know that you gave that statement to him?

19 A Yes.

20 Q And when you spoke to Detective Chavez, you -- when you were
21 talking about moving into this apartment, you just told him that you were
22 moving in with a family in an apartment?

23 THE INTERPRETER: With a family member you say?

24 MR. PAULSON: With a family.

25 THE INTERPRETER: With a family. With a family, yeah?

1 MR. PAULSON: Yes.

2 THE WITNESS: [Through an Interpreter] Yes, because Jose' has his
3 mother. Sometimes she stays there, and sometimes she goes to Mexico.

4 BY MR. PAULSON:

5 Q Okay. And regarding that statement to police and Jose', on
6 numerous occasions you referred to Jose' when you're talking to the police as
7 a friend?

8 A Yes.

9 Q And you also referred to him as the man that lives there in the
10 apartment that you rent a room out of?

11 A Yes.

12 Q And you also say that you give this guy, this friend, a ride to
13 work?

14 A Yes.

15 Q When you're talking to the police, you know that Jose' is much
16 more than a friend, he's actually your boyfriend; correct?

17 A Yes.

18 Q In fact, at that point he had been your boyfriend for about three
19 years?

20 A Yes.

21 Q Now, I want to go ahead and jump forward to August 16th. That
22 particular morning you testified --

23 THE COURT: Wait for the interpreter.

24 MR. PAULSON: I'm sorry.

25 THE COURT: You just gotta watch her. You paused, and she started

1 to speak. Go ahead, Ms. Interpreter.

2 BY MR. PAULSON:

3 Q Okay. You said you were going to give Jose' a ride to work that
4 morning?

5 A [Through an Interpreter] Yes.

6 Q So you were already seated in the driver's seat; correct?

7 A Yes.

8 Q And you testified that you didn't really see Freddy until he was --
9 basically opened the door and got in the car; correct?

10 A Yes, I was bending down trying to find a radio station.

11 Q And he told you to drive?

12 A Yes.

13 Q And so you drove?

14 A Yes.

15 Q Now, at this point was Freddy acting upset? Was he angry?

16 A He was upset, angry.

17 Q In fact, he wanted to know about your relationship with Jose';
18 right?

19 A I don't know. I don't know. He didn't say anything. At that
20 moment he didn't say anything. Freddy didn't say anything.

21 Q At some point that morning during your conversations with
22 Freddy, he wanted to know about Jose'?

23 A He didn't ask me anything.

24 Q Okay. Now, a few -- I'm going to just back up just a little bit
25 before I move on. You -- at this time you're living at the apartment on Lamont

1 Street; correct?

2 A Yes.

3 Q And the motor home that you used to live in was on Lake Mead
4 Boulevard; right?

5 THE COURT: I get the impression it's not a motor home in the sense
6 you can drive it. It's a trailer?

7 MR. PAULSON: Yeah. It's referred to in the statement as either a
8 mobile home, motor home. We can just say -- call it a trailer, I guess. It's not
9 that important. I'm not trying to say it was mobile.

10 THE COURT: Yeah.

11 THE INTERPRETER: What was -- what was the name of the street? I'm
12 sorry.

13 MR. PAULSON: The motor home was on Lake Mead.

14 BY MR. PAULSON:

15 Q Correct?

16 A [Through an Interpreter] Yes.

17 Q Okay. During the time that you were living on Lamont, you
18 would still go by the motor home and talk to Freddy; correct?

19 A Yes, I always went to visit him. I went with my son. Sometimes
20 he didn't work, and we went to see him.

21 Q And there did actually come an occasion where Jose' questioned
22 you about going over to see Freddy; correct?

23 A Yes.

24 Q And a few days prior to this incident, in the morning, you went
25 by the motor home?

1 A I passed by on the street. Freddy was outside. He run towards
2 the car.
3 Q Okay. What street were you passing by on?
4 A I don't know what is the name of the street that cross behind the
5 trailer.
6 Q You were driving, and Freddy saw you?
7 A Yes.
8 Q So you stopped?
9 A Yes.
10 Q And talked to him?
11 A That was logical. I was not afraid of him. He never shown to
12 me that he was going to harm me.
13 Q But in order for you to go into the motor home park, into the
14 mobile home park, you had to go out of your way to do that? It wasn't a direct
15 route to the apartment on Lamont; correct?
16 A No, I could go different ways to where I was living.
17 Q Okay. But this particular day you did end up stopping?
18 A Yes.
19 Q Freddy actually got in and sat in the car and was talking to you;
20 correct?
21 A Yes.
22 Q And do you recall saying to Detective Chavez that on this
23 particular day, apparently Jose' saw that?
24 A Yes, Jose' told that to the detective.
25 Q And there was something about that Freddy -- that he thought

1 Freddy was touching your leg? Do you remember saying that to Detective
2 Chavez?

3 MS. NYICOS: Just for clarification, could Counsel tell me where he's
4 talking about here?

5 THE WITNESS: [Through an Interpreter] Yes, but that's not true.

6 BY MR. PAULSON:

7 Q But you did -- you told Detective Chavez that, though; correct?

8 A Jose' thought that Freddy was touching my leg.

9 Q Okay. So at this point Jose' knows about Freddy, and Freddy
10 knows that Jose' is with you?

11 A Freddy didn't know that I was with Jose'.

12 Q Okay. Let's go ahead and get back to where I left off. While
13 you're driving, you testified that there was some struggling going on; correct?

14 A Yes.

15 Q You actually testified earlier that initially Jose' stabbed you in the
16 leg?

17 A Freddy.

18 Q I apologize. Correct. Freddy stabbed you in the leg?

19 A Yes.

20 Q And so he stabbed you. Was it -- was it a deep stab wound?
21 Did he push the knife into your leg?

22 A No, he just touched me a little bit like to frighten me. Something
23 like that.

24 Q Okay. So you said he touched you to frighten you. So that
25 didn't -- wasn't enough to hurt you? It was more to scare you; correct?

1 MS. NYICOS: Objection; speculating.

2 MR. PAULSON: Well, it's her -- it's her opinion.

3 THE COURT: Yeah. You can ask her what she thinks, and you can
4 rehabilitate her, if you want. Go ahead.

5 THE WITNESS: [Through an Interpreter] Yes. But, anyhow, he touched
6 me a little bit.

7 BY MR. PAULSON:

8 Q Okay. And --

9 THE COURT: Did it bleed?

10 THE WITNESS: [Through an Interpreter] No. Just it turned to red.

11 BY MR. PAULSON:

12 Q That was my next question. All right. And at this point you're
13 driving the car; correct?

14 A Yes, but I drove a little while --

15 Q Right.

16 A -- until it stopped.

17 Q When you stopped, you said initially he wanted you to get in the
18 backseat?

19 A Yes, he said go in the back.

20 Q And you went in the back?

21 A Yes.

22 Q At some point he pulls you back into the front seat; right?

23 A When I was in the front seat, he grabbed my hair, and he pulled
24 me in the back, and then he did the same thing when he pulled me to the front.

25 Q Okay. And also when he pulled you into the front, he had to --

1 at some point he grabbed you by the arm also; correct?

2 A Yes.

3 Q Was that -- would've been by your right arm?

4 A Yes.

5 Q Do you remember that when he grabbed you, was it enough to
6 leave a mark on your arm?

7 A Yes, he left a little.

8 Q A little scrape or mark on your arm?

9 A [Nods head].

10 THE COURT: She nodded yes. Go ahead.

11 MR. PAULSON: Thank you.

12 BY MR. PAULSON:

13 Q Okay. And you also testified that at some point there was a
14 struggle, and you were trying to get the attention of the police car in front of
15 you?

16 A [Through an Interpreter] Yes.

17 Q And you ended up pulling over, and that's when he hit you on
18 your right cheek?

19 A Yes.

20 Q And that's the only time he hit you, though; correct?

21 A Yes, after the two times that he grabbed me by the hair.

22 Q Okay.

23 A And then he hit my -- my face.

24 Q Now, after this occurs, you continue driving, and you testified
25 that eventually you get on the freeway?

1 A Yes. No, he was driving. I didn't drive the car.

2 Q Right. At that -- he's driving. You're in the -- you're in the front
3 seat right now; is that correct?

4 A Yes.

5 Q When he was stopped at that mobile home park when you were
6 trying to get the police attention, you didn't try to get out of the vehicle at that
7 point; correct?

8 A I wanted to leave, but that was when he hit me, and he told me
9 to be quiet, to shut my mouth.

10 Q So at some point you get on the freeway, and you drive for
11 about 25 minutes --

12 THE COURT: When you say "you drive," you're confusing her because
13 she's thinking you're implying she's the driver.

14 BY MR. PAULSON:

15 Q Freddy drove, you were the passenger, and you travel for about
16 25 minutes; correct?

17 A [Through an Interpreter] More or less.

18 Q And you testified at some point you get off of the freeway?

19 A [Nods head].

20 Q And that's when he turned onto this dirt street, dirt road?

21 A Yes.

22 Q Now, that dirt street was fairly close to the freeway; correct?

23 A I was nervous. I really cannot tell you the distance, but I know
24 that he left the freeway.

25 Q Now, when you pulled off there, you said you were nervous, you

1 don't really notice, but you did notice that there was a person there; correct?

2 A Yes. There was somebody waling over there where he took me,
3 and there was also a pickup that was there.

4 Q So you recall that there was actually a person there, and you saw
5 that man. In fact, you saw the man, and you headed off; right?

6 A Yes.

7 Q And that was right nearby where you stopped, where Freddy
8 stopped the car?

9 A Yes, but the person wasn't that close to the car either.

10 Q Do you recall when you were speaking with Detective Chavez
11 that you said that that car or that -- or least it was a truck where the person
12 was-- was about a block, a block and a half away?

13 A Approximately, yes.

14 Q Now, you testified at this point Freddy gets out of the car, and
15 he comes around. Does he open the passenger door?

16 A What I am seeing.

17 Q Okay. And you said he put you into the backseat?

18 A Yes.

19 Q You were laying on the backseat?

20 A Yes.

21 Q Now, do you remember at all telling the nurse at the hospital that
22 you were actually laying on the ground?

23 A No, no, on the seat, on the seat of the car.

24 Q So it was on the seat of the car?

25 A Yes, in the backseat.

1 Q Okay. And you testified that he took your shorts and panties
2 off?

3 A That's it.

4 Q Now, did he take them completely off?

5 A Yes.

6 Q Okay. So your testimony right today is that he took your shorts
7 and panties completely off; correct?

8 A Yes.

9 Q Again, you recall speaking about the -- or to Detective Chavez,
10 and when he asked you that same question, you told him no, that they were
11 actually just pulled down and left on the bottom of your legs by your feet. Do
12 you remember that?

13 A Yes, he took it -- he took it down all the way, all the way down
14 to my feet.

15 Q But not completely off?

16 A I don't know. I think that taking it off is just bring all the way
17 down to the feet. I don't know what you mean.

18 Q Okay. I mean, just for clarification, they're not completely off
19 and laying somewhere; they're still around your legs?

20 A Yes, all the way down to my feet.

21 Q Okay. And you were on your back?

22 A Uh-huh, yes.

23 Q And Freddy would've been on top of you; correct?

24 A Yes.

25 Q Now, you testified earlier that Freddy had the knife; correct?

1 A Yes.

2 Q Where is it at this point?

3 A What do you mean where is it?

4 Q Where's the knife?

5 A He has the knife in his hand. He never let it go.

6 Q He has it in his hand?

7 A But he's not pointing it at me. He just have it in his hand.

8 Q So he's not pointing it at you?

9 A No, but he has it in his hand.

10 Q What hand is it in?

11 A Right.

12 Q The knife in his right hand. And do you recall telling Detective

13 Chavez that Freddy grabbed your right hand?

14 A Yes, when my hand's backwards,

15 Q So your hands are backwards?

16 A Just one hand.

17 Q One hand?

18 A Uh-huh.

19 Q Okay. And actually that would've had to have been your right

20 hand because he grabbed you with his left hand; correct?

