

1 privates?

2 A No. I did not.

3 Q As her Grandma and having lived with her did you understand what she
4 meant by privates?

5 A Yes. I did.

6 Q And what was that?

7 A That it was her -- her personal area, her vagina, her -- it was the same
8 word I taught my kids.

9 Q So you didn't ask any follow-up questions. You just went back
10 downstairs.

11 A Yes.

12 Q And then who was there, downstairs, when you went down there?

13 A Nicole was with my husband David.

14 Q What were they doing?

15 A He was trying to comfort her.

16 Q At some point then does Nicole go back up with the girls?

17 A Yes.

18 Q What did you all decide to do based on what she had told you?

19 A I called Megan immediately because I knew she was going home.

20 Q From your house?

21 A Yes. And I asked her to come back.

22 Q Did you tell her why you wanted her to come back or did you just tell
23 her to come?

24 A I did not. I did not want to tell her over the phone.

25 Q So you just said you got to come back?

1 A Mm-hmm.

2 Q Anyone else? Did you call anyone else to come back to the house?

3 A No. I did not.

4 Q How about Michael? Where was he?

5 A I don't know if he came in the process or came by. I don't -- I don't

6 remember calling Michael myself. I remember specifically calling Megan.

7 Q At some point --

8 A But he --

9 Q -- is Mi -- is --

10 A He did come. Yes.

11 Q Okay. So possibly your husband did or --

12 A Mm-hmm.

13 Q Somehow he gets back at --

14 A Yes.

15 Q -- the house also.

16 A Yes.

17 Q When Megan gets back to the house, what happened?

18 A Well I -- Michael was there and I asked him to take the boys because

19 I -- because Megan is very emotional and I knew that his was going to be very hard.

20 And so I didn't want the boys to see or hear what I had to tell her.

21 Q Then what happened?

22 A I told her what Jocelyn told me.

23 Q And what was her reaction?

24 A She screamed and said he better never have hurt my boys. And she

25 cried.

1 Q At some point did Jocelyn have an opportunity to speak with Megan?

2 A Yes. Nicole had brought her downstairs. I can't remember how long
3 she'd been there. And we asked her if she would be okay to tell Megan, she called
4 her Mae-Mae, what she had told us and she did. She told her.

5 Q Did she tell her similar things that -- or the similar that she told you?

6 A Exactly. Almost exactly the same. But I remember.

7 Q Do you remember if Megan asked her any kind of follow-up questions
8 to that?

9 A No. She did not. She was speechless. She just, you know.

10 Q Okay. Does your -- well, did someone at some point throughout the
11 night call law enforcement?

12 A I believe that Nicole did.

13 Q Did anyone come to the house and respond to that call that night?

14 A No. They did not.

15 Q So how did the following days unfold?

16 A I know that there was a call made that night. I want to say that we
17 didn't hear back from anybody the following day. And then Nicole had to make a
18 follow-up call but I don't remember how long that was.

19 Q Okay. The next or within the following days are you in any way
20 involved with taking Jocelyn to see a doctor?

21 A No. I was not involved with that at all.

22 Q How about going down to law enforcement to conduct an interview or
23 participate in an interview?

24 A No. I was not involved in that at all. And I want to correct; I did go to
25 the hospital with them. I did ride along because we had Katelyn.

1 Q Okay.

2 A But I did not go to the interview with law enforcement.

3 Q Okay. And I probably should clarify. So the next day you go to the
4 hospital. Is that right?

5 A I believe it was the next day.

6 Q Sometime; a day or two.

7 A Right.

8 Q And was that at the urging of law enforcement?

9 A Yes.

10 Q Do you remember which hospital you went to?

11 A I believe we went to Sunrise.

12 Q Were you in any way involved in the interview with the nurse or with the
13 examination itself?

14 A Not that I remember.

15 Q Did you just hang out with Katelyn?

16 A Yes.

17 Q Now you say that you did not go to any interview with Jocelyn. Did you
18 yourself meet with a detective and have your own interview?

19 A On the phone.

20 Q And how long was that after this?

21 A It was about a week after.

22 Q The detective -- do you remember his name was Detective Hatchett?

23 A Hatchett. Mm-hmm.

24 Q So he called you and did he tell you this is a re -- I'm going to record

25 this --

1 A Yes. He did.

2 Q -- is a recorded interview?

3 A Yes. He did.

4 Q Where were you when that interview took place?

5 A At my home.

6 Q Before these events can you describe what Jocelyn was like as a child?

7 A She was very outgoing, very loving, friendly, she liked to be around
8 people.

9 Q Has there been any change in her since July of 2010?

10 MR. BECKER: I'm going to object and ask to approach.

11 THE COURT: Okay.

12 [Bench Conference Begins]

13 MR. BECKER: I think what the State is doing is trying to bolsterate [sic] the
14 witnesses' credibility. I mean, I don't know if the State is anticipating that we're
15 going to have testimony about change in demeanor and so forth. But it seems like
16 these questions are very irrelevant at this time and it's done solely for the purpose to
17 try to kind of unscientifically bolster her credibility. And I think it's improper --

18 MS. FLECK: It's a lay witness.

19 MR. BECKER: -- at this point.

20 THE COURT: Well she certainly can testify about -- if she was outgoing and
21 bubbly and all of sudden she's withdrawn. She can see -- she can testify about her
22 observations.

23 MR. BECKER: Okay.

24 [Bench Conference Concludes]

25 MS. FLECK: May I proceed?

1 THE COURT: Yes.

2 BY MS. FLECK:

3 Q After 2000 and -- July of 2010, did you notice any changes in Jocelyn?

4 A Yes.

5 Q What kind of changes?

6 A She became very withdrawn. Sorry. She was always saying her
7 privates hurt. She was pulling -- she always had a wedgie. She was constantly
8 pulling at her underwear. But she did. She became very withdrawn, very
9 untrustworthy of other people; people she didn't know; people she didn't recognize.

10 Q You say that after July of 2010 she would complain about pain in her
11 privates.

12 A Yes.

13 Q Is that something that you'd ever heard her complain about before --

14 A No.

15 Q -- July of 2010.

16 A No. Just the, you know, typical; when she was younger the, you know,
17 when you're first -- when they're first learning to use the bathroom, you know; the
18 itches or whatever the, you know. But that was when she was two; but nothing after
19 that, you know. Not until this had happened.

20 Q The first time you hear pain is July of 2010. Is that something that she
21 complained about often after July of 2010?

22 A Yes. All the time.

23 Q Did you and your daughter and your husband take steps to see if there
24 was something that was actually causing that pain; something physically causing --

25 A Yes.

1 Q -- that pain?

2 A Yes.

3 Q What did you do?

4 A I know that Nicole had taken her to her pediatrician.

5 Q And were you ever able to determine that there was something that was
6 physically wrong that would have caused that?

7 A As far as I remember, there was nothing. They did a urine test and
8 some other things. I don't remember the exact details but I do remember a urine
9 test, you know.

10 Q Okay.

11 MS. FLECK: Court's indulgence.

12 BY MS. FLECK:

13 Q Just really -- briefly. I know that -- I know you don't remember who
14 brought up that conversation at church about Dustin sitting on --

15 A Mm-hmm.

16 Q Did he say anything? Whether it was him that brought or Megan that
17 brought it up; do you remember what the Defendant said about what had happened
18 that evening?

19 A Yeah. He had said he had went to check on Joshua and he had
20 forgotten she was in there.

21 Q And that what happened?

22 A And that he accidentally sat on here.

23 Q While she was sleeping?

24 A Mm-hmm.

25 Q So regardless of who brought it up that was something that he then

1 went on to say.

2 A He acknowledged. Yes.

3 MS. FLECK: Okay. Great. And I'll pass the witness.

4 MR. BECKER: Thank you.

5 **CROSS-EXAMINATION**

6 BY MR. BECKER:

7 Q Good afternoon.

8 A Good afternoon.

9 Q Okay. You testified that you and your husband did not initially approve
10 of the relationship between Dustin and Megan. Is that correct?

11 A I don't believe that's what I said.

12 Q All right. You said that you didn't know him and you said that initially
13 Dustin had come to your husband to ask for permission to marry Megan. Is that
14 correct?

15 A That's correct.

16 Q Now with regard to not knowing Dustin; Dustin was a member of your
17 church. Is that correct?

18 A Yes. He had been.

19 Q And he had been a member of your church prior to meeting Megan.

20 A He had -- he actually had been attending as far as I know the bigger
21 church that our church was affiliated with. And he had come a few times but I don't
22 know that he had at that point not too far before that had then started attending the
23 church we were at regularly.

24 Q Okay. And did you come to meet him at the church?

25 A Yes.

1 Q In fact, he met your daughter Megan through the church?

2 A That's correct.

3 Q All right. So this is -- I mean -- a good place for your daughter to meet a
4 man at the church. Right?

5 A No. That depends on whose definition and what church you're at I
6 guess.

7 Q Okay. Well, would you agree that it was a gentlemanly and proper
8 thing for Dustin to come and ask your husband's permission to marry Megan?

9 A Yes.

10 Q Notwithstanding your husband declined to give permission. Correct?

11 A He asked them to wait.

12 Q And is it fair to say that when they made the decision to go ahead and
13 get married, notwithstanding the fact that you wanted them to wait -- or your
14 husband did, that that become a source of tension?

15 A I -- it wasn't for us.

16 Q Well, you weren't upset that they decided to get married without
17 permission?

18 A Well, there's a much bigger story involved here than just not giving
19 permission and they ran off and got married.

20 Q Well, you described yourself as a tight-knit family. Is that correct?

21 A That's correct.

22 Q And you -- at one point did you testify that they went off and eloped?

23 A Did I testify -- well, I mean that's what I -- I mean, they had a wedding
24 ceremony.

25 Q Right. But you've previously described it as them eloping. Is that right?

1 A I might have.

2 Q They had a wedding ceremony.

3 A That's correct.

4 Q And they sent out invitations.

5 A Mm-hmm.

6 Q And you received an invitation.

7 A Mm-hmm. I did

8 Q And your husband.

9 A Yes.

10 Q And you chose not to go to the wedding.

11 A That's correct.

12 Q And to your knowledge Nicole also received a wedding invitation and
13 chose not to go to the wedding and chose not to go to the wedding?

14 A That's correct.

15 Q Would it be fair to say that there was some tension and disapproval of
16 the wedding and Dustin as reflected by the fact that you guys refused to go to their
17 wedding?

18 A There was tension. I guess that could be the right word.

19 Q Okay. I mean, even as time went on, you never quite came to accept
20 Dustin. Is that correct?

21 A That's not true.

22 Q Well -- you gave a statement to a detective. Is that correct?

23 A That's correct.

24 Q And he asked you about your relationship with Dustin. Correct?

25 A That's correct.

1 Q And this was several days after the subject incident. Is that correct?

2 A If that's the one you're referring to; the week after, yes.

3 Q And this is something that you've reviewed prior to testifying. Correct?

4 A Yes.

5 Q As early as yesterday?

6 A I don't think I -- I think I -- I think I looked at it Monday -- was the last

7 day.

8 Q But you told the detective that Dustin kind of rubbed you the wrong way.

9 Is that right?

10 A He could. Yes.

11 Q And you said that when it came time to doing family things that he was

12 very non-committal to doing stuff with the family.

13 A That's correct.

14 Q And that you felt that he was trying to isolate Megan from you -- your

15 family.

16 A Yes. I felt that way sometimes.

17 Q And you described him as just kind of strange. Is that right?

18 A I don't know if that's the word I used but --

19 Q Okay. But suffice it say you weren't so keen with -- on Dustin?

20 A I don't know if that's the right word. I mean strange was that he would

21 walk in my house, I'd say hello, and he wouldn't say hello to me.

22 Q Okay.

23 A That's what I mean by strange, you know. Strange has a large defi --

24 you know -- except I don't know that I used that word in my testimony.

25 Q All right.

1 A To Detective Hatchett.

2 Q Now you testified regarding the events of the weekend where these

3 allegations arose and you said that Nicole had been in the hospital so her sister

4 Megan and Dustin agreed that Nicole's children Jocelyn and Katelyn could stay at

5 their house. Correct?

6 A Megan did. Yes.

7 Q And. Well --

8 A I just -- I didn't speak to Justin regarding --

9 Q Right.

10 A -- that. So I can't say.

11 Q But this was not an uncommon thing for Nicole's kids to stay with Aunt

12 Megan and Uncle Dustin. Correct?

13 A Correct.

14 Q As a matter of fact, this happened about once or twice a month. Is that

15 right?

16 A Yeah. About that. Maybe once a month.

17 Q Okay.

18 A You know, could've been twice a month depending.

19 Q So it was normal.

20 A Yes.

21 Q And at this time Jocelyn was four years old.

22 A Correct.

23 Q And this had been going on her entire life. Correct?

24 A Not her entire life. No.

25 Q So a couple of years at least.

1 A Maybe a year here, you know -- maybe when she turned three or
2 around there.

3 Q And suffice it to say that regarding her visits with Uncle Dustin and Aunt
4 Megan that there was never prior to this occasion any assertion that something
5 untoward had occurred. Is that correct?

6 A No one ever said anyth -- nothing was ever brought up.

7 Q Okay. So there's no -- there was no Megan -- Jocelyn had never come
8 and something improper had occurred?

9 A No.

10 Q Okay. And there was absolutely no level hesitance to allow Jocelyn
11 and Katelyn to stay with Aunt Megan and Uncle Dustin?

12 A No.

13 Q And in fact this is what happened on Sunday -- on a Saturday in July of
14 2010 when they went to their -- went Jocelyn went and Katelyn went to their aunt
15 and uncle's.

16 A Yes.

17 Q And would it be fair for you to describe your relationship with Jocelyn as
18 close?

19 A Yes.

20 Q You were working at the church on the Sunday morning.

21 A Correct.

22 Q And Jocelyn and Katelyn came to church. Is that correct?

23 A Correct.

24 Q And at some point that morning you got to spend some time with
25 Jocelyn and Katelyn. Is that correct?

1 A That's correct.

2 Q And when was it on Sunday that you first spoke to Jocelyn and Katelyn;
3 if you recall?

4 A I would've seen them probably when they first got there and -- before
5 they went to their Sunday School class.

6 Q Okay. And how much time would you have spent then with them?

7 A A few minutes.

8 Q And then after the class?

9 A It was just a few minutes. It's usually pretty hectic.

10 Q And would it be fair to say that that morning Jocelyn's demeanor was
11 perfectly normal?

12 A I don't -- I don't know that it was perfectly normal, you know.

13 Q Well, you had described, you know, that this point in time when there's
14 this conversation with Dustin and Megan and your sister Kathy, right?

15 A Mm-hmm.

16 Q And you said that, you know, the kids are running around and playing
17 like they normally did. Right?

18 A Yeah. But there mother had been sick so, you know -- I don't -- things
19 weren't normal right at that point.

20 Q But you never to describe to Detective Hatchett or anybody else that
21 any observation that had suggested to you that Sunday morning that Jocelyn was
22 behaving in a manner inconsistent with normal. Right?

23 A Can you -- I'm sorry. Can you ask that question again?

24 Q At no time -- I mean, you were interviewed by a detective, correct?

25 A Correct.

1 Q And you've testified in proceedings before.

2 A Yes.

3 Q And you've testified moments ago on direct examination. Right?

4 A Yes.

5 Q There's been no time where ever suggested that Jocelyn's demeanor
6 on that Sunday was anything other than normal. Correct?

7 A Correct.

8 Q And suffice it to say that at no time that Sunday did Jocelyn approach
9 you and say, Grammy, I need to talk to you about something.

10 A No. She did not.

11 Q After the church she goes back and spends the night at Dustin -- at
12 Aunt Megan and Uncle Dustin's. Correct?

13 A Later, yes. After they were taken back.

14 Q At no time does Jocelyn come to you and says -- and say, Grammy, we
15 don't want to -- I don't want to spend the night at Aunt Megan and Uncle Justin's
16 tonight. Can we stay -- can we come home tonight?

17 A I -- once we left the church, I did not see them again.

18 Q But, you said there may have been another church service on Sunday
19 night.

20 A Yes, there was.

21 Q Okay.

22 A At the -- at a different church building though; another church we were a
23 part of.

24 Q All right. Did Jocelyn ever come to you and suggest that she'd prefer
25 not to spend the night at Megan and Dustin's on Sunday night?

1 A She did not. Not while we were at church.

2 Q So in fact, she went back and did spend the night at Megan and
3 Dustin's on Sunday night?

4 A Correct.

5 Q And then -- let me go back a little bit. On Saturday when the kids were
6 brought over to Megan and Dustin's house, you're the one that brought them over.
7 IS that correct?

8 A Yes.

9 Q Do you remember if Dustin was home when you brought the kids over?

10 A Yes. He was.

11 Q He was home?

12 A Yes. He was.

13 Q Are you sure about that?

14 A I'm pretty sure. Yes.

15 Q Just pretty sure?

16 A Yes. It's been three years.

17 Q And on Monday would it be accurate to say that it was Michael you
18 picked Jocelyn and Katelyn up at Megan and Dustin's and brought them to their
19 father, Fred Coleman's home?

20 A I don't know that for sure.

21 Q All right. But you know that it was on Tuesday that Nicole and Megan
22 picked the kids up and brought them home. Is that correct?

23 A Yes.

24 Q And you said the girls ate at -- did they eat at the house or did they eat
25 prior to getting home?

1 A You know, I don't remember.

2 Q Okay. But you said it was pretty late on Sunday night. Correct?

3 A No. It was -- it -- I mean, bedtime was 7:30 so it wasn't late on Sun --
4 okay. You said Sunday night.

5 Q I'm sorry. On Tuesday. On Tuesday.

6 A Okay.

7 Q Mm-mm.

8 A It wasn't late because their bedtime was typically between 7 and 7:30.
9 So it wasn't that late.

10 Q All right. And you didn't notice anything unusual about Jocelyn's
11 demeanor when she got home with Nicole and Megan. Correct?

12 A No. But I -- no I didn't.

13 Q Okay. And some point in time she goes upstairs and Nicole's preparing
14 her for a bath. Is that right?

15 A Yes.

16 Q And Nicole comes down and tells you that you should go talk to
17 Jocelyn. Correct?

18 A Yes.

19 Q Now you've testified today that Nicole didn't tell you why you should go
20 upstairs and talk to Jocelyn. Is that correct?

21 A From my recollection, I don't remem -- I don't remember her telling me
22 that before I went up there.

23 Q Well, would it refresh your election -- recollection if I should you a
24 portion of your voluntary statement?

25 A I'm sure it would.

1 Q All right.

2 MR. BECKER: And I'm referring to page 4.

3 MS. FLECK: Okay.

4 MR. BECKER: Permission to approach.

5 THE COURT: Yes.

6 MR. BECKER: And I'm -- I'll point you to some highlighted portions but

7 read -- read as much as you need to.

8 THE WITNESS: I'm sorry. What page were you showing me?

9 MS. FLECK: Of the voluntary statement?

10 MR. BECKER: Yes. Of the voluntary.

11 BY MR. BECKER:

12 A Okay. From my statement I -- she must -- she had told me that he had

13 touched -- that Jocelyn had told Nicole that Uncle Dustin had touched her.

14 Q Okay. And so --

15 MR. BECKER: May I approach again?

16 THE COURT: Yes.

17 MR. BECKER: Okay.

18 BY MR. BECKER:

19 Q So you -- it was more than just touched, it was the same statement that

20 he had dug up in her. Is that --

21 A Well, your question was --

22 Q Mm-hmm.

23 A -- did Nicole tell me before Jocelyn did. So that's --

24 Q Yes.

25 A -- the question I just answered. That yes --

1 Q She did.

2 A -- she said Uncle -- Nicole said to me that -- she came downstairs and
3 she was upset and asked me to go talk to her because Jocelyn had told Nicole that
4 Uncle Dustin had touched her.

5 Q Okay. But it's more than just touched; it was the exact phrase --

6 MS. FLECK: I'm going to object. That's absolutely not what it says. It says
7 exactly what she just said.

8 MR. BECKER: All right. I'll ask to approach.

9 THE WITNESS: All right.

10 MS. FLECK: Objection to mischaracterization, misstatement as to --

11 THE COURT: Sustained.

12 MS. FLECK: -- what he's using to impeach her with.

13 THE COURT: Show her the -- show her what you're referring to.

14 BY MR. BECKER:

15 Q Well --

16 A That's what Jocelyn told me; not what Nicole told me.

17 Q Right. And -- okay.

18 MR. BECKER: Court's indulgence.

19 Q Okay. So you're saying that at that point in time Jocelyn had simply
20 told you that Uncle Dustin had touched her. Is that right?

21 A No.

22 Q Okay.

23 A That's not what Jocelyn had told me.

24 Q All right. I'm sorry. Nicole came downstairs and she told you that
25 Jocelyn had said that Uncle Dustin had touched her. Is that correct?

1 A Yes. That's why she wanted me to go talk to her.

2 Q All right. So contrary to your testimony a little while ago, you already
3 knew the substance of why you were going up to speak to Jocelyn prior to going
4 upstairs. Is that correct?

5 A Yes. I knew -- I did know that before I went upstairs.

6 Q As a matter of fact, you testified at a family court proceeding in relation
7 to this matter. Is that correct?

8 A Yes.

9 Q And at that time would it be correct to say that you -- that Nicole wanted
10 you to go upstairs because in essence she wanted to see if Jocelyn was going to tell
11 you the same thing that he showed -- that she had told her?

12 A I guess that's what she wanted. I don't -- I mean, I --

13 MS. FLECK: What are referencing?

14 MR. BECKER: I'm referencing page 88 of the family court proceeding. Lines
15 8 through 12.

16 THE WITNESS: And that was two years ago also. So.

17 BY MR. BECKER:

18 Q But you said that Nicole specifically told you that she wanted you to go
19 up to see what Jocelyn was going to tell you. Is that right?

20 MS. FLECK: I'm sorry. Misrecord. Can you just --

21 MR. BECKER: Page 10. Page 88, I'm sorry, line 10.

22 MS. FLECK: Page 88.

23 MR. BECKER: Hmm.

24 Court's indulgence. I'm sorry.

25 THE COURT: Jury need a break?

1 All right. What we'll do is we'll let you find your spot. We're going to
2 take a five-minute recess. During the recess, ladies and gentlemen, you're not to
3 talk or converse among yourselves or with anyone else on any subject connected
4 with the trial. Or read or watch or listen to any report of or commentary on the trial
5 or any person connected with this trial by any medium of information including
6 without limitation newspapers, television, radio, or internet. Or form or express an
7 opinion on any subject connected to the trial until the case is finally submitted to
8 you. Take about five minutes.

9 [Outside the presence of the jury]

10 THE COURT: You make sure your witnesses out there don't talk or --

11 MS. FLECK: Yeah. We've --

12 THE COURT: Okay.

13 MS. FLECK: -- we have told them [indiscernible].

14 MR. BECKER: And I'll just note for the Court's benefit that apparently the
15 State ordered transcript of the child court proceedings and the Defense did as well
16 but our transcripts don't necessarily --

17 THE COURT: Pages.

18 MR. BECKER: -- correlate by page and number. And that's --

19 MS. FLECK: Okay.

20 MR. BECKER: -- a little --

21 THE COURT: Okay.

22 MR. BECKER: -- confusing.

23 MS. FLECK: All right.

24 MR. BECKER: But I'll --

25 MS. FLECK: No problem

1 MR. BECKER: I'll make a point to show you --

2 MS. FLECK: I think it's a few after --

3 THE COURT: All right.

4 MS. FLECK: -- so if you're going to reference them, if you could just --

5 THE COURT: Just don't talk in front of the witness.

6 MS. FLECK: Oh sorry. I didn't know she was --

7 MR. BECKER: All right.

8 MS. FLECK: -- still in here. I'm sorry.

9 THE WITNESS: Do I leave?

10 THE COURT: Okay. Why don't you step out in the hall? Don't discuss your
11 testimony.

12 THE WITNESS: Okay.

13 THE COURT: And we'll come get you [indiscernible].

14 THE WITNESS: Thank you, Judge.

15 [Recess taken at 3:27 p.m.]

16 [Trial resumed at 3:37 p.m.]

17 [Outside the presence of the jury]

18 THE COURT: All right. Bring them in Tom. Let's go.

19 THE CLERK: Don't you want the witness back first?

20 THE COURT: Oh yeah. Bring the witness back in first, Thomas.

21 THE MARSHAL: All rise, please.

22 [In the presence of the jury]

23 THE COURT: Stipulate --

24 THE MARSHAL: You can be seated.

25 THE COURT: Stipulate to the presence of the jury.

1 MS. FLECK: The State does. Thank you, Your Honor.

2 MR. BECKER: Yes, Your Honor.

3 THE COURT: All right. I'd just remind you ma'am, you're under oath.

4 THE WITNESS: Yes, sir.

5 **CROSS-EXAMINATION (RESUMED)**

6 BY MR. BECKER:

7 Q Just to get back to where we were in fact, Nicole did tell you that
8 Jocelyn said that Uncle Dustin had touched her. And in fact, she wanted you to go
9 upstairs to see what Jocelyn would say to you. Correct?

10 A She asked me to go up and talk to her. That's my recollection of
11 something that happened three years ago.

12 Q She wanted to see what Jocelyn would tell you. Correct?

13 A I guess -- yeah, I guess that's what she wanted.

14 Q And then when you interviewed with the detective you specifically said
15 that she told you that Uncle Dustin had come in and dug in her privates and that he
16 dug up in here. Correct?

17 A That's -- yes.

18 Q And that is in fact what Jocelyn told you when you went upstairs.

19 A Yes. Correct.

20 Q And to be clear, when you went upstairs Jocelyn was not inside your
21 bedroom she was up at the top of the stairwell. Is that correct?

22 A That's -- yes. That's possible.

23 Q And that's what you testified to previously. Is that correct?

24 A In family court?

25 Q When you gave your statement --

1 A Or is that in my statement?

2 Q Did -- did you in fact say that she was standing up -- up at the top of the
3 stairwell?

4 A If that's what my statement says. Yes.

5 Q Okay. Now, after Jocelyn told this to you is it correct that you did not
6 follow up and ask any additional questions. Correct?

7 A That's correct. I did not.

8 Q And you basically wanted to pretend that everything was normal and
9 proceeded to assist Nicole in placing Jocelyn in the bat. Is that correct?

10 A I'm sorry. Can you ask the question again?

11 Q You did not ask any follow-up questions. Correct?

12 A Yes.

13 Q And in fact, you have previously indicated that you wanted to pretend
14 like everything was normal. Is that accurate?

15 A Well, we wanted to act like everything was normal. I --

16 Q All right.

17 A Pretend is maybe a different word.

18 Q Okay.

19 A Just proceed in our normal routine.

20 Q All right. And proceeded to then at that point place Jocelyn in the bath?

21 A I don't recall being in there when we did that.

22 Q All right. Do you know whether or not Jocelyn had a bath after this
23 revelation?

24 A You mean after she told me?

25 Q Yes.

1 A She had a bath right after she told me.

2 Q Right? Is that correct?

3 A Yes.

4 Q And how it so happened+ that she went to have the bath?

5 A What do you mean? I don't understand.

6 Q Well, I guess -- I mean, she was four years old. Right?

7 A Correct.

8 Q So she doesn't go and draw the water and bathe by herself.

9 A Oh okay. That's what you -- okay. So, her mother or I would typically

10 run the bath water, make sure it was the right temperature, and then we would lift

11 them into the bathtub and set them in the bathtub.

12 Q And you don't remember who did that on this particular occasion?

13 A I don't remember per say. I thought I went back downstairs but it's

14 been three years.

15 Q Did you make any attempt to do any kind of visual inspection of Jocelyn

16 privates to see if there was kind of injury?

17 A I don't recall that I did. No.

18 Q And would it be fair to say that you felt immediately upon learning what

19 you learned that it was appropriate to call law enforcement. Is that correct?

20 A Yes.

21 Q Okay. And how was this call to law enforcement made?

22 A I believe that Nicole called.

23 Q Do you know if she was upstairs or downstairs when she called?

24 A I don't recall.

25 Q Do you know if the call to law enforcement was made before or after

1 Jocelyn was placed in the sh -- in the bath?

2 A I believe it was placed after.

3 Q When Jocelyn and Katelyn went to Megan and Dustin's house, were

4 bags packed?

5 A When they -- when they were taken there?

6 Q Yes.

7 A There was always bags packed. I mean, you would always send

8 clothes.

9 Q And who packed the bags on this occasion; if you recall?

10 A I probably did.

11 Q And the bags that were packed would include changes of clothing.

12 Correct?

13 A Yes.

14 Q Would also include pajamas?

15 A Yes. If they were spending the night. Yes.

16 Q Okay. And at that time can you recall what Jocelyn typically wore to

17 sleep?

18 A Pajamas.

19 Q Okay. And what kind of pajamas?

20 A Little girl pajamas.

21 Q Okay. I mean was it like a jumpsuit; was it --?

22 A Well it was July; it wasn't footsies like you wear in the winter. It would

23 have --

24 Q All right. Would it include a top and a bottom?

25 A Yes.

1 Q And would she typically wear underpants with her pajamas?

2 A Yes.

3 Q All right. And on Tuesday evening Megan -- I'm sorry. Megan and
4 Nicole had just picked Jocelyn up from her dad's. Correct?

5 A Yes.

6 Q So, suffice it to say that she would've been returning also with her bag
7 and her clothing that she had worn at Megan and Dustin's.

8 A Yes.

9 Q Okay. Do you have any knowledge as to what happened to the clothes
10 in that bag?

11 A I don't.

12 Q Okay. Was any effort made to secure the clothing that she may have
13 been wor -- wearing on the night that she said this event occurred?

14 A What do you mean by secure?

15 Q In other words, she describes this terrible, terrible even where there's
16 some improper touching. Correct?

17 A Mm-hmm.

18 Q And she wears pajamas to bed.

19 A Mm-hmm.

20 Q Always. Right?

21 A Mm-hmm.

22 Q And you pack the bags with their pajamas to spend the weekend with
23 Megan and Dustin. Right?

24 A Yes.

25 Q So, now she comes back and she's saying this horrific thing happened

1 while she was with Megan and Dustin. Correct?

2 A Yes.

3 Q Was there ever any effort, to your knowledge, to say hey, maybe we
4 should preserve the pajamas that she was wearing that night to see -- I mean, this
5 could be pretty important. Right?

6 A I don't recall any discussion of that. My biggest concern was my
7 grandsons at that point.

8 Q Right. Did the detective ever inquire of you what -- where the pajamas
9 were?

10 A Not to me. No.

11 Q Did you at some point end up washing those clothes?

12 A Not that I recall. No.

13 Q So as far as you know, there was no concern by anyone paid
14 whatsoever to this -- these clothes that were worn on the night of the alleged
15 incident is there?

16 A I wouldn't say that. No. I just said I didn't.

17 Q Okay. But you have no knowledge of anybody following up on this?

18 A I don't know what you mean by following up. Are you mean just
19 keeping them aside?

20 Q Keeping them aside; questioning you about the clothes that she was
21 wearing.

22 A Well, no one --

23 Q The pajamas.

24 A -- questioned me about the clothes.

25 Q Okay. And they weren't kept aside.

1 A Not that I know of.

2 Q You were aware that at some point around this time that Jocelyn had
3 been suffering a condition known as vaginitis. Is that correct?

4 A At that time?

5 Q Yes.

6 A You mean before this happened?

7 Q No. I mean at the time; around the time that this was all going on.

8 A Not until she was taken to the doctor.

9 Q Well, when she went to Sunrise Medical Center in fact, the doctor said
10 she had vaginitis. Is that correct?

11 A When they did the examination, yes.

12 Q All right. So you were aware that she was suffering some kind of issues
13 relating to that. Is that correct?

14 A Relating to --?

15 Q The vaginitis.

16 A Oh. I'm sorry. Can you repeat that question?

17 Q You were aware at or around this time that she was suffering from this
18 condition called vaginitis. Correct?

19 A Not before that. No.

20 Q Were aware that at Sunrise Hospital or Children's Hospital that there
21 were no findings of any type of injury relating to Jocelyn's privates?

22 A That's my understanding of the report.

23 Q And in fact, without having ever received any information or accusation
24 from Jocelyn it was, you said, Dustin and Megan that had in it -- you know, that had
25 at some point informed that on Sunday after -- informed you on Sunday afternoon at

1 the church that the night before Dustin had gone to check on Joshua in the crib, was
2 not aware that Jocelyn was on the futon and that he accidentally fell on her. Is that
3 correct?

4 A No. He said he had forgotten and he sat on her.

5 Q Okay. And you're not sure whether it was Dustin that had introduced
6 this subject or Megan.

7 A I don't --

8 Q Correct?

9 A I don't recall.

10 Q But that the way this story was told to you it was described as a funny
11 incident like, you know, there was -- in your description there was some ha-ha's and
12 it was a funny incident. Correct?

13 A He thought it was funny. Yes.

14 Q All right. But that was disclosed to you prior to any kind of allegation
15 coming from Jocelyn that something inappropriate had occurred. Is that correct?

16 A Yes.

17 Q Did you follow-up with Jocelyn in any way about that accident as it was
18 described?

19 A No.

20 Q Now, Jocelyn was also very close with your son Michael. Correct?

21 A Yes.

22 Q As a matter of fact, you said in essence she was okay with Dustin but
23 she liked Uncle Michael better.

24 A She was just closer to him.

25 Q And it was in fact, Uncle Michael that picked Jocelyn up from her

1 father's house and brought her home. I'm sorry, it was Uncle Michael -- do you
2 know if it was Uncle Michael that picked Jocelyn and Katelyn up from Megan and
3 Dustin's on Sun -- on Monday and delivered them to the father. Are you aware of
4 that?

5 A I'm not. I'm sure about that. Once again it was three years ago.

6 Q To your knowledge did Jocelyn ever tell anything to Uncle Michael
7 about something having happened?

8 A No. Not that I know of.

9 MR. BECKER: Court's indulgence.

10 JUROR NUMBER 10: I can hear that.

11 MR. CASTILLO: Oh. I'm sorry.

12 THE MARSHAL: They probably have their mic on, on the counsel table.

13 BY MR. BECKER:

14 Q Just one final question. You had testified previously about Megan and
15 Dustin talking about this accident and you were asked what Dustin's demeanor was
16 like when the story was being told. Is that correct?

17 A If that's what my statement says; I was asked that. Yes.

18 Q And would it be correct to say regarding Dustin's demeanor that it was
19 typical Dustin; no different than usual?

20 A No. No different than usual

21 MR. BECKER: Nothing further.

22 **REDIRECT EXAMINATION**

23 BY MS. FLECK:

24 Q The Defense asked you numerous questions about this examination
25 that Jocelyn had and then he vaginitis.

1 A Yes.

2 Q Do you remember those questions?

3 A Yes.

4 Q Okay. And I think he couched it as saying well there was nothing that
5 was found, she just had this vaginitis. Right?

6 A Yes.

7 Q Are you aware that vaginitis that is something that can come from
8 swimming, it can come from wiping, and it can also come from somebody digging
9 their fingers up in a vagina.

10 MR. BECKER: Well, I'm going to object. I'm going to object and it's leading.
11 It's testifying and there's no evidence to support this assertion and I'll ask to
12 approach if we need to.

13 MS. FLECK: He -- well, no. He basically just testified as to what vaginitis is,
14 all kinds of things about vaginitis, you know. So, it's the same thing.

15 MR. BECKER: Well, I'm going to ask to go sidebar.

16 MS. FLECK: It's irritation in her vagina.

17 THE COURT: Approach the bench.

18 [Bench Conference Begins]

19 THE COURT: You sort of opened the door.

20 MS. FLECK: I mean, you -- I wasn't even going to --

21 THE COURT: Because you went into it a lot.

22 MR. BECKER: Well, if I may --

23 MS. FLECK: I wasn't even going to get into the vaginitis.

24 MR. BECKER: If I may. This day

25 MS. FLECK: It's not something that has --

1 MR. BECKER: Can I --

2 MS. FLECK: -- that she had before.

3 THE COURT: Let him make --

4 MR. BECKER: Can I speak?

5 MS. FLECK: No. Go ahead.

6 MR. BECKER: Okay. The State didn't object when I asked my questions.

7 Now, this Prosecutor is going to testify that the vaginitis could be caused by a sexual
8 penetration. And I don't think there's -- I -- she didn't object when I asked my
9 questions. I don't think there's anything --

10 THE COURT: I think you could ask the doctor that is --

11 MS. FLECK: I will ask --

12 THE COURT: -- coming in.

13 MS. FLECK: I will ask the doctor.

14 MR. BECKER: Well, if she --

15 MS. FLECK: But then I'll -- I'm going to ask her -- I mean is this vaginitis
16 something that she had before that day? Because vaginitis is -- if there's no findings
17 as an abrasion or something like but, you know, vaginitis is a non-specific finding.
18 And he keeps saying there's nothing specifically found; it's a non-specific finding.

19 MR. BECKER: But what does --

20 THE COURT: Yeah. I think you can ask the doctor but I'm telling you, you
21 opened the door. I -- it would probably be okay to let it go.

22 MS. FLECK: What --

23 THE COURT: I don't know that it's relevant if you bring it forth from the
24 doctor.

25

1 MS. FLECK: Okay. That's what I'll do then.

2 THE COURT: That's what I would do.

3 MR. BECKER: That's fine.

4 MS. FLECK: Let me just ask one question then, if the system thing --

5 THE COURT: Okay.

6 MS. FLECK: -- this was --

7 THE COURT: What?

8 MS. FLECK: -- after that day that she had --

9 THE COURT: That's fine.

10 MS. FLECK: -- this vaginitis.

11 THE COURT: That's fine.

12 [Bench Conference Concludes]

13 BY MS. FLECK:

14 Q We're going to hear more about vaginitis and finding what it's -- a
15 specific finding is and a non-specific finding; those kinds of things from Dr. Cetl,
16 but --

17 MR. BECKER: Well, I'm going to --

18 BY MS. FLECK:

19 Q -- let me ask you this.

20 MR. BECKER: I'm going to object to that statement and ask to strike it from
21 the record and perhaps ask to approach.

