

1 THE COURT: Okay. Yeah, ask the detective to stay. Go outside the --

2 THE WITNESS: Am I leaving or am I staying?

3 THE COURT: No. Just --

4 MS. FLECK: Just stay outside.

5 THE WITNESS: Okay.

6 THE COURT: Just step outside the courtroom for a minute.

7 MR. BECKER: Okay. I'll --

8 THE COURT: You --

9 MR. BECKER: I will start. Your Honor, when a court makes a ruling it's
10 incumbent upon the Counsel to explain those rulings to the witness. And apparently
11 that wasn't done here. So Ms. Fleck asks a question of this witness and he starts to
12 give an answer, that was an answer that was, I'll agree -- was something the Court
13 had ruled was not something we're going to get in to. Quite frankly, there was a
14 perfect opportunity for Mr. Fleck -- Ms. Fleck to stop him and not have him go the
15 direction that he did.

16 But what he did was, he testified that Jocelyn had said that there was a
17 four-year old that had touched her pri -- kissed her and touched her privates; that
18 was the testimony. And then she proceeded to go on from there to say -- and that --
19 and that was the only other person, other than her parents had touched her privates.

20 Now, after this mishap, which happens -- these things happen at trial,
21 okay.

22 THE COURT: And we had it taken out -- redacted out of the interview. Is that
23 correct?

24 MS. FLECK: That's correct.

25 MR. BECKER: That is correct.

1 THE COURT: All right.

2 MR. BECKER: But what Ms. Fleck then tried to do is tried to clean it up by
3 saying, so the four-year old tried to kiss her and it was the parents that touched her
4 privates to make it seem like that testimony never happened. And I think it was,
5 frankly, misleading and I don't think I could stand and allow the jury to be misled, so
6 I objected.

7 Then when we go to sidebar, I'm being blamed for what happened and I
8 didn't do anything except launch a proper objection. So I -- that is the state of the
9 record. If there's any question, we can play it back but the D.A. can't try to undo a
10 problem by misleading the jury. And I believe that's what she was suggesting was
11 the appropriate remedy.

12 MS. FLECK: Well first of all, of course I wasn't misleading considering we'd
13 already had rulings that that wasn't coming in. In court what happens in every single
14 trial is if a witness says something that either side doesn't -- or has already been
15 ruled and it's elicited by either side. For instance, if somebody accidentally said
16 something like, I interviewed him while he was in custody and it's already been ruled
17 that it's not going to come into evidence that he's in custody, you will attempt on
18 both sides no matter who elicits it to do your best to move forward from that
19 testimony.

20 And instead what Mr. Becker did is he illuminated that point and when I
21 tried to say okay, so -- to redirect him -- what I did was try to redirect him away from
22 the part that we've determined was inadmissible and redirect him by saying, okay so
23 Nico kissed him on the shoulder and her parents touched her, which is what she
24 says in the interview now that they're going to see. But instead what he did is
25 illuminated something that is already been that's inadmissible. I mean, if one of the

1 witnesses had come on today and Mr. Becker had somehow asked a question and
2 of course he's -- they've all been told -- you know how these things go.

3 You know, frankly I thought that the ans -- question -- that the answer
4 was going to be no. I thought he was going to say that in the beginning she was
5 saying no one touched. So -- but if he had somehow elicited from a witness, you
6 know, that the Defendant had invoked his Fifth Amendment right, I certainly wouldn't
7 have stood up and been like well, objection; that's the evidence that came from the
8 witness stand.

9 MR. BECKER: But --

10 MS. FLECK: I mean what he did is -- he knew exactly what he was doing. Is
11 he illuminated it for the jury in a way that's now made it abundantly suspicious to
12 them as to what's going on and to what she said.

13 MR. BECKER: Well, I didn't invite this situation. All I did was lodged what I
14 deemed to be appropriate objections. And --

15 MS. FLECK: How is that an appropriate objection?

16 MR. BECKER: Well, I think the record is clear. If the Court wants to go back
17 and play it and listen to it --

18 THE COURT: No. I think what she was trying to do was to make certain that
19 he didn't go to that direction and get into testimony that was -- previously ruled was
20 inadmissible and redacted. And then by objecting -- it was a proper objection --
21 except it was -- may not have been properly timed because she was trying to clean
22 it up so to make sure -- it would be like if the young lady started to say he took his
23 Fifth Amendment rights and before he -- she got to where it was problematic she
24 said, and you guys split up and cut her off, then you would've objected to that. I
25 mean, that -- that is kind of like that. She's trying to clean it up and I think that --

1 MS. FLECK: And furthermore --

2 THE COURT: You don't need to draw any more attention to that that you've
3 required to be redacted and I've agreed with the Defense, it should be redacted
4 and --

5 MS. FLECK: But here's now what we're left with: First of all, when I cleaned
6 it up, it wasn't accurate what the detective said. What the detective said is that there
7 was a young little boy, four years old, who touched and kissed her privates. And
8 that never came out. Even if we hadn't redacted it, no one's ever said that this little
9 boy kissed her privates.

10 MR. BECKER: I don't think that -- I don't agree. I think he said he touched
11 her privates and kissed her; that's what he testified to.

12 THE COURT: Can you go back --

13 MS. FLECK: Well, either way.

14 THE COURT: -- and look at that.

15 MS. FLECK: I tried to clean it up to say he kissed her shoulder --

16 THE COURT: All right. Let me see what --

17 MS. FLECK: -- and the parents touched the privates.

18 THE COURT: -- what he said about that. That was pretty -- it was --

19 When -- how s --

20 MS. EDWARDS: It's right before all this.

21 THE COURT: Just before all of this junk.

22 [Review of JAVS recording from May 20, 2013 from 3:26:28 p.m. to 3:27:28 p.m.]

23 MS. FLECK: And if you hear my question was, did you talk to her about -- it
24 was a yes or no. Did you talk to her about people inappropriately touching and then
25 he went in to, you know -- it was basically a non-responsive answer. Yes and then

1 he goes into the --

2 THE COURT: Yeah.

3 MS. FLECK: -- what it is.

4 THE COURT: It wasn't a questions that -- from you but he did say -- I mean,
5 you can interpret what he said as kissed in the private part and we need to make
6 sure this jury knows that that juvenile did not -- I don't know how clear it but we --

7 MS. FLECK: Yeah.

8 THE COURT: -- got to figure something --

9 MR. BECKER: Well --

10 THE COURT: -- come up with a jury instruction or -- that I can give the jury
11 right now; you two get together and come up with something that I can tell them that
12 -- right now to clear that up; that that was an un -- a slip of the tongue rather than
13 what happened in that interview.

14 MR. BECKER: Well, the -- okay. The thing is this I don't think that we can tell
15 them that it didn't happen because it did. I agree that it does -- that the way the
16 phrasing was -- what I will agree is that the recording says that there was a kiss and
17 a touching of the private part. But we can't -- I think to tell the jury that it didn't
18 happen is not the in -- appropriate solution.

19 MS. FLECK: Then let's not -- then let's tell the jury that the Defendant
20 invoked his Fifth Amendment rights at family court --

21 THE COURT: No.

22 MS. FLECK: Let's tell them that.

23 THE COURT: We're going --

24 MS. FLECK: Since it did happen.

25 THE COURT: I -- then I'll come up with it. If you don't want to participate and

1 come up with something to say, I'll say that was a slip of the tongue by the detective.
2 He didn't mean to say that and that was -- will not be going in to, there wasn't a
3 kissing of the private part by a juvenile.

4 MS. FLECK: May -- I think that it's -- if you say -- if we say -- I don't even
5 know how to say it because that -- I think that I should just be able to pick up exactly
6 where we left off; where you sustain his objection and then I get to say to the
7 detective, okay where we left off. So she told you that at some point a kid -- a four-
8 year old kid named Nico kissed her on her shoulder and that her parents had --
9 when asked if she had ever been touched on her parents it was -- she said yes, by
10 her parents. That's what they'll see. They won't see anything about the Nico but
11 they'll see that it's her -- that she says her parents and then we just move on for it.
12 Because if we then say, oh --

13 THE COURT: Draw -- we're drawing --

14 MS. FLECK: -- disregard that.

15 THE COURT: We're going to draw too much attention to that and that's not
16 the intent of previous rulings.

17 MS. FLECK: That's why I think if we leave it -- if we start out exactly where
18 we left off --

19 THE COURT: All right.

20 MS. FLECK: -- by me just --

21 THE COURT: You've made a record. I'm going to leave and I'm going to
22 allow the State to do what they're doing and go from there.

23 MS. FLECK: And then the Defense is admonished not to object or go into
24 that on cross-examination; anything about Nico.

25 THE COURT: Right.

1 MS. FLECK: And then we'll tell the detective not to--

2 THE COURT: Just go tell him that that was a slip of the tongue and don't do it
3 again.

4 MS. FLECK: Okay.

5 [Pause in proceedings]

6 THE COURT: So you're satisfied with how we're going to handle this?

7 MS. FLECK: Yeah. I've told the detective that I'm just going to basically start
8 exactly where we left with the last question --

9 THE COURT: All right.

10 MS. FLECK: -- that I asked; I'll re-ask it and we'll go from there.

11 THE COURT: All right.

12 THE WITNESS: Do you want me to include it this time or not?

13 MS. FLECK: I want you to not say anything about a four -- the four year old,
14 Nico.

15 THE COURT: About Nico.

16 THE WITNESS: Okay.

17 MS. FLECK: I'm just going to lead you through the next couple of
18 questions --

19 THE WITNESS: Okay.

20 MS. FLECK: -- so we get past it all and then we'll go from there.

21 THE COURT: All right. Bring the jury back in.

22 [In the presence of the jury]

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

24 MS. FLECK: State so stipulates. Thank you, Your Honor.

25 THE COURT: Okay. Go ahead.

1 MS. FLECK: Thank you. Are -- were you going to rule on the Defense
2 objection?

3 THE COURT: Yeah. I'll sustain the objection.

4 MS. FLECK: Thank you, Your Honor.

5 **DIRECT EXAMINTION (RESUMED)**

6 BY MS. FLECK:

7 Q Okay. So I think that where we left off -- and you were saying that at
8 some point you had spoke to Jocelyn that a little boy, four years old, Nico had
9 kissed her on her shoulder. And then in response to if anyone had touched her
10 privates that her -- both her mom and her dad had.

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

12 THE COURT: No. Overruled.

13 BY MS. FLECK:

14 Q Is that correct?

15 A Yes.

16 Q Okay. Now, you said that you use the words that are comfortable to
17 that particular child or that are associated with that child. For instance, if a child
18 uses privates, you would use privates.

19 A Correct.

20 Q Do you agree with that? And is that what you did with Jocelyn?

21 A I did.

22 Q When you asked her if anyone else besides her mom and dad had
23 touched her in the beginning of the interview, did she indicate that no; no one else
24 had?

25 A That is correct.

1 Q Tell me when you're trained with forensic interviews, how do you deal
2 with a situation like this when you know from outside sources or you have
3 information from outside sources that there's an allegation of something; how do you
4 not use leading questions or not taint the interview and still attempt to get some
5 credible information?

6 A The class I attended, some of the research that was provided that --
7 particularly with kids of preschool age on occasion a more direct, implied question
8 would have to be asked. During this time I asked if -- we all have to remember that
9 we're adults but the children are describing something with their own words. And
10 I'm trying to determine exactly what the child is talking about.

11 At this point I don't even know if it's of sexual nature so therefore I ask
12 the child specifically, did someone -- did you tell someone that somebody had dug
13 into private area? And the child then disclosed.

14 Q And said what?

15 A She indicated that Levo's -- Levi's daddy as the one who was digging in
16 her private area and then also further on in the investigation and the interview also
17 called him by Uncle Dustin.

18 Q So through the interview, which the ladies and gentlemen of the jury will
19 be able to see but did -- was there a distinct difference for her in your interview
20 with touch -- with the word touch and then the word dug or dig?

21 A There was. From my you know, experience with dealing with children,
22 it was obvious to her that touch was not an inappropriate thing. But to me it took a
23 little while for me as an adult and also the investigator to become keen upon that.
24 That's why I had to rephrase some of the wording to determine what specifically in
25 her mind constitutes something that was improper.

1 Again, she said that, you know, basically her parents are okay to touch
2 her and that's consistent with what most juvenile's tell you. However in her mind
3 digging was not appropriate. But furthermore, I had to determine what even digging
4 was because I couldn't make any assumptions that that was even sexually related.

5 Q Okay. And so then did you go on to ask what she meant by digging?

6 A I did.

7 Q And what did she say?

8 A She indicated that her Uncle Dustin had basically dug in her private
9 area. She indicated on the graph -- I asked her to describe what digging was and
10 also to try to describe it on the chart that I provided with her. At that point, she
11 actually began to making mannerisms to her vaginal area and indicated that he went
12 underneath her clothing and used her fingers to describe him placing them in side of
13 her vaginal area. And she used the word -- she basically said, you know, was
14 digging and also sinking, I think were the words she used to describe.

15 Q Did she go on then through the interview to tell you whether he touched
16 her any -- or I guess dug anywhere else?

17 A Yeah. As the interview proceeded -- again, like I said, I think I again
18 used phrases such as touch. She -- we again had to go through a couple other
19 different types of questioning and again sh -- when -- speaking with her again she
20 indicated that he had also gone from there to her buttocks area and also placed his
21 fingers inside her rectum area.