21 A Well, I don't remember. This is a trauma. This is very difficult.

22 I don't think that anybody can understand.

23 Q I understand that.

24 THE COURT: Are you getting close?

25 BY MR. PAULSON:

1 Q Let me put it this way --

2 MR. PAULSON: Getting close, Judge.

3 THE COURT: All right. It's almost break time.

4 BY MR. PAULSON:

5 Q Let me put it this way: You say he had the knife in his right
6 hand?

7 A [Through an Interpreter] Yes.

8 Q So he couldn't have grabbed you with this hand. He must have
9 used his left hand; right?

10 A It was a small knife. It was like a folded -- folding knife.

11 Q So he's holding the knife in one hand and grabbing your hand,
12 and you said he was on top of you?

13 A Yes.

14 Q And during this time, you testified earlier that you didn't say
15 anything?

16 A I don't remember. I just told Chavez that -- that he had a knife in
17 his hand.

18 Q Okay. My question was, you didn't say anything?

19 A To who? To Freddy?

20 Q Yes.

21 A No, I never said anything.

22 Q You testified earlier that you thought it lasted about 15 minutes;
23 is that correct?

24 A Yes.

25 Q And during this time is Freddy being very rough and forceful with

1 you?

2 A No.

3 Q Not at all?

4 A No.

5 Q You said it lasted about 15 minutes. If you had told Detective
6 Chavez that it lasted about five minutes, you wouldn't necessarily dispute that,
7 would you, if you said five minutes?

8 A I don't know.

9 Q Okay. Now, after this is -- after this is over, you testified you
10 put your clothes back on, you get back in the car and continue to drive on;
11 correct?

12 A Yes.

13 Q You go for about five minutes and then stopped at this gas
14 station?

15 A Yes.

16 Q And earlier you testified that Freddy asked you for money for
17 gas?

18 A Yes, he asked me if I had money, and I said no.

19 Q And you told him no?

20 A Yes.

21 Q You also testified earlier that you were too scared to say no
22 when he was having sex with you, but you weren't too afraid of him to say no
23 about money?

24 A I did have money. I had about 22, \$25. I don't remember. I hid
25 it in my suit.

1 MR. PAULSON: Court's indulgence. Nothing further, Judge.

2 THE COURT: Any redirect?

3 MS. NYICOS: Yes, Judge.

4 THE COURT: Other responses briefly.

5 **REDIRECT EXAMINATION**

6 **BY MS. NYICOS:**

7 Q Now, Bianca, Counsel asked you about when Freddy pulled off to
8 the side of the road, and you saw a man walking down the road with this dog?

9 A [Through an Interpreter] Yes.

10 Q How far away was this man?

11 A He wasn't too far; he wasn't too close. I wanted to make some
12 type of movement to get his attention, but I got afraid.

13 Q Did you scream?

14 A No.

15 Q Why not?

16 A I was afraid. Freddy is violent, and I was afraid.

17 Q Now, he also asked you about the truck that was parked nearby.
18 Did you notice if anyone was in the truck?

19 A No, it seemed like it was a -- a tractor was there. Somebody left
20 it there.

21 Q Now, when Freddy was on top of you and he grabbed your right
22 hand, do you remember if he said anything to you?

23 A No.

24 Q Do you remember telling Detective Chavez if he had said
25 something to you?

1 A No, I don't remember.

2 MS. NYICOS: Judge, with the Interpreter, I'm going to show her her
3 statement, but it's the English translation.

4 THE COURT: Okay.

5 THE INTERPRETER: Do you want me to read it?

6 MS. NYICOS: Yes.

7 THE COURT: Did you tell Detective Chavez this?

8 THE WITNESS: [Through an Interpreter] It seems to me like he said
9 something about it to me, but the truth is that I don't remember.

10 THE COURT: We need to have this read in English.

11 MS. NYICOS: Okay.

12 THE COURT: What did he ask her -- go ahead.

13 BY MS. NYICOS:

14 Q Okay. Bianca, what I had the Interpreter just ask you was, did
15 you -- did you tell Detective Chavez, [reading] Yes, he grabs my hand, and then
16 he told me don't make any movements. You just stay relaxed because, if not,
17 I'm willing to poke you with this?

18 A Yes, it seemed that he -- that I did, but I don't remember.

19 Q Okay.

20 A I was very nervous.

21 THE COURT: That's enough.

22 MS. NYICOS: No problem. Nothing further, Judge.

23 THE COURT: Any recross?

24 MR. PAULSON: None based on that.

25 THE COURT: Okay. Thanks. You're excuse. Okay. Let's take our

1 afternoon break at this time. Don't talk about the case with each other or
2 anybody else. Don't read, watch or listen any report on the case by radio,
3 television, newspaper or Internet. Don't form or express any opinion on the
4 case until it's submitted you. We'll be in recess till 3:15. Okay.

5 [A short recess was taken at 3:03 p.m.]

6 [Outside the presence of the jury.]

7 THE COURT: We're back on the record in Case Number C226586,
8 State of Nevada versus Freddy Martinez. Let the record reflect the presence of
9 Defendant with counsel; counsel for the State. Absence of the jury. Ms.
10 Hamers, you wanted to make a record outside the presence. Go ahead.

11 MS. HAMERS: I do, Judge. Thank you. A few things that were
12 mentioned, a couple by Jose' Castillo when he testified and one by Bianca, that
13 I didn't want to call attention to while the jury was present.

14 Jose' said that Freddy was in jail and that there had been a
15 history of problems with Freddy. Bianca said that Freddy was high on drugs on
16 that day. I think that those statements prejudice the jury against Mr. Martinez.
17 Now that they've heard that, I think it violates his right to a fair trial and due
18 process, and I'd ask for a mistrial on that basis.

19 THE COURT: Well, we know that the item one that was brought up in
20 front of the jury is all B.S. I mean, if you have an objection, you make it, and I
21 will sustain it. But in both of those cases, I immediately stopped them,
22 admonished the jury and said this is relevant, and don't consider it, and I don't
23 think it has any effect on anything.

24 MR. BATEMAN: And we were trying -- I think through a lot of the
25 leading questions --

1 THE COURT: I mean, the drug thing is -- first of all, they don't even
2 know; and, secondly, it's a two-edge sword. It might help you, it might hurt
3 you if they thought that was the case, so --

4 MR. BATEMAN: Well, we were trying to lead through some of that.

5 THE COURT: Of course, and they were very difficult witnesses. And
6 you know what they're going to say because when it gets into Spanish, you
7 don't really understand the question, and you don't know what the answer was
8 until the Interpreter is saying it, and so you just do the best you can. So is that
9 a motion for mistrial?

10 MS. HAMERS: Judge, it is. And I am in no way insinuating, obviously,
11 the Prosecution was trying to do that, but that information was brought out in
12 front of the jury.

13 THE COURT: I think it's irrelevant. The motion for mistrial is denied.

14 MS. HAMERS: One other thing I feel compelled to mention, when we
15 were riding the elevator up on our way back from lunch, the juror who sits in
16 the second chair from the end, a woman who's wearing a green sweater,
17 turned to myself and Mr. Paulson and said, The lunch break went by very
18 quickly. And I told her that we weren't able to talk to her.

19 THE COURT: Perfect.

20 MS. HAMERS: That was the extent of that communication.

21 THE COURT: Appreciate your putting that on the record. That was
22 obviously a professional way to handle that, and I think -- you know, we
23 probably understand that the Chinese wall between the jury and us is a little
24 stricter than they understand it to be. I'm sure that casual comment was
25 meaningless. She was just trying to be pleasant, but you handled that very

1 professionally, and thanks for saying that. All lawyers should do that and put it
2 on the record so that later, if something comes up and it didn't get on the
3 record, you know, people can misinterpret. So I appreciate that.

4 MR. BATEMAN: Judge, can I put one thing on the record, briefly?

5 THE COURT: No, I just let public defenders do it because I like them
6 better.

7 MR. BATEMAN: I usually -- I don't have any --

8 THE COURT: What is it?

9 MR. BATEMAN: I had CSA Grover actually today bring all of these
10 packages in here that I've lodged with the Clerk of Court. It's actually
11 packages 1 through, I believe, 11, and they were actually kind of combined.
12 The reason I did that is most of them were booked by Detective Goddard who
13 can't come until tomorrow. He's also the detective that took the bucal swab
14 from the Defendant. So I could've had Grover get on the stand and say, I
15 brought them from the event -- the vault, but the Defense is being kind enough
16 to just stipulate to any issues as to that.

17 THE COURT: I thought we covered that earlier, but nobody has any
18 problem with chain of custody on this stuff; do they? And the one big box was
19 open in everybody's presence; right?

20 MS. HAMERS: That's correct. The only -- there were additional items
21 brought in a few minutes ago, and we also stipulate to chain of custody on
22 those. There's no problems there.

23 THE COURT: All right. We just won't even mention it. All right. Bring
24 them in. Let's dance.

25 [Jury enters the courtroom at 3:17 p.m.]

1 THE COURT: Ms. Hamers, Mr. Bateman, come up.

2 [Bench conference; not transcribed.]

3 THE COURT: Okay.

4 MR. BATEMAN: Could I have the Court's indulgence just one moment,
5 Judge.

6 MS. NYICOS: Okay.

7 THE COURT: Call your next witness, State.

8 MS. NYICOS: The State calls Shane Charles.

9 THE COURT: Shane Charles. Come up here, sir.

10 **SHANE ROBERT CHARLES,**

11 having been first duly sworn, testified as follows:

12 THE CLERK: Thank you. You may be seated.

13 THE COURT: State your name, Officer, and spell your name for the
14 court reporter.

15 THE WITNESS: Robert Shane Charles, R-o-b-e-r-t, S-h-a-n-e,
16 C-h-a-r-l-e-s.

17 THE COURT: Go ahead.

18 **DIRECT EXAMINATION**

19 **BY MS. NYICOS:**

20 Q Mr. Charles, how are you employed?

21 A With the Mesquite Police Department.

22 Q In what capacity?

23 A I'm a sergeant on patrol.

24 Q Now, directing your attention specifically to August 16th of 2006,
25 were you working that day?

1 A Yes, I was.

2 Q And were you dispatched to the Hockridge Condominiums?

3 A Yes, I was.

4 Q And are those located in Mesquite, Clark County, Nevada?

5 A That's correct.

6 Q Okay. And what was the nature of that call?

7 A We were told that there was a domestic in progress with a knife

8 involved.

9 Q And did you arrive at the Hockridge Condominium?

10 A Yes, I did.

11 Q What did you observe when you got there?

12 A I observed a white truck with someone getting in it, attempting

13 to drive from the parking lot, and we were receiving information at the same

14 time that our suspect might be getting into a truck to leave.

15 Q And the person you observed getting into a truck, do you see him

16 in the courtroom today?

17 A Yes, I do.

18 Q Would you please point to him and describe something he's

19 wearing.

20 A He's at that table with the white shirt on.

21 MS. NYICOS: Can the record reflect the I.D. of Defendant?

22 THE COURT: Yes.

23 MS. NYICOS: Thank you.

24 BY MS. NYICOS:

25 Q And what did you do when you received a call that your suspect

1 might be attempting to flee?

2 A I told the other officers about the truck that was leaving, and we
3 pulled in behind it and stopped it. Did a felony stop on the vehicle.

4 Q Now, you said felony car stop. What does that entail?

5 A It entails pulling out guns and making sure everyone's covered
6 and brought out at gunpoint.

7 Q How many people were involved -- were inside the truck?

8 A If I recall, three. Maybe four.

9 Q I think you need to sit closer to that microphone. And did the
10 Defendant exit the vehicle at that time?

11 A Yes, he did.

12 Q Okay. And at that point what did you do?

13 A I was the cover officer, so I just stood back and covered
14 everyone else.

15 Q Now, you said you originally came on the scene because your
16 call stated it was a domestic involving a knife. Did you later determine that
17 there was more to it than that?

18 A Yes, we did.

19 Q Okay. And how did you make that determination?

20 A We had a lot of witnesses telling us that it involved a victim
21 being raped and brought up against her will from Vegas.

22 Q Okay. Now, at this point knowing that there's some connection
23 to Las Vegas, would this be a Mesquite Police Department case?