22 THE COURT: Well, it's -- when you talk up here it's all recorded. So, go
23 ahead. Overruled.

24 BY MS. FLECK:

25 Q So let me just ask you this, the vaginitis was something that she was

1 diagnosed with and that occurred after she disclosed that her uncle, the Defendant
2 was digging, digging and digging with his fingers in her private area?

3 A That's correct.

4 MR. BECKER: Well, I'm going to object is that that misstates the testimony.

5 THE COURT: All right.

6 BY MS. FLECK:

7 Q You tell me. You tell me. When is it that she was diagnosed with the
8 vaginitis?

9 MR. BECKER: And I'll object; lack of foundation.

10 THE COURT: You've opened the door. Overruled.

11 BY MS. FLECK:

12 Q When did she -- when was she diagnosed with her vaginitis? Was it
13 before or after she said that the Defendant was digging in her privates?

14 A After.

15 Q Nothing further.

16 A After the incident happened.

17 MS. FLECK: Nothing further.

18 **RECROSS EXAMINATION**

19 BY MR. BECKER:

20 Q Well, when you testified on direct earlier you had said that she had had
21 issues relating to potty training. Is that correct?

22 A No. That's not --

23 Q You didn't testify that -- just a little while ago that she had had some
24 kind of issue relating to potty training but that was before when she was like two
25 years old. Isn't that what you said?

1 A If you've ever potty trained a little girl, you will realize that there's a lot
2 involved to teach them. If we like we could talk about wiping properly and different
3 things like that.

4 Q Okay.

5 A That's what I was referring to.

6 Q And you testified that this predated the event. Is that correct?

7 A Potty training. Yes.

8 Q And the irritation in the vaginal area or the vaginitis.

9 A I never said that. I never said she had irritation. All I stated was that it
10 was the normal little girl things. I don't remember the exact question that was asked
11 of me at that point but that's what I was referring to.

12 Q And you were saying these were normal little girl things relating to
13 irritations associated with problems with potty training.

14 A No. You're twisting my words. What I said was nothing ha -- there
15 would never been another -- if I'm remembering my statement correctly, my
16 testimony, that there had never been an incident except then -- back when we were
17 potty training her, the normal things that you go through with little girls when you're
18 potty training them.

19 Q And you said that was before the day and you even said it was like
20 when she was --

21 A Two.

22 Q -- started when it is -- she was like two. Right?

23 A Yeah. She was potty -- fully potty trained by the time she was two,

24 Q Right. So, you're saying that the only time she had these issues when
25 she was two and it was not a continual thing up until the time she was four.

1 A That's correct. I mean -- I'm not sure what you're -- I mean, she's --

2 Q I mean, I -- what I'd ask you to do is just answer the question and not
3 worry about why --

4 A Okay.

5 Q -- I'm asking it; just answer the question.

6 A No. I just -- it --

7 MS. FLECK: Objection argument. Objection argumentative.

8 THE WITNESS: You're just --

9 THE COURT: Yeah. Don't be argumentative. And just answer his question.

10 THE WITNESS: Okay.

11 THE COURT: If she's need a clarification, she'll clarify it.

12 THE WITNESS: Okay.

13 BY MR. BECKER:

14 Q I mean you testified that she had had some irritation relating to potty
15 training prior to the day in question. Is that correct?

16 A Well, I didn't say she had irritation. No.

17 Q Okay. But your understanding was, after the examination at Sunrise
18 Children's Hospital that there was no evidence found supporting this allegation that
19 something had happened.

20 MS. FLECK: And Judge, again, I'm going to object. I mean, first of all --

21 THE COURT: Sustained.

22 MS. FLECK: -- she -- Thanks.

23 MR. BECKER: No further questions.

24 MS. FLECK: Nothing further.

25 THE COURT: All right. The jury have any questions of this witness?

1 All right. You're seat number, I think, eight. And your name please.
2 Let's go out in the -- I'll -- it's easier for me to take the attorneys out
3 then have you guys go out.

4 [Pause in proceedings]

5 **EXAMINATION BY THE COURT [JURY QUESTIONS]**

6 BY THE COURT:

7 Q Did you help Jocelyn practice for her speech?

8 A No. I did not.

9 THE COURT: State have any questions.

10 **FOLLOW-UP EXAMINATION**

11 BY MS. FLECK:

12 Q How -- you know, we've talked about how Jocelyn changed after --

13 THE COURT: No. This.

14 MS. FLECK: I know.

15 THE COURT: It -- Okay.

16 MS. FLECK: I will Judge. I promise.

17 THE COURT: Make sure it's addressed to this question.

18 MS. FLECK: I promise.

19 BY MS. FLECK:

20 Q We've talked a little bit about how she changed after July of 2010. How
21 did she feel about having to come in to court to testify?

22 A She didn't want to.

23 Q Has she been having difficulty sleeping?

24 A Yes.

25 MR. BECKER: Objection. Exceeds the scope.

1 MS. FLECK: Judge it isn't. If there's a question as to what this --

2 THE COURT: Well,

3 MS. FLECK: -- the --

4 THE COURT: -- first of all, let me ask you this question one -- did you help
5 Jocelyn practice for her testimony?

6 THE WITNESS: No. I did not.

7 BY MS. FLECK:

8 Q How -- I mean, was she -- did she lose sleep at all.

9 A Yes.

10 Q Was she emotional?

11 A Yes.

12 Q Did her mom --

13 MR. BECKER: Well, I'm going to object. Is it --

14 THE COURT: You can ask questions in just a minute.

15 MS. FLECK: And here's the thing, the Defense opens the door by asking
16 numerous --

17 MR. BECKER: Well, I'm going --

18 MS. FLECK: -- questions.

19 MR. BECKER: -- to ask that they speaking then.

20 THE COURT: You don't need talking objections. Overruled. You'll be able to
21 ask questions.

22 BY MS. FLECK:

23 Q Did -- you know -- did her mom have to prepare her for today to have
24 to come in to court, to have to face a jury, to have to talk about these kinds of things
25 in front of people that she's never met before?

1 A Yes.

2 MR. BECKER: Objection to leading.

3 THE COURT: Overruled.

4 BY MS. FLECK:

5 Q Was that ever something that was her mom telling her what to say or
6 was she helping prepare her for this day?

7 MR. BECKER: Objection. Foundation.

8 THE COURT: Overruled.

9 BY MS. FLECK:

10 A I'm sorry. Can you repeat the question?

11 Q Well, when you guys would talk to Jocelyn about having to come and
12 having to deal with this day and having to testify against this person who's done this
13 to her, was it ever a time that you --

14 MR. BECKER: Objection.

15 MS. FLECK: -- told her what to say?

16 MR. BECKER: Compound --

17 THE WITNESS: No.

18 THE COURT: This isn't her case.

19 MR. BECKER: -- and leading.

20 THE COURT: Sustained.

21 Just limit your question.

22 BY MS. FLECK:

23 Q Was she ever told what to say or were you and Nicole and your family
24 helping to prepare her for what she would face today in terms of kind of the
25 magnitude of it; the seriousness of it?

1 A We were trying to help her emotionally. We never told her what to say?

2 Q Would you ever tell your granddaughter what to say in a situation like
3 this?

4 A No, never.

5 Q Have you ever heard your daughter tell her what to say?

6 A No, never.

7 Q Is this a situation that entirely devastated your entire family?

8 MR. BECKER: Objection.

9 THE COURT: Sustained.

10 BY MS. FLECK:

11 Q Well -- I mean, is this something that has broken up your family?

12 A Yes. It has.

13 MR. BECKER: Objection. Relevance.

14 MS. FLECK: Judge, again --

15 THE COURT: It's answered but you have any other questions?

16 MS. FLECK: Just that the -- that there's been the implication that this is
17 somehow, in any way --

18 MR. BECKER: Well, this is now --

19 MS. FLECK: -- contrite.

20 MR. BECKER: -- a speaking --

21 THE COURT: Hold on.

22 MR. BECKER: -- this is a -- this is a --

23 THE COURT: Hold on. Hold on.

24 MR. BECKER: -- a speech.

25 THE COURT: All right. Do you have any other questions of here?

1 BY MS. FLECK:

2 Q Is this something that broke up your family?

3 THE COURT: Okay.

4 BY MS. FLECK:

5 A Yes, it did.

6 MR. BECKER: Obj --

7 THE COURT: All right.

8 MS. FLECK: Nothing further.

9 THE COURT: Do you have any questions?

10 **FOLLOW-UP EXAMINATION**

11 BY MR. BECKER:

12 Q Well this is -- strike that. You don't live with Nicole and Jocelyn and
13 Katelyn anymore. Correct?

14 A No. I do not.

15 Q And you haven't lived with them for a couple of years. Correct?

16 A It's actually been less than a year.

17 Q Right. So in the days and weeks and month leading up to today, you
18 do not have any personal knowledge about what in fact Nicole has been doing to
19 prepare Jocelyn to come in and testify for today. Correct?

20 A Yes. I do know what she's been doing. I'm not with them every minute
21 but --

22 Q Okay. You have no knowledge as to whether or not Jocelyn and
23 Nicole -- Nicole was assisting Jocelyn to practice for her testimony. Is that correct?

24 A I have no first-hand knowledge of that.

25 Q Okay. Thank you.

1 MR. BECKER: Nothing further.

2 THE COURT: Thank you. You're free to go.

3 THE WITNESS: Thank you.

4 THE COURT: Call your next witness, State.

5 MS. FLECK: Court's indulgence, Your Honor.

6 MS. EDWARDS: The State calls Kathy Denny.

7 **KATHERINE DENNY**

8 [having been called as a witness and being first duly sworn, testified as follows:]

9 THE CLERK: Please be seated. Would you please state and spell your first
10 and last name for the record?

11 THE WITNESS: My given name is Katherine Denny; K-A-T-H-E-R-I-N-E,
12 D-E-N-N-Y.

13 THE CLERK: Thank you.

14 MS. EDWARDS: May I proceed, Your Honor?

15 **DIRECT EXAMINATION**

16 BY MS. EDWARDS:

17 Q You said your given name is Katherine Denny, what do you go by?

18 A I go by Kathy.

19 Q Comfortable if I call you Kathy?

20 A Yes.

21 Q What is your relationship to Joanna Hammonds?

22 A She's my sister.

23 Q So that makes you what to Jocelyn Coleman?

24 A I am her great-aunt is what I think the technical --

25 Q Were you living in Clark County in 2010?

1 A Yes.

2 Q Specifically on or about July 11th of 2010?

3 A Yes.

4 Q Did you have contact with Joanna Hammonds and her family in July of
5 2010?

6 A Yes.

7 Q Prior to that weekend involving July 11th, 2010; how would you describe
8 your relationship with Jocelyn?

9 A Very good. I have a close relationship with her.

10 Q About how often would you see her around that time?

11 A Around that time, probably once every couple weeks, you know. The
12 summertime we would go swimming.

13 Q Any other types of settings you see Jocelyn other than going
14 swimming?

15 A Family dinners, any kind of holiday get-togethers; Fourth of July.

16 THE COURT: Scoot a little toward the mic --

17 THE WITNESS: Okay.

18 THE COURT: -- if you don't mind.

19 THE WITNESS: Sorry.

20 BY MS. EDWARDS:

21 A Yeah. Just, you know, we'd get together all the time.

22 Q Okay. What -- how would you describe your relationship with Nicole
23 Hammonds in July of 2010?

24 A I'm very close with Nicole.

25 Q Do you remain close with Nicole to this day?

1 A Yes, I do.

2 Q In July of 2010, about how often would you see Nicole?

3 A You know, once every couple weeks, you know -- or even once a week
4 sometimes because they live very close to me at that time.

5 Q Also in July of 2010, how would you describe your relationship to
6 Megan Barral?

7 A It was good. We were close then.

8 Q And what was Megan's relationship to you at the time as far as being in
9 the family tree?

10 A She was niece.

11 Q How often would you see Megan in July of 2010?

12 A I don't really remember but probably at least -- once a month at least; at
13 that point.

14 Q In July of 2010, did you know who Dustin Barral is?

15 A Yes.

16 Q Prior to July of 2010, had you had the opportunity to interact with
17 Dustin?

18 A Yes.

19 Q How would you describe not the family tree relationship but the
20 personal relationship you did -- you may have had with Dustin?

21 A I thought we got along just fine.

22 Q How would you describe your interaction prior to that time?

23 A I would just see him when the family would get together. You know,
24 we'd watch T.V., you know, there was never any kind of conflict of any kind that I
25 knew of on my part; wasn't any conflict.

1 Q By any chance, did you go to the wedding of Megan and Dustin?

2 A No. I did not.

3 Q So, fair to say in 2010 you were able to hold a conversation with
4 Dustin?

5 A Yes.

6 Q Would you say you were friendly with him, not friendly with him, or
7 something else?

8 A I thought -- friendly.

9 Q In July of 2010, did you have the opportunity to help out with Jocelyn
10 and Katelyn?

11 A Yes.

12 Q And under what circumstances were you helping out with Jocelyn and
13 Katelyn?

14 A Nicole was in the hospital so I would help out -- I helped out with the
15 girls after church to take care of them while she was in the hospital.

16 Q Okay. Was that on the Sunday?

17 A That was on a Sunday.

18 Q Do you recall everything you did with the girls that Sunday?

19 A Not completely. I just remember seeing them at church and after
20 church and spending a little time with them that afternoon.

21 Q At any point in time did you take them to the hospital to visit Nicole that
22 day?

23 A I might have. But I don't really remember. That was a few years ago.

24 Q All right. Do you have any children yourself?

25 A Yes. I do.

1 Q What are their -- one or more than one?

2 A I have three.

3 Q Okay. If you'd please tell me, as we sit here today, what their gender is
4 and their --

5 A I have a daughter that's nineteen; a son that's sixteen; and another
6 daughter that is nine.

7 Q Were those children around Jocelyn and Katelyn in July of 2010?

8 A Yes, they were.

9 Q Did you have the opportunity to observe Jocelyn interact with your son
10 prior to July of 2010?

11 A Yes.

12 Q About how often would she see him?

13 A Same as me with, you know, once a week; once every couple weeks.

14 Q How would Jocelyn interact with him the times you saw?

15 MR. BECKER: I'm going to object and ask to go sidebar.

16 THE COURT: Okay.

17 [Bench Conference Begins]

18 MR. BECKER: I'm -- it's -- my hunch is that where this is going is the State is
19 going to elicit testimony that Jocelyn is now uncomfortable around males. And what
20 I will say is that one: We've been provided with no discovery about whatever -- if I'm
21 correct and I think I am, we have been provided no discovery in this regard and so
22 what concerns me is it -- it seems --

23 THE COURT: Did you have her name?

24 MR. BECKER: We have her name.

25 THE COURT: Okay.

1 MR. BECKER: But --

2 THE COURT: You don't always get the testimony of the witnesses; you get
3 the names of the witnesses.

4 MS. FLECK: For the record, I had her name and I pretried her. That's it.

5 MR. BECKER: Okay, but -- in other words, it seems like there's a distinct
6 course of action. I mean, what's the relevance of this question?

7 THE COURT: Well, I think it goes to her -- the change in her personality and I
8 think I'm going to allow it.

9 MR. BECKER: How did -- how does Michelle -- how does Ms. Edwards know
10 to go directly down this path without having ever spoken to her.

11 MS. EDWARDS: We pretried her.

12 MR. BECKER: I mean, it's just so --

13 MS. FLECK: I just said that I pretried her.

14 MS. EDWARDS: She just said we pretried her.

15 MR. BECKER: Oh. You pretried her and did not provide us with any
16 discovery or notice for it.

17 MS. FLECK: I don't owe you any work product.

18 THE COURT: They don't --

19 MS. FLECK: There's no reporting.

20 THE COURT: They don't have any of this.

21 MS. EDWARDS: It certainly isn't explicatory.

22 THE COURT: So, did you have discovery?

23 MR. BECKER: Actually --

24 MS. FLECK: No.

25 MR. BECKER: Actually --

1 MS. FLECK: There's no discovery.

2 MR. BECKER: I'll actually suggest that this is not her client so it's not work
3 product. And I do --

4 THE COURT: All right.

5 MR. BECKER: -- believe she owes discovery.

6 MS. FLECK: And you will --

7 THE COURT: All right.

8 MS. FLECK: -- you just --

9 THE COURT: You can make that.

10 MS. FLECK: All you deserve is the scope of trial stuff.

11 THE COURT: All right.

12 [Bench Conference Concludes]

13 THE COURT: Go ahead.

14 MS. EDWARDS: I'm sorry. Is he making a record?

15 THE COURT: It's recorded up her. He wants to make a record he can or we
16 can wait.

17 BY MS. EDWARDS:

18 Q Back to my question. Had -- prior to July of 2010, you'd had the
19 opportunity to see Jocelyn interact with your son. Correct?

20 A Yes.

21 Q And in 2010, he was how old? Approximately?

22 A He turned -- wait -- okay. He'll be seventeen -- I stink at math. I think
23 he was fourteen.

24 Q Easier to say, what's his date of birth?

25 A Thirteenth -- July 22, 1996.

1 Q Okay. So right around the time frame we're talking about, he changed
2 ages. Correct?

3 A Yes.

4 Q Okay. So, somewhere around thirteen, fourteen?

5 A Yes. In that -- yeah.

6 Q July 2010.

7 A Yes.

8 Q Okay. And did also have the opportunity to see Jocelyn to interact with
9 your daughters during that same --

10 A Yes.

11 Q Prior to that same period?

12 A Yes. I did.

13 Q Same frequency she'd interact with your daughters.

14 A Yes. Yes. We were always together as a family.

15 Q Okay. And as far as your oldest daughter is concerned what's her
16 birthday?

17 A September 30th 2000 -- I'm sorry. 1993.

18 Q Now you're going to make me do math.

19 A Sorry.

20 Q So that would make her how old in 2010? About seventeen?

21 A About seventeen, yes.

22 Q Okay. Sixteen, seventeen. And your youngest daughter, what's her
23 date of birth?

24 A June 21st, 2003.

25 Q They all change ages right around the same time.

1 A Yes.

2 Q So that would make her approximately how old in July of 2010?

3 A July of 2010; that was three years ago so she had just turned seven.

4 Q Had to opportunity to watch Jocelyn interact with her as well?

5 A Yes.

6 Q Now, when you had the girls in July of 2010, on that Sunday, how
7 would you describe Jocelyn's demeanor?

8 A Well, she was kind of quiet and somewhat withdrawn; not her usual,
9 outgoing self. I thought she possibly could be tired but she just didn't act like
10 herself.

11 Q Had you ever seen her not act like herself before?

12 A Not like that.

13 Q Okay.

14 A No.

15 Q When you say she was withdrawn, what do you mean by withdrawn?

16 A She just wasn't really talking. She was just not as, you know, friendly,
17 and you know, the hugs weren't they normally are. You know, she just withdrew.

18 Q Do you recall if your children -- your three children were with you when
19 you had the girls in July of 2010?

20 A I believe at least two of them were.

21 Q Of the three which two do you recall?

22 A I believe it was the youngest and then her brother.

23 Q Do you recall how Jocelyn interacted with your youngest daughter in
24 July of 2010 when you had them that weekend?

25 A I don't particularly remember how they interacted. They've been

1 the statements previously we went sidebar. I think it's appropriate. I don't need to
2 say -- I could say earlier today --

3 THE COURT: You said it -- well you don't even have to say earlier today; you
4 can just say at another hearing did you say?

5 MR. BECKER: Okay.

6 MS. FLECK: And --

7 THE COURT: There's a way to impeach her with it but don't refer to
8 something that's out of the presence because juries think that we're hiding stuff from
9 them anyway.

10 MS. FLECK: That's -- as a starter a number -- my objection to what he did
11 this morning is is that there was nothing inconsistent. So, to try to, you know,
12 present her with the statement that's the same and then bring in this other hearing
13 was improper. And in terms of the statement to the police, he didn't impeach her
14 and he didn't refresh her memory. So I would just ask that he -- I've not spoken to
15 her about the hearing this morning. Not -- I've had a meeting -- no communication
16 with her about what was said or what we'll be asking her this afternoon; nothing like
17 that.

18 So, my -- I would ask that he ask her the same question and then that
19 you impeach her or refresh her memory with her prior statement because she did
20 tell the police that when Nicole comes downstairs she says -- Nicole says, briefly,
21 she says that Dustin touched her. You know, it's three years; whether she
22 remembers that or not but at least give her the opportunity --

23 THE COURT: Right.

24 MS. FLECK: --to -- from the transcript to the police that's he's referring to to --
25 for her to say, oh, I didn't remember that -- yeah I guess she had said something.

1 Or to say no, that's not how it happened. Or whatever she wants to do.

2 THE COURT: There's a way to --

3 MS. FLECK: Right. With the transcript.

4 THE COURT: --rehabilitate them or impeach them with their prior statements.
5 But just don't refer to it as prior, before today, or I mean --

6 MS. FLECK: Outside the presence,

7 THE COURT: -- today at a hearing outside the presence of the jury. Well, no.

8 MR. BECKER: Well --

9 THE COURT: They don't need to know that.

10 MR. BECKER: The problem is that I don't have a transcript of this morning's
11 hearing and so she's likely to say I never said that and I can't impeach her with what
12 she said this morning because I don't have a transcript of it. But if I tell her earlier
13 today it might trigger her recollection on that.

14 MS. FLECK: But you do have her transcript from -- with the police and that's
15 what you're referring to of where she said something inconsistent with what she said
16 today. So --

17 MR. BECKER: Well, in essence what she did was --

18 MS. FLECK: -- since I have not spoken to her, I imagine she's going to testify
19 to the same thing she did this morning.

20 MR. BECKER: Okay.

21 MS. FLECK: Unless she just reread her statement because she does have it.

22 MR. BECKER: Well we'll see --

23 MS. FLECK: And so --

24 MR. BECKER: We'll see how it goes.

25 THE COURT: Okay. What's --

1 MR. BECKER: The other issue that I just would like to touch on so that we
2 don't neglect it. Ms. Edwards in her opening made a statement that Dustin and
3 Megan are no longer together. And she said in her opening you may or may not
4 learn why. And I think this is kind of a loaded area because I believe that the history
5 is such that Megan and Dustin were together back when Dustin went to the family
6 law hearing on this matter; that per advice of counsel he invoked his Fifth
7 Amendment rights in the family law proceeding because he had a petting criminal
8 case which is standard that the family lawyer would tell him to do so.

9 That once Dustin invoked his rights at the family law proceeding, that
10 Megan decided to leave him because she was aghast that he chose not to testify.
11 And so when Ms. Edwards says we may or may not hear about my interpretation of
12 it is -- is that this is a tricky area and I think we need to touch on it because I think it
13 might even rise to level of mistrial if Megan testifies that Dustin invoked his Fifth
14 Amendment rights at the family law hearing. I think it's not proper and I think we
15 need a court ruling and we need to instruct Megan on it.

16 THE COURT: No. She would have to be instructed before she --

17 MS. FLECK: I completely agree and that's -- and I'm happy that he brought
18 this up because we were going to do the same before Megan testifies such that I'm
19 allowed to lead her through the area of family court and that -- I mean it's going to
20 be obv --

21 THE COURT: Well I think you need to go out and talk to her before and
22 this --and just --

23 MS. FLECK: We have. We have talked to her but she's not here today.
24 She's not going to testify today.

25 THE COURT: Okay.

1 MS. FLECK: But I will talk with her before and then I would like permission to
2 lead her through that area to just say, you know, at some point was there a family
3 court proceeding? Yes. And at some point after that hearing did you make the
4 determination that you were going to terminate your marriage; that you thought you
5 were going to file to divorce. I will not say a word as to whether he testified or not at
6 family court. Certainly I will not comment on the fact that he invoked his Fifth
7 Amendment right.

8 THE COURT: Well, I think we should stay away from it because that is a
9 slippery slope.

10 MS. FLECK: I agree.

11 MR. BECKER: The problem is if it's asked in that sequence it looks -- it's
12 going to come off like she observed the family court proceedings, she decided he
13 was guilty based on what she observed, and she left him for that reason. I think it
14 could just be -- that if it not be set up where that would be the logical inference to
15 just at some point later say that -- at some point you guys decided to split
16 afterwards. And I won't touch it.

17 THE COURT: All right.

18 MR. BECKER: Because I -- obviously I don't want to risk opening the door to
19 something like that.

20 MS. FLECK: But -- well -- and

21 THE COURT: Just be real careful when you get around that.

22 MS. FLECK: I will do that but then it also -- then that -- that also then ties the
23 Defense hands in closing that they can't get up in closing and make some argument
24 that's like she stood by him because she believed him if that's not what they elicit
25 from her from the witness stand.

1 THE COURT: Right.

2 MS. FLECK: So, you know, it -- I will res -- I respect that and I agree with Mr.
3 Becker that that is an area that I will not, absolutely --

4 THE COURT: All right.

5 MS. FLECK: -- will not touch on. But the truth is it's not that they decided -- I
6 mean, Megan decided. And I won't set it up in terms of her deciding based on what
7 happened at family court but the fact is she is in the relationship, she's manipulated
8 by him, and at some point she's -- pulls her head out and is no longer manipulated
9 and she decides to file for divorce.

10 MR. BECKER: Well I guess there are two spins on it. On some level I do
11 think that the issue of whether Megan believed or dis -- disbelieved Dustin is a red
12 herring and probably should be avoided by both sides. And I think --

13 THE COURT: I think so.

14 MR. BECKER: -- giving the proffer from Ms. Fleck that I should probably
15 agree to stay away from that in closing. And we both should to avoid --

16 THE COURT: I think so.

17 MR. BECKER: And it -- and I'll just -- I'll leave it alone afterwards. Like, it's
18 not just the Fifth Amendment issue -- that he invokes his Fifth, but that he does so
19 based on advice of counsel which --

20 THE COURT: Sure

21 MR. BECKER: -- gets into attorney/client stuff.

22 MS. FLECK: Totally.

23 MR. BECKER: It's just -- so it's just your mus -- messy area.

24 THE COURT: All right.

25 MS. FLECK: Totally agree.

1 THE COURT: Both of you stay away from it. All right.

2 MS. FLECK: I completely agree. Thank you.

3 THE COURT: How many other witnesses are you going to call today?

4 MS. FLECK: We have the victim, the grandparents --

5 THE COURT: Both?

6 MS. FLECK: Yes, both grandparents. And the aunt. So I believe four. We
7 had Dr. Cetl for the end of the day but given that it's already 2, we told her not to
8 come.

9 THE COURT: All right. Let's go. You guys ready?

10 MR. BECKER: And we anticipate going to about 5 today?

11 THE COURT: We're going to finish these -- well if we can finish these four.

12 MS. FLECK: Yeah.

13 MR. BECKER: Okay.

14 MS. FLECK: And then though, real quickly -- then we will get through our
15 witnesses absolutely tomorrow. What our request would be is to be able to get
16 through our witnesses tomorrow, settle jury instructions and all of that, and then
17 close at 9 a.m., Friday morning and send it to the jury; if that's okay.

18 THE COURT: All right. If you need -- if you have jury instructions you
19 should --

20 MS. FLECK: I have.

21 THE COURT: And if you have any Defense, you need to send them to --

22 MR. BECKER: Okay.

23 THE COURT: -- to Thad and she'll give you his.

24 MS. FLECK: Thad, you got mine?

25 LAW CLERK: I do.

1 MR. CASTILLO: I may have one or two supplements which I'll submit by
2 tomorrow morning, Your Honor.

3 THE COURT: All right.

4 MR. CASTILLO: If that's okay.

5 THE COURT: All right.

6 MR. CASTILLO: And does that have our e-mail address? If I can approach,
7 I'll just --

8 THE COURT: We can start in the morning since I don't have the calendar
9 tomorrow, we could start early.

10 MS. FLECK: Right. Over like -- around 9 or 9:30.

11 THE COURT: Right.

12 MS. FLECK: So -- I mean, 9 or 9:30 completely works. Does that work for
13 you guys?

14 MR. BECKER: I guess the only concern --

15 THE COURT: 9 is okay.

16 MR. BECKER: Thank you, Your Honor.

17 THE COURT: I'd rather start at 8. I don't like to start --

18 MS. FLECK: Well, here's the thing, maybe --

19 THE COURT: Well, that's half a day for me before I get to start my trial.

20 MS. FLECK: I'm not certain that we will be that productive in the morning
21 because Dr. Cetl can't come until after lunch.

22 THE COURT: Okay.

23 MS. FLECK: And we're finishing with --

24 THE COURT: Well, don't we --

25 MS. FLECK: -- with the detective.

1 THE COURT: -- have to have another hearing as well?

2 MS. FLECK: Megan's. But that -- yeah that's -- that will take --

3 THE COURT: Is it just Megan?

4 MS. FLECK: Megan and the detective both have to do their 51.385 but that
5 will also be very short. So depending on how today goes, you know, we really could
6 be fairly brief tomorrow. Not brief but, you know, three witnesses that will all be
7 substantial but none of them are going to take the whole morning.

8 THE COURT: So tomorrow you'll have Megan?

9 MS. FLECK: We'll have Megan, we'll have Dr. Cetl, --

10 THE COURT: Dr. Cetl.

11 MS. FLECK: We'll have the detective.

12 THE COURT: And detective.

13 MS. FLECK: The detective will be lengthy.

14 THE COURT: Okay. I'm just needing to manage the time.

15 All right. I'll -- get the jury in, Tom.

16 Yeah. We'll be done by 5. Probably before then, depending on what
17 your cross-examination's like.

18 MARSHAL: All rise, please.

19 [In the presence of the jury]

20 MARSHAL: And be seated.

21 THE COURT: Stipulate to the presence of the jury.

22 Stipulate to the presence of the jury.

23 MS. FLECK: Oh. I'm sorry. Yes, Your Honor. The State stipulates.

24 MR. CASTILLO: Yes. Yes, Your Honor.

25 THE COURT: All right.

1 MS. FLECK: Thank you.

2 THE COURT: Ready for the next witness.

3 MS. EDWARDS: The State calls Jocelyn Coleman.

4 THE COURT: And you'll qualify her.

5 THE CLERK: Yes.

6 THE COURT: I won't.

7 We're not going to swear her in; you're going to qualify her.

8 **JOCELYN COLEMAN**

9 BY MS. EDWARDS:

10 Q Can you tell me your name, please?

11 A Jocelyn.

12 Q What's your last name?

13 A Coleman.

14 Q How old are you today?

15 A Seven.

16 Q Do you know when your birthday is?

17 A November 13th.

18 Q Do you know what year you were born?

19 A No.

20 Q That's okay. Are you in school?

21 A Yes.

22 Q What grade are you in in school?

23 A First.

24 Q Where do you go to school?

25 A Thompson.

1 Q Are you don't with school yet?

2 A No.

3 Q Almost?

4 A Yeah.

5 Q Have any plans for the summer?

6 A Yes.

7 Q What are you going to do this summer?

8 A Swimming.

9 Q Swimming a lot?

10 A Yeah.

11 Q Can you tell me some of the stuff you've learned in school this year?

12 A Math.

13 Q What kind of math?

14 A Pluses and Minus.

15 Q What else have you learned in school?

16 A I don't know.

17 Q Do you know the name of your teacher?

18 A Ms. Richardson.

19 Q What are you wearing today? Can you describe it for me?

20 A A pink dress.

21 Q Do you know what you had -- did you have breakfast this morning?

22 A Yes.

23 Q Do you know what -- you remember what you had for breakfast?

24 A Cereal.

25 Q Who do you live with?

1 A My mom and my sister.

2 Q What's your mom's name?

3 A Nicole.

4 Q What's your sister's name?

5 A Katey.

6 Q Do you know how old Katey is?

7 A Five.

8 Q Do you know where you live with your mom and your sister?

9 A No.

10 Q Do you live -- do you know if you live in Las Vegas or somewhere else?

11 A I live in Las Vegas.

12 Q Do you know -- can you tell me what you're -- the place that you live

13 right; can you tell what it's like? One story? Two story?

14 A It's two.

15 Q Do you share a bedroom with Katey or you mom or do you have your

16 own bedroom?

17 A I share a bedroom with Katey.

18 Q Do you have any pets at home?

19 A Yes.

20 Q What pet or pets do you have?

21 A Two dogs and one turtle.

22 Q What are the dogs' names?

23 A Mocha and Marley.

24 Q And what's the turtle's name?

25 A Bubbles.

1 Q Which one is your favorite of all the pets?
2 A They're all my favorite.
3 Q They're all your favorite. Okay. Fair enough. Did you bring anything
4 into court with you today?
5 A My stuffy.
6 Q Can you show me your stuffy? Does your stuffy have a name?
7 A Baby wolf.
8 Q Okay. Do you want me to call it stuffy or baby wolf?
9 A Baby wolf.
10 Q Okay. I'll call it baby wolf. Do you know what it means to tell the truth?
11 A Yes.
12 Q What does it mean to tell the truth?
13 A To tell only the thing that was true.
14 Q Okay. Do you know what it means to lie?
15 A Yes. To --
16 Q What does it mean to lie?
17 A To make up something.
18 Q Okay. Is it good or bad to tell the truth?
19 A It's good.
20 Q Is it good or bad to tell a lie?
21 A It's bad.
22 Q What do you think -- or what happens if someone lies?
23 A They can get punished.
24 Q Okay. What would happen if someone tells the truth?
25 A They won't get punished.

1 Q Do you have a dad?

2 A Yes.

3 Q What is his name?

4 A Fred.

5 Q Did you go to school today?

6 A No.

7 Q Did you go to school yesterday?

8 A Yeah.

9 Q Do you remember anything you learned in class yesterday?

10 A I did minuses.

11 Q Okay. Did you do any reading or spelling?

12 A I did reading.

13 Q What'd you do for reading?

14 A I read a book.

15 Q Do you remember the name of the book? Or what it was about?

16 A Little Red Riding Hood.

17 Q Do you like the book?

18 A Yeah.

19 Q Do you have a favorite book?

20 A Yes.

21 Q What's your favorite book?

22 A Marley's Adventure.

23 Q I'm sorry?

24 A Marley's Adventure.

25 Q What's that about? You said Marley's Adventure.

1 A It's a dog who digs out and goes to a restaurant.

2 Q Do you remember the last time you read Marl -- is it Marley or Molly?

3 A Marley.

4 Q Do you remember the last time you read Marley's Adventure?

5 A No.

6 Q Have you always lived with just your mom and you sister?

7 A No.

8 Q Who else have you lived with?

9 A Grammy and Granpy.

10 Q Okay. Do you remember when you lived with Grammy and Granpy?

11 A No.

12 Q Do you remember how old you were when you lived with Grammy and

13 Granpy?

14 A Four or five.

15 Q Okay. Did you go to school when you were four or five?

16 A Yeah.

17 Q Where'd you go to school when you were four or five?

18 A I forgot.

19 Q That's okay. When you lived with Grammy and Granpy, did you have

20 your own room or did you share a room?

21 A I shared a room.

22 Q Who'd you share a room with?

23 A Katey.

24 Q Anybody else live with you?

25 A No.

1 Q Okay. Did your mom live with you when you lived with Grammy and
2 Granpy?

3 A Yeah.

4 Q All right, Jocelyn. You said your dress is pink. Right?

5 A Yeah.

6 Q If someone was to tell you that your dress is green, would that be telling
7 the truth or telling a lie?

8 A Telling a lie.

9 Q Why?

10 A Because I don't have a green dress.

11 Q You're sitting in a courtroom. Correct?

12 A Yeah.

13 Q If someone were to tell you that you were at Disneyland right now; is
14 that the truth or a lie?

15 A A lie.

16 Q Why?

17 A Because I'm in the courtroom.

18 Q But you'd probably rather be at Disneyland. Right?

19 A Yeah.

20 Q Me too. Okay. If someone were to tell you that --

21 THE COURT: You don't need to ask anymore.

22 MS. EDWARDS: Okay.

23 THE COURT: I'm satisfied she'll tell the truth. Will you tell the truth today?

24 THE WITNESS: Yes.

25 **DIRECT EXAMINATION**

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BY MS. EDWARDS:

Q All right, Jocelyn. You said you were four when you lived with Grammy and Granpy. Right.

A Yeah.

Q Okay. Do you know who Megan is?

A Yeah.

Q Who's Megan?

A Dustin's wife.

Q Okay. Do you know if Megan has any kids?

A Yeah.

Q Do you remember or know the names of Megan's kids?

A Levi and I forgot the other name.

Q Okay. But she has -- so you're saying she has two kids?

A Yeah.

Q Okay. So you remember Levi. Right.

A Right.

Q Now the other one, do you remember if that one is older or younger than Levi?

A Younger than Levi.

Q I'm sorry?

A Younger.

Q Okay. So he's younger than Levi. Do you know where Megan lived the last time you saw her?

A No.

1 Q Do you remember what her house looks like?

2 A No.

3 Q And you said -- you mentioned Dustin. Right.

4 A Yeah.

5 Q Who is Dustin? Is he related to you or someone you know or someone

6 else?

7 A He's someone I know.

8 Q And how do you know Dustin?

9 A I spent the night at his house.

10 Q When you spent the night at his house, do you remember where you

11 slept?