22 Q Okay. Obviously she didn't use the word rectum --

23 A No.

24 Q -- did she?

25 A No. Those are words I'm using.

1 Q But she indicated then in her language that he then dug in her butt.

2 A Correct.

3 Q Did she tell you where she was when this happened?

4 A She did. She indicated that she was at her uncle's house and that
5 Josh-Josh was in the room, which further investigation revealed that that was
6 Joshua. She indicated that it was nighttime however she was able to see him. She
7 described hearing his voice and also described him wearing shorts and no shirt
8 when this occurred.

9 Q She indicate to you if she saw him do anything after he touched her?

10 A She did. She indicated after he was apparently completed touching he
11 had actually began and washed his hands.

12 Q Meaning that she saw him go do that.

13 A Yes. In the restroom.

14 Q Did she ever indicate to you where her mom was during this event?

15 A She did. She advised me that her mom was in the hospital.

16 Q And did she indicate where her Uncle Dustin's wife Megan was?

17 A She described everyone that was in the room and being just her and
18 Josh-Josh and advised that the other individuals in the house that were present --
19 Megan -- I don't recall if she actually said that she was in the bedroom or not.

20 Q Okay. All right. At the CAC when you conduct these interviews, are
21 you in a room that has video -- audio and or video capability?

22 A Yes.

23 Q And did you attempt -- or did you I guess you didn't attempt to but did
24 you make a recording of the interview that you conducted with Jocelyn that day?

25 A I did.

1 MS. FLECK: Judge, I move to publish the actual interview then to the jury
2 now.

3 THE COURT: Okay.

4 MR. BECKER: No objection, Your Honor.

5 THE COURT: Okay. Published. Turn it on. Once it's going and if we're
6 okay, you can go home.

7 [The videotape was shown to the jury]

8 BY MS. FLECK:

9 Q Okay. Detective just a couple things from that interview. Fair to say
10 that at times Jocelyn would have not really a speech impediment but that there were
11 a couple of words, for instance, Justin or Dustin, it was hard to figure those J or D?

12 A For me, yes.

13 Q Okay. Was it apparent though she was always speaking of her Uncle
14 Dustin?

15 A Yes. That's why I asked for clarification and that's basically part of the
16 interview is to always ask for clarification in determining exactly what's going on.

17 Q Okay. And then the other word was -- when you asked her if she said
18 anything the word came out as top. When you were sitting in the interview, could
19 you determine what she was saying?

20 A To me it's apparent that it was stop.

21 MS. FLECK: Judge, may I approach your clerk?

22 THE COURT: Sure.

23 MS. FLECK: Sorry. Just for housekeeping purposes, State moves for
24 admission of State's proposed Exhibit 2, which is the video that we just viewed.

25 THE COURT: I believe there was no objection to that.

1 MR. BECKER: That's correct.

2 THE COURT: All right. Be admitted.

3 **[STATE'S EXHIBIT 2 ADMITTED]**

4 MS. FLECK: Showing Defense Counsel's State's proposed Exhibit 3.

5 MR. BECKER: No objection.

6 MS. FLECK: May I approach?

7 THE COURT: Yes.

8 BY MS. FLECK:

9 Q Showing you State's proposed Exhibit 3, do you recognize this?

10 A I do.

11 Q How do you recognize it?

12 A This is the anatomically correct body sheet that I provided Jocelyn.

13 Q Okay. How do you know it's the one you provided Jocelyn?

14 A I indicated her name on the upper left hand corner and also the event
15 number associated with the case.

16 Q Does it appear to be in substantially the same condition as it was in
17 when you interviewed her back in July of 2010?

18 A Yes.

19 MS. FLECK: Move for admission of State's proposed Exhibit 3.

20 MR. BECKER: No objection.

21 THE COURT: Be admitted.

22 **[STATE'S EXHIBIT 3 ADMITTED]**

23 MS. FLECK: And admission to publ -- permission to publish.

24 THE COURT: [indiscernible]

25 BY MS. FLECK:

1 Q Now you indicated -- or I'm sorry during the interview, there was a point
2 you talked with her and said, you know, when she was talking about inside -- I don't
3 want to misquote but you say can you show me this picture, you know, on this
4 picture where he was touching you at. And then she said like he's inside her. Can
5 you indicate on here where she was and then she pointed on the video --

6 MR. BECKER: I'll object. The video speaks for itself.

7 MS. FLECK: Well, it doesn't --

8 THE COURT: Overruled.

9 MS. FLECK: Thank you.

10 THE COURT: I'll allow him to answer.

11 MS. FLECK: Thank you.

12 BY MS. FLECK:

13 Q I don't think that the jurors could have seen this on the video; what
14 was -- what she was pointing at. So for their benefit if you could just point on here
15 and show the jurors where when Jocelyn said like he's inside here where was she
16 pointing on the body sheet?

17 A She was pointing to herself in the vaginal area.

18 Q Okay. So was it on her body or on the body she -- because I believe in
19 the statement at some point you say, can you show me on the picture here where --

20 A Right. But she --

21 Q -- she was touching

22 A -- actually shows me on her body.

23 Q Okay.

24 A The intent was to show her on the picture. We generally don't ask them
25 to show us specifically like hey, you know, where on the body was somebody

1 touching you inappropriately. But in this particular case she took it upon herself to
2 actually take her hand and her fingers and illustrate that he was touching by the
3 vaginal area; pointing towards he vaginal area.

4 Q Okay. So she indicates on the body sheet -- I mean, I see the word
5 pee-pee there or private, did you write those out?

6 A Yes. As we went through basically she identified them. Obviously the
7 child can't write so basically we go through, I don't give them any information; they
8 can call them anything they want to. So, basically we go around; we identify all the
9 different areas so that I can you know, verbalize specifically how she illustrates it.

10 For example, most adults would call the breast area, breasts. However
11 the child calls it the body.

12 Q Okay.

13 A So that's a way to illustrate specifically what they're speaking about.
14 When we went through I had her identify which areas were private, she marked
15 those areas that are private, and then she also spoke them out loud.

16 Q So -- and again I just want to be clear then when in the video when we
17 hear you say can you show me on this picture where he was touching you at, are
18 you saying that she then pointed just to herself?

19 A Yes.

20 Q And skipped over the picture altogether?

21 A Yes.

22 Q Got it. Okay. Thank you. After you interviewed Jocelyn that day you
23 said that you had an interview with her mom, Nicole.

24 A That's correct.

25 Q And that was also recorded at the CAC. Is that right?

1 A That is.

2 Q And then what did you do as part of this investigation?

3 A Basically I just sat down with her, discussed again -- provided some --

4 Q And --

5 A -- open-ended questions --

6 Q Sorry. Just -- only because the jurors have heard from Nicole --

7 A Mm-hmm.

8 Q -- and I'm not going to get into what she told you that day.

9 A Mm-hmm.

10 Q So, let me be more specific.

11 A Yes, please.

12 Q After you interviewed Jocelyn and then you interviewed Nicole, what did

13 you do following those interviews to continue on in your investigation in this case?

14 A Following those interviews --

15 Q Did you go on to interview anyone else in the family?

16 A Oh, yes. On the 20th I believe that's the date that I interviewed her

17 sister, Katelyn. During that time she had trouble -- verbal --

18 MR. BECKER: Objection, hearsay.

19 BY MS. FLECK:

20 Q Well, -- and detective I know it's getting late in the day so my questions

21 are probably sort of vague. You interviewed other people pursuant to your

22 investigation. Is that right?

23 A Correct.

24 Q One of them was Katelyn.

25 A True.

1 Q Did you also interview Jocelyn's grandfather?

2 A No. I did not.

3 Q Did you ever speak to his -- to her grandmother?

4 A I did.

5 Q And when did you do that?

6 A The following day after interviewing her. I believe it was the 21st.

7 Q Did you do a recorded interview with Mrs. Hammonds?

8 A I conducted a telephonic interview and she agreed to conduct that
9 telephonic interview. And I had her state her name and her information that
10 determined that the -- was the individual I was speaking to on the phone.

11 Q Okay. And then recorded that on the phone.

12 A I did.

13 Q Did you talk to Nicole's brother, Michael?

14 A Yes, I did.

15 Q And ultimately did you also talk to the Defendant's wife, Megan?

16 A I did.

17 Q And then based upon those investigate -- those interviews and your
18 entire investigation in this, did you ultimately arrest the Defendant for sexual assault
19 on a minor?

20 A I did.

21 Q And where did that -- where did you do that?

22 A That occurred on North Decatur. I apologize I can't remember the
23 specific address. It was his place of employment; the postal office.

24 Q Okay.

25 A I believe it's in the 2000 block.

1 Q That's okay. Do you see him in the courtroom today? The person that
2 you --

3 A I do.

4 Q And can you please just point to him and describe something he's
5 wearing?

6 A He's off to my right and the green shirt.

7 MS. FLECK: Let the --

8 THE COURT: Record reflect --

9 MS. FLECK: -- record reflect, identification.

10 THE COURT: It will.

11 MS. FLECK: I'll pass the witness.

12 **CROSS-EXAMINATION**

13 BY MR. BECKER:

14 Q Well, let's talk about your entire investigation.

15 A Okay.

16 Q You -- at this time, how long had you been a Metro police officer?

17 A At the time of the investigation I would say approximately five to six
18 years.

19 Q All right. And how long had you been a sexual assault detective?

20 A Approximately a year.

21 Q You talked about a variety of training that you had to be a sexual
22 assault detective. Right?

23 A Correct.

24 Q And would it be fair to say that it is really important to be trained in how
25 to do proper investigative techniques with regard to these types of cases? Correct?

1 A Correct.

2 Q And one of the areas of training has to do with how to do these types of
3 interviews. Correct?

4 A Correct.

5 Q And the other has to do with how to properly do an investigation into
6 this type of case. Is that right?

7 A That is right.

8 Q All right. So you were just asked about your entire investigation. Yes?

9 A Yes.

10 Q Aside from interviewing these people -- strike that. Did you ever go to
11 the Hammond home?

12 A I did not.

13 Q Did you ever go to the home of Dustin and Megan Barral?

14 A I did not.

15 Q So you never went to see the layout of the Barral home.

16 A I did not.

17 Q You never went to photograph the respective rooms. You heard
18 testimony from -- or a statement from Jocelyn about Dustin going from the bedroom
19 and at some point she said he washed his hands. Correct?

20 A Correct.

21 Q And do you know where this bathroom was?

22 A I do not.

23 Q Okay. So you don't know if it was possible that from the position of
24 Jocelyn in the bedroom that she could see Mr. Barral in a bathroom?

25 A I don't recall if she said she was actually in the bath -- or bedroom when

1 she observed him but I do not know.

2 Q Okay. And you never inquired at any time of anybody what the bed
3 dressing on the subject futon was. Is that correct?

4 A That is correct.

5 Q So you don't know whether she was sleeping on a straight -- on a futon
6 mattress without covering. Correct?

7 A Correct.

8 Q You don't know if there was sheets on the futon.

9 A No, I do not.

10 Q You don't know if there was a blanket on the futon.

11 A No, I do not.

12 Q You never during the course of your investigation at any time asked
13 anybody about whether there were sheets or blankets on the futon. Is that correct?

14 A That is correct.

15 Q Now, did any component of your training involve collection of physical
16 evidence?

17 A Yes.

18 Q And specifically would it be fair to say that it involves collecting
19 evidence that could be suitable for the purpose of DNA testing? Correct?

20 A Depending on the case. Correct.

21 Q Right. And any time there's a case involving some kind of touching,
22 physical exchange, there's a distinct possibility that there could be a trail of DNA
23 evidence. Is that correct?

24 A As far as just touching? No.

25 Q Okay. Well are you familiar with touch DNA?

1 A I am not.

2 Q All right. So you have no knowledge or training with regard to the
3 exchange of DNA through touching.

4 A As far as bodily fluids?

5 Q As far as any trace evidence of DNA that could come from touching.

6 A If bodily fluids are present. Yes.

7 Q Well let's talk about -- how about touch DNA, like skin; a skin trail that's
8 behind when we touch things?

9 A Okay.

10 Q Are you familiar with that? Or did you have any training on that?

11 A As far as scratching or fingerprints or specifically what?

12 Q I'm talking about every time someone touches something, there's skin
13 from the body that can leave touch DNA. Are you ha -- Do you have any training
14 about that?

15 A No.

16 MS. FLECK: I'm going to just object to lack of foundation as to the question
17 there's -- I mean, I don't know if he's testifying that that's possible. We don't have
18 any DNA expert to come in and talk about this and --

19 THE COURT: He answered no.

20 MS. FLECK: -- the question is inappropriate.

21 THE COURT: He answered no and we'll have to -- we'll leave it at that.

22 BY MR. BECKER:

23 Q I'm -- about -- what about the fact that the body is constantly emitting
24 moisture and that DNA can come from sweat, from any type of physical exchange?

25 A Yes. I'm familiar with that.

1 Q All right. And would you also be familiar with the fact that -- for
2 example, if there was some kind of touching that both the assailant and/or the victim
3 could leave behind some trace DNA evidence?

4 A As far as this particular case?

5 Q In general.

6 A Ask me one time the specific question.

7 Q Okay. In other words, if there was some kind of physical exchange --

8 A Mm-hmm.

9 Q -- that either an assailant or a victim could leave behind some DNA
10 evidence.

11 A Depending on the case, then there's a possibility and that's something
12 you have to look at.

13 Q Okay. So in your opinion, would it be relevant for example to find out
14 whether or not there were bed sheets or a blanket in -- on the futon where an
15 alleged sexual assault occurred?