24 A No, it wouldn't.

25 Q Okay. What did you do at that point?

1 A We called Las Vegas Metro and advised them of the situation to
2 have some people respond up.

3 Q And did Las Vegas Metropolitan Police Department respond up to
4 Mesquite?

5 A Yes, they did.

6 Q And you drove down here from Mesquite today; is that correct?

7 A Yes, I did.

8 Q How long is that drive?

9 A About 45 minutes to an hour.

10 Q And what interstate did you have to take to get down here?

11 A 15.

12 Q And is Interstate 15, to your knowledge, located entirely within
13 Clark County, Nevada?

14 THE COURT: Not the whole interstate, but that led from --

15 BY MS. NYICOS:

16 Q Well, the interstate that you had to travel today between
17 Mesquite and here, is that located here in Clark County, Nevada?

18 A That's correct.

19 Q Okay. And while you were waiting for Metro officers' arrival,
20 what did you do with respect to the Defendant and the alleged victim in this
21 case?

22 A We isolated him, took the Defendant to the station for
23 questioning and did what we could to comfort the victim. Got her settled
24 down. Took her to the hospital.

25 Q And which hospital would that be?

1 A That was Mesa View Hospital in Mesquite.
2 Q Now, when you made contact with the victim in this case, do
3 you recall her name?

4 A I don't.

5 Q Okay. Do you recall what her demeanor was like when you
6 made contact with her?

7 A She was very hysterical, crying. Real upset.

8 MS. NYICOS: Nothing further.

9 THE COURT: Any cross?

10 MS. HAMERS: Yes, Judge.

11 **CROSS-EXAMINATION**

12 BY MS. HAMERS:

13 Q Good afternoon. You said that you went out to Hockridge.
14 Originally that was based on a domestic battery with a knife involved; right?

15 A That's correct.

16 Q And then you got further information that there could've been
17 more involved?

18 A That's correct.

19 Q But you don't know what happened between Bianca Hernandez
20 and Freddy Martinez?

21 A Just what I was told.

22 Q Right. The impression you had just came from other people.
23 You certainly didn't witness anything that happened between the two of them?

24 A That's correct.

25 Q And I'm not saying no, you don't know where that truck was

1 going?

2 A No, I don't.

3 MS. HAMERS: That's all. Thank you.

4 THE COURT: Thanks, Sergeant.

5 THE WITNESS: Thank you.

6 THE COURT: Appreciate you coming down. I know it's a long trip.

7 Call your next witness.

8 MS. NYICOS: The State calls Lance Barr.

9 ***LANCE BARR,***

10 having been first duly sworn, testified as follows:

11 THE CLERK: Thank you. You may be seated.

12 THE COURT: Officer, state your name, and spell your name for the
13 court reporter, please.

14 THE WITNESS: Officer Lance Barr. Last name's spelling, B-a-r-r.

15 THE COURT: Okay. Go ahead.

16 ***DIRECT EXAMINATION***

17 ***BY MS. NYICOS:***

18 Q Officer Barr, how are you employed?

19 A Police officer for the City of Mesquite, Nevada.

20 Q And how long have you been employed there?

21 A Seven years, seven months.

22 Q Now, directing your attention specifically to August 16th of 2006,
23 were you working that day?

24 A Yes.

25 Q And were you dispatched at some point to the Hockridge

1 Apartments -- I mean, condominiums?

2 A Yes.

3 Q And those are located in Mesquite, Nevada?

4 A Yes, they are.

5 Q Okay. Now, what did you observe when you got there?

6 A We were told that there was a domestic battery in progress and
7 that the perpetrator had a knife and had already assaulted someone and that
8 they were attempting to escape in a white pickup truck.

9 Q Did you observe that white pickup truck at the apartment?

10 A Yes.

11 Q At the condominium?

12 A Yes.

13 Q And how many occupants were in that pickup truck?

14 A As far as I remember there were -- including the suspect, there
15 were three others.

16 Q And you say "the suspect." Do you see the suspect in the
17 courtroom today?

18 A I do.

19 Q Can you please point him out.

20 A Wearing the white shirt sitting at defendant's table.

21 THE COURT: The record will reflect identification of Defendant Freddy
22 Martinez.

23 BY MS. NYICOS:

24 Q And what was this truck doing when you observed it?

25 A Attempting to flee the scene.

1 Q By "the scene," do you mean the condominium complex?

2 A Yes.

3 Q Okay. And what did you do at that point?

4 A Already being forewarned that the -- as of the description of the
5 pickup, we put our lights and sirens on -- sirens on and stopped the vehicle.

6 Q And did you have the occupants of the vehicle exit?

7 A Yes.

8 Q And did that include the Defendant?

9 A Yes.

10 MS. NYICOS: Okay. Judge, can we just have an ongoing permission
11 to approach?

12 THE COURT: Sure.

13 MS. NYICOS: Thank you.

14 BY MS. NYICOS:

15 Q Did you come to search the Defendant?

16 A Yes, I did.

17 Q And when you searched the Defendant, what did you find?

18 A I found a dark colored folding knife.

19 Q Okay. Showing you what's been marked as State's Proposed
20 24-E, do you recognize that?

21 MS. NYICOS: And just for the record, that envelope is open; it was
22 never sealed; correctly -- correct?

23 THE WITNESS: [Nods head].

24 THE COURT: That's actually what could happen, but there was a
25 whole bunch of pieces of evidence. They put them in this big box. It was

1 sealed. It's been kept in the evidence vault intact. It was brought in here by
2 an evidence custodian, and both sides were good enough to stipulate that we
3 can save a half hour of testimony by agreeing to that, that there was no
4 tampering with the evidence. Go ahead, Officer.

5 THE WITNESS: This would be the knife that I removed from suspect's
6 front pocket, right front pocket.

7 BY MS. NYICOS:

8 Q Okay. And do you recognize that?

9 A Yes.

10 MS. NYICOS: Move for admission.

11 THE COURT: Any objection?

12 MS. HAMERS: No objection.

13 THE COURT: Admitted.

14 [State's 24-E admitted.]

15 MS. NYICOS: And just so the record is clear, 24-E, that would
16 encompass the envelope the knife is located in and the knife?

17 THE COURT: Yeah. We're considering both 24-E.

18 MS. NYICOS: Okay.

19 BY MS. NYICOS:

20 Q Could you please remove the knife from the envelope.

21 A [Doing so.]

22 Q Now, could you please describe what you're holding in your
23 hand.

24 A This is a dark colored folding knife with an approximate
25 three inch blade.

1 Q Okay. And is it -- what would you describe it as? Is it like a
2 switchblade?

3 A It's a -- it's a folding knife that's probably got a quick release.
4 It's on a spring, looks like.

5 Q Is it functional?

6 A Yes.

7 Q Now, after searching the Defendant and locating this knife, what
8 did you do at that point?

9 A After I disarmed him, I took this knife and put it in my pocket.

10 Q Okay. And did you eventually hand that off to a Las Vegas
11 Metropolitan Police Department officer?

12 A Yes.

13 Q Okay. Why did you put it in your pocket?

14 A For safekeeping.

15 Q Okay.

16 A Maintain chain.

17 Q Okay. I'm sorry, what?

18 A To maintain chain of evidence.

19 Q Did you have any other evidence in your possession that you
20 needed to turn over to Metro?

21 A No.

22 Q And this was the only thing?

23 A Yes.

24 Q Okay. Do you recall which detective you turned it over to?

25 A Detective Scott Kavon.

1 MS. NYICOS: Okay. Nothing further.

2 THE COURT: Anything else? Any questions?

3 MS. HAMERS: Just a couple, Judge.

4 **CROSS-EXAMINATION**

5 **BY MS. HAMERS:**

6 Q You said that when you arrived at this apartment -- these
7 apartments, there was a truck attempting to leave?

8 A Yes.

9 Q You don't know where that truck was going, do you?

10 A No.

11 MS. HAMERS: That's all. Thank you.

12 THE COURT: Okay. Thanks, Officer. Appreciate your time. I know
13 it's a long trip down. Thank you very much. Call your next witness.

14 MR. BATEMAN: Judge, the issue we spoke at the bench, I think it's
15 been resolved, so we're going to call William McPheeters.

16 THE COURT: Okay. If you folks have resolved it, it's okay with me.
17 Come on up, sir. Come up here and stand and raise your right hand.

18 **WILLIAM MCPHEETERS,**

19 having been first duly sworn, testified as follows:

20 THE CLERK: Thank you. You may be seated.

21 THE COURT: Sir, will you tell us your name, and spell your name for
22 us.

23 THE WITNESS: William McPheeters.

24 THE COURT: Spell McPheeters, please.

25 THE WITNESS: M-c, capital P-h-e-e-t-e-r-s.

1 THE COURT: Okay. Go ahead, Mr. Bateman.

2 MR. BATEMAN: Thank you.

3 ***DIRECT EXAMINATION***

4 ***BY MR. BATEMAN:***

5 Q Sir, I'm going to direct your attention to August 16th of last year.
6 Do you remember that day?

7 A Well, somewhat, yeah.

8 Q Okay. Where were you working on that day?

9 A At the Glendale Sinclair station.

10 Q Okay. And when you say "Sinclair station," is that a gas
11 station?

12 A Yes, it is.

13 Q Are there any other businesses that are attached or close by the
14 gas station?

15 A Yes.

16 Q What are they?

17 A Well, there's a restaurant, convenience store, bar and motel.

18 Q Okay. And you say "Glendale." Can you tell me about where
19 that is in relation to Mesquite and Las Vegas.

20 A It's about 50 miles north of Las Vegas on I-15 and 30 miles
21 south of Mesquite.

22 Q Okay. That's still here in Clark County?

23 A Yes.

24 Q All right. And were you working on that day at the Sinclair gas
25 station?

1 A Yes.

2 Q Were you like a clerk or what were your job duties?

3 A Cashier.

4 Q Okay. What time did you get to work that day?

5 A Oh, I was probably working 6:00 to 2:00.

6 Q 6:00 a.m.?

7 A Yes.

8 Q Okay. Now, from your -- do you normally work inside a building
9 or are you outside?

10 A Well, I have to do both.

11 Q And are the gas station -- or the pumps near where you would be
12 able to observe what was going on?

13 A Yes.

14 Q All right. On that particular day, did an individual catch your eye,
15 I guess, early -- in the early morning hours?

16 A Yes.

17 Q And how did that come about? How was it that this individual
18 caught your eye?

19 A Well, I watch people all day long.

20 Q Yes.

21 A You know, it's part of the job. And, I don't know, he just
22 seemed to catch my attention.

23 Q What was this individual who caught your attention doing?

24 A Well, first, he was just walking over by the restaurant, and then
25 it looked like he appeared to go inside the restaurant. And after that, he came

1 over to the station and talked to one of the people getting gas in the station.

2 Q Can you describe this individual?

3 A The one he talked to or him?

4 Q The one that you were observing, that went into the restaurant
5 and came back out.

6 A Hispanic male wearing a ball cap, I think a t-shirt. Nothing really
7 outstanding.

8 Q Did the individual have anything in his hands?

9 A Not that I noticed right off the bat.

10 Q Eventually did you notice something?

11 A A gas can.

12 Q Gas can? Was it a red gas can?

13 A I think so.

14 Q Okay. And what was this individual doing when he approached
15 the gas pumps?

16 A Well, he walked up and talked to a Hispanic male and got some
17 gas. Went over to a white car and put it in. And a few minutes later he came
18 back over and talked to another Hispanic male at a different pump and got
19 some more gas and put it in, and after that point, I lost him.

20 Q Okay.

21 A You know, he could've driven off or whatever.

22 Q How far away was the white car parked from the gas pumps?

23 A 20 yards.

24 Q Is that unusual if you were getting gas from your experience?

25 A Yeah.

1 Q Did you see anybody -- did you pay close attention to the white
2 car at all?

3 A No, not really.

4 Q Okay. About how long did this event take place where this
5 individual had gone twice to gas pumps?

6 A I'd say the whole thing, maybe over ten to 15 minutes.

7 Q This individual never came in to like pay for gas; is that correct?

8 A No.

9 Q What ultimately was it about this situation that kind of caught
10 your eye or caught your attention?

11 A Well, it wasn't the fact that he came up and asked one person
12 for gas. It's that he came back and asked a second one.

13 Q And then ultimately after the second time that he received some
14 gas in this container and put it in the car, is it at that point that this individual
15 left?