12 A By the baby.

13 Q Was anyone else in the room besides you and the baby?

14 A Dustin.

15 Q Do you remember where you slept in that room when you slept in the

16 room with the baby?

17 A No.

18 Q Do you remember if you slept on something or on the floor or

19 somewhere else?

20 A No.

21 Q Okay. When you stayed the night at Dustin's, do you know where your

22 mom was at the time?

23 A At our -- at her house.

24 Q Was anyone else home besides you and the baby and Dustin at that

25 time?

1 A Megan, Levi, Katey, and then his little brother.

2 Q Do you know where Levi and Katey were when you were in the room
3 with Josh and Dustin?

4 A They were in Dustin's and Megan's room.

5 Q Okay. Do you know how long Dustin was in the room with you and the
6 little one; the baby?

7 A No.

8 Q Was it for a long time or a short time?

9 A I don't know.

10 Q Okay. Did anything happen when Dustin was in the room?

11 A Yeah.

12 Q Can you tell me what happened?

13 A He digged in my privates.

14 Q Okay. Can you tell me where your privates are?

15 A I don't know.

16 Q Are they on your body or somewhere else?

17 A On my body.

18 Q Can you stand up and point to where on your body you privates are?

19 A [The witness stands and points below her waist]

20 MS. EDWARDS: For the record she stood up and is pointing to below her
21 waist. In her -- area.

22 THE COURT: Yeah.

23 MS. EDWARDS: Okay.

24 BY MS. EDWARDS:

25 Q You can have a seat. Thank you. Do you do anything with your

1 privates?

2 A No.

3 Q Okay. Do you remember what you were wearing when that happened?

4 A No.

5 Q Do you remember what -- when you say he digged in your privates, do
6 you know what he was digging with?

7 A His finger.

8 Q And where did he put his finger?

9 A Inside my privates.

10 Q Okay. Do you know if it was over your clothes or under your clothes?

11 A No.

12 Q How did it feel when he was digging in your privates with his fingers?

13 A It hurt.

14 Q Do you remember if you said anything to him?

15 A No.

16 Q Do you remember if he said anything to you?

17 A No.

18 Q Do you remember how long he was digging in your privates?

19 A No.

20 Q Did he -- at some point did he stop digging in your privates?

21 A Yes.

22 Q What happened after he stopped digging in your privates?

23 A He went to wash his hands.

24 Q Where did he go wash his hands?

25 A In the bathroom.

1 Q Did you see him go to the bathroom to wash his hands?

2 A Yeah.

3 Q Okay. Do you know where he went after he washed his hands?

4 A In bed.

5 Q Okay. Do you know who -- or where he slept in the bed?

6 A No.

7 Q Do you remember -- was it daytime or nighttime or something else
8 when this happened?

9 A It was nighttime.

10 Q Where were you at when this happened?

11 A At Megan's and Dustin's house.

12 Q Do you ever call Megan by a different name?

13 A No.

14 Q Do you --

15 MS. EDWARDS: Sorry. Court's indulgence.

16 BY MS. EDWARDS:

17 Q After he -- you said Dustin went back into the room. Right.

18 A Yeah.

19 Q After he went back into the room, what'd you do?

20 A I went to sleep.

21 Q Did you ever tell anybody about what happened with Dustin?

22 A Yeah.

23 Q Who'd you tell?

24 A My mom and my grandma.

25 Q When did you tell your mom?

1 A When she came and picked us up
2 Q Where'd she pick you up from?
3 A Dustin's house.
4 Q When she picked you up, where were you when you told your mom?
5 A In her bed.
6 Q Was anyone else there?
7 A Grammy was.
8 Q When did you tell Grammy?
9 A The same time I told Mommy.
10 Q Did you tell them at the same time or the same day or something else?
11 A At the same time.
12 Q Did you tell anybody else?
13 A No.
14 Q Did you ever go to a doctor's office?
15 A Yeah.
16 Q Do you remember when you went to a doctor's office?
17 A No.
18 Q Why'd you go to the doctor's office?
19 A I don't know.
20 Q Did you ever talk to a police officer?
21 A No.
22 Q Do you know anyone by the name of Tim or Timmy?
23 A No.
24 Q One second, Jocelyn. Okay, Jocelyn. Did you ever talk to your dad
25 about this?

1 A Yes.

2 Q Do you remember when you talked to him?

3 A No.

4 MS. EDWARDS: I don't have any --

5 MS. FLECK: No.

6 BY MS. EDWARDS:

7 Q I just have -- I don't have any more questions about that but I have one
8 more question for you. Ready?

9 A Yeah.

10 Q Do you see Dustin in the room today?

11 A Yeah.

12 Q Can you tell me where Dustin and tell me something Dustin's wearing?

13 A A blue shirt.

14 THE COURT: Record reflects she's identified the Defendant.

15 MS. EDWARDS: I don't have any more questions for you. Thank you.

16 **CROSS-EXAMINATION**

17 BY MR. BECKER:

18 Q Good afternoon.

19 A Afternoon.

20 Q You and I have never spoken before have we Jocelyn?

21 A No.

22 Q But you've talked before about what you talked about today. Right?

23 A Yeah.

24 Q And you've actually come to a court before to talk about these things.

25 Correct?

1 A Yes.

2 Q And it was a different courthouse you came to last time. Right?

3 A Yeah.

4 Q And do you remember how long ago it was that you came to court
5 another time to talk about this?

6 A No.

7 Q Do you remember when you went to court another time being asked if
8 you could see your Uncle Dustin in the courtroom?

9 A No.

10 Q Do you know if you were able to point to him the last time you testified in
11 a court?

12 A I don't know.

13 Q All right. Now, you meet with a woman named -- or strike that. For a
14 long period of time you were meeting with someone named Betsy. Is that right?

15 A Yeah.

16 Q And you were going to Betsy to kind of talk about some of these things.
17 Is that right?

18 A Yeah.

19 Q And do you remember meeting with Betsy and telling Betsy that you
20 wanted to practice what you were going to say in court when you came here?

21 A Yes.

22 Q Okay. So you've been practicing a lot to prepare for today. Is that
23 right?

24 A Not a lot.

25 Q How did you go about practicing?

1 A I told Ms. Betsy what happened.

2 Q Okay. But when you were planning to practice to come to court what
3 kind of things did you do to practice?

4 A I don't know.

5 Q All right. Did you -- did family members help you to practice?

6 A yes.

7 Q Did your mommy help you to practice?

8 A Yeah.

9 Q And did your Grandma help you to practice?

10 A No.

11 Q When did your mommy help you to practice?

12 A At nighttime.

13 Q Did you mommy help you last night?

14 A No.

15 Q How long ago did your mommy help you to practice?

16 A I don't know.

17 Q Did she help you a lot to practice?

18 A No.

19 Q How many times did mommy help you practice?

20 A Like two.

21 Q And I know days and weeks go by really quickly. But you know what a
22 week is; don't you?

23 A Yeah.

24 Q Like if I said to you what did you do over the weekend? Could you tell
25 me what you did this last weekend?

1 A Go swimming.

2 Q All right. Did your mommy help you practice before this weekend? Or

3 was it after -- between today and this weekend that your mommy helped you

4 practice?

5 A I don't know.

6 Q Now when you stayed with -- when you spent the night at Dustin and

7 Megan's house you don't remember much about the house?

8 A No.

9 Q Do you remember how many bedrooms there were in the house?

10 A No.

11 Q Do you remember if it was a big house or a small house?

12 A No.

13 Q Well, when I ask you if you remember something -- you know, when

14 you're young sometimes it's hard to remember a lot of things. Is that right?

15 A Yeah.

16 Q So you're in first grade now. Right?

17 A Yeah.

18 Q And last year you were in Kindergarten.

19 A Yeah.

20 Q Do you remember if you were going to school when you were four

21 years old?

22 A I went to school.

23 Q Okay. Where did you go to school then?

24 A I forgot.

25 Q Okay. When you sit today in this big courtroom -- I know you've had a

1 chance to practice all of these things but can you actually remember this night that
2 you said you were sleeping at Megan and Dustin's? Can you actually remember it?
3 Or are you just talking about the things that you've practiced with your mom?

4 A I can remember it.

5 Q All right. Now the nice lady over here had asked you where you were
6 sleeping that night. Remember?

7 A Yeah.

8 Q And she asked you -- you said you were sleeping in the same room
9 with the baby. Right?

10 A Yeah.

11 Q And you don't remember the baby's name.

12 A No.

13 Q All right. But you were asked whether you were sleep -- where you
14 were sleeping and you don't remember. Is that right?

15 A No.

16 Q In other words, did you have a sleeping bag?

17 A No.

18 Q Were you sleeping on a bed?

19 A I don't know.

20 Q Do you remember if there were sheets? If you had a blanket or
21 something like that?

22 A I had a blanket.

23 Q All right. You did have a blanket.

24 A Yeah.

25 Q Okay. Do you remember what color the blanket was?

1 A No.

2 Q Do you remember if you were sleeping underneath the blanket?

3 A I was sleeping underneath the blanket.

4 Q All right. And you told Michelle that today you're wearing a nice pink
5 dress. Is that right?

6 A Yeah.

7 Q Do you remember what you were wearing this night when you went to
8 sleep?

9 A No.

10 Q What do you normally wear when you go to sleep?

11 A A t-shirt.

12 Q Okay. Do you wear pajamas?

13 A Yes.

14 Q Okay. And do you wear shorts also?

15 A Yeah.

16 Q All right. And when you would go to spend the night at Uncle Dustin
17 and Aunt Megan's house, you would bring clothes with you. Is that right?

18 A Yes.

19 Q And when you would go to sleep you would wear shorts and pajamas.
20 Right.

21 A Yeah.

22 Q And you'd also wear underpants. Right?

23 A No.

24 Q And do you remember this night -- do actually remember what -- when it
25 was that you decided to go to sleep?

1 A No.

2 Q Do you remember if you decided to sleep in the room with the baby or
3 who decided that you would sleep in that room?

4 A Aunt Megan did.

5 Q All right. And do you remember if Uncle Dustin was in the house when
6 you went to sleep?

7 A What did you say?

8 Q This house that you were at -- you were at Aunt Megan's house. Right?

9 A Yeah.

10 Q And Aunt Megan lived in the house with Uncle Dustin.

11 A Yeah.

12 Q And they had two children. Right?

13 A Yes.

14 Q And when you went to bed that night, do you remember if Uncle Dustin
15 was there; was home?

16 A He was home.

17 Q All right. And -- but it was Aunt Megan who decided to -- that you would
18 sleep in the room with the baby?

19 A Yes.

20 Q And do you have any idea when it was that you went to sleep? Was it
21 after dinner? Was it really late that night?

22 A I don't know.

23 Q Did you have any problem falling asleep that night?

24 A Yes.

25 Q Why did you have trouble sleeping?

1 A Because I was hurting.

2 Q I'm sorry? You were holding?

3 A I was hurt.

4 THE COURT: Hot.

5 MR. BECKER: All right. Okay.

6 THE COURT: It was hot.

7 MR. BECKER: Oh. It was hot.

8 THE WITNESS: No.

9 MS. FLECK: No. She was hurt.

10 MS. EDWARDS: It's hurt.

11 MR. BECKER: Okay.

12 THE COURT: Hurting.

13 MR. BECKER: All right.

14 BY MR. BECKER:

15 Q You say at some point in time your Uncle Dustin came in the room.

16 A Yes.

17 Q All right. When Uncle Dustin came in the room, were you sleeping?

18 A I was trying to go to sleep.

19 Q All right. And what did Uncle Dustin do when he first came in the room?

20 A He digged in my privates.

21 Q All right. Do you remember telling anybody that Uncle Dustin came in

22 the room to check on the baby?

23 A Yes.

24 Q So did Uncle Dustin come to check on the baby before he dug or after?

25 A Before.

1 Q All right. So he came into the room and he checked on the baby. Is
2 that right?

3 A Yes.

4 Q And at this point in time you were lying down under the blanket. Right?
5 A Yes.

6 Q And then at some point you say Uncle Dustin came and dug on your
7 privates. Is that right?

8 A Yes.

9 Q How long did that last?

10 A I don't know.

11 Q Did you stay -- when Uncle Dustin came in to dig on you, did you stay
12 where you were underneath the blanket?

13 A Yes.

14 Q Did -- you were wearing your pajamas. Right?
15 A Yes.

16 Q And you were -- you never took your pajamas off did you?
17 A No.

18 Q And your pajamas stayed on you the whole time. Right?
19 A Yes.

20 Q And the blanket stayed on you the whole time. Is that right?
21 A Yes.

22 Q And you specifically remember this?
23 A Yes.

24 Q Okay. I mean I know this happened a long time ago but it's important.
25 You can remember as you're sitting --

1 MS. FLECK: Objection. Asked and answered twice now.

2 THE COURT: I'll -- overruled.

3 BY MR. BECKER:

4 Q As you sit here today, you remember these -- the things that you're
5 testifying to. Correct?

6 A Yes.

7 Q Now how many nights did you spend at Aunt Megan and Uncle
8 Dustin's?

9 A One.

10 Q Okay. And do you remember who picked you up after you spent the
11 night at Aunt Megan and Uncle Dustin's?

12 A My mom.

13 Q And did you tell your mommy right away what happened?

14 A Yes.

15 Q Did you tell her in the car?

16 A I told her when we got home.

17 Q Now you -- sometimes you spent -- during -- you live with your mommy
18 and your sister right now. Is that right?

19 A Yes.

20 Q But back then you lived with -- you also were lucky you got to live with
21 your grandparents too. Right?

22 A Yes.

23 Q But at that time your -- you got to also stay sometimes with your
24 mommy and sometimes you got to stay with your daddy. Is that right?

25 A Yes.

1 Q And so do you remember at some point after spending the night at Aunt
2 Megan and Uncle Dustin's going to spend the night with your daddy?

3 A No.

4 Q When you lived with your grandparents, did you ever hear your
5 parents -- your mommy or your grandparents saying mean things about Uncle
6 Dustin?

7 A No.

8 MR. BECKER: Court's indulgence.

9 No further questions.

10 THE COURT: Thank you.

11 MS. EDWARDS: No questions.

12 THE COURT: The jury have any questions for this witness?

13 Seeing no hands. You're free to go, okay.

14 THE WITNESS: Okay.

15 THE COURT: Thanks.

16 Call your next witness.

17 MS. FLECK: Thank you. The State calls Joanna Hammonds.

18 **JOANNA HAMMONDS**

19 [having been called as a witness and being first duly sworn, testified as follows:]

20 THE CLERK: Please be seated. Would you please state and spell your first
21 and last name for the record?

22 THE WITNESS: Yes. Joanna Hammonds; J-O-A-N-N-A, H-A-M-M-O-N-D-S

23 THE CLERK: Thank you.

24 MS. FLECK: May I proceed, Your Honor?

25 THE COURT: Yes.

1 MS. FLECK: Thank you.

2 DIRECT EXAMINATION

3 BY MS. FLECK:

4 Q Good afternoon, Ms. Hammonds.

5 A Afternoon.

6 Q Do you have children?

7 A I do.

8 Q How many kids do you have?

9 A I have three.

10 Q Who's your oldest?

11 A Nicole Hammonds.

12 Q And how old is she?

13 A Twenty-nine.

14 Q Does Nicole have children?

15 A Oh wait. Not until next week. I'm sorry.

16 Q Okay. Well close enough. She'll be twenty-nine for awhile actually.

17 A Right.

18 Q She's a woman. So.

19 A Yeah.

20 Q Does Nicole have kids?

21 A Yes she does.

22 Q How many?

23 A Two.

24 Q And what are their names?

25 A Jocelyn Coleman and Katelyn Coleman.

1 Q How old is Jocelyn?
2 A Jocelyn is seven.
3 Q And how about Katelyn?
4 A She's five
5 Q Is Nicole married at the -- right now?
6 A No she is not.
7 Q Has she been?
8 A Yes she has been.
9 Q And what's her ex-husband's name?
10 A Frederick Coleman.
11 Q While they're not married is he still in your lives being the father of the
12 grandkids?
13 A Yes.
14 Q How about the next child after Nicole?
15 A Megan Hammonds.
16 Q And how old is she?
17 A 28.
18 Q Does she have kids?
19 A Yes, she does.
20 Q And what are her kid's names?
21 A Levi Barral and Joshua Barral.
22 Q And how old is Levi?
23 A Levi is six.
24 Q How about Joshua?
25 A He's three.

1

2 Q Is your daughter Megan married?

3 A No, she is not.

4 Q Has she been?

5 A Yes she has been.

6 Q And what's her ex-husband's name?

7 A Dustin Barral.

8 Q Do you see Dustin Barral in the courtroom today?

9 A Yes, I do.

10 Q Can you please point to him and describe something he's wearing for
11 the record?

12 A He's right there in the blue shirt and blue tie.

13 MR. BECKER: And I'll stip that she's identified Dustin.

14 THE COURT: The record reflects they've identified the Defendant.

15 BY MS. FLECK:

16 Q And then you said that you have one more child.

17 A Michael Hammonds.

18 Q And how old is he?

19 A 26.

20 Q And is he about to get married?

21 A Yes.

22 Q Who do you currently live with?

23 A My husband, David Hammonds.

24 Q How about any of your kids?

25 A No.

1 Q And is that here in Las Vegas?

2 A Yes, it is.

3 Q At some point did you -- I mean, obviously when the kids are growing
4 up you live with all them. Is that right?

5 A Yes.

6 Q At some point did you live with your daughter Nicole as she's been an
7 adult and has had her two kids Jocelyn and Katelyn?

8 A Yes.

9 Q And when was that?

10 A I want to say 2009, 2010. Could have been before that a little bit. I
11 don't know the exact month they moved in but --

12 Q That's okay. So back in 2010 she's living with you with the girls. Is that
13 because her and Fred are at that point separated?

14 A Yes.

15 Q How about Megan? Was Megan living with you?

16 A No.

17 Q Back in 2010, where was Megan living?

18 A With her husband and the boys in their own house.

19 Q So that's with the Defendant?

20 A Yes.

21 Q What was your relationship like with Nicole and her kids back in 2010?

22 A Very -- we're very close.

23 Q Close family?

24 A Yes.

25 Q They were all living with you and that was -- I mean, you were good

1 with that at the time?

2 A Yes.

3 Q How about Megan? Back in 2010, what was your relationship like with
4 her?

5 A Very close.

6 Q How about her and your husband?

7 A Very close.

8 Q Growing up, would you describe your family, you, the girls, your
9 husband, and your son as a tight-knit, close family?

10 A Yes.

11 Q What kinds of things did you all enjoy doing together?

12 A Baseball games, football games, vacations, you know, swimming,
13 barbeques.

14 Q Were church functions a regular --

15 A Yes. And church.

16 Q -- part of your life?

17 A Yes.

18 Q How old was Megan when she met the Defendant?

19 A I'm sorry. I'm having to think. Twenty-three?

20 Q Okay.

21 A Is that right? No. Yeah. About twenty-three maybe.

22 Q Early twenties.

23 A Yeah.

24 Q And when they first met how did you like Dustin? How'd you feel about
25 him?

1 A I didn't know him when they first met.

2 Q How long after they met did they go on to marry?

3 A It wasn't that long, I don't think.

4 Q How much time had you been able to spend with Dustin before you got
5 word that they were getting married?

6 A Not that much.

7 Q Was that something different for you? I mean, how did you feel about
8 that?

9 A Yeah. That was different. The circumstances I think were different.
10 So.

11 Q In what way?

12 A That -- just because we didn't know him very well and they had their
13 minds set on what they wanted to do.

14 Q Meaning getting married.

15 A Yes.

16 Q Okay. So, how did you first come to know that they were thinking about
17 this; this was something they were thinking that they wanted to do?

18 A I act -- that they -- from my recollection Dustin had come to my husband
19 and asked -- said he wanted to marry Megan.

20 Q Okay. And how did you and your husband feel about that?

21 A He said -- he asked him to wait.

22 Q And why was that?

23 A Because we didn't know him that well.

24 Q So was it something that you didn't like Dustin or was it just that you
25 didn't really have a chance to form your opinion yet and they were young -- kind of

1 young kids?

2 A Yeah we didn't have a chance to form our -- an opinion and, you know,
3 we were just, you know, maybe being a little protective I guess, you know. I don't --
4 I mean, we just didn't know him.

5 Q Okay. Throughout the course then of their marriage I guess up until
6 while -- let's talk about first from, you know, when they first got married until July of
7 2010. What was your relationship like as a family with Megan and Dustin?

8 A Well after they had been married for a few months, it became more
9 normal. We started spending more time together. And they would a part of, you
10 know, things that we did as a family after a few mon -- after they'd been married a
11 few months.

12 Q Would you spend holidays with your daughter and the Defendant?

13 A Yes.

14 Q And also Nicole and the kids?

15 A Yes.

16 Q And the family things you talked about, you know, going to barbeques
17 or baseball games or church functions; is that something that the Defendant was
18 also included in --

19 A Yes.

20 Q -- if he wanted to come?

21 A Yes.

22 Q Okay. Then I'd like to direct your attention to July of 2010; specifically
23 July 9th. Was there something that happened July 9th of 2010 that caused your
24 daughter, Nicole to go to the hospital?

25 A Yes. She had been vomiting. Just -- like she couldn't stop. She would

1 drink water and she'd throw-up and you know, just -- there was no rhyme or reason
2 to what was happening. She just kept vomiting and sh -- we had called -- I'd called
3 my family doctor and he said take her to Valley Emergency Room.

4 Q So did you do that?

5 A Yes, I did.

6 Q And --

7 A Well, my husband did. I'm sorry. I did not. My husband took her.

8 Q Okay. But somehow she gets to the hospital?

9 A Yes.

10 Q And she was living with you at the time. Right?

11 A Yes.

12 Q So what happened with Jocelyn and Katelyn when your husband took
13 her to the hospital?

14 A They were with me on that Friday. I believe it was a Friday. They were
15 with me.

16 Q Throughout the weekend, where did the girls go if anywhere?

17 A Well they were at our house until Saturday afternoon; sometime
18 Saturday afternoon. And then I took them to Megan and Dustin's house.

19 Q How was it that they ended up going from your house over to Megan
20 and Dustin's? How did that come about?

21 A At that time my husband and I were on staff at a church and so we
22 would have to be at church very early; like 7:00 in the morning. So we typically left
23 the house at 6 and so to make it easier Megan had volunteered to take the girls so
24 they wouldn't have to get up so early and be at church so early. So that's why I took
25 them there so they could spend the night.

1 Q And when you say to church are you talking about the following Sunday
2 you would have to be there that early? Like --

3 A The next day. That next Sunday.

4 Q That next Sunday.

5 A Yes.

6 Q Yeah.

7 A Yeah.

8 Q Okay so on Saturday if -- you determined hey tomorrow's church day,
9 we've got to be there so early so have the girls go to Megan's?

10 A Right.

11 Q And is that something that the girls would do often? Go over to Megan
12 and Dustin's?

13 A I mean it -- often is probably not the right word. It was -- maybe regular
14 would be more, you know, -- but I mean, when something like this would happen
15 and there needed to be help, the family kind of all pulled together. So.

16 Q So it wasn't like a weekly or sometimes even monthly thing but the --
17 but it wasn't abnormal for the girls --

18 MR. BECKER: I'm going --

19 MS. FLECK: -- to go over to their cousin's --

20 MR. BECKER: I'm going to object.

21 MS. FLECK: -- and aunt's house?

22 MR. BECKER: Leading.

23 MS. FLECK: Well, I just -- you know, it's kind --

24 THE COURT: Overruled.

25 MS. FLECK: -- of hard to figure out the timeline.

1 BY MS. FLECK:

2 Q But it wasn't something that was abnormal?

3 A No it was not abnormal at all.

4 Q When Jocelyn went to her Aunt Megan's that day, did she indicate in
5 any way that she didn't want to go?

6 A No.

7 Q What was her relationship, you know -- as far as you saw, what was her
8 relationship like with her Uncle Dustin up until that point?

9 A It was okay. I mean, you know, she was closer to her other uncle than
10 she was to him.

11 Q Is that your son?

12 A Yes.

13 Q How about her relationship with her Aunt Megan?

14 A Oh, she adored her.

15 Q And how about her cousins Levi and Joshua?

16 A Adored them.

17 Q So who was it that was responsible then for taking the girls over to
18 Megan and the Defendant's on that Saturday?

19 A I took them.

20 Q Around what time do you think you dropped them off?

21 A I want to say that it was around dinnertime because when we got there
22 dinner was ready and the girls pretty much came in and they sat down and ate with
23 Levi and Joshua; or with Levi. Joshua was still really little then. So I would say it
24 was 5:30, 6-ish maybe in the evening.

25 Q And then at some point did you leave to go spend the night at your own

1 house?

2 A Yes, I did.

3 Q When's the next time that you see Jocelyn and Katelyn and Megan?

4 A At church on Sunday morning.

5 Q So tell how it is that you kind of start -- where you get to church and
6 then see your family the next day.

7 A They prob -- they got there right before service started and my husband
8 and I would work the children's ministry and Nicole also. And so I think saw Megan
9 when she dropped -- when she went up to the nursery and was dropping the kids
10 off. So.

11 Q So she would drop the kids off in the nursery and then she would go in
12 for service?

13 A Correct.

14 Q At some point after church do you see the Defendant?

15 A Yes. It was after service.

16 Q How did that happen?

17 A He had come in to pick up Levi and Joshua.

18 Q So he had not attended the service that particular morning?

19 A No, he had not.

20 Q How did happen then that he came to church to pick up the boys?

21 A I don't understand.

22 Q Why did he come to church -- why -- I mean, why didn't the boys just
23 leave with Megan?

24 A Megan wanted to go to the hospital to see her sister.

25 Q Okay. So he was going to come and get the boys and take them

1 home?

2 A Yes.

3 Q Did you interact with him when he came?

4 A Yes.

5 Q And who all was there during that interaction?

6 A Megan, the children, all of them were there and I believe my sister was
7 there also.

8 Q What's your sister's name?

9 A Katherine Denny.

10 Q Aunt Kathy?

11 A Uh-huh.

12 Q Okay. If the jurors have already heard Aunt Kathy, that's who it is?

13 A Yeah.

14 Q All right. And you say the children so that would be Levi, Joshua,
15 Jocelyn, and Katelyn?

16 A Yes.

17 Q Did you have any verbal interaction with the Defendant during that time
18 after the service?

19 A Yeah. There was some -- and I -- you'd have to pardon me I don't
20 remember who brought it up but something was brought up that in the middle of the
21 night Dustin had forgotten that Jocelyn was sleeping on the futon in Joshua's room
22 and he had come in and sat on her.

23 Q Now when you say you don't remember who, was it any of the kids that
24 brought it up?

25 A No.

1 Q Okay. So one of the adults. So the only adults that were there are you,
2 Megan, and the Defendant. Correct?

3 A Correct. And possibly my sister was there.

4 Q And possibly your sister.

5 A But it was between -- either Megan or Dustin had brought it up.

6 Q Okay. [indiscernible]

7 A Because it was something I wasn't privy to before that moment.

8 Q Right. I just want to make sure it wasn't one of the children that talked
9 about it.

10 A Right.

11 Q It was either Dustin -- I know you don't remember which but it was
12 either Dustin or Megan who brings this up?

13 A Correct.

14 Q And what's the sort of vibe of the conversation? Is it something that
15 they'd find interesting? That's funny? That was, you know -- what was the nature of
16 the conversation?

17 A It was light-hearted. They thought it was funny that he had forgotten
18 she was in there.

19 Q Was Jocelyn present for this conversation?

20 A She was around. She -- I would say she probably wasn't in the middle
21 of the conversation. It was a room about 10 by 8 maybe and so, you know, as
22 children do when they're together, they're just kind of all over, you know, and back
23 and forth. So.

24 Q Did she -- do you if she kind of realized that the conversa -- I mean did
25 you notice whether Jocelyn heard that part of the conversation? Did she react in

1 any way to that part of the conversation that you saw?

2 A I don't remember anything like that.

3 Q Okay.

4 MS. FLECK: Court's indulgence.

5 BY MS. FLECK:

6 Q And did you think anything of it when you guys had that conversation?

7 A No. I did not.

8 Q So then what happens after church?

9 A This is where it gets complicated trying to remember who took
10 everybody where.

11 Q I know. And it's --

12 A Yeah.

13 Q -- three years ago.

14 A Right.

15 Q I understand. I'm not asking for, you know --

16 A Yeah.

17 Q If you don't remember just tell me you don't remember the exact times
18 and stuff.

19 A Okay. So Dustin and the boys left. I'm not sure if Jocelyn and Katelyn
20 went with my sister or with Megan to the hospital to just see their mom quick
21 because, you know, kids aren't supposed to go in a hospital. So, we kind of brought
22 them to the door: Hi mom. She's okay type of th -- or they did. And so -- and then
23 Megan stayed and then my sister Kathy took the girls with her.

24 Q And then what happened after that?

25 A From what I understand was that she took -- they might have gone

1 swimming at my brothers. And she had kept them and --

2 Q Another night?

3 A No. They actually ended up going back to Megan and Dustin's house.

4 Q So your Aunt Kathy kept them for a bit that day, they swam possibly,
5 and then went back to Megan's though that evening to stay the night.

6 A Correct. Because we typically take a nap and then we had Sunday
7 night services.

8 Q Did you see the girls again Sunday night?

9 A I did not.

10 Q Did you see them at all on Monday?

11 A I did not.

12 Q Do you know where they went on that Monday?

13 A Well, on Sunday there was a part -- Meg -- Nicole got discharged from
14 the hospital so Megan had brought her home from the hospital. And so the boys -- I
15 mean, sorry. Jocelyn and Katelyn were at the boys' house; at Megan and Dustin's
16 house Sunday night. And I'm not sure what occurred Monday.

17 Q Okay.

18 A Except that typically Monday night they spent the night at their dad's
19 house because he was off on Tuesdays. And Nicole went to school on Monday
20 night. She was going to get her bachelor's degree.

21 Q Okay. Fair to say then on a weekly basis, sometimes Monday,
22 sometimes that would change if it needed to but the girls would stay with their dad --
23 try to stay with their dad once a week?

24 A Just on the school night.

25 Q Just on a --

1 A On a night she went to her classes; when Nicole went to school.

2 Q Okay. And then sometimes if their work schedules would change or
3 fluctuate that -- they would be flexible with that?

4 A Yeah.

5 Q Is that right?

6 A Yes.

7 Q They were able to work together at that time with custody?

8 A Yes.

9 Q So then at some point on Tuesday, does Nicole and the two girls come
10 back to your house?

11 A Yes.

12 Q Nicole's -- well I guess she -- I'm sorry. You just said she came back
13 Sunday. But did she bring the girls back I should say?

14 A Yes. She -- I believe that she went and picked up the girls with Megan.

15 MR. BECKER: We'll object. Lack of foundation.

16 MS. FLECK: Is it --

17 MR. BECKER: I'll withdraw the objection.

18 MS. FLECK: Well let me -- just let me clarify because I think it's probably my
19 fault.

20 BY MS. FLECK:

21 Q Sunday night they are not at your house. Right?

22 A Correct.

23 Q The girls are still at Megan's?

24 A Correct.

25 Q Monday, as far as you know, they go to their dad, Fred's?

1 A Correct.

2 Q on Tuesday they come back to your house?

3 A Correct.

4 Q And what you remember is that Nicole and Megan go to pick the girls
5 up at Fred's and bring them back to your place?

6 A Correct.

7 Q When they get back to your place, who all is there?

8 A My husband David and I are home. Nicole came home. Megan was
9 with here. Jocelyn, Katelyn, Levi, and Joshua were all at my house.

10 Q Right. And what did you guys do?

11 A I think we just -- we hung out for awhile. I don't remember the exact
12 time that they came home and -- but it was -- I believe it's later because my
13 recollection is is that Megan had to leave to go ho -- she had to get gas and stop at
14 the store and then Nicole took the girls upstairs so they could take their bath.

15 Q Is that something that was a regular evening routine?

16 A Oh, yes. Every evening.

17 Q At some point does Nicole come back downstairs to tell you something?

18 A Yes. She came down the stairs; she looked very upset. And she said I
19 need you to go talk to Jo-Jo, which is Jocelyn's nickname.

20 Q Do you remember anything else that she said?

21 A She just said that she had told her something and she wanted me to go.

22 Q Okay. And so what did you do?

23 A So I went upstairs. They typically bathed in our room because we had
24 a -- like a roman tub in our bath. And so they -- her and her sister were in the
25 master bathroom area waiting and so I, you know, I went over to her and I said, you

1 know, -- this isn't exact. I don't -- the exact words kind of -- it's been three years so
2 it kind of gone a little bit. But she -- I asked her if she was okay. And she said yes.
3 And I said well what did you tell mommy? And then she proceeded to tell me that
4 Uncle Dustin had touched her and had dug up in her; was her words.

5 Q Where did you say she was when she told you this?

6 A In the master bathroom.

7 Q And what was her demeanor? How was she acting?

8 A Just matter-of-fact. Ar -- you know, she ver -- it was very articulate what
9 she said and what she communicated to me.

10 Q At that time at four years old, at four years old, I mean when you say
11 she was very articulate, is -- was that your general feeling of how she was able to
12 express herself? Like she was -- she was verbal?

13 A Yes.

14 Q She was a verbal child?

15 A Yes.

16 Q So she was matter-of-fact, meaning what?

17 A Just that she knew exactly what had happened.

18 Q Was she emotional at all?

19 A Not really.

20 Q Not dramatic or hysterical; anything like that?

21 A No.

22 Q What did you do then based on what she had told you?

23 A I asked her again if she was okay and then I proceeded to come
24 downstairs so that her mom could come back up and finish their bath.

25 Q Did you ask any follow-up questions to her saying he dug in her

1 Jocelyn and I also spoke with Counsel earlier that they would stipulate to admission
2 of the exhibit.

3 MR. BECKER: No objection.

4 THE COURT: It'll be admitted.

5 **[STATE'S EXHIBIT 1 ADMITTED]**

6 BY MS. EDWARDS:

7 Q Okay. Is that approximately what Jocelyn looked like in July or summer
8 of 2010?

9 A Yes.

10 Q Okay. Did you take this picture?

11 A I did.

12 Q Okay. I notice she's missing some teeth.

13 A Yes.

14 Q Okay.

15 A She has a lot more now.

16 Q Okay. And was she missing all those teeth in July of 2010?

17 A Yes.

18 Q Okay. So her everyday disposition: outgoing, shy?

19 A Very outgoing, playful, social; she had a lot of friends. Just happy. She
20 was a happy kid.

21 Q Generally speaking, when Jocelyn had something to tell you, in an
22 everyday occurrence, what would the conversation be like?

23 A Just conversation; she would just talk. Nothing -- I don't know.

24 Q At some point in July of 2010 did Jocelyn tell you something that had
25 happened to her?

1 A Yes.

2 Q Okay. Do you remember when that was?

3 A Yes. It was that Tuesday after I'd been hospitalized.

4 Q Where were you when this happened?

5 A We were at home?

6 Q You said you saw the girls first Tuesday in Tuesday afternoon evening,
7 correct?

8 A Correct.

9 Q Where did you first see them?

10 A My sister had picked me up with her kids and we went to pick up my
11 kids from their dad's house.

12 Q And what's their dad's name?

13 A Frederick Coleman.

14 Q Regular for them to have visitation with him?

15 A Yes, weekly.

16 Q When you picked them up, what happened after you picked them up
17 from Fred's house?

18 A Megan and I and all the kids went back to my parent's house for dinner.

19 Q Were your parents home at the time?

20 A Yes.

21 Q So you all had dinner together, correct?

22 A Yes.

23 Q Okay. What happened after dinner?

24 A Megan and the boys left and I took the girls upstairs, my girls, to take a
25 bath.

1 Q Okay. When you took them upstairs to take a bath, what happened
2 when you got upstairs?

3 A We got upstairs and Jocelyn stopped me in the hallway and told me she
4 needed to talk to me.

5 Q Okay. Was it normal for her to stop you in the hallway and tell her she
6 needed to talk to you?

7 A Not really, no.

8 Q Okay. What was your response?

9 A I said okay honey, what's up? And she said no, we need to go in your
10 bedroom. So -- Sorry.

11 Q Okay.

12 A Sorry.

13 Q So she took you from the hallway to the bedroom?

14 A Correct.

15 Q Okay. And then what happened?

16 A She had me sit on my bed and she sat next to me.

17 Q And when she was sitting next to you, what did she say?

18 A She went on to tell me that when she was trying to sleep at Mae-Mae
19 and Uncle Dustin's house -- Mae-Mae is Megan.

20 Q Okay.

21 A That Dustin came in the room to check on the baby and he sat on the
22 futon, looked at her privates, touched her privates, and dug in them.

23 Q Okay. What was your response?

24 A I just said okay. And then I asked if she was telling the truth and she
25 said yes.

1 Q Okay. How would you describe Jocelyn's demeanor when she was
2 explaining these things to you?

3 A Very serious; very matter-of-fact.

4 Q Was that normal for her? Different for her?

5 A No, that was not normal for her.

6 Q Do you know where Katelyn was at this point in time?

7 A I don't.

8 Q So why -- you asked her if she's telling the truth, correct?

9 A Correct

10 Q And sh -- what was the purpose of you asking that question?

11 A I knew I needed to call the police and I just needed confirmation from
12 her.

13 Q Okay. What do you do after she tells you all these things?

14 A I told her to wait upstairs and I went downstairs.

15 Q As she's telling you these things when you're upstairs, did you know
16 what she meant when she used the word privates?