16 A Not always.

17 Q All right. Well, is there a reason not to do it?

18 A Yes. During my investigation I spoke with Megan, they have people
19 who live in their household. There's always going to be bodily fluid present
20 throughout different areas of the home. They indicated there was sexual intercourse
21 going on. It wouldn't be out of the question for all types of different types of bodily
22 fluid to possibly be found in that room, in the bedroom, in the room downstairs;
23 therefore, there even could be Dustin's bodily fluid located on the futon.

24 However with that being said there also -- it would be consistent with people
25 who have intercourse and engage in those activities. They also have kids in the

1 room and other things of that nature. So there could be urine and things of those --
2 of that substance. So with that being said, there would be a very little evidentiary
3 value in collecting somebody's bed or bedding in a particular case unless it
4 happened within a very, very short period of time and that scene had been
5 contained.

6 Q Right. Well isn't normal to question for examp -- to question a party
7 and say, were there sheets on the bed? Was there a blanket?

8 A Probably would've been better for me to ask those questions.

9 Q All right. And then to determine whether th -- because you spoke to
10 Megan on -- well, you spoke -- you originally got the report on July 14th. Correct?

11 A Correct.

12 Q And then to speak to the parties for example to determine whether or
13 not the blankets or sheets on the futon are the same ones that were there on the
14 time of the alleged occurrence. Correct?

15 A Again if I would've brought that up in this particular case I didn't think it
16 was of -- something of -- exceptionally of value.

17 Q Okay. Or to obtain for example a search warrant where you can go to
18 the location --

19 A Absolutely.

20 Q -- and could actually collect the sheets and blankets on the bed. Right?

21 A Absolutely.

22 Q And that's something that's routinely done. Isn't it?

23 A In particular cases, yes.

24 Q Okay. And that's something that was not done here.

25 A Not in this case, no.

1 Q And you -- when you spoke to Jocelyn she specifically talked to you
2 about the clothing that she was wearing at the time that she says this occurred.
3 Correct?

4 A True.

5 Q Did you at any time make any inquiry of Jocelyn or Nicole or anybody
6 as to what happened to the clothes that she was wearing when this incident
7 allegedly occurred?

8 A No.

9 Q All right. So, no inquiry as to where they were; no inquiry as to whether
10 or no they had been washed. Correct?

11 A Correct.

12 Q All right. No attempt to collect the clothing for submission for any kind
13 of DNA analysis.

14 A No.

15 Q All right. When did you start as a sexual assault detective?

16 A I can't give you the specific date. It was approximately five years in to
17 the time that I had been employed.

18 Q Well, when did you cease to be a sexual assault detective?

19 A Approximately three and a half to four years ago.

20 Q Okay. Well, do you recall what the date of this incident was?

21 A Yes. This was July 14th of 2010.

22 Q All right. Now, you said that you ceased to be a sexual assault
23 detective three or a ha -- three and a half to four years ago

24 A Correct.

25 Q What date was that?

1 A I -- I can't provide that to you.

2 Q Well, is that before or after you were assigned this case?

3 A Oh, it was definitely after.

4 Q Okay. How many months after you were assigned this case was it that
5 you ceased to be a sexual assault detective?

6 A Let me make sure I understand you correctly. I was in sexual assault
7 when I received this case.

8 Q Right.

9 A After that, several months had transpired. At that time I no longer was
10 in sexual assault.

11 Q Okay. So your stint as a sexual assault detective ended
12 approximately two months after this case began?

13 A Again, I can't give you specifics of what the dates are. I'd have to
14 review specifically what the date is.

15 Q Is there a particular reason why your stint as a detective ended?

16 A Well, I went back to patrol and then I got promoted to sergeant.

17 Q Is it common to go from detective to patrol?

18 A I don't know if it'd be common.

19 Q Would it be fair to say that that -- that going from detective to patrol is a
20 demotion?

21 A No. It would not be.

22 Q Did you follow this case -- after you did interviews, did you do anything
23 further to follow-up on this case?

24 A As far as what?

25 Q As far as -- did you attend any of the family court proceedings?

1 A No. I did not.

2 Q Did you review any of the testimony of witnesses at those proceedings?

3 A No. I did not.

4 Q Did you -- at any time did you become aware of the results of a sexual
5 assault examination?

6 A Yes.

7 Q And to your knowledge, what were those results?

8 A Basically, they describe the child as possibly having vaginitis.

9 Q Okay. No evidence of any kind of physical injury, bruising, any of kind
10 of notable injuries or lacerations or anything to the vaginal or anal areas. IS that
11 correct?

12 A That's correct.

13 Q You interviewed Jocelyn and Nicole on July 15th. Is that correct?

14 A That is correct.

15 Q And you testified that you interviewed Joanna Hammonds the next day
16 telephonically?

17 A No, it was on the -- I believe it was the 21st but I'm not 100 percent sure
18 if that's correct.

19 Q All right. So six additional days went by before you interviewed Joanna.

20 A Correct.

21 Q You never interviewed David Hammonds, is that correct?

22 A No. I did not.

23 Q You testified that part of your training had to do with the importance of
24 the questions that you asked. Is that correct?

25 A That is true.

1 Q I'm sorry?

2 A That is correct.

3 Q Okay. And specifically that it's really important not to lead somebody in
4 your questioning.

5 A That is true.

6 Q Is that right?

7 A That is true.

8 Q Yet, when you began your questioning and you set-up this whole
9 pattern where you were talking to Jocelyn about her privates and which areas were
10 appropriate or inappropriate to touch; was it your impression that she -- that there
11 was a clear understanding between the two of you of what the private areas were?

12 A Yes. She could identify the private areas.

13 Q And also that you were talking about whether it was appropriate to have
14 touching in those areas. Is that right?

15 A Correct.

16 Q And she's very specifically had indicated to you that her mommy and
17 her daddy would touch her in her private areas but no one else was to touch her in
18 those private areas. Is that correct?

19 A That is correct.

20 Q And then you proceeded to ask her if anybody else had touched her in
21 the private areas and she said no. Correct?

22 A Correct.

23 Q And it wasn't actually until you used the word dug that a response from
24 her was triggered. Is that an accurate --?

25 A That is accurate.

1 Q But ultimately would it be fair to say that whatever technique you were
2 using to try to establish rapport and elicit this information with the more general
3 types of questions; it wasn't working. Correct?

4 A I had to implement a prompt question.

5 Q Okay. And that's exactly what you were saying you really didn't want to
6 have to do, which is to lead someone into making an accusation. Is that correct?

7 A I don't believe that was a leading question.

8 Q Okay. Well, you called it a prompt question.

9 A That's the term that -- the class that I was approved to take and I
10 utilized during there; that's a term that they use. It's basically a term for a directed
11 question without giving them too much elements of what specifically you're speaking
12 about. I didn't describe who the alleged perpetrator was, I didn't describe what
13 digging or dug meant, and I didn't describe who she said it to.

14 Q But you said, somebody told you.

15 A Correct.

16 Q And you felt like it was necessary to use a prompting question because
17 when you were trying to gain information by using non-leading questions, you were
18 unsuccessful. Is that right?

19 A Yes.

20 Q When you're asking somebody questions, do you have -- are you
21 trained in regard to assessing the credibility of somebody who's making this
22 statement?

23 A Assessing for my personal opinion, yes.

24 Q All right. Now, would it be fair to say that during the time that you were
25 questioning Jocelyn that she was quite fidgety?

1 A She was.

2 Q Would that be fair?

3 A Yes.

4 Q And that probably fidgetiness might be something normally associated
5 with a child. Is that right?

6 A That is right.

7 Q Would it be fair to say that when you asked her these questions that
8 involved the digging -- would you say -- be accurate to say that she was looking
9 away from you when she answered those question?

10 A I don't recall that.

11 Q Do you find eye contact to be a relega -- a relevant factor when you're
12 doing an interview of witness?

13 A Not so much with children. No.

14 MR. BECKER: Court's indulgence.

15 BY MR. BECKER:

16 Q Is there -- with regard to the label of detective in the sexual assault
17 team --

18 A Yes?

19 Q Is there any more distinct breaking down of levels If detective?

20 A No. It's not even a promotion. You test for it and it's a transfer.

21 Q Okay. And is it common for one detective to be assigned to a sexual
22 assault case?

23 A Yes.

24 Q Whence -- once you were -- once you went from detective to patrol was
25 anybody else assigned to this case?

1 A I had completed the rest as far as detective-wise. I can't say anybody
2 was assigned to it because it had been closed down.

3 MR. BECKER: No further questions.

4 **REDIRECT EXAMINATION**

5 BY MS. FLECK:

6 Q Sergeant, whose choice was it for you to leave sex assault this time?

7 A It was mine.

8 Q And why did you make that choice?

9 A I had tested for sergeant and I had also gone back to patrol. As a
10 sergeant you are introduced directly back in the patrol atmosphere.

11 Q Okay.

12 A And currently I am on patrol.

13 Q So you got looped through patrol to then get promoted to sergeant.

14 A Correct.

15 Q Correct me if I'm wrong but sergeant is actually a higher rank in Metro
16 than detective.

17 A Correct.

18 Q Regarding some of the things that the Defense talked to you about with
19 going over to the house and seeing the layout of the home. You talked or
20 interviewed Jocelyn on the 15th of July. Is that right?

21 A Yes.

22 Q And then after you had that information from her, you spoke with her
23 mother, Nicole.

24 A I did.

25 Q Is that correct?

1 A That's correct.

2 Q On the 21st of July, you spoke with her grandma Joanna.

3 A Yes.

4 Q On the 22nd you spoke with Megan Barral. Is that correct?

5 A Correct.

6 Q Once you spoke with Megan, were you able to -- I mean, through all of
7 the interviews but specifically Megan, were you able to use Megan to corroborate a
8 lot of things that Jocelyn had told you?

9 A Yes.

10 Q In a sexual assault examination since you're not getting things like DNA
11 and things of evidentiary value, do you use corroboration to determine your
12 investigation -- the course of your investigation; what you're going to do and not do?

13 A Absolutely. It's something you definitely look at.

14 Q In fact, you know, the Defense went through a number of things that
15 you didn't know; where the layout of the bathroom was and the bedding on the
16 futon. You knew from every single person that you interviewed that Nicole was in
17 the hospital. Is that right?

18 MR. BECKER: Objection, calls for hearsay; leading.

19 THE COURT: Overruled.

20 BY MS. FLECK:

21 Q You knew that she was in the hospital. Is that correct?

22 A I did.

23 Q You knew that the girls were staying at Megan's. Is that right?

24 A Yes.

25 Q And in fact, from Megan through the course of your investigation you

1 learn that the Defendant places himself in the room on the futon that this child is
2 sleeping on on that Saturday night. Is that right?

3 A That is correct.

4 Q Then you go on after you talk with Megan and you interview Michael. Is
5 that correct?

6 A That is correct.

7 Q And you even interviewed Frederick Coleman, Jocelyn's father.

8 A I did.

9 Q So it's not until August 4th that you conduct all of these interviews and
10 compare all of these interviews that you ultimately go and arrest the Defendant.

11 A That's true.

12 MS. FLECK: Okay. Nothing Further.

13 MR. BECKER: I'll pass the witness, Your Honor.

14 MS. FLECK: We having nothing.

15 THE COURT: Jury have any questions of this witness?

16 Thank you, Detective. You're free -- or Sergeant. You're free to go.

17 THE WITNESS: Thank you.

18 THE COURT: All right. We'll take out evening recess. I have two hearings in
19 the morning so we'll come back at 9:00.

20 During this recess you're admonished not to -- and we'll finish up
21 tomorrow. Guaranteed.

22 During this recess you're admonished not to talk or converse among
23 yourselves or with anyone else on any subject connected with this trial. Or read or
24 watch or listen to any report of or commentary on the trial. Or anyone connected
25 with this trial by any medium of information including without limitation newspapers,

1 television, radio, or the internet. Or form or express an opinion on any subject
2 connected with the trial until the case is finally submitted to you.

3 See you guys in the morning at 8:00.

4 MR. CASTILLO: 8 or 9?

5 THE COURT: 9. I'm sorry. I'll be here at 6 by the way.

6 [Outside the presence of the jury]

7 THE COURT: All right. If you could be here at 8, I have two short hearings
8 and then we'll do jury instructions. Yes?

9 MS. FLECK: Um --

10 THE COURT: I know you have a hard time -- you're time-challenged.
11 Michelle, you are time-challenged.

12 MS. FLECK: Okay. I absolutely can do that.

13 THE COURT: I'll be here at 6. We could do it at 6 but I don't know if you
14 guys want to get here that early.

15 MS. FLECK: 8 works really well. But, will it take us an hour to do jury
16 instructions?

17 THE COURT: Well, I have two hearings.

18 MS. FLECK: So, how about --

19 THE COURT: I want you guys to get together and --

20 MS. FLECK: Oh.

21 THE COURT: -- and agree on anything you -- if you can do it at 8:30, that's
22 fine too.

23 MS. FLECK: I think -- I got two instructions --

24 THE COURT: 8:30?

25 MS. FLECK: -- from the Defense. One is Defendant's right you know, not to

1 take the stand. Of course, we don't object if her doesn't.