16 A Yeah.

17 Q Did you see which way he went or did you pay --

18 A No.

19 Q Okay. At some point did police officers come and talk to you
20 about maybe what had happened earlier in the day?

21 A Yes.

22 Q Was that later that day?

23 A Yes.

24 Q And did you describe what you had just told us?

25 A Yes.

1 Q Okay. Do you think you could identify this person again?
2 A It's doubtful.
3 Q Did you -- you didn't get a good look at their face?
4 A I don't think I ever got a look at his face.
5 Q Okay. But you said it was a Hispanic male?
6 A Yes.
7 Q Do you remember the type of car that you would've observed,
8 the car that he was putting gas in?

9 A It was just a smaller white car.
10 MR. BATEMAN: Pass the witness, Judge.
11 THE COURT: Any questions?
12 MS. HAMERS: Yes.

13 **CROSS-EXAMINATION**

14 **BY MS. HAMERS:**

15 Q Good afternoon. How far was this white car from the gas
16 pumps? Can you estimate in feet?

17 A In feet? About 60, 70 feet.

18 THE COURT: Well, he just said 20 yards.

19 MS. HAMERS: Oh, did he say 20 yards? I'm sorry. I missed that.

20 **BY MS. HAMERS:**

21 Q And you said this was all over in about 10 to 15 minutes
22 approximately?

23 A Yes.

24 Q How many customers go through there in 10 to 15 minutes?

25 A It can vary greatly.

1 Q On this day do you remember if it was more than just those two?

2 A Oh, yeah, there were other customers who came and went.

3 Q More than five?

4 A Probably.

5 Q More than ten?

6 A Again, I'm -- I'm not sure.

7 Q Sure. We're just estimating. Would it maybe be safe to say five
8 to ten other people? Not 20?

9 A Like I said, it would be hard to say.

10 Q Okay. But other people?

11 A Yeah.

12 Q Now, you said that it was unusual that more than one person
13 was approached and asked for gas; is that correct?

14 A No. The part that was unusual is he got gas from one, then
15 came back and got gas from another.

16 Q Okay. What was unusual about that?

17 A Well, we have people that do that on occasion there, but usually
18 they get gas from one person, and they're gone.

19 Q Okay. So it was unusual to ask more than one person for gas?

20 A Yes.

21 THE COURT: No, no. He's saying "get," and you're saying "ask." I
22 think it's probably usual that they might ask ten people before they get one of
23 them to give them gas, but to get two people to give him gas is what he's
24 saying is unusual.

25 THE WITNESS: Yes, sir.

1 THE COURT: There you go.

2 BY MS. HAMERS:

3 Q So you're saying once you've already received some gas in that
4 gas can, it's unusual to then ask another person?

5 A Yes.

6 Q Why is that unusual?

7 A Because usually when it happens, they get their gas, and they're
8 gone.

9 MS. HAMERS: Okay. Nothing further. Thanks.

10 THE COURT: Thank you, sir. Appreciate your time. Yes, yes.

11 JUROR NUMBER 10: Can I ask a question or --

12 THE BAILIFF: Hang on.

13 THE COURT: The way you do it is give it to Lisa.

14 JUROR NUMBER 10: I'm not going to ask it here.

15 THE COURT: That's all right. Just give it to Lisa, and she'll give it to
16 me, and if it's under the rules allowed, I'll ask it. If it's not, I'll tell you later
17 why, and that's exactly the way you do it.

18 Fair question. I'm not sure everybody here knows the layout of
19 the whole complex. He wants to know where the car was relative to the
20 restaurant. You said it was 20 yards from the gas pumps. Was it right up next
21 to the restaurant?

22 THE WITNESS: It was parked right next to the southern wall of the
23 restaurant.

24 THE COURT: Okay. And is that an entrance, exit wall or just kind of a
25 dead wall?

1 THE WITNESS: It's a dead wall.

2 THE COURT: Okay. Thank you. You're excused. Thanks for coming
3 down. Appreciate your time.

4 THE WITNESS: Thank you.

5 THE COURT: Call your next witness.

6 MR. BATEMAN: Your Honor, the State calls Kristina Paulette. May I
7 approach the Clerk?

8 THE COURT: Sure.

9 MS. HAMERS: Mr. Bateman, is this your DNA witness?

10 MR. BATEMAN: Yes.

11 ***KRISTINA PAULETTE,***

12 having been first duly sworn, testified as follows:

13 THE CLERK: Thank you. You may be seated.

14 THE COURT: State your name, ma'am, and spell your name for the
15 court reporter.

16 THE WITNESS: Kristina Paulette, K-r-i-s-t-i-n-a, P-a-u-l-e-t-t-e.

17 THE COURT: Okay. Ms. Paulette, you have a very nice soft voice, but
18 this lady over here is doing interpreting, and it's very important that she is able
19 to hear you clearly as well as the jurors. So try to speak up. You can either
20 kind of pull that microphone to you or you can try to project.

21 THE WITNESS: Okay.

22 THE COURT: Thanks.

23 ***DIRECT EXAMINATION***

24 ***BY MR. BATEMAN:***

25 Q Ma'am, what do you do for a living?

1 A I'm a forensic scientist with the Las Vegas Metropolitan Police
2 Department's forensic lab.

3 Q Are you assigned to a particular department in the forensic lab?

4 A I'm in the biology DNA detail.

5 Q And how long have you worked as a criminalist in the forensic
6 lab?

7 A I've been with Metro for almost two years.

8 MS. HAMERS: Judge, we'd be -- we'd offer to stipulate to her
9 qualifications and that Mr. Martinez's DNA was found on Bianca Hernandez.

10 THE COURT: Okay. I understand you may want to bring that out a
11 little bit so that the jury can understand the import of that, but do you have any
12 problem accepting the stipulation that she is a scientist, she is qualified to take
13 and analyze DNA?

14 MR. BATEMAN: No, not at all.

15 THE COURT: All right. Then we'll save about 20 minutes going
16 through her background and qualifications because everybody is going to say
17 okay, she knows her job. She's capable of doing her job, and she's capable of
18 giving the testimony she's going to give her today, and we'll have an
19 abbreviated testimony as to what she did and what it means. Go ahead

20 BY MR. BATEMAN:

21 Q In this particular case were you asked to analyze some DNA
22 samples?

23 A Yes, I was.

24 Q Okay. And just briefly, and I know it's a big topic, can you just
25 briefly describe for the jury what generally DNA is.

1 A DNA is a substance found in the body that allows genetic
2 information to be passed down from generation to generation. Each of us has a
3 unique DNA pattern except for identical twins, and half of our DNA comes from
4 our moms and the other half comes from our dads.

5 Q So what is the process that you go through in comparing DNA
6 samples to see if they either match or maybe identify an individual?

7 Q Okay. The first thing we do is to release the DNA from the cells
8 from any substance that we took a cutting from, and then we -- once we
9 release the DNA, we quantitate the DNA to see how much is there. We make
10 lots and lots of copies of the DNA, which allows a tiny amount of DNA to be
11 recognized by our instruments. And then the instruments separate these DNA
12 fragments by their size.

13 Now, depending on the size of the DNA fragment, each DNA
14 piece is assigned a number. And since we're looking at 15 specific areas of the
15 DNA, we end up with 15 pairs of number -- numbers that make up our profile,
16 and this is because half of our DNA comes from our dads and half of our DNA
17 comes from our moms.

18 Q Okay. So how does DNA technology allow you to make an
19 identification?

20 A Basically, each -- since each of our profiles are unique, we can
21 compare DNA found from an evidentiary sample and compare it to a known
22 sample taken from a particular individual and see if these numbers, indeed,
23 match.

24 Q And do you -- well, let me go forward on this. Were you asked
25 to examine in this particular case a sexual examination kit with a bucal swab?

1 A Yes, I was.

2 MR. BATEMAN: Okay. May I approach, Your Honor?

3 THE COURT: Sure. Why don't you tell the jury what a bucal swab is
4 and what a sex exam kit is.

5 BY MR. BATEMAN:

6 Q Okay. Let's start with -- well, what I'm going to show you is
7 State's Proposed Exhibit 21 and see you recognize this evidence bag and
8 what's contained in the evidence bag.

9 A Yes, I do. This is the sexual assault examination evidence from
10 Bianca Hernandez.

11 Q Okay. Now, you're saying that that's basically what's in this
12 evidence bag; is that correct?

13 A Yes, it is.

14 Q How do you know that that's in this evidence bag?

15 A Because those are the items that I examined and my initials and
16 date of when I seal the evidence are on there.

17 Q So when you receive this bag per the request to analyze DNA, is
18 this basically how you receive the bag to do the analysis?

19 A Yes, it is.

20 Q Okay. Now, there's a red label up here and a blue label down
21 here.

22 A Uh-huh.

23 Q Can you tell me what the difference is.

24 A The red label on top is what's sealed by the officer who actually
25 packaged the evidence and booked it, and the bottom seal is the seal that once

1 I open it up and examine the evidence, I sealed that back up when I was done.

2 Q Okay. Now, tell me -- just like the Judge asked -- what exactly
3 is a sexual examination kit.

4 A A sexual examination kit is taken by a sexual assault nurse
5 examiner, and essentially it can contain things such as a vaginal swab. It
6 contains possibly rectal swabs, oral swabs, any kind of swabs that may have
7 been taken from an alleged sexual assault from a victim. And also they have a
8 reference standard in there from the victim as well.

9 Q What is a reference standard?

10 A A reference standard is a standard -- a known standard from the
11 person so that you know that that is their actually DNA profile if we run that
12 swab.

13 Q Was that contained in this particular --

14 A Yes, it was.

15 Q Okay.

16 THE COURT: You mean, they have something that gives you DNA of
17 Bianca Hernandez so that you know that when you look at something it isn't
18 her? Is that what you're saying?

19 THE WITNESS: Right. Correct.

20 BY MR. BATEMAN:

21 Q Okay. Basically to rule her out?

22 A An elimination standard, yes.

23 Q Okay.

24 A Essentially.

25 Q The sexual assault kit in this particular case, was there any items

1 of potential DNA that you actually used in the process of making an
2 identification?

3 A Yes, I examined a vaginal swab.

4 Q Okay. Now, when you say you examine it, what exactly do you
5 do?

6 A I took a cutting from the vaginal swab. After -- I tested it
7 presumptively to see that there was semen present, and then once I did that, I
8 went through the entire DNA process and ended up with a DNA profile.

9 Q And you said you can get that from semen?

10 A Yes.

11 Q Okay. And then you actually found some DNA; is that correct?

12 A Yes, I did.

13 Q And did you find Bianca's DNA?

14 A I found DNA that is consistent with Bianca as well as DNA that is
15 consistent with Freddy Martinez.

16 Q Now, you say Freddy Martinez. How do you know it's consistent
17 with an individual by the name of Freddy Martinez?

18 A Because when I compared his reference standard to the DNA
19 profile found on the vaginal swab, it was match.

20 Q You say "his reference standard." Did you get that from
21 basically a bucal swab --

22 A Yes, I did.

23 Q -- that was provided to you? What exactly is a bucal swab?

24 A A bucal swab is a swab taken from the cheek. They basically
25 just take a swab and rub it on the inside of the cheek.

1 Q Okay. I'm going to show you what's been marked as State's
2 Proposed Exhibit 20. It appears to be also an evidence bag. Is this the bucal
3 swab that you received to do your analysis in this particular case?

4 A Yes, it is.

5 Q And it also has the red label and the blue label just like the other
6 evidence bag; correct?

7 A Correct.

8 Q When you received it, it just had the red label?

9 A Yes.

10 Q And then this blue label at the bottom, it's your sealing of the --

11 A Yes, it is.

12 Q Of the bag; is that correct? Okay. Now, the bucal swab, was it
13 actually found in this particular bag?

14 A Yes, it was.

15 Q Okay. So you analyzed the DNA from this particular bucal swab
16 with what you found in the vaginal bucal swab in the sex assault kit; is that
17 correct?

18 A Correct.

19 Q Okay. And what ultimately was your conclusion?

20 A My conclusion was that the DNA -- there's actually -- when we
21 do a DNA extraction of sexual assault samples, we do -- there's sort of two
22 fractions to the DNA extract because you're dealing with sperm cells and
23 you're dealing with epithelia or skin cells from the victim. And so what we do
24 is an enrichment process, which makes one of the fractions have the epithelia
25 cells and one of the fractions has the sperm cells. So the fraction with the

1 sperm cells, the DNA profile matched Freddy Martinez's bucal swab.