17 A Yes.

18 Q Okay. Had she ever used the word privates before in your presence?

19 A Yes.

20 Q And what did she -- what was she referring to when she uses the term
21 privates?

22 A Her genital area.

23 Q Had you ever heard her use the phrase dug-in?

24 A No, never.

25 Q Do you know what she meant by that?

1 A I know what she meant by it, yes.

2 Q Did you ask her any questions to explain what she meant by dug-in
3 privates?

4 A No.

5 Q Did you ask her any follow-up questions other than the one we talked
6 about as far as the circumstances or what happened?

7 A No.

8 Q So you go downstairs; what happens when you go downstairs?

9 A My parents were down there and so I told them what she had just told
10 me.

11 Q Is anyone watching the kids at this time?

12 A Probably not.

13 Q Okay. You're downstairs. What happens -- do you talk to your
14 parents? What happens --?

15 A I tell my parents my -- I was sobbing and kind of hysterical at this point
16 and my mom went upstairs to take care of the girls and my dad called Megan
17 because she at this point was on her way home. And he knew he needed to tell her
18 what Jocelyn had told me. And so he called her and she headed back to the house.

19 Q Were you present when he called her?

20 A I don't remember.

21 Q Okay. At some point in time do you go back upstairs?

22 A I did.

23 Q Okay. When you go back upstairs what do you do with the girls?

24 A I got them ready for bed.

25 Q Any --

1 A Lotion, Pajamas.

2 Q Any further discussions with Jocelyn about what she'd disclosed to

3 you?

4 A No.

5 Q At some point in time, does Megan come back to the house?

6 A Yes.

7 Q And do you see her at the house?

8 A I did.

9 Q Okay. Where were you when you saw Megan at the house?

10 A After I had gotten the girls ready for bed I went back downstairs and

11 she was sitting at the table.

12 Q Did you have interaction with Megan?

13 A I did. I hugged her. She was -- at this point was sobbing and I just

14 hugged her.

15 Q When you went downstairs, at any point in time did Jocelyn stay

16 upstairs or did she come back downstairs at any point in time?

17 A She came back downstairs later; at this point she was still upstairs.

18 Q Were you there when Jocelyn came downstairs?

19 A Yes.

20 Q And where were you when Jocelyn came downstairs?

21 A I'm not sure. Probably standing in the kitchen.

22 Q Okay. Anybody else around when Jocelyn came back downstairs?

23 A Megan was down there and my mom was down there.

24 Q Did you have the chance to observe and what she did when she came

25 back downstairs?

1 A I don't remember exactly what she did right when she came downstairs.

2 Q At some point did you observe her have any interaction with Megan?

3 A Yes. Her and Megan sat on the couch and she gave Megan a short

4 description of what had happened.

5 Q And you were present when that happened, correct?

6 A I was.

7 Q Eventually Jocelyn goes upstairs and goes back to bed, correct?

8 A She went upstairs to play with the other kids.

9 Q Okay. And were Levi and Josh still present at that time?

10 A They were. At some point my brother came over and he was hanging

11 out with the kids.

12 Q And who's your brother?

13 A Michael Hammonds.

14 Q Did he live at the house with your parents or somewhere else?

15 A No. He lived somewhere else.

16 Q After the discussion with Megan, Jocelyn goes back upstairs; what do

17 you do?

18 A I'm not sure. I know I was in the kitchen for awhile. I probably went

19 upstairs to tuck the kids in at bed -- into bed at some point.

20 Q At any point in time did you contact the police?

21 A I did. After Megan left I called non-emergency.

22 Q And is that 3-1-1?

23 A Yes.

24 Q Were you given any information about who to contact, about --

25 A Yeah. They -- I told them what Jocelyn had told me. And they asked if

1 she was safe at the moment. And I told them yes. And they said to call an
2 investigator the next day.

3 Q And did you do that?

4 A I did.

5 Q What investigator did you come into contact with the next day?

6 A Hatchett.

7 Q Did Hatchett direct you to do anything the following day?

8 A Yes. We didn't actually talk until the afternoon. And he directed me to
9 take Jocelyn to Sunrise Children's Hospital.

10 Q Do you know what the date was that you went to Sunrise Hospital?

11 A I believe it was the 16th; July 16th.

12 Q Sometime in that time frame?

13 A Yeah. It was a -- it was that Wednesday.

14 Q Okay. And that was the day immediately after Jocelyn had made her
15 disclosure to you?

16 A Correct.

17 Q Did you take her to Sunrise?

18 A I did.

19 Q Generally speaking, what happened at Sunrise?

20 A They immediately took us in a room because Hatchett had called
21 beforehand and told them we were coming. And I spoke to a nurse or a social
22 worker, I'm not sure who it was exactly, and a doctor did an exam on Jocelyn.

23 Q When you were in -- were you present when the exam was done?

24 A I was.

25 Q Were you present when the nurse -- I believe you said there was a

1 nurse there?

2 A Yes.

3 Q Did the nurse ask any questions or take any information?

4 A She asked -- she took me in another room and asked me question
5 about the disclosure that Jocelyn had made to me. But I don't remember if she
6 talked to Jocelyn at all.

7 Q Okay. And did you answer the nurse's questions?

8 A I did.

9 Q And were they about Jocelyn's disclosure or something else?

10 A Jocelyn's disclosure.

11 Q Do you remember that nurse's name by any chance?

12 A I have no idea.

13 Q At some point in time did you contact Fred to let him know what was
14 going on?

15 A After we left the hospital.

16 Q And how did you contact him?

17 A By phone.

18 Q You explained to him what was going on or something else?

19 A I explained to him what was going on.

20 Q Were you the only person who talked to Fred that day or did anyone
21 else talk to him during that phone call?

22 A Not -- Jocelyn talked to him during that phone call. I think they just
23 said, hi and I love you. I'm not sure if she disclosed anything at the point.

24 Q Okay. But you were there when the phone call took place, correct?

25 A Yes.

1 Q After Wednesday, what happened next?

2 A Thursday we went in and talked to Hatchett.

3 Q Okay. Where did you go when you went to talk to Hatchett?

4 A I don't remember the name of the building. It's on Pecos.

5 Q Okay. When you went to talk to Hatchett, what happened when you
6 first got to that building? Did you talk to Hatchett? Did you talk to Jocelyn? If you --

7 A I don't remember the order. He did talk to both of us.

8 Q Were you present when he talked to Jocelyn?

9 A No.

10 Q And was she present when you talked to Hatchett?

11 A No.

12 Q After all this happens, how was Jocelyn after all these events?

13 A Jocelyn, she was fine during the investigation; she was nervous.

14 Hatchett said she was able to answer questions.

15 MR. BECKER: Objection, hearsay.

16 THE COURT: Sustained.

17 BY MS. EDWARDS:

18 Q After Thursday, so moving forward with your life. Is Jocelyn the same
19 or different from before this all happened?

20 A Very different. She was very emotional.

21 Q Why do you -- what about her being emotional was different?

22 A She would cry everyday just for no reason. She would complain of
23 pain.

24 Q Did she ever tell you where the pain was that she complained of?

25 A She did. She said it was in her privates.

1 Q Did you ever seek medical care for that pain?

2 A We did. We had a few follow-ups with her pediatrician and she did a
3 couple urine tests just to rule out any kind of infection and she didn't have anything
4 at that point.

5 Q Approximately -- or for what period of time after that did Jocelyn
6 complain of pain?

7 A It was at least six months.

8 Q As far as her being emotional you said she started crying and those
9 kinds of things, correct?

10 A Correct.

11 Q Prior to her disclosing these events, how often would she be emotional
12 or cry or just cry?

13 A Not very often; when she got hurt.

14 Q Since the conversation with -- or since Jocelyn was interviewed with
15 Detective Hatchett, it's been quite some time fair to say?

16 A Yes.

17 Q Have you had any follow-ups with Jocelyn or asked her any details of
18 her disclosure; what went on?

19 A No.

20 Q Has she ever brought this back up to you?

21 A She has brought it up.

22 Q And when she does, how do you respond or how do you handle that?

23 A I let her say what she needs to say. I don't ask questions. I try to
24 reassure her that things will be over soon.

25 Q What's her general demeanor these days when she is discussing what

1 happened with Dustin?

2 A Emotional. Sometimes she'll bring it up and then she'll just shutdown.

3 She'll try to change the subject.

4 Q What does she do when she shuts down?

5 A She gets fidgety, she'll kind of bounce around, she'll -- or she'll just stop
6 talking and sometimes cry.

7 Q Do you still love with your parents?

8 A No.

9 Q Where do you live these days?

10 A I live in the Northwest.

11 Q Who do you live with?

12 A Just me and my girls.

13 Q Do you have any pets?

14 A We have a turtle.

15 Q And what's the turtle's name?

16 A Bubbles.

17 Q Okay. As we sit here today, how would you describe Jocelyn -- or sorry
18 what grade is she in in school?

19 A She's in first grade.

20 Q How -- has she done fairly well in school?

21 A She's done very well in school.

22 Q How would you describe her ability to describe things or be articulate?

23 A She's very articulate.

24 Q Was she that way in July of 2010?

25 A Yes.

1 Q Does she know her colors?

2 A Yes.

3 Q Her letters?

4 A Yes.

5 Q Reading?

6 A Yes.

7 Q Okay. Did -- of her colors and her letters what did she know in July of
8 2010?

9 A She knew all of her colors and all of her letters.

10 Q And was she in school in July of 2010?

11 A She was in preschool, yes.

12 Q If I told you that you went to Sunrise Hospital on July 14, you said that
13 was a Wednesday, correct?

14 A Yes.

15 Q Does that sound about right?

16 A Yes.

17 Q Okay. So backing up out of that, Tuesday you said was when she told
18 you, correct?

19 A Tuesday was when she told me.

20 Q Which would've been the 13th, correct?

21 A Yes.

22 Q And backing up even further, that would mean that you went into the
23 hospital on the 9th. Is that correct? Sounds about right?

24 A That Friday, yes, would've been the 9th.

25 Q Okay. And then the girls stayed over at Megan and Dustin's on

1 Saturday and Sunday.

2 A Saturday and Sunday.

3 Q Which would've been the 10th and the 11th?

4 A Correct.

5 MS. EDWARDS: I don't have any more questions for the witness.

6 THE COURT: Cross.

7 **CROSS-EXAMINATION**

8 BY MR. BECKER:

9 Q Good morning.

10 A Good morning.

11 Q How would you describe your relationship with Dustin prior to the time
12 these allegations came to surface?

13 A We were fine. We would -- he was a part of the family.

14 Q He was a part of the family because he had married your sister, Megan.
15 Is that correct?

16 A Correct.

17 Q But would it also be correct to say that the family did not approve of the
18 marriage?

19 A Not at first, no.

20 Q And the family by and large didn't -- did not even go to the wedding, is
21 that correct?

22 A I think some of the family did; some didn't.

23 Q You didn't go did you?

24 A No.

25 Q And your parents didn't go to the wedding, correct?

1 A No.

2 Q When you say no, you mean they didn't go, correct?

3 A Yes.

4 Q All right. So things didn't really get off to a great start, is that right?

5 A Right.

6 Q And specifically the family had protested this marriage?

7 A I'm not sure what you mean by protest.

8 Q Okay. And with regard to your relationship with Dustin, you had

9 previously stated that you and Dustin were not the best friends. Is that correct?

10 A Yeah. That's correct,

11 Q All right. Now at the time that these allegations came to surface you

12 were living with your parents, is that right?

13 A Correct.

14 Q And would it be fair to say you and your husband were estranged, is

15 that correct?

16 A Yes.

17 Q At the time of these allegations were you and Fred divorced?

18 A We were. Our divorce was finalized in March of 2010.

19 Q And was it after your divorce that you moved in with your parents?

20 A It was before the divorce.

21 Q All right. How long prior to July 2010 was it that you were living with

22 your parents?

23 A I'm not sure exactly.

24 Q Would it have been months or years?

25 A Maybe about a year; not precise; around that.

1 Q Right. And how many bedrooms is the house so -- where you lived
2 with your parents?

3 A One, Two -- Five bedrooms.

4 Q And so your parents obviously share a bedroom?

5 A Correct.

6 Q You had your own room?

7 A Correct.

8 Q Jocelyn and Katelyn each had their own room?

9 A They shared a room.

10 Q All right, shared a room. And would it be fair to say that your parents
11 assisted at this point in time in the upbringing of Jocelyn and Katelyn?

12 A Yes.

13 Q And that you were a very close-knit group; meaning you, your
14 daughters, and you parents?

15 A Yes.

16 Q Almost as if you were a nuclear -- a nuclear family living in the same
17 home?

18 A At that point in time, yes.

19 Q All right. And how would you describe your relationship with Megan at
20 this time?

21 A We were close.

22 Q When was it that Megan Dustin married?

23 A I believe it was 2006.

24 Q And I know that the marriage didn't get off to a great start but when did
25 there come a time in which you came to accept Dustin as your sister's husband and

1 the uncle to your children?

2 A I think it was within a few months. It wasn't that long.

3 Q So you came to accept him but still you would -- you described you and
4 Dustin specifically as not being good friends at this date and time?

5 A We were friendly. I wouldn't have considered him a best friend.

6 Q How about in July 2010, what -- how would you describe your parents
7 attitude towards Dustin?

8 A I'm not sure. I -- they were fi -- I mean he was involved in family
9 functions.

10 Q But -- okay. But he wasn't necessarily well-liked, is that correct?

11 A I think at that point in time, he was liked.

12 Q You think?

13 A Yeah.

14 Q Okay. You're not sure?

15 A I'm pretty sure.

16 Q All right. Well, you gave a statement to Detective Hatchett --

17 A Mm-hmm.

18 Q -- specifically regarding issues relating to Dustin, is that right?

19 A Yes.

20 Q And you actually were explaining --

21 MS. FLECK: Can you reference page, please.

22 MR. BECKER: I'm -- page 7.

23 BY MR. BECKER:

24 Q You were explaining the reasons why you weren't particularly fond of
25 Dustin, is that right?

1 A I probably did, yes.

2 Q And one of the issues had to do with an assertion that he was obtaining
3 payday loans?

4 A Yes. Earlier that year my sister had found an account that she didn't
5 know about and they were having money issues.

6 Q All right. And so even at this time when you spoke to Detective Hatchet
7 in July 2010 there was some tension with the regard to the relationship with Justin
8 specifically relating to this -- these money issues, is that right?

9 A I knew the money issues were there but at that point Megan had not
10 decided to do anything about it and was still with him. And so I let it go.

11 Q And you objected to her being with Dustin, correct?

12 A Not at that point, no.

13 Q Would it be fair to say that your relationship with Megan at that time
14 was somewhat strained due to her relationship with Dustin?

15 A No.

16 Q Was the topic about the attitude towards Dustin something that was
17 discussed in the family home?

18 A I don't know.

19 Q In other words, as a family you would sit down with your children and
20 your parents and have a prepared meal at home, correct?

21 A Correct.

22 Q To your knowledge, did the subject come up about this tension or
23 dissatisfaction with Dustin in your family home?

24 A No.

25 Q Well you said you weren't sure a moment ago.

1 A Well and then you explained sitting down and eating a meal and
2 specifically talking about this; no.

3 Q Now prior to the date of these allegations would it be fair to say that it
4 was fairly common that Jocelyn and Katelyn would spend the night with Megan, at
5 the home with Megan and Dustin?

6 A I don't know how often it happened. I couldn't give you specifics. But it
7 wasn't unusual.

8 Q If I proposed that it happened one or two times a month, would that be
9 accurate?

10 A I'm not sure.

11 Q Right. And Katelyn at this time was four, correct?

12 A No.

13 Q I'm sorry. Katelyn was two.

14 A Correct.

15 Q And Jocelyn was four.

16 A Correct.

17 Q And at this time Dustin and Megan also had two small children.

18 A Correct.

19 Q And would it be fair to say that Jocelyn since the time of her birth would
20 spend the night at Aunt Megan and Uncle Dustin's home?

21 A She would, yes.

22 Q Okay. And prior to the date in question, there had been no information
23 conveyed to you about any type of irregularities or discomfort relating to nights spent
24 at Dustin and Megan's house, correct?

25 A Correct.

1 Q Okay. And then comes the -- the weekend in question is a weekend
2 where you were in the hospital.

3 A Yes.

4 Q And Jocelyn and Katelyn are staying at Aunt Megan and Uncle Dustin's
5 house?

6 A Correct.

7 Q And they stay with Dustin and Megan from Saturday, sometime in the
8 morning.

9 A I think it was actually afternoon.

10 Q Saturday, sometimes in the afternoon, until Monday, correct?

11 A Yes. They weren't at the house the entire time but yes.

12 Q All right. And then on Monday they go to stay with their fath -- I'm sorry,
13 Jocelyn and Katelyn go to stay with their father, Fred Coleman. Correct?

14 A Yes.

15 Q And that was something that was done on a regular basis; that he
16 would have the kids on Monday night?

17 A Weekly, yes.

18 Q Now do you remember when you first saw Jocelyn after spe -- while --
19 over that weekend, when you were in the hospital?

20 A Yes. The family brought the kids to see me on Sunday; sometime in
21 the afternoon.

22 Q Okay and who was present?

23 A My parents, my sister, my aunt Kathy Denny, and my kids.

24 Q All right. And how long did this visit last?

25 A I don't remember.

1 Q Do you remember where the visit occurred?

2 A In the hallway. Outside the elevators. In the hospital.

3 Q Did it -- was this a meeting that lasted 15 minutes or did it last several
4 hours?

5 A Oh it was probably 15 to 30 minutes. It wasn't that long.

6 Q And would it be fair to say that at that point in time you noticed nothing
7 unusual about Jocelyn's demeanor or mannerisms?

8 A No. She hugged me for a long time but I -- I mean she was seeing her
9 mom in a hospital gown with an I.V. so I didn't think anything unusual; no.

10 Q Well you said that the meeting occurred in the hall, is that right?

11 A Yes.

12 Q You actually had an I.V. that you were wearing in the hall?

13 A I think at that point I did. I was dehydrated. So I'm assuming that I had
14 an I.V.

15 Q All right. Not just in your room but in the hall?

16 A I don't remember exactly.

17 Q So you communicated and there was nothing unusual about her
18 demeanor?

19 A No.

20 Q She then goes to her father's on Monday. And then on Tuesday, you
21 and Megan go to pick her up. Is that correct?

22 A Correct.

23 Q And what time did you pick Jocelyn and Katelyn up at her father's?

24 A It was late afternoon.

25 Q And did you interact with Fred Coleman at the time you picked Jocelyn

1 and Katelyn up?

2 A I spoke to him, yeah.

3 Q And was -- were you given any indication at that point in time that
4 anything was unusual?

5 A Okay.

6 Q It's then later that evening when you're preparing Jocelyn for a bath that
7 the first unusual sign occurs. Is that correct?

8 A Correct.

9 Q And just so we're clear about it, I think you testified that you were kind
10 of walking through the halls in the process of getting ready for bathing when she
11 said that she needed to talk and you sat her down on the bed in the bedroom. Is
12 that correct?

13 A She sat me down in the bedroom.

14 Q All right. And at this point in time she had not entered the bath. Is that
15 right?

16 A Correct.

17 Q And she's fully clothed at this time?

18 A I don't remember.

19 Q All right. Now do you remember when you were given -- giving a
20 statement, you were asked about this particular time whether she was making any
21 mannerisms when she asked to explain these things to you. Is that correct?

22 A I was asked that, yes.

23 Q And you said, no she wasn't. Is that right?

24 A Correct.

25 Q And you've testified today -- you described the conversation as two-

1 ways. You said it was serious, matter-of-fact. Is that correct?

2 A I -- yes.

3 Q Okay.

4 A That's how I described it.

5 Q I'm -- from your perspective are serious and matter-of-fact the same?

6 A Yes. In that instance, yes.

7 Q So when she stopped to talk to you, she wasn't crying or upset?

8 A No.

9 Q There was nothing unusual about her mannerisms.

10 A No.

11 Q She just stopped to tell this to you?

12 A Yes.

13 Q And in essence she had told you that at some point in time when she
14 was sleeping at Dustin and Megan's that Uncle Dustin had come in to check on the
15 baby. Is that correct?

16 A Correct.

17 Q Did she specifically explain in any way, why she knew that Dustin was
18 coming in to check on the baby?

19 A She did not explain that, no.

20 Q And did you ask her what if anything happened with the baby?

21 A No.

22 Q Did you ever ask her questions about whether or not Uncle Dustin knew
23 that she was sleeping on the futon in that room?

24 A No.

25 Q Because you did say on one of the nights she actually slept with her

1 nephews and her sister in the same room. Correct? Oh, excuse me, with one of
2 her nephews and her sister in the same room?

3 A One of my nephews?

4 Q One of your nephews, I'm sorry.

5 MS. FLECK: Objection. I think -- he's taking that from Ms. Edwards opening.
6 That wasn't testified to today.

7 MR. BECKER: Okay. Well let me --

8 THE COURT: Sustained.

9 BY MR. BECKER:

10 Q Okay. Do you know what the sleeping arrangements at the house
11 were?

12 A I know that that night Jocelyn was sleeping in Joshua's room.
13 Joshua's the baby. And Katelyn was sleeping with Levi.

14 Q Right. And do you know -- do you have any knowledge as to whether
15 or not Dustin knew that Jocelyn was sleeping in the room with Joshua on the futon?

16 A I would not have that knowledge. No.

17 Q All right. And do you know whether those sleeping arrangements were
18 the same on both nights or do you have any knowledge about that?

19 A I don't.

20 Q So she tells you that Uncle Dustin came in to check on baby Joshua,
21 correct?

22 A Mm-hmm.

23 Q And that at some point in time she says that he dug in her privates,
24 correct?

25 A Correct.

1 Q And you testified today that the privates were the genital area, correct?

2 A Yes.

3 Q And just to be clear because you had -- you testified twice today. First,
4 outside the presence of the jury, correct?

5 A Yes.

6 Q And at that point in time you testified that the privates were the vaginal
7 area. Correct?

8 THE COURT: Counsel, approach the bench.

9 [Bench Conference Begins]

10 THE COURT: I'm not sure you should get in the hearing this morning.

11 MR. BECKER: Well in other words, it's private -- it's prior testimony. I just
12 want to clarify.

13 MS. FLECK: You -- the only way you can say -- talk about prior testimony is if
14 she says something inconsistent with what she said another time.

15 THE COURT: It's not -- it wasn't inconsistent --

16 MS. FLECK: Mm-hmm.

17 THE COURT: -- and the jury's going to think we did something untoward;
18 having a hearing. That's why we have it out of their presence.

19 MR. BECKER: Okay. I just want to --

20 THE COURT: I'd just be very careful.

21 MR. BECKER: Okay. All right.

22 THE COURT: Just caution there.

23 MR. BECKER: All right.

24 [Bench Conference Concludes]\

25 BY MR. BECKER:

1 Q Well just to be clear about this, when you say genital area, you mean
2 the vaginal area. Is that correct?

3 A Yes.

4 Q And this is an area that Jocelyn referred to as her privates? Correct.

5 A Yes.

6 Q And okay. Now, after Jocelyn told you this you excused yourself.

7 A Yes.

8 Q You became very upset.

9 A Yes.

10 Q And you went downstairs to speak to your parents. Is that right?

11 A Yes.

12 Q And you never questioned her in any further detail about this allegation.
13 Correct?

14 A No. I did not.

15 Q In other words, you heard what she said and your decision was not to
16 cross-exam her in any way about it or endeavor to learn anymore; at this point you
17 just wanted to go downstairs to talk to your parents.

18 A Correct.

19 Q And suffice it to say that you were upset when you walked downstairs.

20 A Yes.

21 Q And to be clear, you told your mother at least in that point in time what
22 Jocelyn had said. Is that correct?

23 A Mother and my father --

24 Q Right.

25 A -- were both there.

1 Q You told them very specifically what Jocelyn had relayed to you.

2 A I believe so.

3 Q Okay. Well you testified previously about his. Correct? I mean, you
4 made a -- you gave a statement about this.

5 A Yes.

6 Q And in your statement you indicated -- well at least that you told your
7 parents about what Jocelyn had said.

8 A Yes.

9 Q All right. So that when your mother went upstairs, she already had
10 information from you about what Jocelyn had said.

11 A She did.

12 Q Now, at some point in time you decide to call 3-1-1. Is that correct?

13 A Yes.

14 Q Just in terms of the sequence of events; after your mother goes upstairs
15 to talk to Jocelyn, do you go with her?

16 A No.

17 Q And at what period -- at what point -- okay, strike that. Megan is called
18 fairly promptly. Is that correct?

19 A Yes. My Dad called her.

20 Q And Megan had recently left the house and she turned around and
21 came back.

22 A As far as I know, yes.

23 Q And when Megan came back, Megan also spoke to Jocelyn.

24 A After my dad had talked to her. Yes.

25 Q Okay. And this conversation takes place downstairs?

1 A Sitting on the couch. Correct.

2 Q And is it fair to say that at this point in time, Jocelyn is clothed.

3 A Yes.

4 Q And how long would you say it -- this was after her disclosure to you
5 that the meeting with Megan takes place?

6 A I'm not sure exactly. Maybe about an hour -- within the hour.

7 Q All right. And the decision to call 3-1-1 is made as soon as Megan
8 leaves. Correct?

9 A Yes.

10 Q That's when you make the phone call.

11 A Yes.

12 Q Is there a time in between where Jocelyn actually takes a bath?

13 A She did. My mom put her in the bath.

14 Q All right. So after this disclosure by Jocelyn, the decision was made
15 that she should bathe?

16 A Well, yes.

17 Q Was that a decision made by your mother alone or was that a decision
18 made in consultation with you?

19 A I was already in process of getting them in the bath. So when I went
20 downstairs, my mom said let me take care of the girls. She went upstairs and got
21 them in the bath.

22 Q When Jocelyn made this allegation to you about the digging in the
23 privates, did you make any effort to do any kind of physical inspection upon her?

24 A No.

25 Q Okay. And you knew -- you felt it was appropriate to call 3-1-1 to make

1 a report. Is that right?

2 A Yes.

3 Q Had you had any kind of information about how to properly handle a
4 situation such as this?

5 A No.

6 Q In other words, either information that you were aware of online or just
7 through general common experience.

8 A No. I called 3-1-1, told them the situation, and they advised me.

9 Q Did they make any advisement about whether or not she should bathe?
10 Anything like that?

11 A No.

12 Q All right. With regard to the evening that Jocelyn spent at Aunt Megan
13 and Uncle Dustin's; did she -- did you pack bags for them?

14 A I did not. No.

15 Q Did they have clothing with them?

16 A I don't know. I was in the hospital. So I'm assuming that my mom
17 would've packed a bag for them because she took them over there.

18 Q And when Jocelyn and Katelyn came back from their father's on
19 Tuesday, did they have their clothing with them?

20 A I don't know.

21 Q Do you have -- strike that. Does Jocelyn typically wear pajamas when
22 she goes to sleep?

23 A Yes.

24 Q Do you know if she was wearing pajamas when she spent the night at
25 Uncle Dustin and Aunt Megan's?

1 A I wasn't there so I'm not sure what she had on.

2 Q Did you ever make any effort to locate the pajamas that she would've
3 been wearing on the night in question?

4 A No.

5 Q Did anyone instruct you at any time or inquire of you what pajamas she
6 was wearing that night?

7 A I don't think so.

8 Q Now, you complied with Detective Hatchett's instructions to go to
9 Sunrise Hospital to help facilitate an examination. Is that correct?

10 A Correct.

11 Q And would it be fair to say that it was a fairly comprehensive
12 examination?

13 A I'm not sure what you mean by that.

14 Q Well, how long did you spend at Sunrise Hospital?

15 A We were there maybe a couple -- few hours. I'm not sure exactly.

16 Q And you were at the regular hospital or the children's hospital?

17 A Children's emergency room.

18 Q And would it be fair to say that there was a registered nurse, a female,
19 who assisted in this investigation?

20 A Yes.

21 Q And in the process of assisting, she asked a lot of questions. Correct?

22 A She asked me questions.

23 Q When she asked you questions, did she ask you in the presence of
24 Jocelyn or --

25 A No.

1 Q All right. Where was Jocelyn when she was asking you questions?

2 A I believe Jocelyn was in the room with my mom.

3 Q Right. From your observation, did this registered nurse ever specifically
4 ask Jocelyn any questions about what had happened?

5 A I'm not sure. I don't remember.

6 Q Did you see -- were you present when she asked Jocelyn any
7 questions?

8 A I just said I don't remember if she asked any questions.

9 Q Okay. Now when she was asking you questions, was she filling out
10 forms simultaneous to asking the questions?

11 A Yes, she was.

12 MR. BECKER: All right. And I'm going to ask for permission to approach. I
13 can mark this as an exhibit by reference only but I'm not looking to admit this exhibit,
14 Your Honor.

15 THE COURT: Okay.

16 MR. BECKER: I don't if the State prefers it if I mark it Defense A for
17 identification or just use the --

18 MS. FLECK: Well are you asking her a question based on it?

19 MR. BECKER: Yes.

20 MS. FLECK: Well ask her the question and see if she knows the answer.

21 MR. BECKER: May I approach?

22 MS. FLECK: Well I mean it--

23 THE COURT: Are you --

24 MS. FLECK: Why doesn't he ask her? Is he refreshing her memory? Is he --
25 she --

1 THE COURT: Yeah. What are you --

2 MS. FLECK: He hasn't asked --

3 THE COURT: What are you sh --

4 MS. FLECK: -- the question yet to see if --

5 MR. BECKER: Well I want to ask --

6 MS. FLECK: -- she just knows it.

7 MR. BECKER: -- the witness if she recognizes these as the forms that the
8 nurse was filling out when she was speaking with her.

9 And I think the witness wants to get some water, which of course you
10 can do.

11 WITNESS: Is that okay?

12 MR. BECKER: Absolutely.

13 WITNESS: Thank you.

14 MS. FLECK: I mean, it -- I have no objection to it.

15 THE COURT: I mean that's --

16 MS. FLECK: I just --

17 THE COURT: -- it's --

18 MS. FLECK: -- don't know what it's based on.

19 THE COURT: I'm trying to figure out what -- the way to -- I mean generally
20 when you're refreshing recollection you ask question; could it refresh your
21 recollection. I suppose if you ask her does she remember the forms and if she says
22 no then you can approach her and show her.

23 MR. BECKER: Okay.

24 THE COURT: I think you have to ask that question.

25 MR. BECKER: I'll try to simplify this.

1 BY MR. BECKER:

2 Q You did see that the nurse was filling out forms when she was asking
3 you questions.

4 A I saw her writing. Yes.

5 Q And she was taking down the information that you were giving.

6 A I would assume that's what she was writing.

7 Q And you did your best to relay to the nurse information that Jocelyn had
8 to relayed to you?

9 A Yes.

10 Q And the substance of what Jocelyn relayed to you was that Uncle
11 Dustin had dug into her privates. Correct?

12 A Correct.

13 Q And at that point in time, that was the full amount of information that you
14 had. Correct?

15 A Yes.

16 Q And fair to say that between the time of Jocelyn's disclosure and the
17 time you took her to Sunrise Hospital, there was no further discussion with Jocelyn
18 to obtain any additional details or anything like that?

19 A No there was not.

20 Q Okay. And you did your best to obtain information as accurately as
21 possible. Is that correct?

22 A Obtain information from whom?

23 Q I'm sorry. To relay information as accurately as possible?

24 A I would assume I did. Yes.

25 Q Do you remember specifically being asked whether or not there was

1 any form of rectal penetration?

2 A I don't remember that. No.

3 Q But suffice it to say that you had not been made aware that there was
4 any type of allegation of a rectal penetration?

5 A From whom?

6 Q From Jocelyn.

7 A No. She told me he touched her privates and dug them -- in them.

8 Q Okay.

9 A She did not explain any further.

10 Q Now were you present when a physical examination was done on
11 Jocelyn?

12 A Yes.

13 Q And would it be fair and accurate to say that upon completion of the
14 examination that there were no fi -- irregular findings made pursuant to this
15 examination?

16 A Yes.

17 Q And that was relayed to you from the nurse, by the registered nurse?

18 A It was either the nurse or the doctor. I'm not sure.

19 Q So that -- in other words, from what they could see they didn't find
20 anything unusual and they couldn't document any kind of damage to the vaginal or
21 rectal areas?

22 A No. There was no physical damage.

23 Q Okay. Thank you. Now. After the disclosure a lot of people became
24 involved in endeavoring to console and deal with Jocelyn and the aftermath of these
25 assertions. Is that correct?

1 A I'm not sure what you're asking.

2 Q Well your dad, Dave -- David was there and Joanna. Megan was
3 immediately called over.

4 A Yes.

5 Q And then even you said your brother Michael was summoned over to
6 the house.

7 A Yes.

8 Q And he didn't live with your parents at that time.

9 A No.

10 Q Okay. And so all of this happened on the evening of the disclosure. Is
11 that correct?

12 A Correct.

13 Q Now after Jocelyn made this disclosure you said you asked Jocelyn if
14 she was telling the truth.

15 A Correct.

16 Q Did -- was this common that you would have to ask Jocelyn after she
17 told something whether she was truthful?

18 A No.

19 Q Did Jocelyn have a history of lying to you?

20 A No.

21 Q Notwithstanding the fact that there were no findings made by the nurse
22 of any damage to these areas, for approximately the s -- next six months Jocelyn
23 continued to complain about pain to her privates. Is that correct?

24 A Yes.

25 Q And you were concerned enough that you took her to the doctor several

1 times to do an examination to see if there was some kind of medical explanation for
2 this pain. Correct?

3 A No. Her doctor never did a physical examination. She did a urine test
4 to make sure there was no infection.

5 Q At some point in time was there a diagnosis of vaginitis?

6 A There was.

7 Q All right. And just to be clear, vaginitis is kind of an infection that can
8 come from either a possibly a lack of cleanliness or when you wipe some of the
9 stool can get in the vaginal area and cause infection. Is that correct?

10 A Yes.

11 Q But you knew that there had been a diagnosis in the aftermath of this
12 event of vaginitis.

13 A That was actually diagnosed at Sunrise.

14 Q So she had already at Sunrise something going on down there that was
15 relating to this vaginitis. Correct?

16 A She was diagnosed with it at Sunrise.

17 Q Right. And how long was it before this vaginitis cleared up?

18 A I don't know.

19 Q Well, I mean obviously you would be concerned about your daughter's
20 physical well-being. Is that correct?

21 A Yes.

22 Q And if she's complaining about some kind of pain you would assist her
23 to receive medical diagnosis or treatment to clear up a problem. Correct?

24 A Yes.

25 Q So when she continued to complain about this pain in the vaginal area,

1 did you do anything to see if there was something going on?

2 A Yes. I took her to the doctor several times over the next -- I'm not sure
3 exactly how many but over whatever the time frame is, she had doctor visits.

4 Q And there was never any medical explanation provided for why she
5 would have pain in that area? Correct?

6 A No. Her doctor assumed it was psychological.

7 Q All right. And she described this pain as feeling like a shot. Is that
8 correct?

9 A Correct.

10 Q Did the doctor use the expression, you know, psychosomatic?

11 A I don't know.

12 Q Prior to testifying in this matter, did you review any written materials?

13 A Yes.

14 Q And would that include the voluntary statement that you made to law
15 enforcement?

16 A To Detective Hatchett?

17 Q Yes.

18 A Yes.

19 Q And would that also include your testimony at a family court proceeding
20 relating to this matter?

21 A Yes.

22 Q And did you review with Jocelyn any information relating to her
23 statement?

24 A No.

25 Q Did you review with Jocelyn anything relating to the family court

1 proceeding?

2 A No.

3 Q And you were present at the family court proceeding. Is that right?

4 A Yes.

5 Q You testified at a family court proceeding?

6 A Yes.

7 Q And this would've been back in July 2011.

8 A Correct.

9 Q Were you present when Jocelyn testified?

10 A I was.

11 Q All right. Would it be fair to say that Jocelyn was unable to recall the
12 events giving rise to these allegations at the family --?

13 MS. FLECK: I'm going to completely and totally object to that. It's a complete
14 and total mischaracterization. It's a completely different court proceeding,
15 completely different standard, completely different questions being asked for --

16 MR. BECKER: I'll withdraw.

17 MS. FLECK: -- an entirely different purpose.

18 THE COURT: I'll sustain the objection.

19 MR. BECKER: I'll withdraw the question.

20 Court's indulgence.

21 BY MR. BECKER:

22 Q We talked about the vaginitis but this was -- would it also be correct to
23 say that Jocelyn was having issues relating specifically to -- and discomfort in that
24 area relating to potty training?

25 A Not persistently. But she had been irritated prior to this.

1 Q From -- in relation to potty training?

2 A Learning how to wipe and stuff like that. Yes.

3 MR. BECKER: No further questions at this time.

4 **REDIRECT EXAMINATION**

5 BY MS. EDWARDS:

6 Q Prior to this incident Jocelyn hadn't ever complained of pain in her
7 privates, correct?

8 A Not pain like she was getting a shot. No.

9 Q And prior to this incident she had never even mentioned pain in her
10 privates like a big shot. Correct?

11 A She had expressed irritation but not pain.

12 Q So not pain like a big shot. Correct?

13 A Correct.

14 Q Okay. And when she's describing this pain like a big shot, this lasts for
15 approximately six months. Correct?

16 A At least six months.

17 Q Now Counsel, when he was asking you questions on cross, said when
18 you were at Sunrise Hospital you only knew that Dustin had allegedly dug into her
19 privates. But that's not correct. Fair to say? In fact, you knew that she described
20 him coming in to the room; that she had described him sitting on the futon. She
21 described him looking at her privates, touching her privates, and digging in her
22 privates.