2 THE COURT: Right.

3 MS. FLECK: And then the other is in addition to that there is one that we'll
4 litigate.

5 THE COURT: Okay. 8:30 then?

6 MS. FLECK: 8:30.

7 THE COURT: And then I can do these two.

8 MS. FLECK: Okay.

9 THE COURT: One's just an indigent hearing. And one is they've got a
10 material witness on my murder trial next week and the State wants to release her
11 and Defense wants her to stay in custody.

12 MS. FLECK: Okay. That's the one from --

13 THE COURT: But I won't take long.

14 MS. FLECK: Okay. The only thing that we have is we do have the amended
15 information just changing Jocelyn's name from Hammond to Coleman. I'm not sure
16 why it was originally Hammond but --

17 THE COURT: All right.

18 MS. FLECK: We have that to file.

19 THE COURT: You have any objection of --

20 MR. BECKER: No.

21 THE COURT: -- changing typographical?

22 MS. FLECK: And I just want to make for the record -- you know, I know that
23 there's nothing that can ever be done to the Defense and that you know, the way
24 that cases always go forward is that the State can't blink really without getting in
25 trouble. But, after we -- you ruled, after you specifically said that the Defense was

1 not to bring up what had happened outside of the presence, on the exact same
2 question, Mr. Becker stood up and objected to the exact same thing even after he
3 admonished him. And I just want it in the record --

4 THE COURT: I don't penalize --

5 MS. FLECK: -- because it's happening --

6 THE COURT: -- attorneys for zealous --

7 MS. FLECK: -- all the time.

8 THE COURT: -- representation. I might yell at them but I don't penalize
9 them.

10 MS. FLECK: I don't expect you to.

11 THE COURT: All right.

12 MS. FLECK: But I want it in the record because --

13 THE COURT: See you guys in --

14 MR. BECKER: Well if we're going to -- I mean --

15 MS. FLECK: -- that's how it goes.

16 MR. BECKER: I'm going -- I'll -- I don't want my silence and I'm going to
17 remain silent other than to say, I don't want my silence to be viewed as any way of
18 agreeing to the accuracy of the record.

19 ...

20 ...

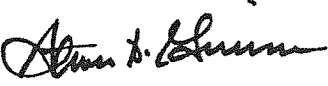
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CLERK OF THE COURT

1 RTRAN

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3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 STATE OF NEVADA,

7 Plaintiff,

CASE NO. C269095

DEPT. VIII

8
9 VS.

10 DUSTIN JAMES BARRAL,

11 Defendant.

12 BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

13
14 FRIDAY, MAY 31, 2013

TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

DAY 4 - VOLUME IV

15
16
17 For the State:

MICHELLE FLECK, ESQ.
Chief Deputy District Attorney

18
19 MICHELLE Y. EDWARDS, ESQ.
Deputy District Attorney

20
21 For the Defendant:

MICHAEL L. BECKER, ESQ.
MICHAEL V. CASTILLO, ESQ.

22
23
24 RECORDED BY: JILL JACOBY, COURT RECORDER

25 TRANSCRIBED BY: BRITTANY MANGELSON, INDEPENDENT TRANSCRIBER

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1 FRIDAY, MAY 31, 2013 AT 8:54 A.M.

2
3 MR. CASTILLO: Mr. Becker should be along shortly, Your Honor. But I am
4 prepared to argue all jury instructions --

5 THE COURT: That's fine.

6 MR. CASTILLO: -- and I've been authorized.

7 The last page is the only new addition to the Defense since the other
8 day.

9 THE COURT: All right. Here -- you've reviewed the jury instructions
10 proposed by the State?

11 MR. CASTILLO: Yes, Your Honor.

12 THE COURT: Are you objecting to any of those?

13 MR. CASTILLO: Yes, Your Honor. There's one material objection and there
14 a couple just minor --

15 THE COURT: All right.

16 MR. CASTILLO: -- disagreements.

17 THE COURT: When we get to them I guess you'll -- you'll do it as we go
18 through them.

19 MR. CASTILLO: Yes, Your Honor.

20 THE COURT: All right.

21 Is the Defendant going to take the stand?

22 MR. CASTILLO: He is not, Your Honor.

23 THE COURT: Okay. Is that right, Mr. Barral?

24 THE DEFENDANT: Yes, that is right, Your Honor.

25 THE COURT: And your satisfied that that's in your best interest?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right.

3 And you fully discussed that with both of your attorneys, probably with
4 your family, and your satisfied with that decision.

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay. So, we'll give that jury instruction.

7 MS. FLECK: Is -- are you guys making the ultimate changes?

8 THE COURT: Okay.

9 MS. FLECK: I --

10 THE COURT: I have three. Do you have more?

11 MR. CASTILLO: Court's brief indulgence.

12 MS. FLECK: Because I can make the changes here.

13 MR. CASTILLO: It's a total of three, Your Honor.

14 THE COURT: Okay. So we're giving the one on the Defendant's right; that
15 they can't comment on his right to not take the stand. So then we have this one:
16 There is no requirement that the testimony of a named victim of sexual assault be
17 corroborated. And her testimony standing alone if believed beyond a reasonable is
18 sufficient to sustain a verdict, guilty. Although the named victim testimony need not
19 be corroborated, she must still testify with some particularity regarding the incident
20 in order to uphold the charges.

21 That is been submitted without any citation. Where does that come
22 from?

23 MR. CASTILLO: It comes from *LaPierre v State*, Your Honor. If I can
24 approach I do have a copy of *LaPierre*; the citation as well.

25 THE COURT: I don't --- that may be covered in the general instructions.

1 Wait, I -- what's that?

2 MR. CASTILLO: It's the same instruction with the citation.

3 THE COURT: Oh. That's fine.

4 MR. CASTILLO: Okay.

5 And if Your Honor refers to page 3 of the Westlaw print-off --

6 THE COURT: I'm looking. I'm looking at it. Thanks.

7 MR. CASTILLO: -- it should be there.

8 THE COURT: All right. What's the State's position on that?

9 MS. FLECK: Well, it's a -- the second portion of that is a correct statement of
10 the law; however, it has nothing to do with the first portion. So what he's done is
11 he's added a sentence from *LaPierre*, or the theory in *LaPierre*, to another
12 instruction and then making it out to be as though it's one complete sort of statement
13 of the law when it isn't. It stands for two separate -- entirely separate concepts.

14 The *LaPierre* case is basically saying that a, you know -- it's the case
15 that stands for the fact that a victim can't come in and testify and say I was sexually
16 molested every single night for two years and every single night for two years the
17 Defendant came into my room and put his finger in my vagina and then all of a
18 sudden we charge, you know, 2 years worth of --

19 THE COURT: Seven hundred counts.

20 MS. FLECK: Yeah. Counts. So it's -- with some particularity it -- obviously
21 that's not relevant in this particular case considering that the girl testified in this
22 court. And then through 51.385 her statement came in at four years old; it was more
23 particular than most adults can articulate when they're describing something that
24 they've experienced. The house, the room, the futon, where everybody else in her
25 lives were; things that were said, how she felt.

1 So, number one it's not relevant. Number two the requirement that the
2 testimony stand alone has nothing to do with, you know, the next portion. So.

3 MR. CASTILLO: Can I reply briefly, Your Honor?

4 MS. FLECK: If we -- if you're inclined to give the second portion then I'd ask
5 that we at least split them up so that they're on two separate pages because like I
6 said they don't come from the same case, they're not under the same theory. To try
7 to, you know, combine them is not a correct statement.

8 MR. CASTILLO: And I would submit, Your Honor, that if you look on page 3
9 of *LaPierre*, the last paragraph; it has -- in that last paragraph, the first paragraph
10 almost verbatim and then it -- as a additional statement that she must testify of
11 some -- the victim must testify of some particularity regarding the incident to uphold
12 the charge. That has been cited affirmatively by the Nevada Supreme Court as
13 recently as 2007; it remains good law, it's a correct statement of the law, and it's for
14 the jury to determine, you know, be the Trier of fact. But that is a correct statement
15 of the law for the jury to consider.

16 THE COURT: Yeah, but that wasn't their argument. Their argument is that
17 you're combining that with another jury instruction and they should be actually two
18 jury instructions.

19 MR. CASTILLO: Right.

20 THE COURT: The first sentence and the second sentence.

21 MR. CASTILLO: Court's brief indulgence.

22 If the Court wants to have it as a separate instruction that would --

23 THE COURT: All right.

24 MR. CASTILLO: -- be fine with the Defense.

25 THE COURT: Send it to him.

1 MS. FLECK: Are you doing them? Because I can do them also are -- but are
2 you?

3 THE COURT: He --

4 THE CLERK: I can do them right here. So.

5 THE COURT: Either way.

6 MS. FLECK: So

7 THE COURT: All right.

8 MS. FLECK: -- we need to change -- did you change the amended? Or the
9 information part?

10 MS. EDWARDS: Pages three and four.

11 THE CLERK: Just -- I thought I'd just separate them out. So.

12 MS. EDWARDS: No.

13 MS. FLECK: No. The -- it should read, an amended information is but a
14 formal method. So we file it amended.

15 MS. EDWARDS: Not in that instruction [indiscernible.]

16 THE COURT: Oh. On the like the third page.

17 MS. EDWARDS: Yeah. Pages three and four of what the State submitted.

18 THE COURT: Okay.

19 MS. FLECK: I can just do them.

20 MS. EDWARDS: This is confusing.

21 MS. FLECK: Let me do them up here.

22 THE COURT: All right. You fix --

23 MS. FLECK: Okay, so --

24 THE COURT: Fix whatever --

25 MS. FLECK: So should I add a whole nother[sic] instruction saying although

1 the named victim's testimony may not be corroborated, you should -- must still
2 testify with some particularity regarding the --

3 THE COURT: Yes.

4 MS. FLECK: -- incident in order to uphold the charge.

5 THE COURT: I'll give that us two instructions.

6 MS. FLECK: So where -- where were we?

7 THE COURT: We were just looking at theirs.

8 MS. FLECK: Okay.

9 THE COURT: So we got that taken care of and then they submitted one
10 about the Court. If during the trial, I have said -- I don't get that personally. I would
11 say that the Court has said -- done anything but I think there's instruction on that. I
12 don't know if you have it in here.

13 MR. CASTILLO: If you want to change the language to the Court; that's fine
14 with Defense, Your Honor.

15 MS. FLECK: You know, now that I'm typing this out, the other problem I have
16 with the way that this lop here is is because the way that the verbiage is is to uphold
17 the charge. That's because the way that the case is -- I mean, my understanding is
18 is that that's because it's in reference to an -- on appeal; to uphold it on appeal. So,
19 the verbiage is: She must still with some particularity regarding the incident in order
20 to uphold the charge. That's not really the standard.

21 THE COURT: Accept a way and then get these guys to read that.

22 MS. FLECK: So that -- well, I mean that's why I -- again I -- you know, I just
23 don't know that it's relevant at all in this particular case. And she does testify with
24 particularity and you know, it's -- that's no the standard in terms of finding guilt. The
25 standard is going to be what -- if they believe the case beyond a reasonable doubt, it

1 can be based on -- so, I -- now that I -- I'm typing it out I object and I don't think that
2 it's a correct statement for this particular set of facts and the way that it's worded in
3 terms of upholding the charge; it's an appellate issue.

4 I think that it -- the argument for the Defense would be she didn't describe it
5 with enough particularity; therefore, they shouldn't believe it beyond a reasonable
6 doubt.

7 MR. BECKER: I'll just add briefly. You know, the sufficiency of the evidence;
8 the Court saying that it's -- that the testimony if believed is sufficient is also an
9 appellate decision upholding the sufficiency of the evidence. I think it's a semantic
10 distinction but I think the law is deciphered equally with regard to the statement that
11 we want versus the statement that the State wants.

12 THE COURT: Well -- but it's referencing upholding the decision in front of the
13 Supreme Court; that verbiage. And so, it's not artfully written.

14 So get together and get a good one that you guys can both live with or I
15 can do one.

16 MS. FLECK: I also changed the credibility to be gender -- I did his or her at
17 the request of the Defense. And then -- towards the end we're changing one. It
18 says -- it now reads: Your duty is confined to the determination of the guilt or
19 innocence of the Defendant; to comport with the other instructions and what the
20 Defense wants in every case, which would read: Your duty is confined to the
21 determination of whether the Defendant is guilty or not guilty based on the evidence
22 since those are the two choices.

23 MR. CASTILLO: Correct.

24 MS. FLECK: And then where would you like me to put the constitutional right
25 of the Defendant; that he doesn't have to testify?

1 THE COURT: I've got -- I'll do -- I'll handle that.

2 MS. FLECK: You'll add that?

3 THE COURT: Yes. I already have.

4 MS. FLECK: So -- okay.

5 So, do -- I'm confused. Do you want me to make the changes or are
6 you guys --

7 THE COURT: Yeah.

8 MS. FLECK: -- making them? I did them. So, where should I add -- or just --
9 are we going to print them off and then you'll add the constitutional right.

10 THE COURT: Print them off. Just send them to Thad. Thad can print them
11 off.

12 MS. FLECK: Okay.

13 THE COURT: I'll come look at his computer.

14 MS. FLECK: So is there anything else then you guys besides those --
15 changed the gender and I changed the -- whether the Defense guilty or not guilty
16 based on the evidence. What else?

17 MR. CASTILLO: And Your Honor? I'm sorry. I apologize. Is the Court
18 accepting the instruction about taking the cue from the Court with the modification of
19 changing it from I to the Court?