2 Q And can you say to what -- is there a percentage or that you in
3 the forensic lab used to determine how likely it is that this is an individual's
4 DNA that had been left in the sexual assault kit?

5 A Yes. We use the stat 1 in 600 billion. It actually is greater than
6 that, but that is our cutoff.

7 Q And so, in your opinion, would the DNA that was in the sexual
8 assault kit and on the vaginal bucal swab be the same DNA that was found on
9 the bucal swab in State's Proposed Exhibit 20 of Freddy Martinez?

10 A Correct.

11 MR. BATEMAN: Your Honor, I'd move State's Proposed Exhibits 20
12 and 21. I don't believe I have any other questions.

13 MS. HAMERS: No objection.

14 THE COURT: No objection. They'll be admitted.

15 [State's 20 and 21 admitted.]

16 THE COURT: Ms. Hamers.

17 MS. HAMERS: Thank you, Judge.

18 **CROSS-EXAMINATION**

19 **BY MS. HAMERS:**

20 Q Good afternoon.

21 A Hi.

22 Q You keep saying the sex assault sample. Just so the jury is clear
23 and we're all clear, there's no special sex assault DNA; right?

24 A No.

25 Q This is just saying that his DNA was present in the sperm that

1 was found in the sample?

2 A Correct.

3 Q And that could happen whether there was consensual sex or
4 whether there was a sex assault?

5 A Correct.

6 Q Okay. And is it possible that other DNA was present as well or
7 was that something you would've seen? And excuse my ignorance on this.
8 Sometimes you see a report come back that says, you know, there's this DNA,
9 and there's that DNA, and then there's unknown DNA. Is that something that
10 existed here or were those two DNA's present and that's it?

11 A There were no foreign -- there was no indication of foreign DNA
12 present other than Bianca Hernandez and Freddy Martinez.

13 Q And if there was other DNA present, would that have shown up
14 or would you have needed some other sample to test?

15 A We would've expected to see it, and if that were the case, we
16 would've asked for other comparison standards if there was perhaps another
17 suspect or another victim in the case.

18 Q So do we know one way or another whether or not someone
19 else's DNA was present?

20 A There -- I don't have any other elimination standards. All I know
21 is that in the sperm fraction, it matches, the major profile matches the DNA
22 from Freddy Martinez. And in the epithelial fraction, the major profile matches
23 Bianca Henderson [sic], and I don't have any other reference standards to
24 compare --

25 THE COURT: You said "Henderson." Do you mean Hernandez now?

1 THE WITNESS: Hernandez. I'm sorry.
2 THE COURT: Okay.
3 THE WITNESS: There could be --
4 BY MS. HAMERS:
5 Q Without some other --
6 A Without other standards, there's no way to tell if there's any
7 other DNA there.
8 MS. HAMERS: That's exactly what I wanted to know. Thank you
9 THE COURT: Anything else?
10 MR. BATEMAN: No, Your Honor.
11 THE COURT: Thank you, Ms. Paulette. Thank you very much.
12 You're excused. Call your next witness.
13 MS. NYICOS: Judge, I think there's a juror question.
14 THE COURT: Wait a minute. Hold on just a second. Did you do any
15 investigation of any sample of blood or any other substance that was taken
16 from the knife that might be related to this case?
17 THE WITNESS: No, I did not.
18 THE COURT: The only DNA examination you were asked to do and
19 that you did was to compare the sperm sample taken from the vaginal area of
20 Ms. Hernandez with the known profile of Freddy Martinez and the elimination
21 sample of Ms. Hernandez; is that right?
22 THE WITNESS: Correct.
23 THE COURT: Okay. You got a question? There's your answer.
24 Thank you. You're excused. Call your next witness.
25 MS. NYICOS: The State calls Arturo Chavez.

1 THE COURT: Come on up, Officer.

2 **ARTURO CHAVEZ,**

3 having been first duly sworn as a witness, testified as follows:

4 THE CLERK: Thank you. Please be seated.

5 THE COURT: State your name, please, Officer, and spell your name for
6 the court reporter.

7 THE WITNESS: My name is Arturo Chavez, A-r-t-u-r-o. Last name of
8 C-h-a-v-e-z.

9 THE COURT: Go ahead.

10 **DIRECT EXAMINATION**

11 **BY MS. NYICOS:**

12 Q Mr. Chavez, how are you employed?

13 A With the Las Vegas Metropolitan Police Department..

14 Q And in what capacity?

15 A I am a sexual assault detective.

16 Q And how long have you been so employed?

17 A With Metro, 16 years now, and with the sexual assault unit, a
18 little over five years now.

19 Q And as a sex assault detective, can you just briefly tell me what
20 your job duties entail.

21 A Primary duties is to investigate any sex crimes, sexual assaults,
22 loitering with a purpose -- I mean, excuse me. I was working Vice.

23 Q Okay.

24 A Exploitation of children, anything to do with sexually related
25 crimes.

1 Q Okay. And that would encompass child victims as well as adult
2 victims?
3 A That is correct.
4 Q Okay. Now, directing your attention specifically to August 16th
5 of 2006, were you on duty that day?
6 A Yes, I was.
7 Q And do you work with a specific partner all the time or how does
8 that generally work?
9 A The majority of the time, yes, I do have a partner.
10 Q And what's your partner's name?
11 A Detective Goddard.
12 Q Is that G-o-d-d-a-r-d?
13 A That is correct. Yes.
14 Q And was he working with you that day?
15 A Yes, he was.
16 Q Now, where were you called out to?
17 A We were called out to Mesquite, Nevada.
18 Q Were you also aware of an initial call that was made down in Las
19 Vegas, Nevada, earlier that day?
20 A That is correct. Yes, there was.
21 Q Okay. And what was the nature of that call?
22 A It was the kidnapping.
23 Q Now, do you respond to kidnappings?
24 A No, robbery detail does.
25 Q Okay. So you were called out to respond to Mesquite, Nevada,

1 and why is that?

2 A After they apprehended the subject that kidnapped the victim,
3 she stated she was sexually assaulted --

4 MS. HAMERS: Judge, I'm going to object to the conclusion that
5 someone was kidnapped --

6 THE COURT: Alleged. Alleged.

7 MS. HAMERS: -- and also to the continued use of the term "victim."

8 THE COURT: Alleged kidnapping.

9 THE WITNESS: Alleged kidnapping.

10 THE COURT: Okay.

11 BY MS. NYICOS:

12 Q So it wasn't until later that day up in Mesquite that there was
13 any knowledge that this was sexually related crime?

14 A That is correct.

15 Q Okay. And did you respond to Mesquite, Nevada?

16 A Yes, we did.

17 Q Where did you go first when you got up there?

18 A First we went to the hospital.

19 Q And do you recall the name of that hospital up there?

20 A Mesa View, I believe it was, Mesa View Hospital.

21 Q And who did you come into contact with at Mesa View Hospital?

22 A I made contact with two individuals at the time, Bianca, the
23 victim --

24 THE COURT: Alleged victim.

25 THE WITNESS: Alleged victim. Excuse me. And also the -- her

1 boyfriend.

2 BY MS. NYICOS:

3 Q And her boyfriend, did he have a name?

4 A Yes, Jose'.

5 Q Now, when you made contact with Bianca, was this in an exam
6 room?

7 A Yes.

8 Q Okay. And to your knowledge, had she already been examined
9 by a nurse or was she waiting for one?

10 A She was waiting for one.

11 Q Okay. And what was her demeanor when you spoke to her?

12 A She was crying. She had red eyes, puffy eyes, upset. But at the
13 same time she was calm in a way.

14 Q And was she able to give you an account of the events that
15 occurred that day?

16 A Yes, she did.

17 Q And was this interview that you conducted with Bianca, was this
18 in English or in Spanish?

19 A It was done in Spanish.

20 Q And do you speak Spanish fluently?

21 A Yes, I do.

22 Q Okay. Now, is that your primary language?

23 A Yes, it is.

24 Q Okay. And --

25 THE COURT: You don't want us to get you an interpreter here to help

1 you with your questions?

2 THE WITNESS: No, no, I'll be fine. Thank you.

3 BY MS. NYICOS:

4 Q All right. So after speaking with Bianca, where did your
5 investigation take you next?

6 A After speaking with Bianca?

7 Q Yes.

8 A After I got her statement --

9 Q Uh-huh.

10 A -- we then -- Detective Goddard and myself then proceeded to go
11 to the -- Mesquite's jail, detain facility.

12 Q Okay. And did you come into contact with anyone you see in
13 the courtroom today at the Mesquite holding facility?

14 A Yes.

15 Q Okay. Could you point to him and describe something's he's
16 wearing.

17 A I think he's wearing a white shirt, and he has a brown -- a
18 multicolor brown tie.

19 THE COURT: The record will reflect identification of the Defendant
20 Freddy Martinez.

21 MS. NYICOS: Thank you.

22 BY MS. NYICOS:

23 Q And did you conduct an interview with Freddy Martinez at the
24 Mesquite holding facility?

25 A No.

1 Q Okay. Did you later conduct an interview with Freddy Martinez?

2 A Yes, we did.

3 Q Okay.

4 A Yes, I did.

5 Q Where did that interview take place?

6 A That occurred here in Las Vegas, Nevada.

7 Q Now, when you made contact with the Defendant in the
8 Mesquite holding facility, what did you do with him at that point?

9 A At that point we put him in the car, in the backseat of the car. I
10 sat with him in the backseat of the car, at which time I did read him his rights
11 in English and in Spanish. He speaks both languages. And then we drove out
12 here to Las Vegas. And once we got here to Las Vegas, we took him to our
13 sexual assault office, and, once again, we interviewed him there, and, once
14 again, read him his rights in Spanish and in English.

15 Q Okay. Now, you said you read him his rights?

16 A Correct.

17 Q Are those found in -- do you read those from a card or do you
18 recite those from memory?

19 A On him we did it -- I did it on memory.

20 Q And what are those rights?

21 A He has a right to remain silent. Anything you say can and will be
22 used against you in a court of law. He has a right to an attorney. If you can't
23 afford an attorney, one will be appointed to you at no cost. Once you wish to
24 stop all interviews, all interviews stop.

25 Q Okay.

1 A Do you understand your rights.
2 Q And you said you gave him those rights in English and in
3 Spanish?
4 A In Spanish, correct.
5 Q In Spanish?
6 A In Spanish also.
7 Q Okay. And twice?
8 A Twice.
9 Q So the first time in the car before you brought him back to Las
10 Vegas?
11 A Correct.
12 Q And the second time at the sex assault detail office?
13 A That is correct.
14 Q Now, the second time you gave him those rights at the sex
15 assault detail office, did he indicate to you that he understood those rights?
16 A Yes.
17 Q Did he indicate to you that he wished to speak with you?
18 A Yes.
19 Q And did you then interview the Defendant?
20 A Yes, I did.
21 Q Okay. And just as an overview, what did the Defendant tell
22 you?
23 A Basically he stated that he had been having a sexual relationship
24 with Bianca for the last 16 years, that he was very in love with her. That about
25 a month ago she moved out of the house or out of the trailer. She -- he also

1 said that he suspected that she was dating someone else. That one day he
2 was walking, he was going to use a payphone, and he observed Bianca going
3 into this residence where she at the time was living.

4 He stated that -- that that morning -- the early morning hours he
5 was waiting for her to come out. At approximately 5:00, 5:30 in the morning,
6 she came out about three times. She came outside. She started the car, like
7 warming up the car. She came in and out.

8 Q Did he tell you if he had something in his hand while he was
9 waiting?

10 A He stated that when he walked up to the car to Bianca, he took
11 out a knife.

12 Q What else did he tell you?

13 A He said he saw Bianca the third time by the car. He had a knife
14 in his hand. He walked towards the car. He approached the car where Bianca
15 was at. At this time her -- he wasn't sure if it was her boyfriend or friend came
16 out. Pointed this -- the knife at him, and he then walked towards the victim,
17 told the victim to get in the car --

18 MS. HAMERS: Judge, same objection. I'd ask that the witness be
19 admonished to quit saying the word "victim."

20 THE WITNESS: I do. Bianca.

21 THE COURT: I think he understood the alleged victim. We've already
22 made that determination, but it's kind of a natural thing to do. Go ahead.