23 MR. BECKER: Well, objection to leading.

24 MS. EDWARDS: It's all her testimony from direct and cross, Your Honor.

25 THE COURT: I'll sus -- overrule the objection and allow you to ask the

1 question confirm --

2 MS. EDWARDS: That was --

3 MS. FLECK: See it --

4 THE COURT: Defense counsel opening the door.

5 BY MS. EDWARDS:

6 Q He did more than a brief statement that he dug in privates. Correct?

7 A Yes.

8 Q So he was -- she described him being in the room too. Correct?

9 A Correct.

10 Q Sitting on the futon next to her. Correct?

11 A Correct.

12 Q That she -- that he looked at her privates.

13 A Touched her privates and dug in them.

14 Q And in fact, when you were talking to the nurse at Sunrise you
15 explained to her that he then apologized to Jocelyn after he'd done all this. Correct?

16 A I don't remember that.

17 MR. BECKER: Well I'm going to object. Is it --

18 THE COURT: That's -- that goes a little far. How does that go to the --

19 MS. EDWARDS: He asked about the statements that she told the nurse in
20 the scope of the -- when Jocelyn was at the hospital having the scan exam, he went
21 in to some of the statements that are attributed to Nicole having told the nurse of
22 what had happened to Jocelyn. I'm trying to bring in everything that was discussed
23 as to what happened to Jocelyn. It's in the scan report.

24 MR. BECKER: And I'm not sure that I -- that there were statements that were
25 discussed.

1 THE COURT: Right. I'm going to ove -- sustain the objection.

2 BY MS. EDWARDS:

3 Q Now all the times that Jocelyn told you that he dug in her privates she --
4 she said privates. Correct?

5 A Yes.

6 Q Plural?

7 A Yes.

8 Q Okay. She never said private. Correct?

9 A Not that I recall. No.

10 Q Always the plural with the "s". Correct?

11 A Yes.

12 Q Okay. And you didn't ask any follow-up questions, right?

13 A For detail?

14 Q Correct.

15 A No.

16 Q You didn't ask her what she -- if she meant her vaginal or her butt as far
17 as she was describing her privates. Correct?

18 A Correct.

19 Q You didn't ask her how much time he spent doing this. Correct?

20 A No.

21 Q You didn't ask her any detail questions about what she meant when she
22 said he dug in her privates. Correct?

23 A Correct.

24 Q Fair to say this is your first experience with disclosure of sexual abuse?

25 A Yes.

1 Q Okay. She never said it before about anybody else. Correct?

2 A No. Correct.

3 Q In fact, she'd never even complained about Dustin before that; isn't that
4 correct?

5 A That's correct.

6 Q So this is the first time she's made any statements of such a serious
7 nature against anyone. Correct?

8 A Correct.

9 Q Fair to say this is extremely serious?

10 A Yes.

11 Q Okay. And this is the first time you've dealt with it. Correct?

12 A Correct.

13 Q So you had no prior knowledge as to preserving anything or trying to
14 preserve anything --

15 A No prior knowledge.

16 Q -- one way or the other. Correct?

17 A Correct.

18 Q And fair to say when you saw Jocelyn on Tuesday night when you
19 picked her, no evidence that she hadn't bathed in days. Correct?

20 A Correct.

21 Q Because this incident allegedly --

22 MR. BECKER: Let me object, calls for speculation.

23 THE COURT: I'll -- overruled.

24 BY MS. EDWARDS:

25 Q So fair to say you would've expected she took baths after Saturday

1 night and before you picked her up on Tuesday? Correct?

2 A I would assume at some point. Yes.

3 Q She appeared clean on Tuesday?

4 A Yes.

5 Q Appeared to have clean clothes on?

6 A Yes.

7 Q Her hair appeared to be done?

8 A I would think so. I'm not sure exactly.

9 Q To the extent Fred's capable of doing her hair?

10 A Yes,

11 Q Okay. Fair to say she didn't smell like she was dirty or anything like

12 that?

13 A No.

14 Q Now how often did Jocelyn spend the night at Dustin and Megan's prior

15 to this incident?

16 A I'm not sure often.

17 Q Was it --

18 A It wasn't very often.

19 Q Okay. And she never complained as far as Dustin before that.

20 Correct?

21 A Correct.

22 Q And in fact she likes Megan. Correct?

23 A She loved Megan.

24 Q And she liked seeing Levi and Josh. Correct?

25 A Yes. Very much.

1 Q And this all changed after all this occurred. Correct?

2 A Yes.

3 Q And in fact, Jocelyn was upset that she hadn't seen Megan anymore.
4 Correct?

5 A She was upset.

6 Q And she was upset that she hadn't seen Levi and Josh anymore.
7 Correct?

8 A Correct.

9 Q Okay. Now Counsel was asking you questions about your description
10 of Dustin during the course of your interview with Detective Hatchett. Do you recall
11 those questions?

12 A That Counsel was asking?

13 Q Yes.

14 A Yes.

15 Q Fair to say that within 24 -- 48 hours you'd just learned that Dustin had
16 dug in her privates?

17 A Correct.

18 Q Fair to say that your opinion of him had shifted between Tuesday
19 afternoon and Thursday when you're talking to the detective?

20 A Majorly shifted.

21 Q Fair to say that you're pri -- trying to provide as much information and
22 insight into Dustin as possible to the detective. Correct?

23 A Yes.

24 Q Okay. And describing how you Jocelyn at the hospital you said she
25 hugged you for a long time. Correct?

1 A Correct.

2 Q And on Tuesday night you find out that Uncle Dustin had dug in her
3 privates. Correct?

4 A Correct.

5 Q Did that you lead you to interpret anything she'd done at the hospital
6 potentially differently or as for being a -- for a different reason?

7 A I don't think that I realized it at the time. No.

8 Q But you had new information Tuesday after -- or Tuesday evening.
9 Correct?

10 A Correct.

11 Q Information you didn't have on Sunday.

12 A Correct.

13 Q And so things you observed from her on Sunday and Tuesday in
14 bringing her to the house all the sudden appeared to be different or somehow
15 explained. Correct?

16 A Yes.

17 Q And as far as the kid's visitation with Fred, isn't it true that it would
18 sometimes fluctuate with his work schedule?

19 A Yes.

20 Q And that his work schedule changed sometimes from week to week?

21 MR. BECKER: Object, leading.

22 THE COURT: Sustained.

23 BY MS. EDWARDS:

24 Q Would his work schedule fluctuate sometimes?

25 A I don't know. At that point he had them on Mondays. I'm not sure what

1 the time frame was but I know that it was Mondays because I was going to school.

2 Q Okay. Now going back to when Megan married Dustin. She was only
3 21 years old. Correct?

4 A That sounds right. Yes.

5 Q And they'd only been together for a very brief period of time.

6 A Yes.

7 Q Isn't that correct?

8 A Yes.

9 Q And in fact, they eloped. Isn't that true?

10 MR. BECKER: I'm going to object, leading.

11 THE COURT: Sustained.

12 BY MS. EDWARDS:

13 Q You didn't go to the wedding. Correct?

14 A I did not.

15 Q Did they elope? Do you know?

16 A I think they planned it. I'm not sure. I wasn't involved in any of it.

17 Q It wasn't like one of those weddings you plan out for a year and a half
18 and --

19 A No.

20 Q -- every bride's dream come true?

21 A No.

22 MR. BECKER: Object, leading.

23 THE COURT: Overruled.

24 BY MS. EDWARDS:

25 Q And in fact, your family had issues or reservations about a kid getting

1 married at such a young age. Isn't that correct?

2 MR. BECKER: Objection, leading. Calls for hearsay.

3 THE COURT: All right. You sort of opened the door. I'm going to allow it in.

4 MR. BECKER: It's still leading.

5 THE COURT: You opened the door.

6 BY MS. EDWARDS:

7 Q Concerns about the young age. Correct?

8 A Yes.

9 Q The lack or the shortness of the relationship at the point they chose to
10 get married?

11 A I think the shortness was more than the young age.

12 Q No more questions. Thank you.

13 MR. BECKER: Briefly.

14 **RECROSS EXAMINATION**

15 BY MR. BECKER:

16 Q Well you received a written invitation to the wedding. Didn't you?

17 A Probably. I'm not sure exactly.

18 Q And your parents received a written invitation to the wedding?

19 A I can't tell you what they received.

20 Q Okay. So this wasn't eloping where they didn't plan it. They planned a
21 wedding and they sent invitations out. Right?

22 A I believe they sent invitations. Yes.

23 Q And you and your parents chose not to go?

24 A Yes.

25 Q And that was something that even four years later in 2010 was a source

1 of tension in your relationship with both your sister Megan and your relationship and
2 your parent's relationship with Dustin?

3 A No. I don't think so.

4 Q Now you were asked questions about private or privates. As a parent
5 would it be fair to say you have names for parts for the body that you use when you
6 communicate with your child?

7 A Yes.

8 Q And they're very specific names. Right?

9 A Yes.

10 Q And in the word for example, vagina is kind of a difficult word for a
11 child. Correct?

12 A Yes.

13 Q And not necessarily a word you want your child using. Right?

14 A I don't know if it's not something you want your child using, it's just not
15 something that typically is used at such an early age.

16 Q So you've come up with a different name. Right?

17 A Yes.

18 Q And so the name that you and Jocelyn used for the vagina was private.
19 Right?

20 A Everything in that region; vagina, genitals, everything was privates.

21 Q Right. And the area behind -- the anus, was called the butt. Right?

22 A Yes.

23 Q So there's no ambiguity as you're here today as to what Jocelyn's use
24 of the term of privates would be. Correct?

25 A What do you mean?

1 Q Meaning it's very clear to you when she uses the word privates that
2 she's talking about her vagina or genital area.

3 A Yes.

4 Q Nothing further.

5 MS. EDWARDS: No questions, Your Honor.

6 THE COURT: Jury have any questions of this witness?

7 Seeing no hands. Ma'am, you're free to go.

8 MR. BECKER: Your Honor, I would be that -- ask that this witness be subject
9 to recall if needed.

10 THE COURT: I'm sure she'll be here so -- I mean, think about it. Just stay
11 around.

12 THE WITNESS: Okay.

13 MR. BECKER: I wouldn't need her today; probably not until Thursday. And if
14 so I would contact the DA's office. I probably won't but I just --

15 MS. FLECK: [indiscernible]

16 MR. BECKER: -- ask that she be subject to recall.

17 MS. FLECK: She is more than willing and happy to come in any time we
18 need her.

19 MR. BECKER: Thank you.

20 THE COURT: All right. We'll take our --

21 Go ahead and step down.

22 We'll take our afternoon recess ladies and gentlemen. During the
23 recess your admonished not to talk or converse among yourselves or with anyone
24 else on any subject connected with the trial or anyone -- or listen -- read or watch or
25 listen to any report of our commentary on the trial. Or any person connected with

1 this trial by any medium of information including newspaper, televisions, radio, or the
2 internet. Or form or express an opinion on any subject connected with the trial until
3 the case is finally submitted to you.

4 I think you could be back by a quarter to two. Quarter until two.

5 [Outside the presence of the jury]

6 THE COURT: All right. Jury's left. See you guys back about 20 til, hey.

7 MR. CASTILLO: Thank you, Your Honor.

8 [Outside the presence of the jury]

9 MR. BECKER: Your Honor, there are two items -- brief items --

10 THE COURT: Wait, wait. Let me make --

11 MR. BECKER: Okay.

12 THE COURT: -- we got to get -- okay, we're on record.

13 MR. BECKER: Two items that I just want to -- we can -- I can take them off;
14 we don't need to resolve necessarily both of them now. But I'm assuming that the
15 State is calling Joanna Hammonds next.

16 MS. FLECK: No. We're calling Jocelyn.

17 MR. BECKER: Okay. Then we can wait but I will need to speak to the Court
18 briefly before Joanna is called. I don't know if she's go --

19 MS. FLECK: We're calling her right next -- right after, so let's go ahead.

20 MR. BECKER: Okay. The issue is this: Joanna Hammonds this morning
21 testified very clearly that when she went downstairs that Nicole did not tell her what
22 Jocelyn had said. But I have other statement of hers where she did say that when
23 she went downstairs she was told what Nicole -- that Nicole told her what Jocelyn
24 had said. The issue is that I may want to impeach her with a statement from this
25 morning's hearing outside the presence of the jury and when endeavor to use one of

1 THE COURT: Without telling us a verdict, were you able to reach a verdict?

2 PROSPECTIVE JUROR NUMBER 095: We did.

3 THE COURT: And were you the jury foreperson?

4 PROSPECTIVE JUROR NUMBER 095: No.

5 THE COURT: And you know the difference I've explained earlier is criminal's
6 prove beyond a reasonable doubt and it's all twelve. And civil isn't that way.

7 PROSPECTIVE JUROR NUMBER 095: Yeah.

8 THE COURT: You understand that?

9 Can you think be fair and impartial to both parties in this case?

10 State.

11 MS. FLECK: Oh. Thank you.

12 I couldn't help but notice or sense some dread when he asked if you'd
13 been a juror before.

14 PROSPECTIVE JUROR NUMBER 095: Yeah. It was about a six-day thing.
15 And, you know, it was challenging trying to run a business and be here at the same
16 time. So --

17 MS. FLECK: Okay.

18 PROSPECTIVE JUROR NUMBER 095: Yeah.

19 MS. FLECK: How is your life now? I mean, can you feel comfortable sitting
20 throughout this week even though I know you've got a life to live?

21 PROSPECTIVE JUROR NUMBER 095: Everyone has a life to live. My
22 problem is my receptionist is out with strep throat, you know, so we're already two
23 men down. And it is what it is. It's life.

24 MS. FLECK: Well at least if we keep you here you won't get strep.

25 PROSPECTIVE JUROR NUMBER 095: Yeah, right.

1 MS. FLECK: Yeah. Maybe there is a silver lining.

2 Okay so do you and your husband have children?

3 PROSPECTIVE JUROR NUMBER 095: Yes.

4 MS. FLECK: How old are they?

5 PROSPECTIVE JUROR NUMBER 095: Two daughters, 28 and soon to turn

6 23.

7 MS. FLECK: Any grandkids yet?

8 PROSPECTIVE JUROR NUMBER 095: No.

9 MS. FLECK: Any, anything that you've heard in this case, whether it's law
10 enforcement, you being the victim of a crime or someone close to you, accused of a
11 crime, anything like that?

12 PROSPECTIVE JUROR NUMBER 095: No.

13 MS. FLECK: No. None of those would pertain to you?

14 PROSPECTIVE JUROR NUMBER 095: No.

15 MS. FLECK: So, no significant ties or connections or experiences with law
16 enforcement?

17 PROSPECTIVE JUROR NUMBER 095: No.

18 MS. FLECK: Okay. And perfectly comfortable with the kids testifying that
19 kind of thing?

20 PROSPECTIVE JUROR NUMBER 095: Yeah.

21 MS. FLECK: All right. Thank you so much. We'll pass for cause.

22 MR. BECKER: Briefly. You could look at Mr. Barral at this point in time as an
23 innocent man?

24 PROSPECTIVE JUROR NUMBER 095: Yes.

25 MR. BECKER: And you can be fair to him?

1 PROSPECTIVE JUROR NUMBER 095: Yes.
2 MR. BECKER: Pass for cause, Your Honor.
3 THE COURT: Ladies and gentleman the reason I --
4 THE CLERK: There is still one more.
5 THE COURT: What?
6 THE CLERK: Mr. Williams [indiscernible].
7 THE COURT: Oh, sorry. Go ahead.
8 Tell me, do you work?
9 PROSPECTIVE JUROR NUMBER 099: Yes, Your Honor.
10 THE COURT: What do you do?
11 PROSPECTIVE JUROR NUMBER 099: I'm a lawyer.
12 THE COURT: Where at?
13 PROSPECTIVE JUROR NUMBER 099: Koeller, Nebeker, Carlson, and
14 Haluck, civil litigation defense.
15 THE COURT: All right. Do any criminal work?
16 PROSPECTIVE JUROR NUMBER 099: No.
17 THE COURT: How long you been a lawyer?
18 PROSPECTIVE JUROR NUMBER 099: Eleven years.
19 THE COURT: Have you been in this department?
20 PROSPECTIVE JUROR NUMBER 099: No, Your Honor.
21 THE COURT: Aren't you lucky. Have you ever sat as a juror before?
22 PROSPECTIVE JUROR NUMBER 099: I have.
23 THE COURT: Where?
24 PROSPECTIVE JUROR NUMBER 099: California.
25 THE COURT: Civil or criminal?

1 PROSPECTIVE JUROR NUMBER 099: It was a civil case. I was the
2 foreperson.

3 THE COURT: And d -- were you able to reach a verdict?

4 PROSPECTIVE JUROR NUMBER 099: We did.

5 THE COURT: Can you be fair and impartial to both parties in this case?

6 PROSPECTIVE JUROR NUMBER 099: Yes.

7 THE COURT: State.

8 MS. FLECK: Thank you.

9 Do you have any experience practicing criminal law?

10 PROSPECTIVE JUROR NUMBER 099: Other than faxing in things for traffic
11 tickets for staff, no.

12 MS. FLECK: Okay. So, again, like the other attorneys that have just sort of
13 curbside consultation-type things; friends and family that ask you to do favors for
14 them?

15 PROSPECTIVE JUROR NUMBER 099: Fortunately, yes.

16 MS. FLECK: Okay. So, not -- it wasn't even something that you were
17 interested in doing after law school?

18 PROSPECTIVE JUROR NUMBER 099: That is true.

19 MS. FLECK: All right. Well, you've heard all the questions I think that -- I
20 mean, is there anything that's come to mind that causes you concern?

21 PROSPECTIVE JUROR NUMBER 099: No.

22 MS. FLECK: I sense something. Is it basically just your schedule?

23 PROSPECTIVE JUROR NUMBER 099: Yes.

24 MS. FLECK: That's what stresses you?

25 PROSPECTIVE JUROR NUMBER 099: It does.

1 MS. FLECK: Okay. But for the [indiscernible] you know, I can't -- there's not
2 much I can do on that side of it but for the stress of having to reschedule your life for
3 the next few days, anything else then that makes you think you wouldn't be a good
4 juror for this case?

5 PROSPECTIVE JUROR NUMBER 099: No.

6 MS. FLECK: Okay. Thank you. Pass for cause.

7 MR. BECKER: No questions, Your Honor. I'll pass.

8 THE COURT: Okay. Now, ladies and gentleman we have a jury, that's why I
9 went this late. I generally don't go this late but you in the audience weren't sitting
10 here pointless because without good citizens as yourselves, we wouldn't -- our
11 system of government wouldn't work. So, we'll excuse you and you're free to go
12 home. Thank you so much for your time.

13 Ladies and gentlemen, I have a long motion calendar in the morning. In
14 fact, I have two of them; one criminal that should last -- I'm generally done by 9, 9
15 o'clock. So, I should be done with this one, this one's a little lengthy. I'll go 9:15 on
16 that and then I have a civil calendar that should take about a half hour. So, let's
17 have you back at 10 o'clock tomorrow.

18 Now the marshal may not know this, you get to park across the street
19 now. There's a parking garage. Bring your parking sticker and they'll -- what do
20 they do when they --

21 THE CLERK: Validate.

22 THE COURT: Validate them. Sorry. I've been doing this since 6 o'clock this
23 morning. Oh, I guess you do know. I thought you were outside.

24 So, he'll tell you where to go and I'll see you in the morning at 10
25 o'clock.

1 THE CLERK: Do you want them to have the blue badges?

2 THE COURT: No. Tom will give the blue badges out tomorrow. That's fine.

3 Let me -- before you walk, you can just stand right there. During this
4 recess you're admonished not to talk or converse among yourselves or with anyone
5 else on any subject connected with this trial. Or read or watch or listen to any report
6 of or commentary on the trial. Or any person connected with this trial by any
7 medium of information including without limitation: Newspapers, television, radio, or
8 the internet. Or form or express an opinion on any subject connected with the trial
9 until the case is finally submitted to you.

10 Thank you so much. See you in 10 o'clock. Generally, we'll start at 9
11 or 9:30. And Thursday maybe 8 o'clock.

12 JUROR NUMBER: Your Honor, do we report right to the jury?

13 THE COURT: Yeah. He'll tell --

14 JUROR NUMBER: Oh. He'll tell us.

15 THE COURT: Just come up here. There'll be a different marshal. My
16 marshal will be here.

17 [Outside the presence of the jury]

18 THE COURT: All right. I have a criminal calendar and a civil calendar in the
19 morning. The civil calendar won't take me long. So, I'll see you guys in the
20 morning.

21 MS. FLECK: Thank you, Your Honor.

22 THE COURT: Please be here at 10 promptly.

23 MR. BECKER: Yes, Your Honor.

24 MR. CASTILLO: Yes, Your Honor.

25 MS. FLECK: Yeah. And then, Your Honor, so should we try to have our

1 witnesses here at 10 to do the 51.385?

2 THE COURT: Yes.

3 MS. FLECK: Okay.

4 THE COURT: Oh, I should've told the jury then 11. How long will it take to do
5 those hearings?

6 MS. FLECK: Well, I -- I mean -- in -- it's always of my opinion that they are
7 very tailored to the factors, you know, not getting into a lot of peripheral things.

8 THE COURT: Right.

9 MS. FLECK: But those factors that we look at. So, I guess it just depends on
10 how much cross there is. My direct will be very brief. Just to elicit enough
11 testimony.

12 THE COURT: Yeah. Just have everybody here at 10. We'll get started.

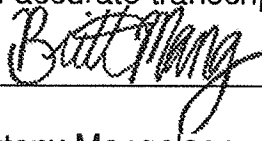
13 MS. FLECK: Okay. Thank you.

14 MR. BECKER: Thank you.

15 THE COURT: Thanks.

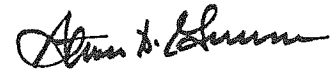
16 [Evening recess at 5:00 p.m.]
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21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
22 acknowledge that this is a rough draft transcript, expeditiously prepared, not
proofread, corrected, or certified to be an accurate transcript.

23 
24 _____

25 Brittany Mangelson

Independent Transcriber



CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

DUSTIN JAMES BARRAL,

Defendant.

CASE NO. C269095

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

WEDNESDAY, MAY 29, 2013
TRANSCRIPT OF PROCEEDINGS
NRS 51.385 HEARING

For the State:

MICHELLE FLECK, ESQ.
Chief Deputy District Attorney

MICHELLE Y. EDWARDS, ESQ.
Deputy District Attorney

For the Defendant:

MICHAEL L. BECKER, ESQ.
MICHAEL V. CASTILLO, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

TRANSCRIBED BY: BRITTANY MANGELSON, INDEPENDENT TRANSCRIBER

1 WEDNESDAY, MAY 29, 2013 AT 10:20 A.M.

2
3 MS. FLECK: We just have a couple things outside the presence.

4 THE COURT: Okay.

5 MS. FLECK: Are we on the record?

6 THE COURT: Absolutely.

7 MS. FLECK: Yesterday the Defense filed a request for admissibility for prior
8 sexual conduct pursuant to 98.069. I just filed in open court our opposition. The
9 Defense motion is sort of -- it's a smidge confusing because under 50 -- or 48.069,
10 that's the statute that's allowing prior sexual conduct to come in as cons -- to show
11 consent. Clearly -- I mean, there cannot be any question and I wouldn't even think
12 that the Defense is making that kind of an argument that there's some sort of
13 consent in this case or that that's a plausible defense in any circumstance.

14 You know, she's four years old when this occurs. So, I don't know if
15 that was just a misstatement, kind of, of that particular statute but I think that what
16 the ultimate issue is is that the Defense wants some statements that have been
17 made maybe to a counselor or to mom regarding what I guess they are going to
18 term as prior sexual conduct to show a basis of knowledge. So, under *Summit* it
19 would possibly be relevant if it was in any way the same type of sexual conduct that
20 the victim experienced at the hands of the Defendant in this case.

21 In this case she clearly describes that she wakes up in the middle of
22 night and the Defendant is digging in her privates. Digging. She repeatedly will say
23 in her statement he was digging, he was digging, he was digging. He shoved -- he
24 sunk his fingers into me. So there's at -- there's no question that this has
25 never -- she's never made these kinds of statements before. The statements that

1 the Defense is referring to is her saying something like when I go to my dad's it hurts
2 my privates because his roommate will say bad words to me.

3 There's no allegation of any other prior sexual conduct that's even
4 remotely close to the type that's alleged in this case. I think that some of the other
5 examples is that there was a little boy at school that kicked her in her privates.
6 There was girl in her classroom -- fully-monitored classroom that she said patted her
7 privates. There was -- they've -- they reference dad's girlfriend at some point of
8 putting his -- her hands around her neck and kind of choking her. That certainly isn't
9 prior sexual conduct.

10 So, there's nothing that they have pointed to in their motion that in
11 anyway falls under *Summit* for giving this girl a basis of knowledge for the
12 allegations that she has made that it would be relevant in this particular case. And
13 then they also at some point reference *Miller*. Well, *Miller* is prior false allegations
14 and so again, there's never been an allegation so they certainly haven't shown that
15 it's a false allegation. So I would just ask that --

16 THE COURT: All right.

17 MS. FLECK: -- you know, it -- that it'd be denied, number one and that
18 number two, it be ruled that it's -- there's been nothing that's been deemed prior
19 sexual conduct. And with that I'll submit.

20 MR. BECKER: And, Your Honor, I think to the extent that I believe Jocelyn
21 will be called to the witness stand this morning in a separate proceeding that
22 pursuant to the Court's ruling on this motion I would ask for a brief opportunity to
23 cross-exam her on these issues.

24 The -- I suppose that if the conduct that we're alleging is not sexual
25 conduct then we don't even need to ask for a court permission under 48.069 and I

1 think we did this and we told Counsel we're -- we were doing this in the abundance
2 of caution. My own opinion is that the most reasonable inference is that these other
3 incidents are not necessarily sexual but that she is repeatedly making assertions
4 about people touching her in her privates and it is something that I think is relevant.
5 *Summit* is designed to insulate, you know, a woman from the appearance of
6 unchastity.

7 And certainly we're not saying that this -- well, seven-year old girl or
8 four-year old at the time, we're not trying to create an impression in front of the jury
9 that she's of loose, moral virtue going around having sex, you know, repeatedly. I
10 mean, that's -- and I think that that's what the statute is designed to preclude is
11 improper smearing of the accuser and that's certainly not what we're trying to do.
12 We felt it was most appropriate to bring this issue to the Court's attention before
13 asking questions just so we don't appear to be doing something improper.

14 But I think I -- I would ask the Court to defer ruling and allow me a brief
15 opportunity when we call Jocelyn to the stand to ask her about these issues and
16 make a record and then I think the Court will have a sufficient basis to rule --
17 rule thoroughly on it.

18 THE COURT: Now I reviewed the medical doc -- records or the records that I
19 provided to you and I gave you all of them. I felt that if we're going to prosecute that
20 you have a right to have those records. However, I was somewhat surprised when
21 the request for admissibility of prior sexual conduct pursuant to 48.069 was
22 submitted because I didn't think that I -- what I read in there was not what it is
23 anticipated under *Summit* or any other case for a four-year old. And I'm not going to
24 let you ask her those questions.

25 You have stay away -- completely away from that. And I don't

1 think -- believe it's prior sexual conduct. And I think it would be most devastating to
2 this young lady if I let you ask those questions. So, I -- rather than to allow you even
3 to get to them I'm going to deny your request. State will prepare an order --

4 MS. FLECK: Thank you.

5 THE COURT: -- consistent with your opposition.

6 MS. FLECK: The only thing I just want make clear for the record only is that
7 additionally that -- all of those records came after this.

8 THE COURT: Right.

9 MS. FLECK: So. And then I --

10 MR. BECKER: Well, I --

11 MS. FLECK: -- don't know if the Defense is confused by this but we're not
12 calling Jocelyn this morning. It's 51.385 so for that --

13 THE COURT: It's --

14 MS. FLECK: -- the mom's called --

15 THE COURT: -- mom and --

16 MS. FLECK: -- and grandma.

17 MR. BECKER: Okay.

18 MS. FLECK: And I will say that for -- just for -- because of the schedule we're
19 only doing those limited hearings this morning on those two witnesses because our
20 other two 51.385 witnesses are tomorrow. So, I thought since we told the jury to
21 come back at 10 that we would do the other ones tomorrow so that --

22 THE COURT: That's fine.

23 MS. FLECK: -- we didn't take all morning.

24 THE COURT: That's fine.

25 MR. BECKER: And if I may the -- under Subcategory E there's a reference to

1 a prior touching incident with a Neco, N-E-K-O -- N-E-C-O, in the interview with
2 Detective Hatchett on July 15th, 2010 which predated this allegation just so it's --

3 THE COURT: All right.

4 MR. BECKER: -- so that's clear.

5 MS. FLECK: And that was a --

6 THE COURT: Thank you.

7 MS. FLECK: -- kicking. He kicked --

8 THE COURT: Thank you.

9 MS. FLECK: He kicked her.

10 Thank you.

11 THE COURT: All right. Anything else that needs to be brought before the jury
12 comes in?

13 MS. FLECK: Just -- yeah. We've got to do the 51.385.

14 THE COURT: Oh yeah. We got to do the --

15 Okay. Who is your first witness?

16 MS. FLECK: Nicole Hammonds.

17 **NICOLE HAMMONDS**

18 [having been called as a witness and being first duly sworn, testified as follows:]

19 THE CLERK: Please be seated. Would you please state and spell your first
20 and last name for the record?

21 THE WITNESS: Nicole Hammonds. N-I-C-O-L-E, H-A-M-M-O-N-D-S.

22 THE CLERK: Thank you.

23 MS. FLECK: Thank you, Your Honor. May I proceed?

24 THE COURT: Yes.

25 **DIRECT EXAMINATION**

1 BY MS. FLECK:

2 Q Good morning, Ms. Hammonds.

3 A Good morning.

4 Q Do you have children?

5 A I do.

6 Q And what are their names?

7 A Jocelyn and Katelyn.

8 Q How --

9 A Coleman.

10 Q Pardon me?

11 A Jocelyn and Katelyn Coleman.

12 Q Okay. How old is your daughter Jocelyn?

13 A She's seven.

14 Q And what's her date of birth?

15 A 11-13-2005.

16 Q And how about Katelyn?

17 A Katelyn is five and her birthday is 8-21-07.

18 Q Just for this particular hearing, I want to direct your attention back to
19 July of 2010.

20 A Okay.

21 Q Did something significant happen in July of 2010 where your daughter
22 Jocelyn came to you telling you something that had happened to her?

23 A Yes.

24 Q Can you please tell me where you were when you first had the
25 conversation with her?

1 A I was in my home, in my bedroom.

2 Q Who all lived at your house at that time?

3 A My parents, Joanna and David Hammonds, --

4 Q Okay.

5 A -- myself, and my two daughters, Jocelyn and Katelyn.

6 Q So you say that you were at home. Is that right?

7 A Correct.

8 Q And who all was there? Everybody --

9 A Everybody --

10 Q -- that you mentioned?

11 A -- was there.

12 Q What had you been doing prior that day or that evening before you had

13 the conversation with her?

14 A How early?

15 Q Well, let's just -- about what time do you have the conversation?

16 A It was probably about 8:30 --

17 Q So just --

18 A -- p.m.

19 Q -- previous to that, say early evening, what were you all doing?

20 A We had dinner at the house. My sister and her boys were there.

21 Q What's your sister's name?

22 A Megan.

23 Q And how about her boys?

24 A Joshua and Levi.

25 Q So it was a family dinner with everyone, your family, your sister's family,

1 and then your parents. Is that right?

2 A Correct.

3 Q After dinner what do you do?

4 A I went upstairs to get the girls ready for a bath.

5 Q When -- is this the time that Jocelyn said she wanted to talk to you?

6 A Yes. We got upstairs and she stopped me in the hallway and said she

7 needed to talk to me.

8 Q What was her demeanor when she talked to you?

9 A Very serious.

10 Q Was she crying?

11 A No.

12 Q Where was Katelyn if you remember?

13 A I don't know.

14 Q After Jocelyn said she wanted to talk you where did you guys go?

15 A We went into my bedroom. She took me into my bedroom.

16 Q Into your room?

17 A Correct.

18 Q Okay. At the time did you have your own room or did you share a room

19 with the girls?

20 A I had my own room.

21 Q So what happened once you got into your bedroom?

22 A She sat me on my bed and proceeded to tell me that while she was at

23 Megan and Dustin's house, Dustin came into the room where she was sleeping and

24 she said it was to check on the baby. And he sat on the futon, looked at her

25 privates, touched her privates, and dug in them.

1 Q What was her demeanor when she was telling you this?

2 A Very serious. Matter-of-fact.

3 Q Was she in any way hysterical or emotional?

4 A No.

5 Q Now you say Dustin and Megan -- and I think we had just talked about
6 Megan. Who's Dustin?

7 A Dustin was Megan's husband?

8 Q And do you see him in the courtroom today?

9 A I do.

10 Q Can you please just point to him and describe something he's wearing?

11 A He's wearing a blue shirt.

12 Q Let the record reflect identification.

13 THE COURT: It will.

14 BY MS. FLECK:

15 Q Do you remember what day of the week it was that you had this
16 conversation with her?

17 A It was a Tuesday.

18 Q And we she talked to you and said when I was at Megan and Dustin's,
19 did you know when she was referring to?

20 A She spent the night there Saturday and Sunday evening.

21 Q So Saturday and Sunday of that same week she had spent the
22 night --

23 A Correct?

24 Q -- at their home. Is that right?

25 A Correct.

1 Q And was it your understanding that that was the time that she was
2 referring to?

3 A Yes.

4 Q Okay. What did you do once she told you this?

5 A I told her I needed to go downstairs and to wait upstairs.

6 Q Did you ask her anything in response to the disclosure that she had
7 made?

8 A I did. I asked her if she was telling the truth.

9 Q And what did she say?

10 A She said yes.

11 Q Why did you ask her that?

12 A Because I knew I needed to call the police and I needed confirmation.

13 Q Did you ask any follow-up questions regarding the actual touching --

14 A No.

15 Q -- or -- no?

16 A No.

17 Q Did you ask her what she meant when she said the word dig?

18 A No.

19 Q Or she said dug but did you ask her what she meant by that?

20 A No.

21 Q So, no follow-up to get more information at that time?

22 A No.

23 Q So then after you confirmed it with here -- you know, are you telling the
24 truth? She says yes. And then what did you do?

25 A I went to downstairs to tell my parents what she had told me.

1 Q What did -- what happened after that?

2 A I told my parents and I kind of lost control. I was crying. And my mom
3 went upstairs to take care of the girls so I could process and get myself together.

4 Q In your home what word did you teach or did your children use to
5 describe their vagina?

6 A Privates.

7 Q That was the word that she often used as a child -- or that she used as
8 a child?

9 A Correct.

10 Q And also Katelyn?

11 A Correct.

12 Q Up until that point in time what was Jocelyn's relationship like with the
13 Defendant?

14 A She loved him. She would hug him hi and bye. He was always around
15 for family events. We went to church together.

16 Q Were there -- I mean, you mentioned that Megan and Dustin had two
17 little boys. Is that right?

18 A Correct.

19 Q Did you daughter Jocelyn and your daughter Katelyn have a
20 relationship then with their cousins, being Levi and Joshua.

21 A Yes, they were very close.

22 Q Were there times other than that night that they had in fact stayed the
23 night over at Dustin and Megan's?

24 A Yes.

25 Q Often or just --

1 A Not very often. Katelyn had spent the night more often.

2 Q Okay. But there were times in the past. That wasn't the first time they
3 had stayed?

4 A No.

5 Q So Jocelyn and Dustin had a good relationship at that point.

6 A Yes.

7 Q Up until that point had she ever told you anything about not liking him or
8 not wanting to see him or be in his home?

9 A No, never.

10 Q And for purposes of this particular hearing, I'll pass the witness.

11 MR. BECKER: Court's indulgence.

12 **CROSS-EXAMINATION**

13 BY MR. BECKER:

14 Q At some point in time you do report this to law enforcement. Is that
15 correct?

16 A Correct.

17 Q Prior to meeting with law enforcement do you personally have
18 additional conversations with Jocelyn about the allegations?

19 A No.

20 Q To your knowledge does anybody else have personal conversations
21 with her about the allegations?

22 A She told my mom and my sister what had happened.

23 Q Were you present when she told them?

24 A I was present when she told my sister. I was not present when she told
25 my mom.

1 Q And you know this because your mom told you that?

2 A Yes.

3 Q Okay. Do you know how long her conversation with your mother was?

4 A I don't know.

5 Q So, prior to meeting with a detective, to your knowledge the only one

6 that Jocelyn had spoken to about these allegations was your mom and your sister

7 Megan. Correct?

8 A Correct.

9 MR. BECKER: Nothing further, Your Honor.

10 MS. FLECK: Nothing further from the State.

11 THE COURT: All right. Call your next witness.

12 MS. FLECK: The State calls Joanna Hammonds.

13 **JOANNA HAMMONDS**

14 [having been called as a witness and being first duly sworn, testified as follows:]

15 THE CLERK: Please be seated. Would you please state and spell your first
16 and last name for the record?

17 THE WITNESS: Joanna Hammonds. J-O-A-N-N-A, H-A-M-M-O-N-D-S.

18 THE CLERK: Thank you.

19 MS. FLECK: May I proceed, Your Honor?

20 THE COURT: Yes.

21 MS. FLECK: Thank you.

22 **DIRECT EXAMINATION**

23 BY MS. FLECK:

24 Q Good morning, Mrs. Hammonds.

25 A Good morning.

1 Q Do you have children?
2 A I do.
3 Q How many?
4 A Three.
5 Q And what are their names?
6 A Nicole Hammonds, Megan Hammonds, and Michael Hammonds.
7 Q Does your daughter Nicole have children?
8 A Yes, she does.
9 Q And what are their names?
10 A Jocelyn Coleman and Katelyn Coleman.
11 Q How about your daughter Megan?
12 A She has two sons. Levi Barral and Joshua Barral.
13 Q And what's your third child's name?
14 A Michael Hammonds.
15 Q For purposes of this particular hearing, I just want to reference you back
16 and direct your attention back to July of 2010. Did there come a point in July of
17 2010 where you had a conversation with your granddaughter Jocelyn about
18 something that may have happened to her?
19 A Yes.
20 Q How was it that that conversation came about?
21 A We were at the house and Nicole --
22 Q When you --
23 A -- and --
24 Q When you -- I'm sorry.
25 A I'm sorry.