20 THE COURT: We're modifying it a little bit. She has to know there's a
21 difference [indiscernible.]

22 MR. CASTILLO: Okay.

23 THE LAW CLERK: Okay. This --

24 THE COURT: What?

25 THE LAW CLERK: I print out the wrong one.

1 THE COURT: Oh.

2 THE LAW CLERK: Are we still keeping the --

3 THE COURT: She's sending some more that she --

4 MS. FLECK: Which is the one that you want --

5 THE COURT: -- corrected.

6 MS. FLECK: Which one are we changing for the Defense with the Court --
7 adding the Court? Arguments of Defense counsel or comments by the Court? How
8 do they want it?

9 THE LAW CLERK: It's the last instruction that they sent; [indiscernible.]

10 MS. FLECK: We didn't get it.

11 THE COURT: I'll read it to you in a minute. Go print it.

12 THE LAW CLERK: Okay. With the one that we're separating out with the
13 objection are we --

14 THE COURT: Yes.

15 THE LAW CLERK: -- still going to keep that one.

16 THE COURT: Well, she -- she's sending them to you; to the --

17 MS. FLECK: I can't get online so I've got to put it on my jump. So, do you
18 want me to change the -- this last one? And then we would have them all done on
19 mine except for the Defendant's right not to testify.

20 THE COURT: Well -- and then mine.

21 THE LAW CLERK: I can print this one right here and then you --

22 THE COURT: All right.

23 THE LAW CLERK: -- can just add --

24 THE COURT: Print it.

25 Okay. Here it is. If during this trial the Court has said or done anything

1 which has suggested to you that the Court is inclined to favor the claims or position
2 of any party, you will not be influenced by any such suggestion. The Court has not
3 expressed nor intended to express nor intimate any opinion as to which witnesses
4 are or are not worthy of belief, which facts are or are not established, or what
5 inference should be drawn from the evidence. If any expression of the Court has
6 seemed to indicate an opinion relating to these matters you are instructed to
7 disregard any implied reference.

8 MS. FLECK: Okay. Well, then let me -- let me just save these for you and
9 then you can add the -- that one and the Defendant's right not to testify.

10 THE COURT: We got that. And those will be in front of the evidence which
11 you are to consider; both of those are in there. And we're going to go through them
12 as soon as we get here. And you redid the information page?

13 MS. FLECK: Yeah. I did.

14 MR. CASTILLO: And the other issue, Your Honor, was making sure that it
15 was gender neutral in terms of the credibility or believability of the witness.

16 MS. FLECK: It is.

17 MR. CASTILLO: That's --

18 THE COURT: Yeah. She --

19 MS. FLECK: I changed that one.

20 THE COURT: -- fixed that.

21 MR. CASTILLO: Okay. I missed it.

22 [Pause in proceedings]

23 THE COURT: Okay. You did not include those two that -- about the
24 Defendant's right to testify --

25 MS. FLECK: Right.

1 THE COURT: Okay.

2 THE LAW CLERK: I added those two in there. Was it the two that they split
3 apart?

4 THE COURT: Yeah. They're in there.

5 THE LAW CLERK: Oh. They're in there.

6 THE COURT: Now, I had put it where I wanted them. Where did you put
7 them?

8 THE LAW CLERK: The -- those two -- last two ones, I put them second to the
9 last before you signed given by.

10 THE COURT: I don't want that in there.

11 [Pause in proceedings]

12 THE COURT: All right. You guys ready?

13 MS. FLECK: Two seconds.

14 THE COURT: And my JEA will make our -- That will copies of these for all
15 the jurors.

16 MR. CASTILLO: Does the Court intend to go over each page for the record
17 for approval or --

18 MS. FLECK: Yeah. We need to number them.

19 THE COURT: Yes.

20 MR. CASTILLO: As far as numbering --

21 THE COURT: Yes. That's how you number them.

22 MR. CASTILLO: Yes, Your Honor.

23 MS. FLECK: Oh. I thought you meant are you ready for the jury to come in.

24 THE COURT: I'm ready for you to be ready to follow along.

25 Are you ready to follow along?

1 MS. FLECK: The words A.D.D. -- or the initials A.D.D. mean anything to you?

2 THE COURT: Yes. I have A.D.D.

3 MS. FLECK: Me too.

4 THE COURT: All right. No. 1, obviously, is the front page.

5 MS. FLECK: We don't have a copy though.

6 THE COURT: Well, follow along in your computer and then I -- we will
7 number these and make -- I'll make 1, 2, 3, 4, 5 -- 19 copies, and give --

8 MS. FLECK: Okay.

9 THE COURT: -- all of the attorneys a copy and the jurors are all have a copy.

10 MR. CASTILLO: Yes, Your Honor.

11 THE COURT: Number 2, If in these instructions.

12 Number 3, Amended information. It's two pages.

13 Number 4, A person who subjects a minor.

14 Number 5, Physical forces not a necessary ingredient.

15 Number 6, Submission is not equivalent.

16 Number 7, There is no requirement.

17 8, Where a child has been the victim.

18 9, Where multiple sexual acts occur.

19 10, Constitute the crime charged.

20 11, The Defendant's presumed innocent.

21 12, You are here to determine whether defendant.

22 13, Is the constitutional right of a defendant in a trial not to be
23 compelled to testify.

24 MR. CASTILLO: Your Honor, with respect to Number 12, could the Court just
25 clarify the last sentence?

1 THE COURT: Yeah.

2 MR. CASTILLO: Because I -- I think there was a change so I just wanted to
3 make sure what the last sentence now reads.

4 THE COURT: You are here to determine whether the defendant is guilty or
5 not-guilty from the evidence. You are not called to determine whether any other
6 person is guilty or not-guilty. So, if the evidence in the case convinces you beyond a
7 reasonable doubt of the guilt of the defendant, you should so find even though you
8 may believe one or more persons are also guilty.

9 MR. CASTILLO: Thank you, Your Honor.

10 THE COURT: 13, It is constitutional right of a defendant.

11 14, If during this trial the Court has said or done anything which is has
12 suggested -- that's that one that you guys submitted.

13 15, The evidence which you are to consider.

14 16, Credibility or believability.

15 17 --

16 MR. CASTILLO: And is 16 gender neutral, Your Honor? I'm sorry for
17 interrupting.

18 THE COURT: His or her manner on the stand. Yes.

19 17, A witness who has special skill.

20 18, Although you are to consider in the case.

21 19, In your deliberation.

22 20, When you retire to consider your verdict.

23 21, If during your deliberation.

24 22, The signature line.

25 Now you'll listen to counsel. Is the State familiar with jury instructions 1

1 within one to three days of when they were being seen at the hospital. At the
2 hospital additionally what can be done is like a DNA Rape kits and kits to facilitate
3 any evidentiary collection in addition to the examination and medical care of the
4 patient.

5 The CAC is more when if a child either discloses or there's concerns for
6 whatever reason, they can referred to the CAC by law enforcement or child
7 protective services to be seen but it's less emergent. Maybe contact happened a
8 week, a month, a year since -- when, you know, when we're seeing the kid.

9 Q Now, what is it about that timeline? What is it about the timeline that
10 makes it -- it's more important that you may see someone at Sunrise as opposed to
11 just allowing Metro to bring them or their parent to bring them into the CAC?

12 A The timeline -- initially a timeline's in terms of collecting DNA evidence
13 off a body were done kind of on adults and so as research has been coming in for
14 kids and collecting evidence on their bodies or their, you know, clothing, or whatever
15 it is, it's found that less than three days is usually no evidence is collected on a
16 child's body. And in fact the first 24 hours is when about -- more than I think 99
17 percent of the evidence can be collected on a child's body.

18 And so that time period reflects whether a kit can be done and if it's
19 going to have any value. Additionally, you know, the body does heal and therefore,
20 if contact was very far out they may not need to rush to the emergency room to have
21 an exam because they might not have any findings.

22 Q Now, you talked about an adult versus a child and that with a child it's
23 really a 24-hour period that you -- after the 24-hour period any sort of potential
24 findings that you may have had or injuries or anything like that would have already
25 healed. Why --

1 MR. BECKER: I object that that misstates the testimony.

2 MS. FLECK: I'll rephrase it.

3 THE COURT: All right. Rephrase it.

4 BY MS. FLECK:

5 Q You talked about the significance in some way of 24 hours with a child.
6 What is significant about the 24-hour timeline with a child versus an adult?

7 A It has to do with evidence collection. So if there is -- for instance if
8 somebody has ejaculated on or in the body the -- a child before they enter puberty
9 the vaginal area is not the same as an adult's vaginal area for instance; or even
10 teenagers after they've gone through puberty.

11 Evidence, one, can get washed away but mostly it's due to kind of that
12 environment -- internal environment. So, semen or saliva collection usually is for
13 naught after 24 hours.

14 Q Is there also -- or is there anything with regards to how a child's body
15 heals or the blood flow, anything like that, with regard to a child versus a adult.

16 A In terms of healing, I think, everybody heals fairly rapidly in the genital
17 area.

18 Q Okay. Then let's talk about the healing process of the genital area
19 versus other parts of the body.

20 A So, for a female for instance is what we more typically see. The genital
21 is made up of tissue; it's a lot like the inside of the mouth. And that's kind of the
22 analogy that I use a lot of times when I teach with parents as well to understand
23 that, you know, we can bite or burn or you know, you can hurt the inside of your
24 mouth and heals incredibly quickly because of how much vasculature and so blood
25 flow there is in that area.

1 Similar with the genital tissue as well as the tissue of the anus;
2 surrounding the anus. So it does heal very rapidly. Research has also shown that
3 the hymen which is -- it's just skin kind of around the vaginal opening that heals
4 extremely well and in fact, will heal a lot of times without any scar tissue at all; which
5 is a little different than skin, for instance, on the rest of the body which will
6 oftentimes heal with scar tissue.

7 Q Okay. What is the exact examination called? If a child, not an adult,
8 but a child comes in and has examination, what is the -- for possible sexual abuse;
9 is there a certain name for that?

10 A At Sunrise Hospital it's called a SCAN examine or a suspected Child
11 Abuse and Neglect. And this would be under a SCAN-S; so sexual, possible sexual
12 abuse or neglect.

13 Q If a four-year old comes and presents at Sunrise Hospital for a SCAN
14 exam, what's the process that is undertaken in order to examine that child?

15 A So, initially just with any patient that comes in, they come to Triage and
16 the nurses ask them general, medical health; get heights, weights, blood pressure,
17 you know, vital signs. Second, they're taken into -- we have one particular room
18 with the equipment necessary to be able to do these kinds of exams. And at that
19 point if concerns are raised by -- whether it's the child or a parent or a caregiver who
20 brought -- whoever brought them in, law enforcement and/or child protective
21 services is called based on mandated reporting laws and reporting if there are
22 concerns of abuse at the home or outside of the home.

23 After that point law enforcement we -- is awaited for so that they can --
24 if an interview needs to be done with a child or if -- with the parents; so the concerns
25 can be kind of clarified and then a law enforcement will direct whether evidence

1 needs to be collected, meaning like a rape kit. So, collecting for DNA, saliva,
2 semen, things like that.

3 Once that's kind of decided, a physician and a nurse will complete a
4 physical exam for the medical needs of the child. And that kind of all happens
5 together. If a kit needs to be collected during that time and during that exam. Photo
6 documentation is also used, you know, in the event that there are findings. And
7 then that child is usually released to go home or under the disposition of saf -- of like
8 a safety plan.

9 Q So you mentioned a couple of things I want to go back to. You
10 mentioned DNA and if you're going to collect for possible evidence. Is that
11 something that is determined based upon the disclosure from either the child or the
12 parent; whether or not there would be anything of evidentiary value that could have
13 come from the abuse?

14 A That would be my understanding. Yes.

15 Q For instance, certain kinds of touching you wouldn't expect to find
16 forensic evidence and so a rape kit in terms of swapping for DNA wouldn't be done.

17 MR. BECKER: Objection, leading.

18 THE COURT: Overruled

19 BY MS. FLECK:

20 A Correct.

21 Q And then with regard to a child -- about let's say a four-year child, when
22 people think of going in to get an examination you may think of stirrups and you
23 know, going to a regular Gynecologist as a women. Is that the process that a child
24 goes through?

25 A No. Children, especially before puberty and you know, before they get

1 their periods -- so girls before they get their periods -- so let's say the -- a four-year
2 child for instance. We put them in what we call frog leg position or butterfly wings or
3 whatever kind of -- the kid can associate with. So they kind of sit cross-legged on
4 exam table on their backs.

5 In order to visualize the vaginal tissue a practitioner or a physician will
6 pull back kind of the skin and just have a visual of the outside of the skin.
7 Sometimes Q-tips are used to kind of move tissue around; just to be able to
8 visualize everything and make sure everything looks normal and there are no need
9 for let's say a surgical intervention or further medical necessity.

10 The child is left in that position and then you're able to also just kind of
11 spread of cheeks of the buttocks to be able to visualize the anus as well. And that,
12 you know -- that's how the exam usually goes for about a four-year old.

13 Q Now, similar to you conducting an examination different on a child than
14 on an adult, is the terminology that either you use or the child will use with regard to
15 their private areas clearly different depending on age?

16 A Yes. Most of the kids -- sometimes they're asked -- I don't know,
17 depends on the pro -- where they are in the process. If it's the first time they're
18 being seen at the hospital or versus you know, an investigator sees them or
19 however it is, a lot of times they'll be asked or their parents will be asked how do
20 they refer to their body parts because people teach them different things; not vagina,
21 penis, anus. They'll say cookie or you know privates or whatever; they'll use
22 different words for it.