23 THE WITNESS: Okay.

24 BY MS. NYICOS:

25 Q Okay. And he got in the car with Bianca?

1 A He got in the car with Bianca, correct.

2 Q What did he tell you happened once he got in the car with
3 Bianca?

4 A Well, first he stated that he sat in the passenger seat and made
5 her drive. He had a knife and pointed a knife at her thigh. He then had her
6 drive just around the corner. He then switched, told her to get in the backseat.
7 He then jumped into the driver's seat. He then proceeded to drive.

8 He was asking her or telling her, You're mine. You're going to be
9 -- you know, you're going to be with me, tell me the truth. Do you love me or
10 are you with somebody else? He did admit that they got into an altercation or
11 -- in the vehicle. That she did not want to put on her seatbelt. That he did
12 grab her seatbelt and try to put it on her so that she wouldn't get out of the
13 car. At one point I asked if there was any fighting because she had a red mark,
14 and he did state that -- he said, No, well, maybe I did, but it was during the
15 altercation.

16 Q Over the seatbelt?

17 A Over the seatbelt, correct.

18 Q Okay. Did he also talk to you about stopping the car along the
19 I-15?

20 A Yes, he did.

21 Q And what did he tell you about that?

22 A And he did proceed to go to Mesquite because he had a job up
23 there in Mesquite, and they were driving to Mesquite. He also said that she
24 wasn't going to see her son, that her son was going to stay where -- at her
25 mom's -- at his mom's house, and her brother was going to take care of her

1 son. And then they stopped at the side of the road, and he admitted to say
2 that he had sexual relations with Bianca.

3 Q Okay. Did he tell you whether or not this was a consensual
4 sexual relation they had?

5 A He said he took it. He took it because there was -- she was his.
6 And there was several times I told him, Why would you force yourself? Why
7 would you force someone to do something like that? He goes, She's mine.

8 Q And that's what he said to you?

9 A She's mine, correct.

10 MS. NYICOS: Court's indulgence. Pass the witness.

11 THE COURT: Cross?

12 MS. HAMERS: Yes.

13 **CROSS-EXAMINATION**

14 **BY MS. HAMERS:**

15 Q Good afternoon.

16 A Good afternoon.

17 Q The interview you had with Mr. Martinez was recorded; right?

18 A Yes. That's correct.

19 Q Well, let me try to start at the beginning. You first come into
20 contact with Mr. Martinez in Mesquite; right?

21 A Correct.

22 Q And you do -- actually do a number of interviews in this case?

23 A Correct.

24 Q With Jose', Bianca, Mr. Martinez?

25 A Martinez.

1 Q Anyone else?
2 A No.
3 Q Okay. Do you interview Bianca before you interview Mr.
4 Martinez?
5 A Yes. That's correct.
6 Q Do you interview Bianca after you interview Jose'?
7 A No, no, that's correct. I interviewed Bianca before Mr. Martinez.
8 Q Before Mr. Martinez?
9 A Correct.
10 Q Jose' Castillo, was that before or after --
11 A I'm sorry.
12 Q That's okay.
13 A Jose' was first, Bianca was second and then Martinez.
14 Q Okay. That's exactly what I was getting at. It's the order I had
15 in mine as well. When you interview Bianca, she tells you she doesn't have a
16 sexual relationship with Mr. Martinez; right?
17 A That is correct.
18 Q And she does admit to you that she was hiding Jose' from
19 Freddy?
20 A That is correct.
21 Q And when you're talking to her, when she talks about Jose', she
22 calls him the man that lives with the family?
23 MS. NYICOS: Judge, I'm going to object. This is all hearsay. He's
24 asking her what Bianca told him. I mean, she's asking him what Bianca told
25 him.

1 MS. HAMERS: Judge --

2 THE COURT: Go ahead.

3 MS. HAMERS: -- I believe it's an inconsistent statement. She testified
4 that he was her boyfriend and what she told police when she was interviewed
5 was different.

6 MS. NYICOS: She admitted to telling the police that on cross, so it's
7 not really inconsistent.

8 MS. HAMERS: It is.

9 THE COURT: Overruled. I'll let her get it in.

10 BY MS. HAMERS:

11 Q She told you that he was the man that lived at the apartment
12 where she lived with a family?

13 A At first, correct, and then during the middle of the interview, she
14 admitted it was her boyfriend.

15 Q When you asked her directly, He's your boyfriend; right?

16 A That is correct.

17 Q Okay. So before that she had said, He's the man that lives with
18 the family?

19 A That's correct.

20 Q And she told you that she went to live with a family when she
21 left the trailer with Freddy?

22 A That's correct.

23 Q She didn't tell you that she went to live with her boyfriend Jose'?

24 A Correct.

25 Q Okay. And she said that she had done that four months prior to

1 that August 16th date?

2 A Three to four months.

3 Q Three to four months?

4 A Correct.

5 Q A matter of months. Certainly not years prior?

6 A Correct.

7 Q Okay. You also asked her about why she was at Freddy's house
8 the previous Monday; right?

9 A Correct.

10 Q Because you and -- I'm kind of assuming by taking her statement
11 and Jose's statement that that was based on information you had from Jose'?

12 A Which part? I'm sorry.

13 Q Well, you -- in your interview with Ms. Hernandez, you start
14 talking to her about why she was at Freddy's house on a previous occasion.

15 A Why she drove --

16 Q She doesn't bring that up.

17 A Why she drove by, correct.

18 Q Right.

19 A Right.

20 Q But she doesn't bring that up, you do. So I'm assuming that was
21 based on information you had from the previous interview with Jose' since he
22 was interviewed first?

23 A That is correct, yes.

24 Q Okay. So he had given you that information and then you ask
25 Ms. Hernandez about it?

1 A That is correct, yes.

2 Q Okay. And she tells you she wasn't going there. She was just

3 driving by; right?

4 A That is correct.

5 Q And that Freddy is just a brother to her?

6 A Sees him as a brother, correct.

7 Q Okay. In this case did you ultimately end up impounding

8 clothing?

9 A Detective Goddard did.

10 Q Detective Goddard did?

11 A Correct.

12 Q Did you see that clothing?

13 A Detective Goddard is the one that -- that did the clothing.

14 Q Okay.

15 A The clothing.

16 Q Are you aware of what the condition of that clothing was?

17 THE COURT: Are you talking about the clothing of the alleged victim or

18 the clothing of the Defendant?

19 MS. HAMERS: I actually think that they impounded both.

20 THE COURT: Yeah. Well, I mean, the answer may be different --

21 MS. HAMERS: I'll ask him specifically --

22 THE COURT: There you go.

23 BY MS. HAMERS:

24 Q The alleged victim, are you aware of the condition of that

25 clothing?

1 A No. Detective Goddard did that.

2 Q Are you aware of the condition of it, is what I'm asking now? I

3 realize he impounded it, but you were working on the case.

4 A No.

5 Q Okay. Mr. Martinez's clothing?

6 A What he was wearing, yes. Oh, actually, no --

7 Q You weren't aware of that?

8 A He was -- what he was wearing, actually, it was in a bag. I do

9 apologize. It was in a bag in a locker in Mesquite.

10 Q Okay.

11 A Detective Goddard -- Detective Goddard was the primary

12 investigator in this case.

13 Q Sure.

14 A Okay.

15 Q So you weren't aware of the condition of that clothing?

16 A Correct.

17 Q Okay. Now, you interview Jose' Castillo; right?

18 A Correct.

19 Q And he told you that he had seen --

20 MS. NYICOS: Objection; hearsay.

21 THE COURT: Why isn't that hearsay?

22 MS. HAMERS: Well, Judge, it's really not for the truth. It's his

23 investigation and why he did what he did and why he asked these people the

24 questions he did.

25 THE COURT: As a result of talking to Jose' Castillo, why did you --

1 MS. HAMERS: Well, okay.

2 BY MS. HAMERS:

3 Q As a result of your conversation with Jose', why were you
4 asking Bianca these questions about her relationship with Freddy?

5 A As a detective it makes you prove or disprove a case.

6 Q Okay. But you were asking questions not about this specific
7 incident, but about her relationship in total with Mr. Martinez; is that correct?

8 A That is correct.

9 Q And why is that?

10 A To gain knowledge, to gain knowledge of the relationship.
11 What's the relationship or was there a relationship? Just to gain knowledge at
12 this time.

13 Q Okay. But after she had initially denied that there was a
14 relationship, you continued to question her about that; didn't you?

15 A Correct, yes.

16 Q In fact, you told her, It's okay. You don't have to feel like you
17 have to hide that?

18 A Correct.

19 Q Was there a reason that you asked those additional questions?

20 A Based on experience, there's, you know, numerous times where
21 a person -- they do have a sexual relationship with a person, but they don't
22 want to mention anything due to the fact that maybe they won't believe them
23 later on. And that's why I was trying to get more information.

24 Q You just wanted to make sure she was being honest with you?

25 A That is correct.

1 Q Okay. Now, when you interview Mr. Martinez, he tells you he
2 went there to talk to Bianca about the truth; right?
3 A Correct.
4 Q And he doesn't say he went there to sexually assault her, does
5 he?
6 A No.
7 Q He tells you he had the knife to scare Jose'; right?
8 A He had a knife, correct.
9 Q And he told you that he had the knife to scare Jose'?
10 A He said he used it to scare Jose', correct.
11 Q Okay. And that Jose' ran away when he pulled a knife on him?
12 A Correct.
13 Q Okay. And he told you that he took her on the trip to Mesquite
14 to make Jose' mad, to make Jose' come after him?
15 A Correct, at one point he did say that.
16 Q Okay. And he admitted to being with Ms. Hernandez that day?
17 A Yes, he did.
18 Q He admitted to getting in a car with her?
19 A Yes, he did.
20 Q He admitted to having a knife?
21 A Yes, he did.
22 Q He admitted to going all the way to Mesquite?
23 A Yes, he did.
24 Q He admitted to having sex with her?
25 A Yes, he did.

1 Q But he told you that the sex was not forced, nor without her
2 consent?

3 A No, he -- he said that he took it.

4 Q And you recorded this statement; right?

5 A Yes.

6 MS. HAMERS: Court's indulgence.

7 BY MS. HAMERS:

8 Q I'm going to show you a transcript of that interview. Do you
9 prefer to see it in English or Spanish?

10 A English.

11 Q English, I would assume. I'm going to show you what we've
12 now labeled page 12, a transcript. I just want you to read down here to
13 yourself.

14 A Which part? Okay. From this line? Martinez?

15 Q Yes, just to yourself.

16 A Okay. [Reading document]. Okay.

17 Q Thanks. After reading that, is it true that he told you that it was
18 neither forced nor without her consent?

19 A Yes. At first he did, correct.

20 Q Okay. And you testified today -- I want to try to get your words
21 right here -- that he several times said -- that several times when he was asked,
22 Why would you force that, why would you do that? And he said he took it
23 because she was his; is that right?

24 A Correct.

25 Q I mean, that's what you testified to today?

1 A Correct.

2 Q Do you have a copy of this same transcript in front of you that I
3 just handed you?

4 A Yes, I believe so.

5 Q Okay. Can you show me where in that transcript that sentence.

6 A Maybe look on page 14. Here's, Something made me --
7 something made me take --

8 MS. HAMERS: Sorry. Court's indulgence. It's my fault. I'm trying to
9 find the right page here.

10 THE WITNESS: Okay.

11 THE COURT: Detective, what page and what line?

12 THE WITNESS: It's page number 14. It's the middle of the page under
13 Martinez.

14 THE COURT: What's it say?

15 THE WITNESS: It says, For her to forgive me, forgive me. What we
16 did in the backseat, it happened without -- you know, it being my intention, but
17 I don't know. I don't know. Something in me made me take it. Forgive me for
18 that, but --

19 BY MS. HAMERS:

20 Q Where it says, That it wasn't -- and it wasn't -- that everything
21 that went on that day wasn't against her, that I am sorry and to forgive me. I
22 showed it to her and returned her keys to her car, and she was driving. It is
23 not harm that I want to do, but always with her first.

24 A Right after that, correct. If you go -- when you past Logandale
25 from there, what happened, the next line, and then you have Martinez.