1 Q When you say we?

2 A Myself, my husband David Hammonds, and my daughter Nicole
3 Hammonds. Jocelyn Coleman was also there and Katelyn Coleman was also there.

4 Q Were Jocelyn, Katelyn, and Nicole actually living at your and your
5 husband's house at that time?

6 A Yes, they were.

7 Q So you say that all of you were there together. Do you remember what
8 day of the week this was?

9 A It was a Tuesday.

10 Q Okay. And was it -- what time of day was it that you first talked with
11 her?

12 A It was in the early evening because we were -- because Nicole was
13 getting them ready for their bath. So it would've been, you know, like after
14 dinnertime but before bedtime.

15 Q Okay. So tell me what happened?

16 A Nicole came downstairs and asked me to go -- she just had a weird
17 look on her face, just seemed upset, and asked me to go talk to Jocelyn; that
18 Jocelyn had told her something that had upset her and she asked me to go talk to
19 her.

20 Q Without telling us what Nicole said, did Nicole tell you at that time what
21 she had said to her?

22 A No.

23 Q So all she said is you need to talk to her. She's told me something
24 distressing. Please go speak with her.

25 A Yes.

1 Q So what did you do?

2 A I went upstairs. They had typically taken a bath in the master bathroom
3 because I had a like a Roman tub. And so her and her sister Katelyn were in my
4 and my husband's bedroom and she -- I just said to her -- I said hey, Jo-Jo, we call
5 her Jo-Jo, it's her nickname, mommy says you told her something. And she said
6 yes. She said Uncle Dustin touched me. And then she just proceeded to say he
7 stuck his hand down her pants and then that she -- he had pushed up inside of her.

8 Q Okay. So based on then what Nicole tells you, you go up and talk to
9 here. What is her demeanor at that point in time?

10 A Jocelyn's?

11 Q Mm-hmm.

12 A Just -- kind of just matter-of-fact. Like, you know, like this is what
13 happened. Just very, you know, she just -- it was -- there was no doubt with what
14 she said. She was very articulate and just kind of matter-of-fact type of --

15 Q Is Jocelyn a girl that's sort of prone to emotion or is she more of a
16 matter-of-fact kind of a kid?

17 A She's more of a matter-of-fact kind of kid.

18 Q Okay. So you said that you went up and you say to her, you know,
19 what did you tell mommy? And what did she tell you?

20 A She told me that Uncle Dustin had touched her and put his hand --
21 well --

22 Q And I know. I -- it's been three years. So --

23 A Right.

24 Q -- I don't know if you -- if you remember the exact verbiage then that's
25 great. Tell me if --

1 A The verbiage that I exactly remember was he pushed up inside of me.

2 Q Okay. If I show you your voluntary statement, might it refresh your
3 memory as to the verbiage -- I mean, you were interviewed by the police in this
4 case. Is that right?

5 A Yes, that's correct?

6 Q And in fact, you were interviewed by the police on July 21st of 2010. Is
7 that right?

8 A Yes.

9 Q And would you agree with me that that's a mere few days after -- about
10 a week after you learned what had happened to her?

11 A Yes. It was about a week after.

12 Q Do you remember that that statement was recorded?

13 A Yes.

14 Q And if I showed you a copy of it, might it refresh your memory as to the
15 verbiage that you disclosed to the detective at that time?

16 A Yes.

17 MS. FLECK: May I approach?

18 THE COURT: Yes.

19 BY MS. FLECK:

20 Q If you could just read this to yourself and tell me if it refreshes your
21 memory.

22 A Okay.

23 Yes, it does.

24 Q Does that refresh your memory?

25 A Yes.

1 Q Okay. So again, I know you're kind of paraphrasing today but at the
2 time what was the exact verbiage that she used in order to describe what had
3 happened?

4 A She said that when she was at May-May's, which is what she called
5 Megan, that Uncle Dustin came in and touched her and dug up ins -- and dug up
6 inside of her.

7 Q Okay. So dug, at the time -- a few weeks af -- or a week after she
8 made that disclosure to you it was the -- the word that she used wasn't pushed, it
9 was dug?

10 A Yes.

11 Q Okay. Now you say that at that time she was -- her emotional state was
12 calm but what? Serious?

13 A Yes.

14 Q Okay. And --

15 MR. BECKER: Well, I'll object; misleads the testimony.

16 MS. FLECK: I --

17 BY MS. FLECK:

18 Q Okay. So what was her emotional state?

19 A She was matter-of-fact. Just, you know --

20 Q After she told you he dug in her privates, what did you do?

21 A I went and got Nicole -- went downstairs and got Nicole and -- so that
22 they could finish their bath and then I talked to my husband and we called -- I called
23 Megan, who had just -- had left our house just within the last maybe 20, 30 minutes
24 or so.

25 Q Did you ask Jocelyn any follow-up questions after she told you that he

1 dug in her privates?

2 A I did not. No.

3 Q Did she ask you anything follow-up?

4 A No. Well, she -- no, that's -- no. I'm sorry. No.

5 Q Okay. So you kind of just left that conversation alone.

6 A Yes.

7 Q Was privates a word that you had u -- heard her use before, you know
8 maybe or bath time or for any other reason?

9 A Yes.

10 Q So that was a term that she used to describe her vagina and that was
11 her customary term that she used?

12 A Yes.

13 Q Before July of 2010, what was Jocelyn's relationship like with Dustin?

14 A Like any other niece with an uncle I think. I mean, they weren't -- I
15 mean, she was closer to my son but she spent a lot of time with them and at their
16 house and with them at our house. And --

17 Q Okay. The -- Nicole's girls and Megan's boys were friends.

18 A Oh, yes.

19 Q The cousins.

20 A Yes.

21 Q Is that right?

22 A Yes.

23 Q Up until that point had she ever expressed to you that she did not want
24 to go over to Dustin's house or that she didn't like him or she was scared of him in
25 anyway?

1 A No.

2 Q For -- do you see Dustin in the courtroom today?

3 A Yes, I do.

4 Q Can you please point to him and describe something he's wearing for
5 the record?

6 A He's right there in the blue shirt and --

7 MR. BECKER: I'll stip that she's identified him.

8 THE WITNESS: -- the blue tie.

9 THE COURT: Let the record reflect she's identified the Defendant.

10 MS. FLECK: Thank you. For purposes of this particular hearing we have
11 nothing further at this time.

12 MR. BECKER: Court's indulgence.

13 **CROSS-EXAMINATION**

14 BY MR. BECKER:

15 Q Well, regarding Jocelyn's relationship with Dustin -- I mean, you said
16 that her relationship with Dustin appeared to be a normal one?

17 A Yes.

18 Q And that she and her sister Katelyn had spent a lot of time over at
19 Megan and Dustin's home?

20 A They had spent time there. Yes.

21 Q Including spending the night?

22 A Yes.

23 Q How frequently would that occur?

24 A I don't know. Maybe -- it was three years ago. I'm sorry. Maybe a
25 couple times a month. Maybe a once a month. Twice a month, maybe.

1 Q Okay. And prior to this incident there had never been -- Jocelyn had
2 never reported anything unusual occurring when she spent the night at Dustin and
3 Megan's. Correct?

4 A I'm sorry. Could you repeat that?

5 Q Prior to this evening in July of 2010, Jocelyn had never reported to you
6 anything unusual occurring when she spent the night at Megan and Dustin's?

7 A That's correct.

8 Q And you said that Nicole came down and how would you describe her
9 demeanor when she came downstairs to tell you to go back up and speak to
10 Jocelyn?

11 A She seemed very upset.

12 Q All right. And I know you gave a written statement -- I'm sorry, a
13 voluntary statement, which was recorded in this matter. Prior to testifying today, did
14 you review your voluntary statement?

15 A I've looked at it. Yes.

16 Q So you have copies of your voluntary statement?

17 A Yes.

18 Q And have -- when was the last time you actually reviewed that voluntary
19 statement?

20 A This weekend.

21 Q All right. And you also have the voluntary statements of Nicole and
22 Jocelyn?

23 A No.

24 Q All right. Did you review your voluntary statement alone or did you
25 review it with Nicole --

1 A No.

2 Q -- and -- or Joc --

3 A Alone.

4 Q Jocelyn?

5 A Only alone.

6 Q And when you came upstairs to speak to Jocelyn, where was she?

7 A She was in like the -- we had a master bath, you know, just kind of an
8 open -- with the sinks and the tub and the shower. She was in there.

9 Q Okay. Was she already bathing?

10 A No.

11 Q So she was placed in the bath after this disclosure?

12 A Yes.

13 Q And whose decision was it call -- to call the police?

14 MS. FLECK: I'm just -- I'm going just to object at this time. For purposes of
15 this particular hearing, I think it's outside the scope. We've now -- we're only here to
16 determine the 51.385 not the whole investigation. It's simply -- you know, it's what
17 the disclosure was and the trustworthiness and reliability of the actual disclosure.

18 THE COURT: And that's 51.385?

19 MS. FLECK: Yes, sir.

20 THE COURT: Yes. Sustain the objection.

21 BY MR. BECKER:

22 Q Now, you testified that Jocelyn had a good relationship with Dustin?

23 A I mean, it was fairly -- I mean, it was -- you know, it seemed okay.

24 Q But as a whole the family did not really have a good relationship with
25 Dustin. Is that fair to say?

1 A I would say it had been bumpy at times. Yes.

2 Q And how long had Nicole, Jocelyn, and Katelyn been living at your
3 home prior to the time of this incident?

4 A I -- to be ho -- I couldn't answer that at this point. I would have to lo -- I
5 just don't know how long they'd been there. It was at least almost -- it was probably
6 about a year. Maybe more than -- I don't -- I can't swear to that number, I'm sorry,
7 of how long.

8 Q Thank you.

9 MR. BECKER: Court's indulgence.

10 BY MR. BECKER:

11 Q To your knowledge, how many people did Jocelyn tell her story to?

12 A Including everyone or --

13 Q Well, in other words, she first told her mom Nicole.

14 A Correct.

15 Q And then she separately told you.

16 A Correct.

17 Q Prior to summoning law enforcement, to your knowledge did she tell her
18 story to anybody else?

19 A To Megan.

20 Q And aside from Megan?

21 A I don't think there was anyone else. I mean, I -- I mean when she told
22 Megan there could've been another adult in the room that hadn't heard the story. I
23 don't know.

24 MR. BECKER: No further questions.

25 THE COURT: Thank you, ma'am. You can step down.

1 THE WITNESS: Thank you.

2 THE COURT: Do you have any other witnesses to call this morning?

3 MS. FLECK: I do not. Thank you.

4 THE COURT: In reviewing the United States Supreme Court case *Idaho*
5 *versus Wright* 497 US 805, and *Maryland versus Craig*, I believe is at 497 US 820,
6 and NRS 51.385. Now in the *Maryland* and the *Idaho* case the child did not testify
7 as I recall. And these hearings are relatively new. A statement made by -- I'm
8 reading from NRS 51.385.

9 A statement made by a child under the age of 10 describing any
10 act of sexual conduct performed with or on the child or any act of physical abuse,
11 which is admissible in a criminal proceeding regarding the act of sexual conduct, or
12 abuse if (a) -- subsection 1 -- subsection (a): The court finds, in a hearing outside
13 the presence, which is what we had today, that the time, content, and circumstances
14 of the statement provide sufficient circumstantial guarantees of trustworthiness.

15 And it appears to the Court the statements made by the child to the
16 mom and the grandmother appear to be trustworthy. She may or may not testify.
17 She may be unable to testify, which is subsection (b): In determining the
18 trustworthiness of the statement the Court shall consider, without limitation 1 -- and
19 this is 2(a): The statement was spontaneous. It appears to be -- the mom was
20 spontaneous. Probably wasn't spontaneous to grandma but I don't think she was
21 subjected -- as (b): That -- was she subjected to repetitive questioning? The State
22 even asked, did you question her at all about this and the mom said no.

23 I don't find that there was a reason to fabricate. She used terminology
24 that was unexpected and she appeared to be stable in mental state. So I'm going to
25 allow the testimony to be presented to the jury.

1 MR. BECKER: Your Honor, if I may, and I don't think this is an issue, but
2 under NRS 51.385 the State would be required to give 10 days' notice if the child
3 was unavailable or unable to testify. I believe the State is going to call Jocelyn and I
4 think under 51.385 they're required to unless they give said notice notwithstanding
5 the Court's commentary including language about unavailability.

6 MS. FLECK: She'll be testifying.

7 THE COURT: Well, according to the Supreme Court, I didn't -- I don't
8 remember that being in the Supreme Court. It appears to be in the under statute,
9 subsection 3: If the child is unavailable or unable to testify, written notices must be
10 given to the Defendant at least 10 days before the trial.

11 MR. BECKER: And the State just indicated that they are calling here. So I
12 believe it's a moot point. If it's --

13 THE COURT: So that's a moot point anyway. Okay. Are you ready to bring
14 the jury in?

15 MS. FLECK: Yes, Your Honor.

16 [Proceeding concluded at 10:56 a.m.]

17

18

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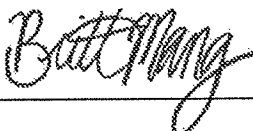
20

21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
22 recording in the above-entitled case.

23

24

25



Brittany Mangelson

Independent Transcriber



CLERK OF THE COURT

1 RTRAN

2

3

4

DISTRICT COURT

5

CLARK COUNTY, NEVADA

6

STATE OF NEVADA,

7

Plaintiff,

CASE NO. C269095

8

DEPT. VIII

9

vs.

10

DUSTIN JAMES BARRAL,

11

Defendant.

12

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

13

WEDNESDAY, MAY 29, 2013

14

TRANSCRIPT OF PROCEEDINGS

15

JURY TRIAL

16

DAY 2 - VOLUME II

17

For the State:

MICHELLE FLECK, ESQ.

18

Chief Deputy District Attorney

19

MICHELLE Y. EDWARDS, ESQ.

20

Deputy District Attorney

21

For the Defendant:

MICHAEL L. BECKER, ESQ.

22

MICHAEL V. CASTILLO, ESQ.

23

24

RECORDED BY: JILL JACOBY, COURT RECORDER

25

TRANSCRIBED BY: BRITTANY MANGELSON, INDEPENDENT TRANSCRIBER

WITNESS INDEX

STATE'S WITNESSES

VOLUME

PAGE

NICOLE HAMMONDS

Direct Examination by Ms. Edwards	II	12
Cross-Examination by Mr. Becker	II	30
Redirect Examination by Ms. Edwards	II	55
Recross-Examination by Mr. Becker	II	63

JOCELYN COLEMAN

Direct Examination by Ms. Edwards	II	82
Cross-Examination by Mr. Becker	II	88

JOANNA HAMMONDS

Direct Examination by Ms. Fleck	II	99
Cross-Examination by Mr. Becker	II	124
Cross-Examination by Mr. Becker (resumed)	II	139
Redirect Examination by Ms. Fleck	II	147
Recross-Examination by Mr. Becker	II	151
Examination by Court [Jury Questions]	II	154
Follow-up Examination by Ms. Fleck	II	154
Follow-up Examination by Mr. Becker	II	158

KATHERINE DENNY

Direct Examination by Ms. Edwards	II	159
Cross-Examination by Mr. Becker	II	170

MEGAN BARRAL

Direct Examination by Ms. Fleck	III	4
Cross-Examination by Mr. Castillo	III	39
Redirect Examination by Ms. Fleck	III	59
Recross-Examination by Mr. Castillo	III	69
Examination by Court [Jury Questions]	III	72
Follow-up Examination by Ms. Fleck	III	72

MICHAEL HAMMONDS

Direct Examination by Ms. Edwards	III	78
Cross-Examination by Mr. Castillo	III	95

NICOLE HAMMONDS (recalled)

Further Direct Examination by Ms. Edwards	III	100
Further Cross-Examination by Mr. Castillo	III	103

STATE'S WITNESSES**VOLUME****PAGE****DR. SANDRA CETL**

Direct Examination by Ms. Fleck	III	105
Cross-Examination by Mr. Becker	III	122
Redirect Examination by Ms. Fleck	III	131
Recross-Examination by Mr. Becker	III	135
Examination by Court [Jury Questions]	III	141
Follow-up Examination by Ms. Fleck	III	142
Follow-up Examination by Mr. Becker	III	143

TIMOTHY HATCHETT

Direct Examination by Ms. Fleck	III	144
Direct Examination by Ms. Fleck (continued)	III	164
Cross-Examination by Mr. Becker	III	174
Redirect Examination by Ms. Fleck	III	186

EXHIBIT INDEX**NUMBER****VOLUME****PAGE****STATE'S EXHIBITS**

1	Photograph - 4 year old, Jocelyn Coleman	II	17
2	Video recording of Detective Hatchett's interview with Jocelyn	III	169
3	Diagram of body used in interview	III	169

DEFENDANT'S EXHIBITS

A	Photograph of baby Monitor	III	47
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1 WEDNESDAY, MAY 29, 2013 AT 11:00 A.M.

2
3 MARSHAL: All rise, please.

4 [In the presence of the jury]

5 MARSHAL: And be seated.

6 THE COURT: Stipulate to the presence of the jury.

7 MS. FLECK: The State so stipulates, Your Honor.

8 MR. BECKER: Yes, Your Honor.

9 THE COURT: Okay. If you'll stand and be sworn in. Raise your right hand.
10 Sworn or affirmed to tell the -- to follow the directives of the Court.

11 [The Clerk swears in the jury]

12 THE COURT: I apologize for being late. My calendar today was atrocious
13 and lasted much longer than it should have this morning. So.

14 The Clerk will read the Information to the jury.

15 [The Clerk read the Information aloud]

16 THE COURT: All right. You ready to do your opening?

17 MS. FLECK: Ms. Edwards will be ready momentarily. I think that someone
18 from JAVS -- to just fix the technology.

19 THE COURT: Ready?

20 MS. EDWARDS: Yes, Your Honor.

21 THE COURT: Go ahead.

22 **OPENING STATEMENT BY THE STATE**

23 BY MS. EDWARDS:

24 He dug in my privates. Those are the words spoken by Jocelyn
25 Coleman who was four years old in July of 2010, describing what the Defendant

1 Dustin Barral did to her one night while she was staying at his house. Now in order
2 to understand Jocelyn -- what happened to Jocelyn and her disclosure, you're going
3 to need to learn about her family and you will over the course of the next couple
4 days as you meet numerous members of her family.

5 Here is her family tree. David and Joanna Hammonds are her
6 grandparents. Her mom is Nicole Hammonds. Her father is Fred Coleman. And
7 they have two children. The first is Jocelyn Coleman who was approximately four
8 years old in July of 2010 and her sister Katelyn Coleman who was approximately
9 two as well in July of 2010. David and Joanna had another daughter; her name was
10 Megan. She was married to Dustin Barral at the time. And at the time they had two
11 children. Levi Barral who was approximately two years old and they had young son,
12 Josh who was approximately 6 months old. The third child of David and Joanna
13 was Michael Hammonds, who's the uncle to obviously Jocelyn, Katelyn, Levi, and
14 Josh.

15 Now when you look at the family prior to the Defendant digging in
16 Jocelyn's privates, you'll learn that they were a close family; that they went to church
17 together, that they had family meals together, and more importantly that they helped
18 each other out. And in fact, prior to all this happening Megan and Nicole were close
19 and Megan would help Nicole with watching her children and vice versa. But
20 because they were a family that helped each other Nicole was the one who was in
21 need in July of 2010.

22 On a Friday, Nicole went in to the hospital. She was admitted to the
23 hospital for unexplained vomiting and because she had to stay the night at the
24 hospital obviously she needed some assistance in caring for her children. Because
25 it is the Hammonds family they all stepped up to assist in the watching of Jocelyn

1 and Katelyn. On Friday night David and Joanna kept the girls. You'll learn that the
2 girls and Nicole lived with David and Joanna at that time. So they kept the girls
3 Friday night but on Saturday night the girls needed to go somewhere else. David
4 and Joanna had obligations on Sunday mornings at the church and obviously it's
5 easier for the girls to stay with someone else.

6 So on Saturday night Megan offers to keep the girls and the girls go to
7 Megan and Dustin's house and stay the night with them. When they go to sleep
8 Jocelyn is put to sleep in the room with Josh, the six-month old child. Josh is in the
9 crib; Jocelyn is on the futon. At some point on Saturday night, Dustin gets up from
10 his bed where he's sleeping with his wife, he goes into the room where Jocelyn is
11 with the baby Josh and he proceeds to sit down on the futon. And this child who's
12 trying to sleep now has Dustin putting his hand and his fingers underneath her
13 pajamas, underneath her panties, and he inserts his fingers into her vagina.

14 And you'll hear that Jocelyn didn't describe in those kinds of terms. In
15 fact, she uses the word dug or digged. She describes Dustin as -- that he dug in my
16 privates. Not only did he dig in her privates, she describes his fingers as sinking into
17 her privates while this is going on. But he didn't stop there, you'll also hear that he
18 dug in her privates and he also dug in her butt. She describes that he also used his
19 fingers to dig in her butt and with respect to both the digging in the privates and the
20 digging in the butt, you'll hear that it hurt; that she complained that hurt bad.

21 So, as soon as he's done digging Dustin leaves the room he actually
22 goes to the bathroom and washes his hands; and Jocelyn observes that happened.
23 After he washes his hands he proceeds back to the bedroom where his wife is
24 sleeping and he has something apparently important to tell her because he wakes
25 her up to tell her that he accidentally sat on Jocelyn while she was in the room with

1 Josh. There was no report that anything was wrong with Jocelyn; that she'd been
2 hurt. He just wakes her up to tell her that he accidentally sat on Jocelyn.

3 Sunday morning, everybody's awake at the Barral home. Megan and
4 Dustin have an interaction with Jocelyn before everybody goes to church and
5 Megan mentions how funny it was that Uncle Dustin accidentally sat on Jocelyn.
6 And you'll learn that Jocelyn's reaction to Megan's statement to her suggested to
7 Megan that Jocelyn either forgot what Uncle Dustin had done or somehow didn't
8 understand what she had said. Nevertheless Megan and the four children go to
9 church that Sunday morning.

10 At church are Joanna and David and some extended family members.
11 After church Kathy Denny, she's the great-aunt to the girls, to Jocelyn specifically,
12 she takes the girls after church and they go to the hospital to visit their mother.

13 Now, you'll that when they were at the hospital it wasn't a quiet
14 environment; it wasn't secluded. They actually visited Nicole in the hallway of the
15 hospital; not in her specific hospital room. So the girls, their Aunt Kathy, Nicole, and
16 some other members of the family are standing in the hallway while they're visiting
17 her. After they visit her at some point in time they go back to Megan and Dustin's
18 where they again stay the night at Megan and Dustin's house. But this time you'll
19 learn the sleeping arrangements are different; the three children Levi, Katelyn, and
20 Jocelyn sleep in the same room this time.

21 On Monday they go and spend some time with their father -- sorry,
22 Jocelyn and Katelyn go and spend some time with their father, Fred Coleman. On
23 Tuesday evening afternoon, Nicole and Megan go to Fred's house and pick up the
24 girls and taken them back to the house of David and Joanna. Now, the boys are
25 with Megan and now the girls are with all of them so they go back to the home. It's

1 David, Joanna, Megan, the two boys, Nicole, and the two girls. They all hang out;
2 they all have dinner together. After dinner is done, Megan takes the boys and
3 leaves the house. And about that time, it's about 8:30 at night, and the Nicole takes
4 the girls upstairs because it's bath time, time to get a round, time to go to bed.

5 When they go upstairs for bath time, Jocelyn stops Nicole and tells Nicole that she
6 has something to tell her. Obviously Nicole's her mom; she's going to listen to her.

7 So she takes Nicole. She makes sure Nicole is sitting down on a bed
8 before she tells her what happened. And when she sits her down on the bed she
9 tells her that while she was staying at Uncle Dustin and Megan's house, Uncle
10 Dustin came into the room, sat on the futon with her, and he dug in her privates.
11 Nicole asked her one question; didn't ask details, didn't ask any follow-up questions
12 but one. And we'll talk -- and you'll hear from her what that question was.

13 Obviously, Nicole would be upset by what had gone on.

14 So Nicole goes back downstairs to where her parents are, relays the
15 gist of what had happened upstairs, and Joanna the grandmother goes upstairs to
16 start tending to the girls because someone needs to take cares of them; someone
17 needs to get them around to go to bed. So Joanna starts that process but when she
18 goes upstairs she talks to Jocelyn. She asks Jocelyn essentially what did you tell
19 mommy and Jocelyn tells Joanna about how Uncle Dustin dug in her privates. The
20 girls get around. Joanna goes back downstairs. Nicole goes back upstairs to take
21 care of the girls but Joanna's downstairs and she calls Megan and tells Megan she
22 needs to come back to the house and she needs to bring the boys with her.

23 Megan returns to the house, brings the boys with her, and when she
24 arrives her parents, David and Joanna, tell her essentially the gist of everything
25 that's transpired in that short amount of time; because of what Jocelyn said to

1 Nicole. Eventually at some point in time, David Hammonds makes a phone call to
2 Dustin. Suffice to say it was not a cordial phone call. At some point time Dustin did
3 hang up on him. David and Joanna initially tell Megan what had gone on; what
4 Jocelyn had disclosed. Nicole eventually comes back downstairs. At some point in
5 time Jocelyn also comes back downstairs and when she comes back downstairs
6 she tells Megan what Uncle Dustin had done. And Jocelyn recalls Megan crying at
7 the point at which she tells Megan what had gone on.

8 So obviously, as we said, we talked to -- she talked to Nicole upstairs
9 spontaneous in that Jocelyn initiated it, that she sat Nicole down away from
10 everybody. She told Joanna which we talked about; she told Megan. Before Nicole
11 goes to bed that night she calls 3-1-1 because she needs to report this to the police.
12 She's given the contact information for a detective who she makes contact with the
13 following day on Wednesday. When she makes contact with the detective on
14 Wednesday he directs Nicole to take Jocelyn and Katelyn to Sunrise Hospital where
15 they receive a scan exam based on the nature of Jocelyn's disclosure.

16 Sometime after they're done with that in the afternoon or sometime that
17 day, Nicole calls Fred. Obviously the father of Jocelyn -- he needs to know what's
18 going on with his child. So she calls him, gives him the gist of what's going, and
19 then she puts Jocelyn on the phone to talk with Fred. And Jocelyn and Fred have a
20 conversation in general of what had gone on.

21 On Thursday, Nicole took Jocelyn and Katelyn to go meet with
22 Detective Timothy Hatchett. He's the detective from Las Vegas Metropolitan Police
23 Department who was assigned investigate this case. He conducts a forensic
24 interview of Jocelyn Coleman all by herself, which is recorded, and he'll explain to
25 you kind of what the purpose of forensic interview is, how it's done; those kinds of

1 thing. But during the course of the forensic interview Jocelyn provides a very
2 detailed and very descriptive account of what Uncle Dustin had done. She tells him
3 where she was, that it was night time, whose house it was at, who was in the room.
4 She accounts for where everyone who was in the house, Megan, the boys, her
5 sister, Dustin, where everybody was sleeping when Dustin dug in her butt. She also
6 discloses that Dustin had dug in her butt to Detective Timothy Hatchett.

7 Detective Timothy Hatchett continues his investigation as he's required
8 to do as the detective. And the family is essentially supposed to go on; they go on
9 to live their everyday lives. But things have changed. Jocelyn has changed. There
10 a --her demeanor, how she responds to things, how she interacts with certain
11 people, all of that has changed since these events. You'll also find out that there
12 were changes to the family. Obviously everybody remains the same people who
13 they are but the dynamics and the relationship substantially changed after this
14 disclosure and after it was reported to the police; obviously the intact family. You'll
15 find that Megan's relationship with her parents became very strained after that point.

16 A once close family, once relied on each other, went to their houses for
17 dinners, those kinds of things; saw their grandchildren. That didn't happen for quite
18 some time because of what had happened. At some point in time for reasons you
19 may or may not find out Megan and Dustin separated, they eventually became
20 divorced but they still co parent their two children, Levi and Josh. And we still have
21 Uncle Mikey hanging out with the family and spending time with them.

22 So, after you have all this information about the disclosure, about how it
23 came out, about what happened to Jocelyn, and how this man dug in her privates,
24 and in her butt; at the close of evidence Ms. Fleck and I will ask you, the jury, to
25 weigh all the evidence, to apply your common sense, and to find the Defendant,

1 Dustin Barral guilty of two counts of sexual assault against Jocelyn Hammonds. For
2 digging in her privates and digging in her butt on or about July 10, 2010. Thank you.

3 THE COURT: Wish to give an opening?

4 MR. CASTILLO: Yes, Your Honor.

5 **OPENING STATEMENT BY THE DEFENSE FOR DUSTIN BARRAL**

6 BY MR. CASTILLO:

7 Good morning ladies and gentleman. The State through their
8 PowerPoint this morning would have you believe that this is a simple and
9 straightforward case where Jocelyn says that Uncle Dustin dug into her privates. I
10 would submit to you that this is not a simple case. Cases that go to juries often are
11 not; that's why they require you to be here as the Trier of fact.

12 Now I would ask you throughout every single person testifying,
13 throughout the entire trial, I would ask you to keep an open mind. And the State
14 mentioned that this was a close knit family and they mentioned some of the family
15 dynamics. And we're going to ask you as well to focus on those family dynamics.
16 Particularly the motivations of each and every person when they testify, what their
17 biases might be, and in many cases how they felt about Dustin even before these
18 allegations ever came to the surface.

19 The State would have you believe that this case is about Jocelyn. Well
20 this case is not just about Jocelyn, this case is also about Dustin, Dustin Barral; a
21 member of the community, a family man, a devoted father, and he finds himself
22 facing his own nightmare from these allegations that have surfaced as well.

23 Ladies and gentlemen, what the State present in that PowerPoint, that's
24 not evidence. That is simply their theory of the case and what they hope to prove.
25 And the burden of proof is on them, the State, throughout every single step of the

1 proceedings here. So what the Defense will respectfully ask is for you to keep an
2 open mind, again scrutinize every single piece of evidence, and at the conclusion of
3 this case we look forward to standing up here once again and telling you why the
4 State has not proven their case beyond a reasonable doubt and why you should find
5 Dustin Barral not guilty on every single count. Thank you.

6 THE COURT: Okay. State, call your first witness.

7 MS. EDWARDS: The State calls Nicole Hammonds.

8 **NICOLE HAMMONDS**

9 [having been called as a witness and being first duly sworn, testified as follows:]

10 THE CLERK: Please be seated. Would you please state and spell your first
11 and last name for the record?

12 THE WITNESS: Nicole Hammonds; N-I-C-O-L-E, H-A-M-M-O-N-D-S

13 THE CLERK: Thank you.

14 **DIRECT EXAMINATION**

15 BY MS. EDWARDS:

16 Q Good morning, Ms. Hammonds. Do you have any children?

17 A I do.

18 Q And what are their names?

19 A Jocelyn and Katelyn.

20 Q What is Jocelyn's last name?

21 A Coleman.

22 Q Okay. And Katelyn's?

23 A Coleman.

24 Q Okay. How old is Jocelyn today?

25 A Seven.

1 Q How old was she in July of 2010?
2 A She was four.
3 Q And how old is Katelyn today?
4 A Five.
5 Q And how old was she in July of 2010?
6 A Two.
7 Q Do you have a sister?
8 A I do.
9 Q Okay. One or more than one.
10 A Just one.
11 Q Okay. What is her name?
12 A Megan.
13 Q And does she have a family?
14 A She does.
15 Q Who are the members of her family?
16 A She has two boys; Levi and Joshua. And --
17 Q In July of 2010, do you know where Megan lived?
18 A Yes.
19 Q Where did she live?
20 A She lived on Molino.
21 Q Is that in Clark County, Nevada?
22 A Yes.
23 Q Okay. In July of 2010, where were you living?
24 A I was living with my parents.
25 Q And what are their names?

1 A David and Joanna Hammonds.

2 Q Were your daughters living with you at that time?

3 A Yes.

4 Q Okay. How would you describe your relationship with Megan in July of
5 2010?

6 A We were very close. We did everything together. We'd watch each
7 other's kids. Vacations. Dinners.

8 Q How would you describe your relationship to your parents in July of
9 2010?

10 A Very close. We lived together. We worked together.

11 Q Did you have an opportunity to observe Megan's relationship with your
12 parents?

13 A Yes.

14 Q Approximately how often would you say Megan was at your parent's
15 house?

16 A Maybe once a week.

17 Q Okay. And how often did you see Josh -- or sorry; strike that -- saw
18 Josh and Levi, correct Megan's children?

19 A Yes.

20 Q Okay. How often would you see them?

21 A Probably once or twice a week.

22 Q Do you know who Dustin is?

23 A I do.

24 Q And in July of 2010, what was his relationship to you?

25 A He was married to my sister.

1 Q Do you see Dustin in court today?

2 A I do.

3 Q Would you please identify where he may be sitting and some item of
4 clothing that he's wearing?

5 A He's sitting right there and he has a blue shirt on.

6 THE COURT: Record reflects that she's identified the Defendant.

7 BY MS. EDWARDS:

8 Q Prior to July of 2010, how would you describe your relationship with
9 Dustin?

10 A It was fine. We did family events, vacations, dinners.

11 Q Okay. Did something happen in July of 2010 where you needed help
12 with your daughters?

13 A Yes. I was hospitalized.

14 Q Just generally speaking what were you hospitalized for?

15 A Unexplained vomiting.

16 Q Do you remember how long you were in the hospital?

17 A Yes. Two days.

18 Q While you were in the hospital, who helped out with the girls?

19 A My entire family.

20 Q You went in the hospital Friday, you said?

21 A I was admitted Friday, yes.

22 Q Okay. And when was the next time you saw the girls in person?

23 A Sunday.

24 Q Okay. And where were you when you saw them?

25 A At the hospital.

1 Q Would you describe for me where you saw them at the hospital.

2 A In the hallway, right outside the elevators.

3 Q Okay. Do you remember who was present when you saw the girls?

4 A I know that my parents were there; Megan was there; my aunt Kathy
5 Denny was there; and my kids were there.

6 Q Okay. When was the next time you saw the girls?

7 A Tuesday.

8 Q Do you remember approximately what time of day you saw them
9 Tuesday?

10 A It was late afternoon.

11 Q Okay. Now on July of 2010, how would describe Jocelyn's everyday
12 demeanor?

13 A Very outgoing, she's very friendly; she has a lot of friends at school and
14 at church. Just very playful.

15 Q Okay. Sitting here today you said she's seven today, right?

16 A Correct.

17 Q Does she look the same as when she was four in July of 2010?

18 A She's a lot taller.

19 MS. EDWARDS: I'm showing you State's proposed exhibit.

20 BY MS. EDWARDS:

21 Q Would you look at that and tell me who is in that?

22 A That is Jocelyn.

23 Q And that's the Jocelyn we've been talking about, correct?

24 A Correct.

25 MS. EDWARDS: I move for admission based on her testimony that this is

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 DUSTIN BARRAL)

3 Appellant,)

4 vs.)

5 THE STATE OF NEVADA,)

6 Respondent.)

7 CASE NUMBER: 64135 Electronically Filed
8 (District Court Case No. C20095) Mar 18 2014 09:24 a.m.
9 Tracie K. Lindeman
10 Clerk of Supreme Court

11 **APPELLANT'S APPENDIX**

12 **(VOLUME II)**

13 MICHAEL L. BECKER, ESQ.

14 Nevada Bar #8765

15 MICHAEL V. CASTILLO, ESQ.

16 Nevada Bar#11531

17 2300 W. Sahara Avenue

18 Suite 450

19 Las Vegas, Nevada 89102

20 (702) 331-2725

21 Attorneys for Appellant

22 STEVE WOLFSON, ESQ.

23 CLARK COUNTY, NEVADA

24 Nevada Bar #1565

25 STEVEN S. OWENS, ESQ.

26 Nevada Bar#4352

27 Chief Deputy District Attorney

28 200 South Third Street

 Las Vegas, Nevada 89155

 (702) 671-2500

 CATHERINE CORTEZ-MASTO, ESQ.