23 Q And then how about ideas of penetration. Does that also differ
24 depending on the age of the child?

25 A It depends a lot just on development and age and understanding what's

1 inside the body and what's outside so that can -- can definitely be different between
2 and adult and a child.

3 Q I mean -- for instance, fair to say that with a child full penetration that
4 you would think of as a women is different than what a child would think of just as in
5 if there's penetration even into her labia; not knowing those parts?

6 A Correct. So, just crossing the plains of the labia to the lips of the vagina
7 are considered penetrative.

8 MR. BECKER: Well, I'm going to object, calls for a legal conclusion. Motion
9 to strike.

10 MS. FLECK: And I'm not asking for --

11 THE COURT: It calls for a medical determination.

12 MR. BECKER: Well, the -- it does maybe in her terms --

13 THE COURT: An --

14 MR. BECKER: -- but in a courtroom --

15 THE COURT: -- expert witness, which the Court, now that you've drawn this
16 in to the attention, would recognize this doctor in the area and she's explaining
17 before the jury the Trier effect. And your --

18 MR. BECKER: And if I may --

19 THE COURT: -- objection's noted.

20 MR. BECKER: -- Your Honor, she cannot render a legal opinion --

21 THE COURT: She can't render a legal opinion --

22 MR. BECKER: -- only a medical opinion.

23 THE COURT: -- but your objection's noted and overruled. Thank you.

24 BY MS. FLECK:

25 Q Okay. So -- but you do find that with a child when they're discussing

1 something being inside of them or penetration it - -depending on their age it differs
2 because of their kind of knowledge of their body parts and what penetration is.

3 A Knowledge and also what they're feeling or understand is where things
4 are going. Sometimes pressure on the outside of the vagina or the anus can feel
5 like it's inside and so we do have kids that will sometimes disclose inside versus
6 outside but it may be understood a little bit differently about you know, through there
7 kind of concept of their bodies.

8 Q But, then will you go on to use pain threshold and things like that to
9 determine what may have happened or what they may have experienced?

10 MR. BECKER: I'm going to object again, leading.

11 THE COURT: Overruled.

12 BY MS. FLECK:

13 Q What kinds of other things will you use besides -- I mean, you say that
14 you do the outside examination; that you'll get a history of what may have
15 happened. Is there anything other things that you try to ascertain from either the
16 child or the parent?

17 A Yes, if there's a history of bleeding or discharge, of complaints of pain,
18 pain with urination, just symptoms to describe any irritation or any problems that
19 they may have in their genital area.

20 Q Okay.

21 A Or anywhere on their body really.

22 Q Okay. Are you familiar with a Doctor O'Connor?

23 A Yes.

24 Q And who is he?

25 A He is an emergency medicine physician at Sunrise Children's Hospital,

1 Pediatric Emergency Department.

2 Q Okay. But, he is an E.R. doctor. Is that right?

3 A Yes.

4 Q Now you say that when you work over at Sunrise you'll do so as a
5 consultant. Is that correct?

6 A Yes.

7 Q You'll often times then work with the emergency staff in order to review
8 their sexual assault examinations being an expert in the field.

9 A Yes.

10 Q Are you familiar with a examination that was done on a Jocelyn
11 Coleman that brings you into court today?

12 A Yes, I am.

13 Q And I believe that the State and the Defense has stipulated that there is
14 no what you would call physical findings in that examination. Would you agree with
15 that?

16 A Yes.

17 Q What did you do when you reviewed findings from Doctor Coleman --
18 I'm sorry, from Doctor O'Connor?

19 A I reviewed the medical chart which includes the electronic medical chart
20 from the -- it's pretty used through the emergency department and it's how
21 everything gets documented in the E.R.

22 Additionally, there is a handwritten note that is filled out by both the
23 physician and the nurse that's participating in the care with him. And then I also
24 reviewed the photo documentation, the images of the exam itself in order to kind of
25 put it all together.

1 Q So, after you reviewed all of those things were you able to come up with
2 your own independent assessment of the findings or lack of findings in the case?

3 MR. BECKER: And Your Honor, I'm going to ask to go sidebar and it may be
4 a good time to have an afternoon recess if we're going to have one.

5 THE COURT: Well, come up -- approach the bench. And I'll control my
6 courtroom; not you. Thank you.

7 [Bench Conference Begins]

8 MR. BECKER: My concern is that she's just testifying that she reviewed
9 some kind of images and that there may be some confusion because we have the
10 nurse's report from a doctor -- from a nurse, a RN Lauren Newman. We also have 2
11 pages that are somewhat ambiguous as to who they're from. But we don't have any
12 images. We weren't just provided --

13 MS. FLECK: We don't have images either. That's --

14 MR. BECKER: And --

15 THE COURT: The images may be on the person's body so ask and clarify --

16 MS. FLECK: I'm just going say -- I mean, it's no findings. We stipulated to
17 that.

18 MR. BECKER: Okay. I guess my concern is I want to make sure we're
19 talking about the same th -- we have the same reports as the State because this is --

20 MS. FLECK: You do.

21 THE COURT: Well --

22 MS. FLECK: There's no findings --

23 THE COURT: What report?

24 MS. FLECK: -- on anything.

25 THE COURT: What report do you have? Show the State --

1 MR. BECKER: I'm kind of --

2 THE COURT: Show the State. If you have the same then they can tell you.

3 MS. FLECK: That's what we have.

4 MR. BECKER: I've got this report from Jocelyn Coleman which is a very
5 lengthy one.

6 MS. FLECK: That's it.

7 MR. BECKER: And there's some type-written stuff which is two pages and
8 I'm not who this is from.

9 MS. FLECK: Has anyone looked -- I don't even know if I've looked at that
10 because --

11 MS. EDWARDS: [indiscernible]

12 MR. BECKER: So, we're just going on this one?

13 MS. FLECK: I'm just -- I'm not even going on any of the things -- I mean, we
14 agreed that there's -- that we're going to say there's no findings.

15 MR. BECKER: Okay.

16 MS. FLECK: I'm only doing this for the record.

17 MR. BECKER: That's fine. Okay.

18 THE COURT: All right.

19 MR. BECKER: All right.

20 [Bench Conference Concludes]

21 MS. FLECK: May I proceed?

22 THE COURT: Yes.

23 MS. FLECK: Thank you.

24 BY MS. FLECK:

25 Q So after looking through all of the reports that were done by the E.R.

1 doctor, Doctor O'Connor, would you agree that there's -- there were no what you
2 would term as quote physical findings in this case?

3 A She had a -- just what he termed as vaginitis or just a little non-specific
4 irritation but otherwise no; a fairly normal exam.

5 Q And the Defense has a talked a lot about the vaginitis earlier so we're
6 going to get into that a little bit in a minute. But, with re -- besides the vaginitis, with
7 regard to any other physical findings, abrasions, cuts, anything like that.

8 A No.

9 Q You would agree then -- you did agree then with Doctor O'Connor's
10 assessment?

11 A Yes.

12 Q Now, in your field have you heard or are you quite familiar with the term
13 normal is normal?

14 A Yes.

15 Q And what does that mean?

16 A I believe it originally came from literature from a Doctor Joyce Adams
17 from University of San Diego and Rady Children's Hospital. It essentially means
18 that a normal exam can still be consistent with concerns and/or disclosure of child
19 sexual abuse. About 95% or a little bit more of the exams when it comes to
20 concerns of child sexual abuse are normal and so it's normal to be normal. It's still
21 concerning if a child discloses inappropriate sexual contact.

22 Q In fact, in your experience in all of the examinations that you have done,
23 can you give a percentage of where you find -- where you have findings?

24 A Probably about the national average; about four to five percent --

25 Q So four to five percent --

1 A -- of findings.

2 Q -- of all of the children that come in and complain of some sort of sexual
3 abuse -- only about four to five percent of them are -- you have some sort of a
4 manifestation of -- of some sort of a cut, abrasion, something like that?

5 A Correct.

6 Q How do you explain that in relation to say a child that, you know,
7 discloses penetration and there could even be a confession or some other
8 corroborating evidence? How do you explain then that there would be no evidence
9 of that on her vagina?

10 A It's kind of several-fold. One is that people can have all kinds of
11 inappropriate contact with the skin and not cause any damage. The vaginal area
12 can be -- and also the anus can be very accommodating. Which means it's stretchy
13 and the vaginal area a lot of people think that there's like a -- the hymen's some kind
14 of barrier or cover. It actually has a hole in it; it's just surrounding the vaginal area.
15 So, it's possible to have an object or a body to go inside and come out without
16 causing any damage. So, that's one reason why we don't always see damage.

17 With children often the -- statistically the perpetrator is someone that
18 live in the home or know them or are related to them and so a lot of times there's
19 something called grooming that's involved, which means kind of gaining trust of a
20 child if ,you know, there are inappropriate contact. And that's just in general. But
21 when that happens a lot of times perpetrators aren't necessarily violent. They want
22 to continue having access to children so a lot of times kids don't end up having any
23 damage because they're not undergoing a very violent attack at the time.

24 And a third reason why we don't really see -- and it's normal to be
25 normal. We don't see damage on the body is that like I said before, it heals very

1 quickly. And so, even if there was damage it may have gone away. Research from
2 thousands and thousands of children shows that kids with actual findings that
3 they've seen in the emergency department or clinics and such, you know, after
4 specific times they were continuing to examine these kids had zero findings and
5 would not have known unless they had seen the children at that initial exam.

6 Q A factor you --

7 THE COURT: Define findings for the jurors. What does findings mean?

8 THE WITNESS: Sure. So in child sexual abuse, findings can be pretty
9 obvious. Like it can be -- again there's skin around the vaginal opening that can
10 have tears in it, it can be bleeding or cut; things like that. Around the anus same
11 thing with lacerations, cuts, bruising -- bruising to really any parts of the vaginal area
12 or the anus.

13 And then additionally, sometimes we see -- we can see bite marks, kids
14 might have discharge or symptoms of sexually-transmitted infection, which is
15 considered a finding, or they might have an actual infection. And so those would
16 kind of encompass most of the findings that would be definitive for sexual abuse.

17 BY MS. FLECK:

18 Q And then -- would you agree then that if you know, if a child complained
19 of penile penetration the expectation of -- if there would be any findings would also
20 differ from say digital?

21 A Right. Yes, it can.

22 Q Are you familiar with studies within your field where adolescent girls
23 have presented as pregnant and still no findings?

24 A I've seen them myself as well and in literature. You have pregnant
25 females or females that have given birth and they normal vaginal and hymeneal

1 tissue.

2 Q So, clearly penetration and then still the normal examination.

3 A Correct.

4 Q Then finally, with regard to vaginitis. What is vaginitis?

5 A The -- you know, anything can have an 'itis at the end of it so 'itis just
6 means inflammation or irritation, you know, tendinitis; whatever it is. So, it just
7 means the vaginal tissue is irritated; non-specifically it has some kind of irritation to
8 it.

9 Q An 'itis of your vagina.

10 A An 'itis of your vagina.

11 Q Okay. So, when you say -- I think earlier you had said that there's --
12 that's something that you would term a non-specific finding.

13 A Correct.

14 Q What is a non-specific finding?

15 A The analogy I can give is the flu has non-specific symptoms; cough,
16 runny nose can be you know, anything. When you have irritation of the vaginal
17 issue -- vaginal tissue it can be caused by lots of different things. And so it's not
18 specific to sexual abuse. It's not specific necessarily to a certain type of infection.
19 It's not specific to anything. It's just a kind of a general finding and doesn't get
20 treated differently you know, it's just irritation and you -- you know, treat it kind of the
21 same; maybe creams, maybe baths, maybe different types of clothing, that kind of
22 thing.

23 Q What are some of the causes -- in a four-year old what would be some
24 of the options for vaginitis?

25 A So skin break-down for any reason that could be -- it can be from

1 inappropriate contact but it can also be from really tight clothing, non-breathable
2 clothing. It can be from a child who you know, wets the bed, or wets there -- or you
3 know, soils their underwear and kind of hangs out in that for little while; that's very
4 irritating on the skin. It can be from a four-year old trying to be independent in
5 wiping themselves and not doing a very good job of it. So those are all kind of the
6 different -- you know, hygiene tends to one of the most common reasons we see in
7 the emergency department for vaginitis.

8 Q Okay. So as opposed to a specific finding say an abrasion or a bruise,
9 then a non-specific finding could be from not wiping properly, could be from
10 manipulation of the vagina with fingers, penis, anything?

11 A Correct.

12 MS. FLECK: Pass the witness. Thank you, Your Honor.

13 **CROSS-EXAMINATION**

14 BY MR. BECKER:

15 Q So to be clear, you never examined anybody in relation to this case.

16 A No. I did not.

17 Q And I suppose as you sit here today, do you even know the name of the
18 alleged victim in this case?

19 A My understanding is Jocelyn Coleman.

20 Q Okay. And that's based upon having reviewed some reports. Correct?

21 A Correct. Yes.

22 Q And have you ever spoken to any of the doctor's that participated in this
23 examination?

24 A About her examination in particular?

25 Q Yes.

1 A No. I have not.

2 Q Do you know what day her examination took place?

3 A I believe it was -- it was the summer of 2010. I don't remember exact
4 date. No.

5 Q Okay. And you have no specific information as to the nature of the
6 complaints giving rise to why she was there.

7 A There was a nursing note that indicated there were concerns by I
8 believe a parent but I don't have any details beyond that.