1 Q So you passed Logandale from there, what do we know?
2 A And then right after that you have Martinez.
3 Q For her to forgive -- to forgive what we did in the backseat. It
4 happened without it being my intention, but I don't know. I don't know.
5 Something in me made me take -- forgive me for that, but, is that what you're
6 referring to?
7 A Correct.
8 Q Okay. And so when you testified today that he several times,
9 when you asked him, Why would you force yourself on someone, and he said,
10 Because she was mine to take, that's what you're referring to?
11 A No. There's another portion somewhere here, Why did you force
12 yourself on her. Also there is a --
13 Q Let's go ahead and take them one step at a time.
14 A Okay.
15 Q Where do you see, Why did you force it on her?
16 A There -- which page?
17 Q Please.
18 A I don't know. [Looking through document].
19 MS. NYICOS: And, Judge, just so the record is clear, we're all fumbling
20 around because this is not a normal transcript. This has no line numbers and
21 no pages numbers.
22 THE COURT: Okay.
23 THE WITNESS: I believe it's by number 13, we start talking about -- I
24 started mentioning it, Why did you take her by force?
25 THE COURT: What was his response?

1 THE WITNESS: He said she stole both, in the car and her. Page 13.

2 Okay. What I'm telling you, you cannot take -- you know, take by force or --

3 BY MS. HAMERS:

4 Q And that's you?

5 A Pardon me?

6 Q So you're quoting right now? That's you?

7 A That's what I'm saying, correct. [Reading]. That's what I'm
8 telling you. You cannot take, you know, by force. That's what I'm telling you.
9 Officer, it's nothing against her. It's nothing, and she doesn't tell me the truth.
10 I want to find out the reactions. Okay. Yes. Like I'm mad. If you are
11 gentleman, and you are with a woman. When a man has sexual relations with
12 a woman, you have to react when another rooster comes and takes a woman
13 when she is with you. He has to respond, react. Has to -- what, what?
14 What's happening here?

15 Q And I'm going to stop you.

16 A [Reading]. And I did it, but he did not react. I'm sorry?

17 Q What -- is there something in there that you're saying says that
18 he forced himself on her? That's what I'm trying to find out.

19 A I think you couldn't -- you can't force a woman, and he's the one
20 that's saying, you know, it's -- he does not say he -- it just says he has nothing
21 against her. It's nothing, and she doesn't tell me the truth. I just wanted to
22 react.

23 Q Okay. So you --

24 A And I'm the one that said, Why did you force her? He goes, I
25 didn't want to -- to --

1 MS. NYICOS: Judge, to make this just a little bit easier, perhaps we
2 can mark one and just move to admit it.

3 THE COURT: Do you want it in?

4 MS. NYICOS: That way we can just read it -- read from it without -- I
5 mean, it's Defendant's statement.

6 THE COURT: It's up to Ms. Hamers. Do you want it in or no?

7 MS. HAMERS: Judge, that's fine. I just don't know if there will be -- if
8 we have a little need to do anything with it before doing that.

9 THE COURT: So do you want to figure that out tonight and decide
10 tomorrow?

11 MS. HAMERS: Yes. So if we can just reserve those issues.

12 THE COURT: You got it. Just be ready first thing in the morning.

13 BY MS. HAMERS:

14 Q But I would still like to ask this officer -- I'm sorry. It's
15 detective?

16 A Yes, ma'am.

17 Q I'm sorry, this detective. So that he doesn't say there that he
18 forced her. Where is it that he says, Because it was mine to take? I believe
19 you testified today he said that several times.

20 A He said it -- correct. He said, She was mine. Maybe I read it in
21 the officer's report.

22 Q And let's talk about that because I know exactly what you're
23 referring to, or at least I think I do, in the arrest report. You didn't write that
24 report; right?

25 A No.

1 Q Officer Goddard --
2 A Goddard.
3 Q -- did?
4 A That is correct.
5 Q But he certainly did it with your input?
6 A Correct, yes.
7 Q And you certainly reviewed it after that?
8 A Correct. After he typed it, correct. Yes.
9 Q And you reviewed it after that?
10 A Yes.
11 Q And if there was something inaccurate, you would've told him
12 that?
13 A That is correct.
14 Q And he wouldn't have included it in his report?
15 A That is correct. Yes.
16 Q And in that report he talks about this very recorded interview
17 that you did with Mr. Martinez?
18 A Yes, he does.
19 Q And what he says is, Detective Chavez asks him, and in quotes,
20 Why did you rape her? He replied, in quotes, I was mad?
21 A That's correct.
22 Q Right? That's on page six and seven of that report?
23 A That is -- that is correct.
24 Q But that question and answer is actually nowhere in that
25 interview, is it?

1 A Not in this interview. That is correct.

2 Q Okay. And when Officer -- is he a detective as well?

3 A Yes.

4 Q I'll quit calling him officer.

5 A Yes.

6 Q When Detective Goddard put down in the report, he puts in, in
7 particular, about what was done during this interview in Las Vegas with Mr.
8 Martinez; correct?

9 A Correct.

10 Q But it's not in there?

11 A Not at this statement. This is not all there, correct.

12 MS. HAMERS: Okay. Court's indulgence.

13 BY MS. HAMERS:

14 Q And you already read a little bit of this, so I'm kind of going
15 backwards. Mr. Martinez told you something about when a man is with a
16 woman and another rooster comes around, he should do something about it?

17 A Correct.

18 Q And he's actually -- what he's talking about or in the context of
19 your interview when he's saying that, he's talking about Jose' should react
20 when he goes and takes off with Bianca?

21 A Correct.

22 Q Okay. And when he says that he told Bianca that she wasn't
23 returning to Las Vegas and that someone else was going to take care of her
24 son, he tells you that he told her that so that she would tell him the truth?

25 A Correct. Correct. He mentioned that.

1 MS. HAMERS: Court's indulgence. That's all, Judge.

2 THE COURT: Anything else?

3 MS. NYICOS: Yes, please, Judge.

4 **REDIRECT EXAMINATION**

5 **BY MS. NYICOS:**

6 Q Now, the interview you have in front of you, the transcript, okay,
7 is that a Las Vegas Metropolitan Police Department certified transcript?

8 A No, it's not.

9 Q Okay. And that was actually one that was provided to you from
10 me that I had gotten from the Defense; is that correct?

11 A That is correct.

12 Q All right. And you reviewed this transcript yesterday and today;
13 correct?

14 A That is correct.

15 Q Did you notice things that were perhaps not included in this
16 transcript that you distinctly recall being said in this interview?

17 A Yes, I do.

18 Q Okay. And a normal Metropolitan Police transcript that we
19 would normally work with, there's places where there's a parenthesis, and it'll
20 say "inaudible," and there's places where there will be a long dash to indicate
21 that some things were being said that weren't being picked up?

22 A That is correct. Yes.

23 Q Do you see anything like that in this transcript?

24 A Not like that. I see little dots.

25 Q Ellipses?

1 A I see little dots in between wordings or sentences.

2 Q Okay. Now, in particular, is there something that sticks out in
3 your mind that you distinctly recall having occurred during this interview that is
4 not in this transcript?

5 A Yes, I do.

6 Q Okay. And what is that?

7 A One of them is that, why did he pull her out of the car or
8 something of that sort because I remember that I asked him why did he pull her
9 out of the car, and I phrased it no, But I said, we -- yes, we saw it and when
10 you pulled her out of the car. And he said, I was just angry. I was mad. And
11 that's what I recall that happened. It was in the interview that I don't see here.

12 Q Okay. And also with respect to the segment that Ms. Hamers
13 read to you out of the arrest report, do you recall that conversation taking
14 place?

15 A I remember he said he was mad.

16 Q Now, with the exception of those two things, is this overall a fair
17 and accurate --

18 A Overall --

19 Q -- statement?

20 A -- it's pretty accurate, yes. There's --

21 Q Now, this interview was conducted in Spanish as well; correct?

22 A That is correct.

23 Q Did you conduct any interviews in English?

24 A No.

25 Q Okay. Now, how many interviews have you conducted in

1 Spanish throughout your career?

2 A Wow. I can't give a number, to be honest. It's a lot.

3 Q Are most of your interviews done in Spanish?

4 A It seems that way.

5 Q Okay. Now, in your experience, are there sometimes language
6 barriers?

7 A Absolutely.

8 Q Things that possibly get lost in translation when this gets put
9 down into English?

10 A Absolutely.

11 Q Now, Ms. Hamers asked you about questioning Jose' Castillo and
12 questioning Bianca regarding her relationship with Mr. Martinez?

13 A Yes.

14 Q And Mr. Martinez also related to you that he had had a sexual
15 relationship with her for over the span of 16 years?

16 A Yes. That's correct.

17 Q And you said that you ask these questions to determine whether
18 a relationship actually exists or not?

19 A That is correct. Yes.

20 Q Based on your conversations with Mr. Castillo, with Bianca
21 Hernandez and with Freddy Martinez, do you yourself believe a relationship --

22 MS. HAMERS: Judge, I'm going to object.

23 THE COURT: Sustained.

24 MS. NYICOS: Okay.

25 THE COURT: It's up to the jury to decide if there was and what effect

1 that would have on the testimony.

2 MS. NYICOS: Okay. That's fine.

3 BY MS. NYICOS:

4 Q During your conversation with Mr. Martinez, the Defendant,
5 however, were you under the impression that a relationship was still ongoing?

6 A Absolutely not.

7 Q And what was Mr. Martinez telling you that led you to believe
8 that?

9 A That there was no relationship?

10 Q That there -- that it was over?

11 A He says she -- she moved out, you know, a month ago, that he
12 wanted to find out if she was seeing someone else. I think the day before that
13 incident or -- I'm sorry. Three days before that incident, I mean, he saw
14 another man with Bianca, that he followed them in his car, pulled in front of
15 them to approach --

16 MS. HAMERS: I'm going to object at this point.

17 MS. NYICOS: Okay.

18 THE COURT: Well, there's nothing to object to there, but that will be
19 the end of that testimony. Go ahead.

20 MS. NYICOS: That's fine. Okay.

21 BY MS. NYICOS:

22 Q And could you have done some more investigation to determine
23 whether or not there once was a relationship?

24 A I mean, there's always more. There's always more we -- yes.

25 Q Okay. That's fine. Did you do that in this case?

1 A No.

2 Q And why is that?

3 MS. HAMERS: Judge, I'm going to object. She's going to the -- she's
4 trying to get the same exact conclusion as to his opinion as to whether or not
5 there was a relationship.

6 MS. NYICOS: Judge, that's not what I'm doing.

7 THE COURT: No, no. Overruled this time. It is different, saying, Why
8 didn't you do further investigation?

9 BY MS. NYICOS:

10 Q Why didn't you investigate into this relationship further?

11 A Because it was clear to me that there was no relationship -- at
12 least for about a month, if there was a relationship. I mean, definitely there
13 was no relationship. She had a relationship with someone else.

14 Q Would the existence of a relationship between the Defendant and
15 Bianca change your opinion as to how to charge the case?

16 A Absolutely not.

17 THE COURT: You're talking about a relationship a long time ago

18 MS. NYICOS: Any.

19 THE COURT: -- or a relationship on August 16th?

20 MS. NYICOS: Any.

21 MS. HAMERS: Judge, I'm going to object. That's his opinion of
22 whether or not that changes what the charges are.

23 THE COURT: Overruled. That's different than his opinion on -- as to
24 who's truthful or whether or not a person is guilty of the charges. Go ahead.
25 You can answer, Officer.

1 THE WITNESS: Those charges would definitely apply, I mean, in this
2 case for -- for what we had.

3 MS. NYICOS: Okay. Nothing further.

4 THE COURT: Anything else?

5 MS. HAMERS: Sorry, Judge.

6 THE COURT: Well, it has to relate to this.

7 MS. HAMERS: It does.

8 **RECROSS-EXAMINATION**

9 **BY MS. HAMERS:**

10 Q Ms. Nyicos asked you about this unusual transcript that you've
11 been shown in court today and that Ms. Nyicos gave you a copy of; correct?

12 A Correct.

13 Q Unusual in the sense that it wasn't prepared by Metro?

14 A It is different, correct. Unusual.

15 Q Okay. And usually when there's a recoded interview, a
16 transcript is prepared by Metro?

17 A That is correct.

18 Q And in this case, even when the report was written, it says,
19 Refer to transcript anticipating that Metro would prepare one?