 NEVADA ATTORNEY GENERAL

 Nevada Bar #3926

 100 North Carson Street

 Carson City, Nevada 89701-4717

 (702) 486-3420

 Counsel for Respondent

INDEX

<u>PLEADING</u>	<u>PAGE NO.</u>
Arrest Report filed on 8/4/2010.....	1-4
Information filed on 11/29/2010	14-16
Judgment of Conviction filed on September 23, 2013.....	85-86
Motion for Acquittal or in the Alternative a New Trial filed on June 7, 2013 ..	47-59
Motion for Extension of Time filed on January 28, 2014.....	91-94
Motion for Extension of Time Second Request filed on February 25, 2014.....	96-99
Notice Approving Extension of Time filed on January 28, 2014	95
Notice of Appeal filed on September 27, 2013	87-90
Order Denying Defendant's Motion for Acquittal or in the Alternative, a New Trial filed on July 19, 2013	83-84
Order Denying Defendant's Request for Admissibility of Prior Sexual Conduct Pursuant to NRS 48.069 filed on June 28, 2013	81-82
Order Granting Extension of Time filed on March 6, 2014.....	100
Reply to State's Opposition to Defendant's Motion for Acquittal or in the Alternative a New Trial filed on June 28, 2013.....	75-80
Request for Admissibility of Prior Sexual Conduct.....	17-36
State's Opposition to Defendant's Motion for Acquittal or in the Alternative a New Trial filed on June 20, 2013.....	60-74
State's Opposition to Defendant's Request for Admissibility of Prior Sexual Conduct filed on May 29, 2013.....	37-44
Transcript of Day I of Trial Proceedings dated May 28, 2013	101-307

1	Transcript of Day II of Trial Proceedings dated May 29, 2013	334-509
2	Transcript of Day III of Trial Proceedings dated May 30, 2013.....	544-734
3	Transcript of Day IV of Trial Proceedings dated May 31, 2013	734-815
4	Transcript of NRS 51.385 Proceedings of May 29, 2013	308-333
5	Transcript of NRS 51.385 Proceedings of May 30, 2013	510-543
6	Transcript of Proceedings of Defendant's Motion for Acquittal or in the	
7	Alternative a New Trial date July 8, 2013	816-821
8	Verdict filed on May 31, 2014	45-46
9	Voluntary State of J.C.	5-13
10		
11		
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STEVEN S. OWENS, ESQ.
Chief Deputy District Attorney
Nevada Bar#4352
200 S. Third Street
P.O. Box. 552212
Las Vegas, NV 89155
(702) 382-5815-Fax
Counsel for the Respondent


An employee of Las Vegas Defense Group

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Jennifer Aleman, an

ct. 7th day


An employee of Las Vegas Def

5

1 doubt, no problem.

2 MS. FLECK: Any problem with the concepts that we've talked about
3 regarding evidence and you know, wanting some maybe that's more than
4 reasonable doubt in terms of you know, hey, this is the kind of case I would require
5 physical evidence of. I would require DNA or I would require fingerprints; something
6 like that. Do you feel that way?

7 PROSPECTIVE JUROR NUMBER 063: No.

8 MS. FLECK: Your -- you'd be comfortable judging just testimony from a
9 witness.

10 PROSPECTIVE JUROR NUMBER 063: Correct.

11 MS. FLECK: All right. Thank you. Pass for cause.

12 THE COURT: Thanks.

13 MR. BECKER: You were asked about judging credibility when it comes to
14 your own children, right? And you said it's easy to judge.

15 PROSPECTIVE JUROR NUMBER 063: Not always. But most of the time it
16 is.

17 MR. BECKER: But, you know your children because you've raised them?
18 Correct?

19 PROSPECTIVE JUROR NUMBER 063: Correct.

20 MR. BECKER: Would it be fair to say that it's probably easier for you judge
21 the credibility of your children than it would be to judge the credibility of someone
22 whose background you don't know fully?

23 PROSPECTIVE JUROR NUMBER 063: Probably.

24 MR. BECKER: And with regard this notion where you're agreeing -- it -- you
25 know, where I would say the Prosecutor wants you to agree to accept little to

1 prosecute, okay -- successfully. I mean, I've asked this of other jurors. If there was
2 evidence -- corroborating evidence that you reasonably would expect to see -- I
3 mean, are you going to stick to this agreement with the Prosecutor to say, hey I'm
4 not going to require that. I told you during jury selection I'm not going to require
5 anything more than testimony.

6 PROSPECTIVE JUROR NUMBER 063: No. I have to deal with the facts.

7 MS. FLECK: Judge, I'm going to object and that's the law.

8 THE COURT: Yeah. I'll sustain the objection.

9 PROSPECTIVE JUROR NUMBER 063: I have to deal with the facts that
10 have presented to me.

11 MR. BECKER: So, you were going to wait to see the full body of the State's
12 case.

13 PROSPECTIVE JUROR NUMBER 063: Correct.

14 MR. BECKER: And any defense that's put on, before deciding whether the
15 people -- I'm sorry, whether the State of Nevada has met this burden?

16 PROSPECTIVE JUROR NUMBER 063: Correct.

17 MR. BECKER: Your ex-husband was a writer for The Boston Globe.

18 PROSPECTIVE JUROR NUMBER 063: No he wasn't. He was a pressman
19 for The Boston Globe.

20 MR. BECKER: Oh. He was a pressman at The Boston Globe. Okay, I'm
21 sorry. As you look over at Mr. Barral at this point in time, have you formulated any
22 opinions with regard to his guilt or innocence?

23 PROSPECTIVE JUROR NUMBER 063: No.

24 MR. BECKER: And do you think you could be fair to him?

25 PROSPECTIVE JUROR NUMBER 063: Yes.

1 MR. BECKER: Okay. Thank you.
2 THE COURT: Hand that to the gentleman next to you.
3 Tell me your name.
4 MS. FLECK: Your Honor. We called one out of order. So.
5 THE COURT: Yeah. We're -- we'll --
6 MR. BECKER: I'll waive any irregularity, Your Honor. It's --
7 THE COURT: We'll fill it.
8 MS. FLECK: No.
9 THE COURT: What?
10 MS. FLECK: Can we approach please? Sorry.
11 [Bench Conference Begins]
12 THE COURT: It's because, that's the alternate and that's not the way that the
13 order looks. So I don't want to picky about it but his is our alternate seat and so it
14 makes a difference.
15 MR. BECKER: I'm not sure I understand what difference it makes.
16 THE COURT: That's one --
17 MS. FLECK: It makes a difference because --
18 THE COURT: -- of the alternate jurors. So, if you overlook that.
19 MR. BECKER: I understand but I think it's all random, it wasn't done
20 purposefully.
21 THE COURT: Right.
22 MS. FLECK: It doesn't make a difference.
23 MR. BECKER: And we would throw away an irregularity.
24 MS. FLECK: Okay. But we don't because
25 THE COURT: Okay.

1 MS. FLECK: -- we want this person necessarily on the jury. So --

2 THE COURT: Okay. All right.

3 MS. FLECK: Okay.

4 THE COURT: Let's have a seat. Make the change.

5 [Bench Conference Concludes]

6 THE COURT: Sir. We're going to have to have you sit in the audience.

7 PROSPECTIVE JUROR NUMBER 067: But it's such a better view, though.

8 Darn.

9 THE COURT: Sorry.

10 PROSPECTIVE JUROR NUMBER 067: That's fine.

11 THE COURT: Technicality in the law; my problem. Sorry.

12 THE CLERK: Badge Number 064, Russell Hepler.

13 THE COURT: Mr. Hepler, do you work?

14 PROSPECTIVE JUROR NUMBER 064: Yes, sir.

15 THE COURT: What do you do?

16 PROSPECTIVE JUROR NUMBER 064: A Geologist.

17 THE COURT: Where at?

18 PROSPECTIVE JUROR NUMBER 064: Ninyo and Moore Geotechnical.

19 Local firm. Consulting firm.

20 THE COURT: Are you married?

21 PROSPECTIVE JUROR NUMBER 064: No, sir.

22 THE COURT: Have you ever sat as a juror before?

23 PROSPECTIVE JUROR NUMBER 064: No, sir.

24 THE COURT: Do you have any background in law or law enforcement?

25 PROSPECTIVE JUROR NUMBER 064: No.

1 THE COURT: You've heard all the questions asked the other jurors, is there
2 anything that came to mind that you thought, well, I better make the Court aware of
3 this?

4 PROSPECTIVE JUROR NUMBER 064: No, sir.

5 THE COURT: Can you be fair and impartial to both parties in this case?

6 PROSPECTIVE JUROR NUMBER 064: Absolutely.

7 THE COURT: State.

8 MS. FLECK: Thank you, Your Honor.

9 Mr. Hepler, just briefly, any kids?

10 PROSPECTIVE JUROR NUMBER 064: No.

11 MS. FLECK: Okay. Any problems or any concerns that you have based upon
12 the questions that have already been presented regarding children in this case; a
13 child testifying?

14 PROSPECTIVE JUROR NUMBER 064: No.

15 MS. FLECK: Okay. If you're chosen, promise to do the best job you can
16 possibly do.

17 PROSPECTIVE JUROR NUMBER 064: Sure.

18 MS. FLECK: Okay. Nothing further. Pass for cause.

19 MR. BECKER: I'm sorry. You may have already indicated, have you had any
20 prior jury experience?

21 PROSPECTIVE JUROR NUMBER 064: No.

22 MR. BECKER: And obviously the charges are -- here are very serious but
23 you understand the burden of proof is the same in all criminal cases regardless of
24 the charges?

25 PROSPECTIVE JUROR NUMBER 064: I do.

1 MR. BECKER: And you wouldn't lower the burden because the accuser is a
2 child, with the thought that, hey better to be safe if it's a child that's complaining?

3 PROSPECTIVE JUROR NUMBER 064: I wouldn't.

4 MR. BECKER: Can you look over at Mr. Barral and see him as being no
5 different than anyone else in this courtroom?

6 PROSPECTIVE JUROR NUMBER 064: I can.

7 MR. BECKER: Do you have a predisposition to believe the testimony of a
8 child over that of an adult?

9 PROSPECTIVE JUROR NUMBER 064: Sure.

10 MR. BECKER: Okay. Meaning you would be more inclined to believe a child
11 than an adult?

12 PROSPECTIVE JUROR NUMBER 064: No. That's not true.

13 MR. BECKER: I'm sorry. Maybe I didn't phrase it great so let's -- my
14 question, the first question was whether you had a predisposition to believe a child's
15 credibility over that of an adult.

16 PROSPECTIVE JUROR NUMBER 064: No.

17 MR. BECKER: So you would evaluate -- notwithstanding the fact that one is a
18 child and one is an adult, you would evaluate their testimony by the same or similar
19 standards?

20 PROSPECTIVE JUROR NUMBER 064: I would.

21 MR. BECKER: And you wouldn't be more inclined to believe a child witness
22 per say than you would an adult?

23 PROSPECTIVE JUROR NUMBER 064: No. I think adults and children lie all
24 the time.

25 MR. BECKER: And you can accept that sometimes an accuser may be

1 relaying truthful allegations and sometimes the allegations may not be truthful?

2 PROSPECTIVE JUROR NUMBER 064: True.

3 MR. BECKER: Whether that's an adult or a child.

4 PROSPECTIVE JUROR NUMBER 064: Correct.

5 MR. BECKER: Okay. This Fifth Amendment issue -- again, we haven't made
6 any decision at this point but do you have any problems, for example, if there is
7 testimony from the State's witness and Mr. Barral chooses to exercise his Fifth
8 Amendment and not testify. Is that something you would hold against him?

9 PROSPECTIVE JUROR NUMBER 064: No, sir.

10 MR. BECKER: All right. So as you sit here at this moment, you believe you
11 could be fair to Mr. Barral?

12 PROSPECTIVE JUROR NUMBER 064: I could.

13 MR. BECKER: Thank you. Pass for cause, Your Honor.

14 THE COURT: Okay.

15 [Pause in Proceedings]

16 THE COURT: We thank and excuse Ms. Watts. Thank you for your time.
17 You'll check-in to the jury commissioner. And Loveranes. Yes. Thank you so much
18 for your time. We appreciate it.

19 THE CLERK: Badge Number 067, James Metzner.

20 PROSPECTIVE JUROR NUMBER 067: Yes.

21 THE CLERK: Badge Number 068, Charles Bowling.

22 THE COURT: All right. Tell me your name again.

23 PROSPECTIVE JUROR NUMBER 067: James Metzner.

24 THE COURT: And do you work?

25 PROSPECTIVE JUROR NUMBER 067: I work at the Palazzo Hotel as a

1 Bellman.

2 THE COURT: And do you -- Are you married?

3 PROSPECTIVE JUROR NUMBER 067: Yes, sir.

4 THE COURT: Does your spouse work?

5 PROSPECTIVE JUROR NUMBER 067: Yes. Kindergarten teacher.

6 THE COURT: Where at?

7 PROSPECTIVE JUROR NUMBER 067: William and Mary Scherkenbach.

8 THE COURT: Have you ever sat as a juror before?

9 PROSPECTIVE JUROR NUMBER 067: No, sir.

10 THE COURT: Do you have any background in law or law enforcement?

11 PROSPECTIVE JUROR NUMBER 067: My grandfather was a deputy sheriff
12 for the Alameda County Sheriff Department in California. My father was a CHP
13 officer for 30 years. He retired and I have all but about 16 units of a degree in
14 Criminal Justice from the Cal State University at Hayward.

15 THE COURT: Can you be fair and impartial to both parties even though you
16 have this background in law or law enforcement?

17 PROSPECTIVE JUROR NUMBER 067: I would hope so. I'm sitting back
18 there listening to everybody and my only problem is I have a young daughter and
19 that really puts me on edge with --

20 THE COURT: It does.

21 PROSPECTIVE JUROR NUMBER 067: -- things that happened.

22 THE COURT: It does.

23 PROSPECTIVE JUROR NUMBER 067: I'm sure everybody feels the same
24 way.

25 THE COURT: It does. No one would choose to be here. We have to have

1 citizens that are willing to serve. No one chooses this type of case. You just -- it's
2 just the luck of the draw.

3 PROSPECTIVE JUROR NUMBER 067: Understood.

4 THE COURT: State.

5 MS. FLECK: Thank you, Your Honor.

6 Mr. Metzner, your wife as a kindergarten is what's called a mandatory
7 reporter. Are you familiar with that term?

8 PROSPECTIVE JUROR NUMBER 067: No.

9 MS. FLECK: Okay. Meaning that there are certain jobs within schools or
10 hospitals, counselors that by law have to report instances of sexual abuse or
11 neglect. Has your wife ever talked to you about having to do that, maybe not termed
12 it as mandatory reporting but has she ever talked to you about a time that a child
13 disclosed something at school and she had to go to law enforcement?

14 PROSPECTIVE JUROR NUMBER 067: Nothing with that but only in mental
15 cases believe it or not. In Kindergarten, she's sending kids the mental facility.

16 MS. FLECK: Oh, really? Based on abusive things?

17 PROSPECTIVE JUROR NUMBER 067: Probably based on that. I'm not
18 completely 100 percent sure but based on something family-based that happened at
19 home.

20 MS. FLECK: Okay. All right. So, nothing that's -- that she's experienced at
21 her school that applies with kids of a similar age that you would bring into this
22 courtroom?

23 PROSPECTIVE JUROR NUMBER 067: No.

24 MS. FLECK: Okay. Now, you did -- you said, you know, the litany of sort of
25 law enforcement ties but then said well, the only problem I would have is that I have

1 a young daughter. So, it doesn't give you concern that that you have a family that's
2 been in law enforcement and that you're interested in the criminal justice system?

3 PROSPECTIVE JUROR NUMBER 067: No. We have family -- we have
4 friends who are judges. It's not a secret in law enforcement, they become friends
5 with judges and that's just what happens. I don't think it makes me any different
6 from anyone in here.

7 MS. FLECK: Okay. You know, would you agree -- and I -- and I've posed
8 similar questions to other jurors that have friends or family in law enforcement -- I
9 mean, you would agree with me that the system doesn't work if, you know,
10 somebody convicts somebody of a crime like this when we haven't proven our case
11 beyond a reasonable doubt.

12 PROSPECTIVE JUROR NUMBER 067: I guess that's true. Okay. Yes.

13 MS. FLECK: Well -- I mean, it's just is -- whenever we have people who have
14 law enforcement connections it's like well automatically they would vote guilty. I
15 mean, you -- when you have res -- I -- in my -- I would think when you have respect
16 for the system; you want the system to work. And the system works when we are
17 held to task to prove our case beyond a reasonable doubt and only then jurors find
18 someone guilty.

19 PROSPECTIVE JUROR NUMBER 067: Correct.

20 MS. FLECK: Okay.

21 PROSPECTIVE JUROR NUMBER 067: I would also -- I mean, I also would
22 be quite nervous knowing that he was arrested for a crime. I don't know if it's
23 lewdness with a minor or whatever we're looking at. And for some -- and if he was
24 neighbor, that would make me real jumpy whether he was guilty or not; whether I
25 knew that. Here's my neighbor just got arrested for this. You know, I have young

1 kids. I would -- I mean, it'd put a little bit on edge.

2 MS. FLECK: Okay. So, it's, you know, the charges itself and the topic but of
3 certainly you can wait until you've heard all of the evidence --

4 PROSPECTIVE JUROR NUMBER 067: Absolutely.

5 MS. FLECK: -- to vote guilt or not guilt?

6 PROSPECTIVE JUROR NUMBER 067: Sure.

7 MS. FLECK: Okay. And then same thing with you having a daughter -- you
8 know, can you wait until the end of the evidence and then say --

9 PROSPECTIVE JUROR NUMBER 067: I'm hoping. There's no doubt in my
10 mind that I've put -- already put my daughter into this courtroom with me mentally.
11 I'm flipping through it going what if was her? What if it was her? What would I do? I
12 mean -- I -- you can't not help that.

13 MS. FLECK: Yeah.

14 PROSPECTIVE JUROR NUMBER 067: When you have a daughter that who
15 is young; what if it was us? What if it was my family?

16 MS. FLECK: Right.

17 PROSPECTIVE JUROR NUMBER 067: I mean, I've got to put myself into all
18 fairness of being a juror but at the same time, you got to put your own spin on it.

19 MS. FLECK: Well and you're asked to use your common sense. You know,
20 you're asked -- you don't -- when I say, can you leave your biases and your
21 sympathies, and your prejudices at the door? Of course you come in with your
22 common sense. But -- I guess -- would it so override your ability to sit as a juror that
23 you couldn't listen to the evidence?

24 PROSPECTIVE JUROR NUMBER 067: I would hope not. I hope that I'm
25 fair.

1 MS. FLECK: Okay. That you can wait until we present our case to come to a
2 verdict about this particular man. Not the charge and not saying, you know, sex
3 assault on a minor is a, you know, morally despicable and repulsive sort of crime.
4 But as the Defendant sits now, he's innocent of that charge.

5 PROSPECTIVE JUROR NUMBER 067: Absolutely.

6 MS. FLECK: Okay. Thank you.

7 PROSPECTIVE JUROR NUMBER 067: Mm-hmm.

8 MS. FLECK: Nothing further and we'll pass for cause.

9 MR. BECKER: What if Mr. Barral's really not guilty?

10 PROSPECTIVE JUROR NUMBER 067: Understood.

11 MR. BECKER: Okay.

12 PROSPECTIVE JUROR NUMBER 067: And at this point he's not, right?

13 MR. BECKER: Now that --

14 PROSPECTIVE JUROR NUMBER 067: Just --

15 MR. BECKER: You know, at this point --

16 PROSPECTIVE JUROR NUMBER 067: In the eyes of this courtroom, he's
17 not.

18 MR. BECKER: Right.

19 PROSPECTIVE JUROR NUMBER 067: He hasn't gone to trial.

20 MR. BECKER: But what if he's really -- I mean, what if -- I mean, you said
21 you wouldn't -- I think you said that regardless of what happens that you'd feel
22 uncomfortable if Mr. Barral was your neighbor.

23 PROSPECTIVE JUROR NUMBER 067: I would. Knowing that he'd been
24 arrested and with a charge.

25 MR. BECKER: Can you accept --

1 PROSPECTIVE JUROR NUMBER 067: And I have young kids that would
2 play out front and things, that would make me a little --

3 MR. BECKER: Can --

4 PROSPECTIVE JUROR NUMBER 067: -- a little on edge.

5 MR. BECKER: Can you accept that people get wrongfully accused all the
6 time?

7 PROSPECTIVE JUROR NUMBER 067: Absolutely.

8 MR. BECKER: But notwithstanding, it's a stigma that it, in your mind, should
9 stay with you regardless of what happens in a courtroom?

10 PROSPECTIVE JUROR NUMBER 067: I think it's going to stay with me no
11 matter what.

12 MR. BECKER: It -- well --

13 PROSPECTIVE JUROR NUMBER 067: I have to try to, you know, leave at
14 the door when I walk in this courtroom. It's definitely tough. I have a young
15 daughter.

16 MR. BECKER: Right.

17 PROSPECTIVE JUROR NUMBER 067: It flips through your heard, you
18 know.

19 MR. BECKER: Well, the thing, you know, about bias is it could take you 40
20 years to develop a bias or prejudgment and we're not through any verbal
21 gymnastics going to disabuse of it by asking you a question in a certain way, okay.

22 So, if what you're saying is that you can't be fair to Mr. Barral because
23 you have a young daughter and you're very protective of your young daughter. And
24 you know, it's -- it -- you look over and you're -- you wouldn't want him as a
25 neighbor. You've already formed opinions about him and that you don't think you

1 could be fair to him, it's only fair that you let us know.

2 PROSPECTIVE JUROR NUMBER 067: I'll let you know, absolutely. I made
3 an opinion --

4 MR. BECKER: Mm-hmm.

5 PROSPECTIVE JUROR NUMBER 067: -- walking in the door.

6 MR. BECKER: All right. And your opinion is that you can't be fair to Mr.
7 Barral.

8 PROSPECTIVE JUROR NUMBER 067: Probably not. Based on the fact that
9 I have a young daughter.

10 MR. BECKER: And that if you were in -- sitting in Mr. Barral's chair, you
11 wouldn't someone in your position to be judging?

12 PROSPECTIVE JUROR NUMBER 067: That's exactly right. That man
13 deserves a fair trial.

14 MR. BECKER: Right. And I would make a motion for cause, Your Honor.

15 MS. FLECK: Submit.

16 THE COURT: Thank you, sir. I appreciate your comments. Why don't you
17 check-in with the jury commissioner? We'll excuse you.

18 THE CLERK: Badge Number 073, Ruben Luna.

19 THE COURT: Mr. Luna, do you work?

20 PROSPECTIVE JUROR NUMBER 073: Yes.

21 THE COURT: What do you do?

22 PROSPECTIVE JUROR NUMBER 073: I'm a parts sales manager at Auto
23 Zone.

24 THE COURT: Are you married?

25 PROSPECTIVE JUROR NUMBER 073: No.

1 THE COURT: Have you ever sat as a juror before?

2 PROSPECTIVE JUROR NUMBER 073: No.

3 THE COURT: Do you have any background in law or law enforcement?

4 PROSPECTIVE JUROR NUMBER 073: I'm going to CSN and majoring in
5 Criminal Justice.

6 THE COURT: You started it?

7 PROSPECTIVE JUROR NUMBER 073: Yes.

8 THE COURT: And what criminal justice classes have you had?

9 PROSPECTIVE JUROR NUMBER 073: Criminology, Introduction to Criminal
10 Law, the introduction class to Criminal Justice, and that's it.

11 THE COURT: Can you be fair and impartial to both the Defendant and to the
12 State of Nevada?

13 PROSPECTIVE JUROR NUMBER 073: Yeah.

14 THE COURT: You'll listen to all the evidence before you make up your mind.

15 PROSPECTIVE JUROR NUMBER 073: Yes, sir.

16 THE COURT: State.

17 MS. FLECK: Thank you, Your Honor.

18 Okay, Mr. Luna, what do you hope to do once you graduation from
19 CSN?

20 PROSPECTIVE JUROR NUMBER 073: I'm not sure. It's still open. As of
21 right now I'm working at Auto Zone. I know I can move up there but I'm still leaving
22 it open so it doesn't mean that I'm going to go into criminal justice.

23 MS. FLECK: Okay. So you're taking classes at CSN for criminal justice but
24 that's not necessarily where you'd like to end up working; in that field.

25 PROSPECTIVE JUROR NUMBER 073: Yeah. No. That's not -- that's an

1 option, just an option.

2 MS. FLECK: If you went into criminal justice, I mean, is it something that
3 you'd like to be like -- does working as a police officer interest you, working as an
4 attorney, working as a corrections officer?

5 PROSPECTIVE JUROR NUMBER 073: Probably a police officer; patrol.
6 Starting off at patrol because it's just I know that opens up doors to everything else;
7 is a patrolman.

8 MS. FLECK: So working for law enforcement is something that you'd be
9 interested in doing?

10 PROSPECTIVE JUROR NUMBER 073: Yes.

11 MS. FLECK: Have you had any experience with law enforcement as a victim
12 of a crime or you -- or anyone close to you have that experience?

13 PROSPECTIVE JUROR NUMBER 073: Probably a couple times. It's been
14 years. Probably since like 10 years ago. Maybe I don't remember them real good.

15 MS. FLECK: Was that you or someone in your family?

16 PROSPECTIVE JUROR NUMBER 073: In the family.

17 MS. FLECK: Who was it?

18 PROSPECTIVE JUROR NUMBER 073: It was burglarized, so it was the
19 whole house.

20 MS. FLECK: Okay. Your house?

21 PROSPECTIVE JUROR NUMBER 073: Yeah.

22 MS. FLECK: You were a kid?

23 PROSPECTIVE JUROR NUMBER 073: Yeah.

24 MS. FLECK: How about accused of a crime? Have you ever been -- you or
25 anyone close to you been accused of a crime?

1 PROSPECTIVE JUROR NUMBER 073: Not just some. Just traffic tickets.

2 MS. FLECK: How about anyone close to you?

3 PROSPECTIVE JUROR NUMBER 073: My brother.

4 MS. FLECK: Okay. Your --

5 PROSPECTIVE JUROR NUMBER 073: My brother served two years.

6 MS. FLECK: In -- was that here in Nevada?

7 PROSPECTIVE JUROR NUMBER 073: Yes.

8 MS. FLECK: For what?

9 PROSPECTIVE JUROR NUMBER 073: For -- I'm not sure what it was for. I
10 didn't really see him. I didn't talk to him during it. I still talk to him but during that
11 time I didn't talk to him.

12 MS. FLECK: Do you even know what the charge was?

13 PROSPECTIVE JUROR NUMBER 073: Mm-mm. I just know it's conspiracy
14 to something but I don't know what the charge was.

15 MS. FLECK: How old were you when he was incarnated?

16 PROSPECTIVE JUROR NUMBER 073: Probably 17.

17 MS. FLECK: Were -- was you two not talking because of that or was there --
18 was it because you were a kid? What was going on?

19 PROSPECTIVE JUROR NUMBER 073: I've -- I had three jobs back then, I
20 think; either three or two. But I was going to school too so it didn't really give me a
21 lot of time to connect with him.

22 MS. FLECK: Worry about what -- worry about him.

23 PROSPECTIVE JUROR NUMBER 073: Yeah.

24 MS. FLECK: Okay. And he's since been released?

25 PROSPECTIVE JUROR NUMBER 073: Yes.

1 MS. FLECK: Do you have a relationship with him now?

2 PROSPECTIVE JUROR NUMBER 073: I don't talk almost anybody in my
3 family. So --

4 MS. FLECK: Okay.

5 PROSPECTIVE JUROR NUMBER 073: No.

6 MS. FLECK: So it doesn't then like that would necessarily -- well, I guess --
7 you know, and again I don't want to pry too much, but the fact that my Ms. Edwards
8 and I, my office basically, sent your, you know -- for all intents and purposes kind of
9 sent your brother to jail. Would you be able to listen to testimony from our witnesses
10 without thinking about that? Without thinking my brother went through this process,
11 my brother was also put in this position?

12 PROSPECTIVE JUROR NUMBER 073: I actually haven't thought about it
13 since until I came here because that's one of the questions you guys asked. But I
14 don't ever think about it.

15 MS. FLECK: So no lasting impressions with law enforcement because of
16 that?

17 PROSPECTIVE JUROR NUMBER 073: No.

18 MS. FLECK: All right. Thank you. We pass for cause.

19 MR. BECKER: Well -- in fact, you may have some interest in becoming law
20 enforcement, correct?

21 PROSPECTIVE JUROR NUMBER 073: Yes.

22 MR. BECKER: My concern as it relates to Mr. Barral is -- I keep asking
23 everybody if they lean to one side or the other, okay. And does the fact that you're
24 studying criminal justice and possibly want to be a police officer; does that make you
25 lean more towards the prosecution's side?

1 PROSPECTIVE JUROR NUMBER 073: N.

2 MR. BECKER: And you think you can be fair to both sides?

3 PROSPECTIVE JUROR NUMBER 073: Yes.

4 MR. BECKER: And you've studied -- have you studied the Fifth Amendment
5 yet in your Criminal Justice class?

6 PROSPECTIVE JUROR NUMBER 073: I haven't. I think it's okay not to use
7 it. I mean, it's one of the things you're given. So if you don't want to use it than you
8 don't have to.

9 MR. BECKER: I'll pass for cause, Your Honor.

10 THE COURT: Thanks. If you'll hand that mic down to this gentleman down
11 here.

12 Tell me your name.

13 PROSPECTIVE JUROR NUMBER 068: The name's Chuck Bowling, 068.

14 THE COURT: You work?

15 PROSPECTIVE JUROR NUMBER 068: I do.

16 THE COURT: What do you do?

17 PROSPECTIVE JUROR NUMBER 068: I'm the President Chief Operating
18 Officer of Mandalay Bay.

19 THE COURT: Have you ever sat as a juror before?

20 PROSPECTIVE JUROR NUMBER 068: I have not, sir.

21 THE COURT: Are you married?

22 PROSPECTIVE JUROR NUMBER 068: I am.

23 THE COURT: Does your spouse work?

24 PROSPECTIVE JUROR NUMBER 068: She would yes, as a hell-maker.

25 THE COURT: That's a lot more work than you think.

1 PROSPECTIVE JUROR NUMBER 068: Yes. That's exactly right. That's
2 why I said that. So yeah.

3 THE COURT: That was my wife speaking.

4 PROSPECTIVE JUROR NUMBER 068: That's right.

5 THE COURT: Do you have any background in law or law enforcement?

6 PROSPECTIVE JUROR NUMBER 068: At Mandalay Bay we run a very
7 large security division of 220 security officers. And I, you know, I have an
8 acquaintance in this jury with Ms. Togliatti since George Togliatti is the vice
9 president of security and surveillance.

10 THE COURT: Okay. Former FBI agent.

11 PROSPECTIVE JUROR NUMBER 068: Correct.

12 THE COURT: Father of our Chief Judge.

13 PROSPECTIVE JUROR NUMBER 068: That's correct.

14 THE COURT: Stays out. Don't -- you can't talk to him about it.

15 PROSPECTIVE JUROR NUMBER 068: I understand that.

16 THE COURT: Can you be fair and impartial to both parties in this case?

17 PROSPECTIVE JUROR NUMBER 068: I would hope so.

18 THE COURT: Thank you. State.

19 MS. FLECK: Thank you.

20 Mr. Bowling, when you say that you hope so, is there anything that has
21 kind of come up in your mind that makes you think that you wouldn't be a good
22 juror?

23 PROSPECTIVE JUROR NUMBER 068: You know, I -- as far as I want to be
24 as fair as impartial as possible. Anybody who's been convicted or been arrested for
25 this situation, and it's also been two or three years since that arrest, I believe if I

1 remember the facts that you stated earlier in the deal. I find that this process
2 should've either been resolved so I'm concerned about what the gentleman's been
3 arrested and not been taken care of since then.

4 MS. FLECK: Okay. Well, so it's -- so what concerns you is the timeline that
5 it's taken to get to this point?

6 PROSPECTIVE JUROR NUMBER 068: That's correct.

7 MS. FLECK: What part of that concerns you?

8 PROSPECTIVE JUROR NUMBER 068: It just belays to me that, you know,
9 there has been a lot of more facts coming out about that at least in my opinion. And
10 I'm not an expert by any stretch of imagination.

11 MS. FLECK: Okay. Well, so maybe we didn't have quite enough a few years
12 and now we've sort of slowly gotten more?

13 PROSPECTIVE JUROR NUMBER 068: That must be the case.

14 MS. FLECK: Okay. So, I mean, I'll tell you it's absolutely not the case. The
15 only thing that's happened is court calendars, court schedules, attorney's schedules.
16 In order to get a criminal trial to go, our State has to be ready. The Defense has to
17 be ready. The Judge has to be ready. The courtroom has to be available. And so
18 it's an unfortunate --

19 MR. BECKER: I'm going to object to this -- to this dialogue is not proper voir
20 dire.

21 MS. FLECK: Well --

22 THE COURT: I'll overrule that. And I'll allow some education here.

23 MS. FLECK: To have a sort of -- and I appreciate you saying this because if
24 people have a preconceived notion, sort of, of how the justice system works, I would
25 love -- I definitely want people to bring it up. But, it's, you know, if that's me just

1 telling you that, does that in any way alleviate your feelings about that?

2 PROSPECTIVE JUROR NUMBER 068: It's an education about what
3 happened.

4 MS. FLECK: Okay. You know, I think it's just a, sort of, a very stressed out
5 system, you know; more or less. It's a system that's just a lot going on and not
6 necessarily enough resources.

7 That being said, besides that, how do you feel about -- I mean, I guess
8 that concerns me because it makes me feel that you might think that we've had to
9 sort of trump stuff up over the years or that we didn't necessarily have our ducks in a
10 row in the very beginning and that we've had to do something to create that. Does
11 that -- am I reading that right?

12 PROSPECTIVE JUROR NUMBER 068: No. It'd probably be the opposite.
13 It'd probably be that this gentleman was arrested and it's taken -- and again I'm not
14 opposite and don't understand the process of how it got here today. But that
15 typically -- or not typically, it's just my understanding would be that it probably
16 could've been resolved some time ago through some kind of a plea bargain or some
17 of the facts would've released the case. So it's a little bit of the opposite, quite
18 frankly.

19 MS. FLECK: Okay. Sitting here, do you come into the courtroom favoring
20 one side or the other? Based upon either that opinion or any other opinion?

21 PROSPECTIVE JUROR NUMBER 068: And again, the opinion that I had
22 before is because the person has been arrested for this supposed crime; that
23 concerns me. Beyond that I would try to be as fair and impartial as possible.

24 MS. FLECK: Okay. Understand that the evidence that you need or the proof
25 that you need to arrest someone is different than the proof that I'd need to present in

1 order to ultimately convict someone.

2 PROSPECTIVE JUROR NUMBER 068: I would understand that.

3 MS. FLECK: Okay. So, I'm comfortable holding us to our burden of beyond a
4 reasonable doubt, nothing more, but waiting until that to actually convict?

5 PROSPECTIVE JUROR NUMBER 068: That's correct, yes.

6 MS. FLECK: All right. Ever been the victim of a crime or -- you or anyone
7 else real close to you?

8 PROSPECTIVE JUROR NUMBER 068: House burglary.

9 MS. FLECK: Were you satisfied with how law enforcement dealt with that; if
10 they were in fact involved in it?

11 PROSPECTIVE JUROR NUMBER 068: They were and yes I was.

12 MS. FLECK: Okay. How about accused of a crime? You or anyone close to
13 you?

14 PROSPECTIVE JUROR NUMBER 068: I was arrested in college of a DUI.

15 MS. FLECK: Again, I always kind of say are a little bit different just because
16 it's definitely [indiscernible] you drink too much you drive; that happens. So, I
17 wouldn't imagine that it's anything that's kind of gone with you through life, based
18 upon that?

19 PROSPECTIVE JUROR NUMBER 068: Well, I'm -- I've approved by a
20 gaming license to run a casino so I've done pretty good.

21 MS. FLECK: Yeah. I think that you've probably, you know, somewhat of
22 [indiscernible].

23 PROSPECTIVE JUROR NUMBER 068: I've been through the process.

24 MS. FLECK: All right then and I'll pass Mr. Bowling for cause.

25 THE COURT: Thanks.

1 MR. BECKER: Can you accept that an innocent person wouldn't take a plea
2 bargain?

3 PROSPECTIVE JUROR NUMBER 068: Yes.

4 MR. BECKER: Can you accept that an innocent person would put his trust in
5 you and fellow jurors to get justice?

6 PROSPECTIVE JUROR NUMBER 068: Yes.

7 MR. BECKER: You know, I'm concerned because you do bring some ideas
8 into this which are complicated because it almost seems like your predisposition is
9 that if was arrested and the case is still around after this time then his hands must
10 be dirty.

11 PROSPECTIVE JUROR NUMBER 068: The some of the things were going
12 through my mind when -- as I've been sitting here for the last several hours. So, the
13 answer is yes.

14 MR. BECKER: Do you think you can -- given that that's in your head, do you
15 think you can be fair to Mr. Barral?

16 PROSPECTIVE JUROR NUMBER 068: I would hope so.

17 MR. BECKER: When you say what's been going on, I mean, you've basically
18 heard a bunch of lawyers probably talking too much but you haven't hear any
19 evidence, right?

20 PROSPECTIVE JUROR NUMBER 068: That's correct.

21 MR. BECKER: Okay. So there's nothing that's gone on that should influence
22 your decision about the merits of this case, right?