9 Q And with regard to the timing of the allegation versus the time that
10 Jocelyn had been in the hospital, do you know what the correlation in time period
11 was?

12 A Not specific time. I believe it was a few days; it wasn't immediate.

13 Q Now, I mean you said that you've had substantial training with regard to
14 -- in essence how these -- how evidence is collected in these types of cases. Is that
15 correct?

16 A The -- about the medical concerns yes and in terms of evidence
17 collection I've had some training on that. Yes.

18 Q And you -- specifically you talked about DNA. Correct?

19 A Correct.

20 Q And the ways you can search for DNA would be -- include doing like a
21 vaginal swabbing. Is that correct?

22 A Correct.

23 Q And you said that the DNA evidence would be most relevant in -- up to
24 a three-day period. Correct?

25 A It depends on the age of the patient. But 72 hours is kind of taken as

1 the average kind of rule of thumb -- timing.

2 Q Do you know if that was done in this case?

3 A My understanding is a kit was collected.

4 Q All right. And do you know what the results of that were.

5 A No. That doesn't follow back to the medical care. No.

6 Q Now, would it also be relevant to say that collection of DNA from the
7 clothing worn at the time of an alleged assault would be relevant?

8 A For an investigator, I believe it would be.

9 Q And would it be fair to say that it's easily accomp -- easily accomplished
10 to test clothing for DNA?

11 MS. FLECK: Judge. I'm going to just object as to outside the scope of her
12 expertise.

13 MR. BECKER: Well, I believe she testified that she has experience --

14 THE COURT: I'm going to let her --

15 MR. BECKER: -- with collection.

16 THE COURT: I'll let her testify to this.

17 BY MR. BECKER:

18 A Easy for medical staff or -- I'm not sure --?

19 Q Okay. With regard to -- you've had a wide range of training in the arena
20 of child sexual abuse as a whole. Is that correct?

21 A Correct.

22 Q And you've lectured on the subject. Correct?

23 A Yes.

24 Q And would it be fair to say that one of the subtopics of an area would be
25 DNA evidence that you might find on a body but also on clothing that was worn at

1 the time of an incident?

2 A Correct.

3 Q And would you say that it's standard procedure to submit the clothing
4 worn for DNA testing to see if you can find corroborative evidence?

5 A In the hospital setting if it's the same clothing that was thought that was
6 worn at the time of contact, then yes it would be standard to collect that.

7 Q And is it standard also to inquire what clothing was worn at the time of
8 contact and where said clothing is?

9 A But the nursing staff does do that. Yes.

10 Q Now, you talked about the equipment that's used during the course of
11 these investigations. Would it be fair to say that it's very highly technical
12 equipment?

13 A Not highly technical. No.

14 Q Well, you said that you viewed images. Correct?

15 A Correct.

16 Q And you have a camera that can take extremely high-resolution
17 photographs. Is that right?

18 A That's correct.

19 Q So that you could see by viewing images from this camera things that
20 you could never see with the naked eye. Is that right?

21 A No. That's not correct.

22 Q Okay. Well, what is the purpose of having this high-resolution camera?

23 A It is to be able to, if needed, to review -- so peer review is a big part of
24 you know, being able to say yes, I agree that there are findings or no findings or
25 looking at that. And then also for evidentiary purpose; if for this type of a scenario

1 somebody needs to see findings and pictures. And high-resolution is more for
2 magnification so to be able to, yeah, see more details. But if it's not something
3 that's not seen by the naked eye then there wouldn't be a -- you know, a filter or
4 something that would be put on it to establish a finding that wasn't there initially.

5 Q Now in this case the findings were that there were -- that there were no
6 abrasions. Correct?

7 A Correct.

8 Q That there were no tears.

9 A Correct.

10 Q No lacerations.

11 A Yes.

12 Q No bruising.

13 A Correct.

14 Q Okay. No genital discharge.

15 A No genital discharge. Correct.

16 Q Now, you were asked a question about the types of injuries that you
17 might expect to see and you were specifically asked about the difference between
18 penile penetration and fingers. Is that correct?

19 A I was asked that. Yes.

20 Q All right. Wouldn't it be -- isn't it fair to say that actually when you have
21 penetration -- when you have digital penetration, that the literature supports that
22 you're actually more likely to see injury because for example, the fingernails have an
23 inherent scratching element to them.

24 A Not necessarily.

25 Q Well, I'm not -- Okay. Not necessarily but isn't it true that it's

1 documented that specifically with regard to fingers and fingernails that you're far
2 more likely to see a lacerations resulting from the sharpness of fingernails?

3 A I'm -- I don't -- I'm not familiar with the specific literature that you're
4 referring to.

5 Q Well, you've practiced in this field.

6 A Mm-hmm.

7 Q Is that correct?

8 A Yes.

9 Q And would you agree that for example, as you compare it to a penis
10 that there's no sharpness to a penis?

11 A Correct.

12 Q And there is sharpness to the fingernails especially when involved -- as
13 involved in alleged -- allegations of digital penetration.

14 A There can be.

15 Q And as a matter of fact, it would be -- if you're aware of it, would it be
16 standard practice that you do a nail scrapings or finger swabs on a suspect, whose
17 alleged to be a digital penetrator?

18 A That's under the purview of the investigator. I wouldn't yeah -- that
19 wouldn't be something I would do.

20 Q Aside from viewing with the naked eye, a doctor might also use a
21 magnifying glass. Is that correct?

22 A That's correct.

23 Q And they would also take photographs with this high-resolution camera.

24 A Correct.

25 Q That are -- photographs that are magnified photographs. Is that

1 correct?

2 A Yes.

3 Q And often, often the -- these magnified photographs can show things
4 such as bruising or lacerations or tears. Is that correct?

5 A Yes.

6 Q Okay. And there's also another mechanism utilized where there's a
7 certain kind of dye that is used. Correct?

8 A Some practices still use that. Yes.

9 Q All right. And the dye basically -- if there was some kind of sore or
10 laceration or something that was not visible; either to the naked eye or a magnifying
11 or this high-resolution camera, the dye would cause a burning sensation if it came in
12 to contact with a place of injury. Is that correct?

13 A I believe you're referring to -- Toluidine Blue. Is that the --

14 Q Yes.

15 A That dye can cause irritation if there is a cut or something. Yes.

16 Q Okay. Do you know if Toluidine Blue is utilized as an investigative tool
17 in this case?

18 A We do not use that at Sunrise Children's Hospital. No.

19 Q All right. Now, with regard to your comments about findings in child
20 abuse cases, you also started to testify about how often you have child abuse
21 scenarios that are inside a family dynamic. Is that correct?

22 A Yes.

23 Q And you discussed how a party is --you know, may be groomed.

24 A Correct.

25 Q And that means that the perpetrator would try to develop and enhance

1 a special relationship with a child so they could build trust. Correct?

2 A Yes.

3 Q And it's something that could be done over -- over a number of year --
4 you know, years.

5 A It can be. Yes.

6 Q And in -- specifically in child sexual abuse cases, it's thoroughly
7 common to scenarios where the child abuse may have continued for a long period of
8 time. Correct?

9 A It can. Yes.

10 Q And specifically with regard to child abuse cases, it's very common that
11 allegations don't come to the surface often many years -- until many years after the
12 alleged abuse. Is that correct?

13 A True.

14 Q And so, with regard to your assertions about findings say in child sex
15 abuse cases -- I mean, it would be very much contingent upon the timing of the
16 allegations. Is that correct?

17 A It can be.

18 Q So, there's a huge segment of child sexual abuse cases where there's
19 no finding because the all -- the abuse is alleged and for many years after the
20 alleged occurrence. Is that correct?

21 A Correct.

22 Q With regard to vaginitis, you say it's non-specific because it can
23 describe a plethora of different things that could be causal factors. Is that correct?

24 A Yes.

25 Q And in fact, the most common is poor hygiene.

1 A Correct.

2 Q And another -- something else that might cause vaginitis might be for
3 example, swimming during the summer and running around in a wet bathing suit.

4 A Yes.

5 Q Correct?

6 A Yes.

7 Q Okay. These are very very common factors. Correct?

8 A Absolutely.

9 Q And in severe cases of vaginitis you would have vaginal discharge. Is
10 that correct?

11 A Depends on the cause. You can, yes.

12 Q And a very unpleasant odor.

13 A That's a possibility as well.

14 Q And that's replete in the literature. Is that correct?

15 A Yes. That's a possibility.

16 Q And with regard to whatever notations were made here, there was
17 absolutely no notation about vaginal discharge. Correct?

18 A Correct.

19 Q Or a malodorous scent.

20 A Correct.

21 MR. BECKER: Court's indulgence.

22 BY MR. BECKER:

23 Q And just to be clear with regard to the component of this examination
24 that included a rectal exam, the findings were rectal exam, normal; no evidence of
25 rectal trauma. Correct?

1 A Correct.

2 MR. BECKER: Thank you. Nothing further.

3 THE WITNESS: Thank you.

4 MS. FLECK: Very briefly, Your Honor.

5 **REDIRECT EXAMINATION**

6 BY MS. FLECK:

7 Q Mr. Becker talked to you about children that will be -- will suffer from
8 years of abuse and that will come in you know, disclose years later and so obviously
9 then you wouldn't expect to find something. But how about an acute examination;
10 those are the ones that are done at Sunrise. Is that right?

11 A Correct.

12 Q And what's the time frame that law enforcement or medical providers
13 deem the acute time frame; such that you would like the child to get to an
14 emergency room as opposed to the CAC.

15 THE COURT: Why don't we elimit -- limit her testimony to medical rather than
16 law enforcement.

17 MS. FLECK: Okay.

18 BY MS. FLECK:

19 Q And the only reason I ask law enforcement is just because you'll -- you
20 will get referrals from law enforcement. But that's okay. In your opinion then --

21 MS. FLECK: Thank you, Your Honor.

22 BY MS. FLECK:

23 Q In your opinion what is that acute time frame?

24 A About three days.

25 Q Right. And so within the acute examinations, what's your percentage of

1 still normal is normal?

2 A About five percent -- maybe also about five percent.

3 Q So, even when they're -- when kids are disclosing right away, you're still
4 in that very low percentage of any kind of findings.

5 A Yes.

6 Q Mr. Becker also talked to about possible you know, items that may have
7 evidentiary value -- that may be of evidentiary value; for instance, clothes. If a
8 woman is examined or a child is examined at the emergency room and clothes be of
9 evidentiary value, would you imagine it would be the clothes that they would have
10 been wearing at the time of the assault?

11 A At the time of the assault, yes.

12 Q When -- I mean, the questions were very general but would you agree
13 that collecting clothes at the time of an examination would be more relevant and may
14 be more relevant to a possible investigation if it's a woman whose been raped or a
15 woman who has been penetrated and there would be semen to possibly collect?

16 A Yes.

17 Q In your opinion and in your examinations a child that complains of some
18 kind of sexual abuse or molestation kind of for a lay term, is their clothing that they
19 have on is that something that you would deem to be that important?

20 A Depend -- again on the timing if they came in with the clothing that they
21 were still wearing at the contact, it gets collected.

22 Q In this case then if the child was -- the allegation came from like a
23 Saturday night and the examination being on a Wednesday, would that be -- would
24 you find that to be of any possible evidentiary value.

25 A More than likely, not. No.

1 Q Additionally, with regard to any kind of swabbing or possible DNA what
2 would your expectation be if the allegation was on a Saturday night, the child came
3 and presented to you on a Wednesday and in that time had bathed, had been
4 swimming, was not in those same clothes, and the allegation was of digital nature
5 not even penile, no semen; nothing like that.

6 A I wouldn't expect any return from evidence kits.

7 Q Is there a difference with you know, touch connect -- and again, I don't
8 want to go into something that's not really your area of expertise so if you're not
9 comfortable -- the Defense kind of went into this so if you're not comfortable tell, but
10 would you agree difference between say touch DNA and DNA from semen?

11 A There's a different collection procedure and touch DNA is not
12 something that's not collected for yet at this time for the child abuse examinations.
13 So, yes they would be completely different things.

14 Q So, would you say it's not even -- it's not even -- it's not -- I'm sorry, I'm
15 having a blank -- gathered. It's not touch DNA if the allegation is then digital, you
16 wouldn't even take those steps to try to find DNA because -- from the skin cells.
17 You're not looking for that or you're not thinking you're going to find it or --

18 MR. BECKER: Objection, it's leading.

19 MS. FLECK: Well then explain to me --

20 THE COURT: Overruled. Overruled.

21 BY MS. FLECK:

22 Q Just explain it to me because it -- again --

23 A Right.

24 Q I know you're not here as a DNA expert but I want to clear up --

25 A So --

1 Q -- any --

2 A -- touch DNA's --

3 Q -- possible causes --

4 A Yeah. Touch DNA's been something that's come out fairly recently.

5 And, you know, DNA swabbing for semen, saliva's something that we've had since
6 you know, late nineties or something -- late nineties, early two-thousands. And so
7 with touch DNA itself is --my understanding and again we don't collect the -- there
8 hasn't been enough literature to support its collection in child abuse cases at this
9 point. And at our program we don't collect it and my understanding from the DNA
10 lab when speaking to them it's a different procedure of how to collect it because it's
11 gathering just skin cells and that the density of the skin cells --

12 MR. BECKER: Well, I'm going to object to the extent that the witness is
13 relying on hearsay and doesn't appear to have expertise in this area and I make a
14 motion to strike her response in this regard.