20 A That is correct.

21 Q But Metro didn't prepare one in this case; is that correct?

22 A I don't know.

23 Q Were you the lead detective on this case?

24 A No, I was not.

25 Q And so is that information that Mr. Goddard would know?

1 A That is correct.

2 Q And what you're saying is, that there was information in that
3 interview where you actually asked Mr. Martinez, Why did you rape her? And
4 he said because he was mad, and that somehow didn't make it into the
5 transcript?

6 A No, I said -- I recall, Why were you mad when you raped her? He
7 said, I was mad. He goes, Yes, I saw -- we were able to see that you pulled
8 her out of the car mad. And he said, Yes, I was mad.

9 Q Of the -- so --

10 A Of that -- I can't recall exactly the words, what was said --

11 Q If I played that interview for you, would it refresh your
12 recollection as to exactly what was said?

13 A Absolutely.

14 MS. HAMERS: Okay. I'd ask to do that at this time.

15 THE COURT: It's in Spanish; right?

16 MS. HAMERS: It is in Spanish, and I have a transcript in Spanish he
17 could look at. I don't know any other way to do it at this point if he's going to
18 say it's not in the transcript.

19 THE COURT: Well, is it the case that there are spots in the
20 transcription where what was said wasn't loud enough or wasn't clear enough
21 that it couldn't come through?

22 MS. HAMERS: That's not my understanding.

23 MS. NYICOS: It's my understanding.

24 THE COURT: What does the dot, dot, dot mean?

25 MS. HAMERS: I'm sorry?

1 THE COURT: You said that in the transcript there are places where
2 there are just a bunch of dots in between words or sentences. Is that true?

3 MS. HAMERS: Okay. Yeah, there are -- there are dots.

4 THE COURT: What does that mean? Does that mean that there is
5 something there, but they couldn't understand what it is?

6 MS. HAMERS: I can't speak for what exactly that means. I mean, I
7 think he could tell me if he listened to the interview whether or not there's
8 something there that's not being picked up. If he's saying, Yeah, that's what
9 was said there, and now we can't hear it on the interview --

10 THE COURT: Okay. Why don't we have him do it tonight. Why don't
11 have him listen --

12 MR. BATEMAN: May we approach?

13 THE COURT: Yes, sir.

14 [Bench conference; not transcribed.]

15 THE COURT: Okay. You know, we're not going to have you sit here
16 while he goes through a tape in Spanish for some period of time. What we're
17 going to do is direct him -- he can listen to it or they can all listen to it together
18 or they can get an interpreter and figure it out on their time and not yours. And
19 then we can ask a few questions in the morning so we can sort of clear up any
20 misunderstanding. With that in mind, he's excused now; is that right?

21 MS. NYICOS: For now, yes.

22 THE COURT: But we need him back at 9:00 tomorrow?

23 MS. NYICOS: 9:00 tomorrow.

24 THE COURT: All right. Now, do you have any other -- is that okay,
25 Detective?

1 THE WITNESS: That's okay.

2 THE COURT: Okay. Thanks. You're excused, but don't leave
3 because these lawyers are going to need to get with you and kind of define
4 what needs to be done. They don't want you to work all night, but we need to
5 have you do some work tonight. Now, do you have any other witnesses
6 today?

7 MS. NYICOS: No, Judge, he would've been the last one for the day.

8 THE COURT: Okay. What have you got? A couple tomorrow?

9 MS. NYICOS: One, possibly two, tomorrow.

10 THE COURT: And then the Defense. Okay. Well, this is about where
11 we expected to be. We sort of expected to be here tonight. The State has one
12 or two witnesses tomorrow. I'm sure the nurse who can't be here today and
13 the Defense. But we're every bit of halfway or more in the case because
14 picking a jury and doing opening statements takes a little longer than reading
15 the instructions and doing closing statements, and we're a little more than half
16 the witnesses. So we're just fine on time in terms of being done exactly when
17 we are supposed to. So that said, we'll get out just a little bit early tonight.

18 Again, don't talk about the case with each other or anybody else.
19 Please, please, please. When you go home and they want to know what's
20 going on, just say, It's a sexual assault case. I swore that I wouldn't talk about
21 the details. Tomorrow night I'll tell you everything I know, but give me a break
22 tonight.

23 Don't read, watch or listen to any report on the case. I'm sure
24 there's none. There's no reporters in here. I keep a close eye out for that. So
25 if you want to read the paper and have a cup of coffee in the morning, don't

1 worry that you're going run across something. If you do, just skip it, but that
2 isn't going to happen. Please keep an open mind until all the evidence is in.
3 Have a nice night. You'll put -- yes, sir.

4 JUROR NUMBER 10: Do we leave these here?

5 THE COURT: Yeah, you can leave that stuff and your badges on your
6 chair. Lisa will take charge of it. She will have it on your chair when we get
7 together tomorrow. We'll pick up at 9:00 tomorrow.

8 Why don't we start earlier? Well, the truth is that, while I'm in
9 trial on one case, my job is to manage about a thousand cases in the
10 courthouse. Each judge has about a thousand they manage. So from 8:00 till,
11 you know, 9:00, 10:00, whatever length of time it takes, we do pretrial issues
12 and post-trial issues on cases. Usually anywhere from ten to 50 in the
13 morning, and usually it takes us till 9:30 or so.

14 As it is tomorrow, we only have three or four, and it's going to
15 be very quick at 8:30, but I'm going to make the lawyers be here early so that
16 we can argue about the jury instructions and not waste your time when that
17 comes around. So if we get you here at 9:00, we should be able to sail right
18 through other than lunch and get this case to you mid to late afternoon.

19 Okay. Have a nice evening. We'll see you promptly at 9:00.
20 Give yourself a little extra time because the elevators are lousy in this building.
21 They're leaving, Lisa. If you'll take charge of them.

22 [Jury exits the courtroom at 4:35 p.m.]

23 [Out of the presence of the jury.]

24 THE COURT: Okay. The record should reflect that the jury has exited.
25 Anything else to be on the record?

1 MS. HAMERS: Yes, Judge, we should make a record about the witness
2 who testified, Mr. Artheris [phonetic]. Mr. Paulson spoke to him, so I'll let him
3 make a record on that.

4 THE COURT: Go ahead, Ron.

5 MR. PAULSON: That's true, Judge. We learned that during the
6 break --

7 THE COURT: In fact, before we start, let's start this: Right after lunch
8 Lisa came to me and said, I saw one of our jurors -- I believe it was Number 9 --
9 making chitchat with a person and said, Who are you or something. Are you a
10 witness in the case? And he said yes, and she was concerned. So I brought
11 everybody to the bench and said, What do you want to do? And Mr. Bateman,
12 said, Well, it's not a real important witness. If you want, we won't call him.
13 That will eliminate the problem.

14 Everybody sort seemed that that was okay, so we did nothing,
15 and we went back with that understanding. Then two witnesses down the
16 road, the representation was, We've worked this out, and it's okay to call
17 them. Now, Mr. Paulson, we're then to you.

18 MR. PAULSON: That's correct, Judge. I went out to the hallway and
19 spoke to Mr. McPheeters. I asked him if he, indeed, had a conversation with
20 one of the jurors. He informed me that as far as he was concerned, the juror
21 didn't know that he was a witness. He had -- he didn't really know or didn't
22 indicate to me that he had any idea that she was a juror in this particular case.

23 THE COURT: That's why we have them wear a red badge. Maybe we
24 need to have some lights around it.

25 MR. PAULSON: He said that that their conversation simply consisted

1 of him asking if it was as cold in this room as it was out in the hallway. She
2 indicated yes. They had a brief conversation about Las Vegas because he was
3 from a little further north. That was the extent of the conversation. I was
4 confident that they never discussed anything to do with this particular case,
5 and there wasn't any --

6 THE COURT: So you were relating the issues, and you told Mr.
7 Bateman, and we put the witness on?

8 MR. PAULSON: That's correct.

9 THE COURT: Okay. Well, I think, again, I appreciate the
10 professionalism of you guys. I mean, this is the way you handle it. When we
11 have something that comes to our attention that could be untoward, you
12 honestly share it with everybody and decide how to come up with a solution
13 that's practical and works, and I think that was a reasonable solution.

14 I also think this: He said virtually nothing, so if we would've left
15 him off, it wouldn't have made a whip bit of difference in the trial. He saw a
16 guy that he can't identify that was Hispanic approach somebody twice and get
17 gas and put it in a white car on the same day that this occurred. So it added
18 nothing and detracted nothing. So how do we handle this? I'm sure it
19 wouldn't have made a whip bit of difference. Thank you. Anything else?

20 MS. HAMERS: No, Judge.

21 THE COURT: Okay. I gave you what I think is my best last set of
22 instructions after we've had a couple submissions by everybody. So let's get
23 together at 8:45. We'll do the instructions. We'll be ready at 9:00. We'll put
24 this officer back on unless you guys agree that you don't need him. If you
25 don't need him, you don't need him, but I want Kathleen and you guys to get

1 together with the officer and make sure that you have instructions to what you
2 need, what you want him to do, whether you want to be present, how you
3 want to handle it so we don't get tomorrow at 9:00 with a jury here and we
4 say, Well, Judge, he needed to do this, that and the other.

5 So you're driving the train, Ms. Hamers. Whatever you want him
6 to do. If you want to be there; if you want to have a Spanish-speaking
7 investigator from your office there. However you want to do it to ensure that
8 we get the best testimony we can. You orchestrate it, but let's make sure
9 everybody's clear on what's going to happen so we don't waste the jury's
10 time.

11 MS. HAMERS: Okay.

12 THE COURT: He'll go at 9:00, and then we'll go with the nurse, and if
13 you have something else, fine. I would expect we need your witnesses here by
14 a little earlier than 9:30. The nurse ain't going to take long.

15 MS. HAMERS: A couple things.

16 THE COURT: Yeah.

17 MS. HAMERS: I have -- based on what happens today, I have a couple
18 more instructions to submit. I can do that probably by ten after 5:00 today. I
19 can send them to you and to Ms. Nyicos, so we can still be ready to deal with
20 those tomorrow morning.

21 THE COURT: Perfect. You fax them over. When I get into work at
22 5:45 in the morning, I will -- that was a joke. I don't get in till 6:00. When I
23 get in in the morning, I'll look at them and see if they're good to go. If they're
24 good to go, I'll put them in the set. If they're not, you know, you can
25 obviously make a record, and we'll be ready to go at 8:45.

1 MS. HAMERS: And -- okay. So as far as the detective and the
2 interview on the tape, he's going to go home and watch it. He'll pick out --

3 THE COURT: Here's what's happening: You and Ms. Nyicos and he
4 are going to go outside, and you're going to reach some agreement on exactly
5 what you want done and whether you want somebody there or you don't want
6 somebody there and what you want to do in the morning. We're going to try
7 to get him on and off in a few minutes at 9:00 in the morning. So you guys go
8 out and figure out what you want.

9 MR. BATEMAN: Ron and I don't have to be a part of this; do we?

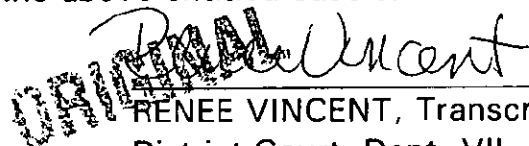
10 THE COURT: Well, I mean, at least one counsel -- at least one counsel
11 from each side. You can have two. You can have an investigator. Do
12 whatever you want, but Ms. Hamers is driving the train. I want her to be
13 satisfied that he can either point out or say, I can't hear this or do whatever. I
14 mean, she's entitled to kind of get into that. So let her sort of decide how it's
15 going to go, and then let's make sure everybody is on the same page of how
16 it's going.

17 MS. HAMERS: Thank you, Judge.

18 THE COURT: Okay. Have a good night. We'll see you at 8:45.

19
20 [Proceedings adjourned at 4:42 p.m.]

21
22 ATTEST: I hereby certify that I have truly and correctly transcribed the
23 audio/video proceedings in the above-entitled case to the best of my ability.

24 
RENEE VINCENT, Transcriber
District Court, Dept. VII
25 (702) 671-4339

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