23 PROSPECTIVE JUROR NUMBER 068: That's correct.

24 MR. BECKER: All right. I'll pass for cause, Your Honor.

25 THE COURT: Thanks.

1 MS. FLECK: Thank you.

2 [Pause in proceedings]

3 MR. BECKER: I'm sorry. Court's indulgence. We're going --

4 THE COURT: That's all right. Take your time.

5 MR. BECKER: Your Honor, we're also asking to approach.

6 THE COURT: All right.

7 [Bench Conference Begins]

8 THE COURT: Yeah.

9 MR. BECKER: Your Honor, we would like to make a Batson challenge. So
10 far, the State has -- there have been three Latino or jurors with Latino names and
11 three of the five are peremptories exercised by the State have been against these
12 jurors. Our client is -- his name is Barral; it's a Latino name. We're concerned that
13 the State is demonstrating their power -- a pattern of discriminatory use of
14 challenges to specifically --

15 THE COURT: All right.

16 MR. BECKER: -- get rid of them.

17 THE COURT: We'll have a Batson challenge. The question is do I excuse
18 the jury for the evening.

19 MS. FLECK: No. I don't think so. I mean, I'm working this term. I think that --
20 I'm not sure that we'll --

21 THE COURT: I have to let them out. This is what happened in a murder trial.

22 MS. FLECK: Oh. I know.

23 THE COURT: They said they met --

24 MS. FLECK: It's mine.

25 THE COURT: It's yours.

1 MS. FLECK: It's mine. So I --

2 THE COURT: And we met and we argued up at the bench --

3 MS. FLECK: Let's just do five minutes because --

4 THE COURT: All right.

5 [Bench Conference Concludes]

6 THE COURT: We're going to take a 5-minute recess, ladies and gentlemen.
7 If you'll step out into the hall for just a minute, we have some legal issues we need
8 to take care of.

9 [Outside the presence of the prospective jury]

10 THE COURT: All right. You wanted to make a Batson challenge prior to them
11 calling the next --

12 MR. BECKER: That is correct. And I'll -- and my challenge will be as follows:
13 Your Honor, we are concerned because our client is Latino and at this point there
14 have been three jurors that have been called into the panel who appear to be Latino,
15 that would be Jazmin Arteaga-Ibanez, who was formerly juror number 5; Joe
16 Barraza, former juror number 11; and now Mr. Luna who is sitting as juror number 7.

17 We were, you know, somewhat guarded about the possibility that the
18 State would seek to exclude Latinos from this jury panel. And, you know, to me it
19 came to the forefront when Mr. Luna was called up, we were guarded about it, but
20 notwithstanding the fact that he was going to school and studying criminal justice
21 and wants to be a pol -- a law enforcement officer. Ms. Fleck seized on the fact that
22 that -- and she very much brought to the forefront that her office, in particular,
23 prosecuted her brother and sent her brother to prison, which I kind of felt was an
24 attempt to try to create a race-neutral ground for excluding another Latino. And he
25 said no, I've never actually thought about that; that's not something that's a concern

1 to me at all. And he denied that being a reasonable factor but I do think that there --
2 a reasonable inference can be drawn based on the fact that the State is utilized
3 three out of their five peremptories to rid the jury of Latinos; that these peremptory
4 challenges are being utilized in a discriminatory and non-race neutral manner.

5 THE COURT: Thank you. State.

6 MS. FLECK: Thank you. Well, to begin with per Mr. Barral's SCOPE, he's
7 white. So, I did not even consider him to be a Hispanic male just because he has,
8 you know, dark hair and dark eyebrows and a dark goatee, certainly doesn't, in my
9 mind, make him Latino. And I'm looking at his SCOPE right here and it says: Race,
10 White.

11 So, to me it's a not -- a non-issue. I will go for the record through the
12 challenges that we -- or peremptories that we have made just because I'd like to
13 have a clean record. The first being Ms. Arteaga-Ibanez. I think she's Persian. I
14 mean, if I marry somebody named Mr. Martinez it doesn't make me Hispanic. Just
15 because that's her last name it certainly doesn't indicate what her particular race is.
16 And she was sleeping. Ms. -- and again, I don't believe that I need to be making this
17 record but for clarity to any future court that may be looking at this, I just want to
18 make certain. So, she was sleeping through the entire process.

19 We next then get to Mr. Barraza. He indicated during his questioning
20 that he would need more than proof beyond a reasonable doubt. In fact, he
21 indicated that in his mind these crimes simply don't happen. I in fact, challenged
22 him for cause and that was denied but he clearly said he doesn't even think that --
23 he doesn't even want to think that this happens; he can't believe it happens.

24 And then with Mr. Luna, my office sent his brother to prison. He
25 vacillated between whether he speaks with his family or doesn't speak with his

1 family. Regardless of that fact, I -- my office is responsible for sending a member of
2 his family to the Nevada Department of Corrections for two years. And whether he's
3 studying Criminal Justice because he has an axe to grind with law enforcement in
4 the future, whether he is studying Criminal Justice because he wants to know the
5 process that his brother went through; I have no idea and I don't want to speculate
6 while he's on my jury. To me, that isn't good enough. You know, kids that are
7 studying, they are studying criminal justice and the next day they're studying, you
8 know, Science, and the next English; who knows. But it certainly doesn't tell me
9 he's pro-law enforcement. But what I do know is that I'm responsible for sending,
10 not personally, but my office is responsible for sending a person within his family to
11 prison for a number of years. And I'm not comfortable with that kind of a person on
12 my jury.

13 THE COURT: Let me see his SCOPE.

14 MS. FLECK: Sorry it's not all --

15 THE COURT: It's all right.

16 All right.

17 MR. BECKER: Your Honor, if I may. I don't think the issue necessarily is
18 what the SCOPE says because, you know, I would pose that his last name Barral is
19 obviously a Latino name. I'm not sure why SCOPE says what SCOPE says. But
20 regardless of whether he was White, I still think we have a challenge if the --

21 THE COURT: No. You have a challenge.

22 MR. BECKER: -- if the peremptories are being exercised in a non-race-
23 neutral manner. And apparently, by the State's admission then, it wasn't three out
24 of five strikes -- peremptory strikes that were used for Latinos; it was four out of five.

25 Because they went --

1 THE COURT: Who's the fourth?

2 MR. BECKER: -- through a list -- I -- well there were -- I think Ms. Fleck just
3 went through a list of explaining why she got rid of four different people.

4 MS. FLECK: No, I didn't. I said three.

5 MR. BECKER: Okay. I --

6 THE COURT: That's okay.

7 MR. BECKER: -- thought there was a female.

8 MS. FLECK: Yeah. That's --

9 MR. BECKER: Okay. Ms. Arteaga-Ibanez, okay.

10 MS. FLECK: There's only been four and it's -- the first one, the woman who is
11 not Hispanic, she was Persian. And then there's the man who indicated that he
12 doesn't think that these kinds of crimes occur. And then there's the person whose
13 brother we sent to prison.

14 THE COURT: All right.

15 MR. BECKER: And I don't -- just the record is clear on this and then I'll
16 submit.

17 THE COURT: Record -- I believe the record's clear.

18 MR. BECKER: If I just may add -- I -- this business about Ms. Arteaga-Ibanez
19 being Persian, I don't -- I don't know where that's coming from. I -- the name
20 A-R-T-E-A-G-A hyphen Ibanez, I mean, I suppose we could debate about it; she
21 looked Latina to me. And I'll submit.

22 THE COURT: All right. Thanks. Go ahead.

23 MS. FLECK: And again, I mean, that's the only thing that I have to say. I
24 mean, it -- if we're going by last names, a bright blonde with blue eyes can marry
25 somebody that's Hispanic; it doesn't make them Hispanic.

1 THE COURT: Right.

2 MR. BECKER: And she wasn't a blonde lady with blue eyes. She was a
3 woman with ge -- with very dark, black hair and you know, she -- you know, we
4 could debate it. We didn't ask her and it wouldn't appropriate. I believe she was a
5 Latina.

6 THE COURT: But the question however to the Court, is whether there was a
7 basis, a racial basis and I don't find that there was a racial basis to remove these
8 individuals. I think they had a basis. I think Mr. Luna did say that his brother was
9 sent to prison by the D.A.'s office. I think that's reasonable. And --

10 MR. BECKER: Your Honor, if I may.

11 THE COURT: You've made a record.

12 MR. BECKER: I know and I'm not -- not further on this but just in terms of
13 time frame, it's 4:20 now. It -- I don't know if the Court has an inclination as to what
14 time we plan to go to. That's all I'm asking.

15 THE COURT: Yeah. I probably -- I just hate to send the jury that we have --
16 we have what, how many more peremptories?

17 We have four each side. We'll go another 15 minutes and then we'll
18 break for the evening.

19 MS. FLECK: And I can tell you, we won't be using all of ours. So, maybe
20 we'll -- maybe it'll speed up the process.

21 THE COURT: All right. Bring the jury back in.

22 MS. FLECK: I don't think we will anyway. I guess, depending on the next
23 ones.

24 MR. BECKER: I would note I did hear some grumbling and murmuring. The
25 Court may want to admonish the jurors in anticipation of -- I did notice it when we

1 took a break. But --

2 THE COURT: Yeah.

3 MR. BECKER: And perhaps also not to associate with the attorneys and that
4 we're ins -- ordered not to talk to them.

5 [In the presence of the prospective jury]

6 THE COURT: All right. Thank you. And I apologize to the jury for having to
7 go in and out. It's just some legal matters we have to take care of.

8 We are at peremptory challenge number 5. We would thank and
9 excuse Juror Number 9, Charles Bounty?

10 PROSPECTIVE JUROR NUMBER 068: Bowling.

11 THE COURT: I can't read it. I'm sorry. Bowling. Sorry. And Mr. Luna.
12 Thank you for your time.

13 THE CLERK: Badge Number 078, Steven Pollex.

14 Badge Number, 079, Carlos Exconde.

15 THE COURT: Who's got the mic back there? All right. Tell me your name.

16 PROSPECTIVE JUROR NUMBER 078: My name's Steven Pollex, 078.

17 THE COURT: And do you work?

18 PROSPECTIVE JUROR NUMBER 078: No, I do not.

19 THE COURT: You go to school?

20 PROSPECTIVE JUROR NUMBER 078: I go to school and then I'm an
21 athlete too. So, that's basically my work for me.

22 THE COURT: What do you -- what do you do?

23 PROSPECTIVE JUROR NUMBER 078: I play Baseball and I just got a
24 scholarship to go to another four-year school because I was at CSN this year. So,
25 I'm going to go play there for two years and then graduate from -- it's Westmont. It's

1 a private Christian college.

2 THE COURT: Cool. When do you go to school there?

3 PROSPECTIVE JUROR NUMBER 078: August, late August.

4 THE COURT: Have you ever sat as a juror before?

5 PROSPECTIVE JUROR NUMBER 078: No, I have not.

6 THE COURT: Can you think of any reason you couldn't be fair and impartial
7 to both parties in this case?

8 PROSPECTIVE JUROR NUMBER 078: I don't believe so besides that my
9 dad's been in law enforcement for over 20 years; 2 years as a patrol in California --
10 patrol officer. And then he works for code enforcement in Clark County currently.

11 THE COURT: For who?

12 PROSPECTIVE JUROR NUMBER 078: Clark County code enforcement.

13 THE COURT: Code enforcement.

14 PROSPECTIVE JUROR NUMBER 078: Yes.

15 THE COURT: You feel any obligation against or for the State or the
16 Defendant in th -- because of that?

17 PROSPECTIVE JUROR NUMBER 078: Well, initially the State but then when
18 you really think about it it's all about the facts and the evidence you're presented.

19 THE COURT: That's it. Okay. State.

20 MS. FLECK: Th -- yeah. That's about sums it up. So, you know, not too
21 much just -- I guess my only question is if -- I know baseball's going to be your focus
22 at school but assuming that you spend some time in the classroom as well, what will
23 you be interesting in doing?

24 PROSPECTIVE JUROR NUMBER 078: Well I do business. I get straight A's
25 this year and I get straight A's basically. So --

1 MS. FLECK: Okay.

2 PROSPECTIVE JUROR NUMBER 078: You know, I do well in school and
3 baseball.

4 MS. FLECK: Good. So --

5 PROSPECTIVE JUROR NUMBER 078: That's the only way I get into that
6 college that I'm going to now.

7 MS. FLECK: Good for you.

8 PROSPECTIVE JUROR NUMBER 078: For that. So.

9 MS. FLECK: Okay. And so business is what you're -- a business degree is --

10 PROSPECTIVE JUROR NUMBER 078: Management. You know, focus on
11 that. I'm going to -- I'm trying to get an internship with Harrah's this summer here
12 just to get some more, you know, experience.

13 MS. FLECK: Nice. Too bad that the guy from Mandalay just left, maybe we
14 could've gotten you something going.

15 Okay, so out for summer.

16 PROSPECTIVE JUROR NUMBER 078: Out for the summer. Out here and
17 just training and still working on baseball just until I leave for the fall.

18 MS. FLECK: Okay, wonderful.

19 PROSPECTIVE JUROR NUMBER 078: Yep.

20 MS. FLECK: Thank you. We'll pass for cause.

21 THE COURT: Thanks.

22 MR. BECKER: Court's indulgence. Yeah -- No questions and pass for cause.

23 THE COURT: Thank you. Hand the mic down to this gentleman.

24 Tell me your name again.

25 PROSPECTIVE JUROR NUMBER 079: Carlos Exonde, Badge Number 079,

1 Your Honor.

2 THE COURT: Do you work?

3 PROSPECTIVE JUROR NUMBER 079: Yes, sir.

4 THE COURT: What do you do?

5 PROSPECTIVE JUROR NUMBER 079: Contract Specialist for the
6 Department of Veterans Affairs.

7 THE COURT: Have you ever sat as a juror before?

8 PROSPECTIVE JUROR NUMBER 079: No, Your Honor.

9 THE COURT: Are you married?

10 PROSPECTIVE JUROR NUMBER 079: Yes, sir.

11 THE COURT: Does your spouse work?

12 PROSPECTIVE JUROR NUMBER 079: Homemaker.

13 THE COURT: That's work. Can you think of any reason you couldn't be fair
14 and impartial to both parties in this case?

15 PROSPECTIVE JUROR NUMBER 079: No, sir.

16 THE COURT: State.

17 MS. FLECK: Thank you.

18 Sir, do you and your wife have kids?

19 PROSPECTIVE JUROR NUMBER 079: Yes.

20 MS. FLECK: How many?

21 PROSPECTIVE JUROR NUMBER 079: One step-daughter and one
22 daughter and one grandson.

23 MS. FLECK: How old are your kids?

24 PROSPECTIVE JUROR NUMBER 079: My step-daughter's 31 and my
25 youngest will be going 21 soon.

1 MS. FLECK: Okay. How about grandkids?

2 PROSPECTIVE JUROR NUMBER 079: Yes, one. Two years old, grandson.

3 MS. FLECK: Okay. So having kids and now grandkids, I imagine you feel
4 perfectly comfortable with children testifying, kind of judging their credibility on the
5 witness stand. Is that right?

6 PROSPECTIVE JUROR NUMBER 079: Yes.

7 MS. FLECK: Anything that causes you concern about that?

8 PROSPECTIVE JUROR NUMBER 079: A little bit concern about to the issue
9 of lying and telling the truth because I know, I've seen my daughter lie for, you know,
10 when they're nervous or when they're scared; sometimes they would lie. So --

11 MS. FLECK: Okay.

12 PROSPECTIVE JUROR NUMBER 079: And I do experience that. So.

13 MS. FLECK: Okay. Does that make you think that -- I mean, would you
14 automatically think that the victim in this case was lying because she's a kid?

15 PROSPECTIVE JUROR NUMBER 079: No. No, absolutely not.

16 MS. FLECK: Okay. So you kind of said a couple reasons that your daughter
17 has lied in the past; maybe she was nervous --

18 PROSPECTIVE JUROR NUMBER 079: She was scared of me or she's
19 scared of the punishment that she'll get or --

20 MS. FLECK: Okay.

21 PROSPECTIVE JUROR NUMBER 079: Yeah.

22 MS. FLECK: So the times that you've experienced it's normally because
23 she's going to get in trouble for something?

24 PROSPECTIVE JUROR NUMBER 079: Yes. Definitely yes.

25 MS. FLECK: So in order to get out of trouble, stay out of trouble, she'll tell a

1 lie?

2 PROSPECTIVE JUROR NUMBER 079: Yes.

3 MS. FLECK: Okay. So when you judge her credibility and whether she's
4 telling the truth, you'll look to see if she has a reason for maybe telling you what she
5 says.

6 PROSPECTIVE JUROR NUMBER 079: Yes. That's correct.

7 MS. FLECK: Okay. Ever been the victim of a crime? You or anyone close to
8 you?

9 PROSPECTIVE JUROR NUMBER 079: No.

10 MS. FLECK: How about accused of a crime?

11 PROSPECTIVE JUROR NUMBER 079: No.

12 MS. FLECK: Where are from, originally?

13 PROSPECTIVE JUROR NUMBER 079: From the Philippines.

14 MS. FLECK: From the Philippines?

15 PROSPECTIVE JUROR NUMBER 079: Yes.

16 MS. FLECK: How old were you when you moved to the States?

17 PROSPECTIVE JUROR NUMBER 079: I joined the Navy in 1986, so I was
18 21 years old -- 22 years old.

19 MS. FLECK: Any experience with the criminal justice system there?

20 PROSPECTIVE JUROR NUMBER 079: No.

21 MS. FLECK: If there's a law that is read to you in this particular case, promise
22 that you will follow the law that the Judge gives you for this case and not say, well,
23 you know, that's something that's different from how they do it in the Philippines;
24 and I think the way they do it at home is better.

25 PROSPECTIVE JUROR NUMBER 079: Absolutely. I serve in the Navy for

1 24 years and I sat on a lot of NJP, non-judicial punishments, so I understand.

2 MS. FLECK: Okay. And even if you think something's better in the
3 Philippines then you'll promise to follow the law here?

4 PROSPECTIVE JUROR NUMBER 079: Yes.

5 MS. FLECK: All right, sir. Anything else then that gives you concern to sit on
6 a juror in this case?

7 PROSPECTIVE JUROR NUMBER 079: None at this time.

8 MS. FLECK: All right. Thank you very much. We'll pass for cause.

9 MR. BECKER: You were asked about your experience with children lying.

10 PROSPECTIVE JUROR NUMBER 079: Yes.

11 MR. BECKER: And Ms. Fleck had listed a few reasons why children might lie.

12 PROSPECTIVE JUROR NUMBER 079: Yes.

13 MR. BECKER: How about to get attention?

14 PROSPECTIVE JUROR NUMBER 079: With my kids, no, because I think
15 they get all the attention that they need, no.

16 MR. BECKER: All right. I know you have a military background and you said
17 something about participating in some misip -- military disciplinary proceedings.

18 PROSPECTIVE JUROR NUMBER 079: Yes, a lot of times. As a supervisor
19 that's part of our job.

20 MR. BECKER: As a supervisor, are you a neutral or are you participating in
21 the prosecution side?

22 PROSPECTIVE JUROR NUMBER 079: Neutral. Yeah.

23 MR. BECKER: So you're making decisions based upon information that's
24 presented to you.

25 PROSPECTIVE JUROR NUMBER 079: Exactly. Yes.

1 THE COURT: What does she do?

2 PROSPECTIVE JUROR NUMBER 089: She's an adjunct professor at home.

3 THE COURT: Have you ever sat as a juror before?

4 PROSPECTIVE JUROR NUMBER 089: No, sir.

5 THE COURT: Do you have any background in law or law enforcement?

6 PROSPECTIVE JUROR NUMBER 089: No, Your Honor.

7 THE COURT: Can you be fair and impartial to both parties in this case?

8 PROSPECTIVE JUROR NUMBER 089: Yes, sir.

9 THE COURT: State.

10 MS. FLECK: Thank you.

11 Sir, what did you say your wife was a professor in?

12 PROSPECTIVE JUROR NUMBER 089: She's an adjunct professor. She's a
13 Doctor of Management. She works for University of Phoenix online.

14 MS. FLECK: Oh, okay. Online, got it.

15 Okay. Do you -- the two of you have any kids?

16 PROSPECTIVE JUROR NUMBER 089: Yes, we do.

17 MS. FLECK: How many?

18 PROSPECTIVE JUROR NUMBER 089: Two.

19 MS. FLECK: How old are they?

20 PROSPECTIVE JUROR NUMBER 089: They're both five months.

21 MS. FLECK: Twins?

22 PROSPECTIVE JUROR NUMBER 089: Yes, ma'am.

23 MS. FLECK: Cool. All right. Any problems or any concerns you've had
24 thinking about, you know, the charges in this case and listening to kids testify or a
25 kid testify?

1 MR. BECKER: Okay. And in -- these types of hearings, do you know what
2 the standard of proof is?

3 PROSPECTIVE JUROR NUMBER 079: I'm sorry?

4 MR. BECKER: Were those administrative types of things or were they
5 disciplinary?

6 PROSPECTIVE JUROR NUMBER 079: Disciplinary, for the most part,
7 disciplinary.

8 MR. BECKER: But these were disciplinary matters that weren't so serious as
9 to go to the military courts?

10 PROSPECTIVE JUROR NUMBER 079: No, no, no.

11 MR. BECKER: So --

12 PROSPECTIVE JUROR NUMBER 079: Mostly disciplinary.

13 MR. BECKER: People weren't, you know, going into the brig or anything
14 because of the decisions you made.

15 PROSPECTIVE JUROR NUMBER 079: No. Mostly you weigh unauthorized
16 actions, you know conduct.

17 MR. BECKER: And when you evaluated those matters, did you evaluate
18 them with a preponderance of the evidence standard or proof beyond a reasonable
19 doubt standard, if you recall?

20 PROSPECTIVE JUROR NUMBER 079: Based on the fact and the evidence
21 presented to the board. They called us the board when we sat down to it, no.

22 MR. BECKER: And when you heard those matters you would endeavor to be
23 fair to both sides?

24 PROSPECTIVE JUROR NUMBER 079: Yes.

25 MR. BECKER: And if the facts came out on the side of the complainant, you

1 would go that way? But if it came back on the side of the person who was being
2 accused, you would go that way, correct?

3 PROSPECTIVE JUROR NUMBER 079: Correct.

4 MR. BECKER: As you sit here today, do you lean towards one side or the
5 other in this case?

6 PROSPECTIVE JUROR NUMBER 079: No, none whatsoever. No.

7 MR. BECKER: Pass for cause, Your Honor.

8 THE COURT: Thank you. Is that it?

9 [Peremptory Challenge]

10 THE COURT: We would thank and excuse Ms. Dennis. Are you -- is it Ms.
11 Dennis? Deninnis.

12 PROSPECTIVE JUROR NUMBER 061: Deninnis.

13 THE COURT: Yes.

14 PROSPECTIVE JUROR NUMBER 061: Thank you.

15 THE COURT: Thank you for your time.

16 Go ahead and fill that spot.

17 THE CLERK: Badge Number 089, Colby Butts

18 THE COURT: Tell me do you work, sir?

19 PROSPECTIVE JUROR NUMBER 089: Yes, sir.

20 THE COURT: What do you do?

21 PROSPECTIVE JUROR NUMBER 089: I'm a mortgage underwriter.

22 THE COURT: Are you married?

23 PROSPECTIVE JUROR NUMBER 089: Yes.

24 THE COURT: Spouse work?

25 PROSPECTIVE JUROR NUMBER 089: Yes she does.

1 THE CLERK: Badge Number 091, Karen Dwyer.

2 THE COURT: Where do you work?

3 PROSPECTIVE JUROR NUMBER 091: No, I do not.

4 THE COURT: Are you married?

5 PROSPECTIVE JUROR NUMBER 091: Yes, I am.

6 THE COURT: Does your spouse work?

7 PROSPECTIVE JUROR NUMBER 091: Yes, he does.

8 THE COURT: What does your spouse do?

9 PROSPECTIVE JUROR NUMBER 091: He works for a TJ Maxx, Marshalls
10 in a distribution center here in town.

11 THE COURT: Have you ever sat as a juror before?

12 PROSPECTIVE JUROR NUMBER 091: yes, I have.

13 THE COURT: Where?

14 PROSPECTIVE JUROR NUMBER 091: In Illinois.

15 THE COURT: Civil or criminal?

16 PROSPECTIVE JUROR NUMBER 091: Criminal.

17 THE COURT: Without telling us a verdict, were you able to reach a verdict?

18 PROSPECTIVE JUROR NUMBER 091: Yes, we did.

19 THE COURT: Were you the jury foreperson?

20 PROSPECTIVE JUROR NUMBER 091: No, I was not.

21 THE COURT: Is there anything about that that would affect your bias or
22 prejudice against the State or the Defense --

23 PROSPECTIVE JUROR NUMBER 091: No.

24 THE COURT: -- in this case?

25 What type of case was it?

1 PROSPECTIVE JUROR NUMBER 089: No, ma'am.

2 MS. FLECK: Okay, you think you can fairly judge the credibility?

3 PROSPECTIVE JUROR NUMBER 089: Yes, I do.

4 MS. FLECK: Ever been the victim of a crime? You or anyone close to you?

5 PROSPECTIVE JUROR NUMBER 089: No, ma'am.

6 MS. FLECK: How about accused of a crime?

7 PROSPECTIVE JUROR NUMBER 089: No, ma'am.

8 MS. FLECK: So no significant dealings with law enforcement in your life?

9 PROSPECTIVE JUROR NUMBER 089: No.

10 MS. FLECK: Okay. So then based upon all the legal concepts we've talked
11 about, and proof beyond a reasonable doubt, and no physical evidence, just hearing
12 testimony, are you comfortable with all of that kind of stuff?

13 PROSPECTIVE JUROR NUMBER 089: Yes.

14 MS. FLECK: All right. Thank you. Pass for cause.

15 THE COURT: Thanks.

16 MR. BECKER: You can look at Mr. Barral as an innocent man at this time?

17 PROSPECTIVE JUROR NUMBER 089: Yes, I can.

18 MR. BECKER: And regarding the Fifth Amendment issue, I mean, you going
19 to require that Mr. Barral testify in order to acquit him?

20 PROSPECTIVE JUROR NUMBER 089: No, I will not.

21 MR. BECKER: Okay. Pass for cause.

22 THE COURT: Thanks.

23 [Peremptory Challenge]

24 THE COURT: We would thank and excuse Mrs. O'Brien. Thank you so much
25 for your time.

1 PROSPECTIVE JUROR NUMBER 091: It was a shooting that no one was
2 injured and -- yeah.

3 THE COURT: Can you think of any reason you wouldn't be fair and impartial?

4 PROSPECTIVE JUROR NUMBER 091: No.

5 THE COURT: Is there anything that you've heard, any questions that -- things
6 came to your mind and said, boy, I better make Judge aware of this?

7 PROSPECTIVE JUROR NUMBER 091: Whenever I was a child, I was
8 actually in the home where a sexual abuse happened. My sis -- I was seven, my
9 sister was five; she saw the abuse. I didn't realize anything happened other than my
10 sister sat in a corner the whole rest of the night and was very not herself; very upset.
11 And so that's the only thing that's --

12 THE COURT: Could you be fair and impartial in this case, you believe?

13 PROSPECTIVE JUROR NUMBER 091: I believe so.

14 THE COURT: State.

15 MS. FLECK: So Ms. Dwyer then I guess the -- you sound somewhat -- well,
16 when asked, you know, if there's anything, are you just kind of telling us that
17 because as -- you know, I've asked everyone to be honest and asked everyone if
18 they've been victims or someone close to them?

19 PROSPECTIVE JUROR NUMBER 091: Yes.

20 MS. FLECK: Okay. So it's kind of as full-disclosure as opposed to it's
21 something that you think that will affect your ability to be fair?

22 PROSPECTIVE JUROR NUMBER 091: Yes, yes.

23 MS. FLECK: You can separate the fact that what happened when you were a
24 child is different than what has happened with the victim in this or the Defendant in
25 this case? Is that fair?

1 PROSPECTIVE JUROR NUMBER 091: Yes.

2 MS. FLECK: Okay. And you wouldn't take your sister's experience and kind
3 of say, well that's what happened to my sister so that's what happened in this case?

4 PROSPECTIVE JUROR NUMBER 091: No, no.

5 MS. FLECK: Okay. Anything else, then? Have you personally been the
6 victim of a crime?

7 PROSPECTIVE JUROR NUMBER 091: No.

8 MS. FLECK: How about accused of the crime -- of a crime? You or anyone
9 close to you?

10 PROSPECTIVE JUROR NUMBER 091: No.

11 MS. FLECK: Okay. And then that experience when you sat as a juror before,
12 anything about that that made you think this was the worst experience ever?

13 PROSPECTIVE JUROR NUMBER 091: No.

14 MS. FLECK: Okay. All right. Thank you. I'll pass for cause.

15 MR. BECKER: Regarding the situation with your sister --

16 PROSPECTIVE JUROR NUMBER 091: Mm-hmm.

17 MR. BECKER: You said you were in the home and something happened and
18 your sister kind of went away in the corner and just started acting different?

19 PROSPECTIVE JUROR NUMBER 091: Yes. She witnessed something --
20 walked in on an act. She was only five.

21 MR. BECKER: Now, was the -- did the w -- did the act involve a child?

22 PROSPECTIVE JUROR NUMBER 091: Yes.

23 MR. BECKER: And was it sex abuse?

24 PROSPECTIVE JUROR NUMBER 091: Yes.

25 MR. BECKER: And was it reported to law enforcement?

1 PROSPECTIVE JUROR NUMBER 091: No.

2 MR. BECKER: Do you know why it wasn't reported to law enforcement?

3 PROSPECTIVE JUROR NUMBER 091: The only one that saw it was a 5
4 year old and she was threatened to your life and her family was threatened by the
5 abuser. So, no.

6 MR. BECKER: Well the purported victim in that case, I mean, was it -- was
7 that a family member also?

8 PROSPECTIVE JUROR NUMBER 091: Yes.

9 MR. BECKER: And that person did not come forward?

10 PROSPECTIVE JUROR NUMBER 091: No, no.

11 MR. BECKER: How old were you at the time? You said your sister was five?

12 PROSPECTIVE JUROR NUMBER 091: Yes. I was seven.

13 MR. BECKER: And did your sister relay the events to you first or to other
14 family members?

15 PROSPECTIVE JUROR NUMBER 091: No. She revealed after the abuser
16 passed away.

17 MR. BECKER: So it was something that was internalized for many, many
18 years?

19 PROSPECTIVE JUROR NUMBER 091: Yes, yes.

20 MR. BECKER: And given that experience, I mean, does that --
21 notwithstanding that experience, do you still think that you could be fair to Mr. Barral
22 here?

23 PROSPECTIVE JUROR NUMBER 091: I believe so. I am -- have lived a lot
24 of life, you know, so I --

25 MR. BECKER: Okay.

1 PROSPECTIVE JUROR NUMBER 091: Yeah.

2 MR. BECKER: Thank you. I'll pass for cause, Your Honor.

3 THE COURT: Thanks.

4 [Peremptory Challenge]

5 THE COURT: Ms. Dwyer, thank you for your time. We appreciate your
6 candid answers. I'd just go home if I were you. Don't even check-in, it's too late.

7 THE CLERK: Badge Number 093, Michael Branum.

8 THE COURT: Tell me do you work, sir?

9 PROSPECTIVE JUROR NUMBER 093: Yes.

10 THE COURT: What do you do?

11 PROSPECTIVE JUROR NUMBER 093: Commercial truck driver.

12 THE COURT: Are you married?

13 PROSPECTIVE JUROR NUMBER 093: Yes.

14 THE COURT: Spouse work?

15 PROSPECTIVE JUROR NUMBER 093: No.

16 THE COURT: You ever sat as a juror before?

17 PROSPECTIVE JUROR NUMBER 093: No.

18 THE COURT: Any background in law or law enforcement?

19 PROSPECTIVE JUROR NUMBER 093: No.

20 THE COURT: Can you be fair and impartial to both parties in this case?

21 PROSPECTIVE JUROR NUMBER 093: I think so.

22 THE COURT: State.

23 MS. FLECK: Thank you.

24 Briefly, you've had the pleasure of hearing these questions over and
25 over and over again. So, anything that's come to mind as you've listened to my

1 questions and everyone else's answers?

2 PROSPECTIVE JUROR NUMBER 093: No, not really.

3 MS. FLECK: Do you and your wife have children?

4 PROSPECTIVE JUROR NUMBER 093: Yes.

5 MS. FLECK: And how old are they?

6 PROSPECTIVE JUROR NUMBER 093: Thirty-two.

7 MS. FLECK: Okay. How about grandkids?

8 PROSPECTIVE JUROR NUMBER 093: Yes, one.

9 MS. FLECK: And how old?

10 PROSPECTIVE JUROR NUMBER 093: A daughter, ten.

11 MS. FLECK: Do you have contact with her?

12 PROSPECTIVE JUROR NUMBER 093: Yes.

13 MS. FLECK: Feel comfortable, you know, judging the credibility of this
14 particular victim even though she is somewhat of the same age, kind of giving her
15 her own experience and not saying well this isn't how my granddaughter acts? Or
16 this isn't how my granddaughter would have done something?

17 PROSPECTIVE JUROR NUMBER 093: I believe so.

18 MS. FLECK: Okay. Is there anything that -- have -- well, have you -- you said
19 no law enforcement in your family. How about any contacts with law enforcement
20 as being the victim of a crime; either you or someone close to you?

21 PROSPECTIVE JUROR NUMBER 093: Well, yeah, my truck was broken into
22 last night.

23 MS. FLECK: Oh no.

24 PROSPECTIVE JUROR NUMBER 091: Down in Nyland, California, so I
25 came up here so I just got it at lunch that my truck has been vandalized and been

1 broken into so.

2 MS. FLECK: Oh, really.

3 PROSPECTIVE JUROR NUMBER 091: And my son was in the custody
4 battle. His ex threatened him with -- if you don't give me custody I'm going to tell the
5 Court that you touched your daughter in an inappropriate way.

6 MS. FLECK: Okay. All right. Well, that's -- so that's kind of big. When did
7 that happen?

8 PROSPECTIVE JUROR NUMBER 091: This has been eight, nine years ago.

9 MS. FLECK: Now is it just that she threatened and that's as far as it went?

10 PROSPECTIVE JUROR NUMBER 091: Yeah. She was overheard by
11 somebody so they said they would stand up and say it wasn't true if -- and that she
12 did threaten it.

13 MS. FLECK: Okay. So as far as the -- the only -- I mean, did it ever even get
14 reported to law enforcement?

15 PROSPECTIVE JUROR NUMBER 091: No.

16 MS. FLECK: How does that make you feel? Does that make you feel in this
17 particular case that, you know, that is what could've happened here?

18 PROSPECTIVE JUROR NUMBER 091: I don't know. I haven't heard any of
19 the evidence so I couldn't say one way or the other.

20 MS. FLECK: Okay. So before you hear any evidence, though, you're not --
21 you're not already coming into the courtroom thinking to yourself, uggh, you know,
22 someone in my family was at least threatened about something like this. So that's
23 likely what's happening here.

24 PROSPECTIVE JUROR NUMBER 091: Well, I don't know this case. I know
25 it can happen.

1 MS. FLECK: Okay. You're not like the gentleman that was I think Mr.
2 Barraza, who said it just doesn't happen. It's -- he just doesn't believe these kinds
3 of crimes happen. You certainly aren't of that opinion.

4 PROSPECTIVE JUROR NUMBER 091: No, I'm sure it happens both ways.

5 MS. FLECK: Okay. All right, sir. Anything else that you've thought about or
6 that makes you think this might not be the best case for you?

7 PROSPECTIVE JUROR NUMBER 091: No. I would just want to listen to all
8 the evidence. I wouldn't want to -- kind of like one of the other jurors said, I wouldn't
9 want to put somebody in prison for something I'm not sure that he did.

10 MS. FLECK: Okay. Well, let me ask you this: When you said that you're not
11 sure that he did, is there something that would, you know, if you just had testimony,
12 you just had testimony that came from the witness stand and that that's in this
13 particular kind of a case the way that the evidence came out. Is that going to be
14 enough for you? Are you going to demand more? Are you going to demand some
15 sort of physical evidence or video or something that, you know, I'm simply not going
16 to bring you?

17 PROSPECTIVE JUROR NUMBER 091: Well, I would like to have something
18 more than testimony but I'm sure we're going to have to look in that little girl's eyes
19 and see what we see.

20 MS. FLECK: Okay. And that would be -- I mean, if you believe her beyond a
21 reasonable doubt would that be enough for you to be able to convict?

22 PROSPECTIVE JUROR NUMBER 091: If I believed her.

23 MS. FLECK: Okay. All right. That's the law. So that's what I'd ask for you to
24 do. All right, sir. Thank you so much. We'll pass for cause.

25 MR. BECKER: Do you think you could be fair to Mr. Barral?

1 PROSPECTIVE JUROR NUMBER 091: Yes.

2 MR. BECKER: Pass for cause, Your Honor.

3 THE COURT: Thanks.

4 [Peremptory Challenge]

5 THE COURT: All right. We would thank and excuse juror number -- in seat 4,
6 Ms. Coreschi. Thank you for your time. And Branum. Thank you for your time.

7 THE CLERK: Badge Number 095, Debra Dower.

8 Badge Number 099, Jason Williams.

9 THE COURT: All right Ms. Bryer, do you work? I mean, Ms. --

10 PROSPECTIVE JUROR NUMBER 095: Dower.

11 THE COURT: Dower. Sorry.

12 PROSPECTIVE JUROR NUMBER 095: Yes. I have an Executive Suite
13 business.

14 THE COURT: Okay. Are you married?

15 PROSPECTIVE JUROR NUMBER 095: Yes.

16 THE COURT: Spouse work?

17 PROSPECTIVE JUROR NUMBER 095: Yes, he does.

18 THE COURT: What does he do?

19 PROSPECTIVE JUROR NUMBER 095: He has a sand bags business.

20 THE COURT: Have you ever sat as a juror before?

21 PROSPECTIVE JUROR NUMBER 095: Yes, I have.

22 THE COURT: Where?

23 PROSPECTIVE JUROR NUMBER 095: Two years ago, here. Civil.

24 THE COURT: Criminal or -- Civil.

25 PROSPECTIVE JUROR NUMBER 095: Mm-hmm.