15 THE COURT: Your motion to strike's denied but limit it to her medical
16 observations and her training and experience, please.

17 MS. FLECK: Thank you, Your Honor.

18 BY MS. FLECK:

19 Q Doctor, then based upon your training and experience and then your
20 knowledge of DNA and your updating yourself on the progressions in DNA, at this
21 time you and your colleagues at Sunrise do not swab for or attempt to collect touch
22 DNA which would be something that would come from say a finger.

23 A Correct.

24 MS. FLECK: Thank you. Nothing further.

25 **RECROSS-EXAMINATION**

1 BY MR. BECKER:

2 Q Well, regarding this issue there -- DNA is found on a lot of -- DNA can
3 be find -- found in a lot of areas. Is that correct?

4 A I'm not sure how you mean?

5 Q Okay. Saliva would contain DNA.

6 A Yes.

7 Q Correct.

8 A Yes.

9 Q Semen would contain DNA.

10 A Correct.

11 Q Blood would contain DNA.

12 A Correct.

13 Q The moisture commonly associated with the vaginal area contains
14 DNA. Is that correct?

15 A In post-pubertal children, yes. In children who haven't gone through
16 puberty yet, it's not a very moist environment but yes, I mean any fluids in the body
17 would contain DNA.

18 Q Well, with regard to it not being a moist environment -- in other words, it
19 does not self-lubricate like a post-adolescent vagina would. Correct?

20 A Correct.

21 Q So that when you have some kind of contact with it without self-
22 lubrication or moisture, often you would expect that there might be a higher
23 likelihood that there would some type of abrasion because it's no self-lubricating.
24 Correct?

25 A Not necessarily abrasion; a more sensitivity to contact though in terms

1 of feeling.

2 Q Skin also contains DNA. Correct?

3 A Correct.

4 Q So that if somebody touches a surface -- when you touch surface you
5 leave skin cells behind every time you touch something. Is that correct?

6 A Most of the times. Yes.

7 Q Okay. So that if for example if a finger was inserted into a vaginal area
8 there is a substantial likelihood that you might find what's called touch DNA. Is that
9 correct?

10 A It's possible.

11 Q And so with regard to the kind of testing that you do, we talked about
12 this before. You would typically do swabbing of the vaginal area. Is that correct?

13 A Correct.

14 Q And swabbing is you use cotton swabs to rub around the area to lift up
15 whatever evidence of DNA there might be. Correct?

16 A Correct.

17 Q And that could be blood; could be sperm. It could be DNA left behind
18 from touch DNA. Correct?

19 A The procedure to collect touch DNA is different so my understanding is
20 that that wouldn't be relevant with the types of swabs that we do.

21 Q Well, are you sure about that because you said you weren't that
22 familiar. In other words --

23 MS. FLECK: And I guess my objection is: Number one, asked and answered
24 and Number two, we've kind of gone so far out this -- outside of this scope based
25 upon the first questions about DNA. But, she's not an expert and she's already

1 testified that --

2 THE COURT: Yeah. She's --

3 MS. FLECK: -- at Sunrise they don't even swab for touch DNA because of
4 the technology.

5 THE COURT: I'm going to sustain --

6 MS. FLECK: So my objection is --

7 THE COURT: I'm going to sustain the objection. I -- you just need to stay to
8 her medical expertise. I let you go a little afar, both parties, on the DNA but I think
9 your -- I need to reel you in because it's going to be confusing to the Trier of fact.
10 So.

11 BY MR. BECKER:

12 Q Okay. Now you cited this statistic of expecting findings five percent of
13 the time in investigations relating to child sexual abuse and then we talked about
14 how a large percentage of these claims come substantially after the time of the
15 incident. Correct?

16 A Findings in medical evaluations. I don't know about in investigation
17 statistics but yes. Correct.

18 Q Okay. And yet, your -- you still stick to this percentage of five percent.

19 A About five percent.

20 Q Okay. And are you relying on your personal experience or are you
21 relying on any particular piece of literature to come up with that figure?

22 A Both.

23 Q And what literature are you relying on?

24 A So American Academy of Pediatrics comes out with a -- they have a
25 journal called *Pediatrics*. Then additionally, the *American Journal of Adolescence*, I

1 believe its *Obstetrics and Gynecology* or maybe *Adolescent Gynecology*. And then
2 there is *Journal of American Medical Association*. Several of them have published
3 articles in reference to findings and so some of the authors that we -- I'd mentioned
4 before like Joyce Adams, Dr. Joyce Adams from San Diego, Nancy Kellogg, Cindy
5 Christian's group. There's several groups that, you know, have addressed some of
6 these like -- how many findings are you know -- kind of the national average and
7 what is being seen you know, objectively.

8 Q Okay. And can you cite one specific study as opposed to general that
9 supports this position of yours about five percent?

10 A I don't recall the specific study. I apologize.

11 Q Now, you've dedicated your life to being a practitioner in the field of
12 child abuse and child sexual abuse. Is that correct?

13 A My career. Yes.

14 Q Okay. And in your field it's very much emphasized to treat an allegation
15 coming from a child as truthful. Correct?

16 A Yeah. I mean, I guess it's truthful as --

17 Q So --

18 A -- face value.

19 Q -- in essence what it comes down to is you -- the county spends a lot of
20 money to have all of this work done at the hospital. Is that correct?

21 A I am not sure what the -- I work for a private company so I'm not sure
22 what the county spends on our exams or anything like that.

23 Q And the private contract -- company is contracted by the county to do
24 these exams. Is that correct?

25 MS. FLECK: Judge, I don't mean to -- but I object. I mean, this is so far

1 outside the scope of relevance and --

2 MR. BECKER: Well, I think the --

3 THE COURT: Well, it goes --

4 MR. BECKER: -- the --

5 MS. FLECK: -- and direct examination.

6 MR. BECKER: I think that we -- that it's proper to ask an expert who's
7 paying --

8 THE COURT: All right. It goes to the bias so I'll let him ask.

9 MS. FLECK: Okay.

10 BY MR. BECKER:

11 A Can you repeat your question, please?

12 Q Your contract is paid for by the county. Correct?

13 A My contract is paid for by a company called Mednax. The subgroup of
14 Mednax is Pediatrix with a -- ending with an x. And I am paid salary so I'm not sure.
15 They may have a -- what their contract is either with county or law enforcement, I'm
16 not sure how that works.

17 Q And this -- and so you don't know how much you're paid or you know,
18 to come here and testify today?

19 A I'm not paid anything to come here and testify today.

20 Q Are you aware of whether a bill is submitted by your company to the
21 District Attorney's office for testimony today?

22 A It is not -- it is up to the practitioners and I don't charge for testimony.

23 Q In fact, this child -- children's assessment center case review team is a
24 team involving law enforcement operatives. Is that correct?

25 A Multidisciplinary teams involve medic -- medicine, law enforcement,

1 child protective services, it can be attorneys, psychiatry, psychology; really just
2 anybody who might deal with that child or a case or a patient.

3 Q Well, your CV doesn't just say attorneys; it says district attorneys.
4 Correct?

5 A Yes.

6 Q And so your basic position is, to be clear, that if there are no -- if you
7 see findings consistent with sexual abuse then that's consistent with sexual abuse.
8 Correct?

9 A Yes.

10 Q But if you don't see consistent with sexual abuse that's also consistent
11 with sexual abuse.

12 MS. FLECK: Judge, I'm going to object. She does not have -- she's never
13 here to make a legal conclusion. To infer that Dr. Cetl is working somehow for the
14 State -- especially when there's no findings.

15 MR. BECKER: Well, I'd object to a speaking objection.

16 THE COURT: I'll sustain the objection and you'll treat her with respect; I know
17 she's earned it.

18 MR. BECKER: Well --

19 THE COURT: I know I've earned it.

20 BY MR. BECKER:

21 Q In other words, normal is normal. Right?

22 A That is correct. It's normal to be normal.

23 Q Okay. So in essence it doesn't matter what these findings say in your
24 opinion.

25 A No. If a child's normal then it means sexual -- it's still possible -- sexual

1 abuse is still possible but the findings cannot speak to that one or another.

2 Q It means that there's no scientific evidence to support the allegations.
3 Is that correct?

4 A Not exactly. I would say that there's scientific evidence to support
5 the -- you know. Unfortunately a lack of medical findings is one component of it; that
6 it's still possible to have sexual abuse.

7 Q Okay. Thank you.

8 MS. FLECK: Nothing from the State. Thank you.

9 THE COURT: Jury have any questions of this doctor. Okay. Write it -- your
10 seat number and name, please.

11 Out in the hall, please.

12 [Pause in Proceedings]

13 THE COURT: I just remind the jury if your question is asked or not asked
14 don't draw any conclusions. It may be what you're asking is inadmissible or another
15 can testify to that question.

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

17 BY THE COURT:

18 Q Approximately what percent of child sexual abuse cases have evidence
19 of quote grooming end quote?

20 A Of grooming? I think that's what it's referring to. The evidence for
21 grooming I can't really speak to. It's something more of an investigative part.
22 Grooming has more to do with the kind of long-term investment that an alleged
23 perpetrator may put in to get to know the child or the family. But it is a quite large
24 percentage of it is my understanding just from speaking to children or from literature.
25 But an exact number; I don't know.

1 THE COURT: State have any questions of the witness.

2 MS. FLECK: Just briefly.

3 FOLLOW-UP EXAMINATION

4 BY MS. FLECK:

5 Q With regard to grooming, fair to say it's -- would you agree that it's a
6 way of -- if somebody doesn't know a child that well; getting closer to them, getting
7 more comfortable, trusting -- getting the child to trust them.

8 MR. BECKER: Objection, leading.

9 THE COURT: You know a jury instruction can be prepared for that. And I will
10 sustain the objection.

11 BY MS. FLECK:

12 Q Then let me just ask you this. When you referred to grooming earlier,
13 was that just an example of when a perpetrator may be -- may not be rough or may
14 not be rough. I mean, you're not -- you weren't in no way implying that grooming is
15 done in every case or that that is something that you see in every one of your
16 patients that you examine?

17 A Correct.

18 Q Okay. Was it merely an example of your way of illustrating?

19 A Correct. Yes.

20 Q And then of course there would be no medical evidence of whether
21 grooming occurred in a case or not.

22 A Correct.

23 MS. FLECK: Thank you. Nothing further.

24 THE COURT: Defense have a question of this doctor based upon that?

25 FOLLOW-UP EXAMINATION

1 BY MR. BECKER:

2 Q Well, you testified about revealing the narrative with background
3 information as part of your evaluation. Correct?

4 A The medical staff's narrative.

5 Q Right. And so to the extent that that would be a part of the narrative
6 coming in, you might see this type of information. Correct?

7 A It can be.

8 Q Okay. Thank you.

9 MR. BECKER: Nothing further.

10 THE COURT: All right. Thank you doctor, you're free to go.

11 THE WITNESS: Thank you.

12 THE COURT: We'll take a five-minute recess. During the recess you're not
13 to talk or converse among yourselves or with anyone else on any subject connected
14 with this trial. Or read or watch or listen to any report of or commentary on the trial.
15 Or any person connected with this trial by any medium of information with --
16 including without limitation newspapers, television, radio, or the internet. Or form or
17 express an opinion on any subject connected with the trial until the case is finally
18 submitted to you.

19 Take five minutes, please.

20 [Outside the presence of the jury]

21 THE COURT: Take -- make sure that you guys use the rest now with the
22 detective. And then that's --

23 MS. FLECK: That's it.

24 THE COURT: That's the last one.

25 MS. FLECK: That's correct. Thank you.

1 THE COURT: Let's make sure your electronics -- if you need.

2 MS. FLECK: That's what we're just going to try to do. Thank you very much.

3 THE COURT: Okay.

4 [Recess taken at 3:00 p.m.]

5 [Trial resumed at 3:12 p.m.]

6 THE COURT: All right. Stipulate to the presence of the jury.

7 MS. FLECK: The State does thank you.

8 MR. BECKER: Yes, Your Honor.

9 THE COURT: Call your next witness.

10 MS. FLECK: Thank you, Your Honor. State calls Detective Hatchett

11 **DETECTIVE TIMOTHY HATCHETT**

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

13 THE CLERK: Please be seated.

14 THE WITNESS: Thank you.

15 THE CLERK: Would you please state and spell your first and last name for
16 the record?

17 THE WITNESS: Timothy Hatchett; T-I-M-O-T-H-Y, H-A-T-C-H-E-T-T

18 THE CLERK: Thank you.

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

20 THE COURT: Yes.

21 MS. FLECK: Thank you.

22 THE COURT: Turn it on.

23 **DIRECT EXAMINATION**

24 BY MS. FLECK:

25 Q Good afternoon, detective. How are employed?

1 A Currently I'm employed as a sergeant with the Las Vegas Metropolitan
2 Police Department.

3 Q How long have you been with Metro?

4 A Approximately nine years.

5 Q And what unit are you currently in as a sergeant?

6 A Currently I'm in patrol. Previous to this I was assigned as an officer to
7 sexual detail for juveniles.

8 Q So as a sergeant you oversee a patrol unit?

9 A Correct.

10 Q And where did you say that you were before you were a sergeant?

11 A I was assigned to the juvenile sexual abuse detail.

12 Q As a detective?

13 A Correct.

14 Q How long were you a detective on juvenile sex assault?

15 A Short of two years; about a year and a half; a little bit over.

16 Q And where were you before that?

17 A Prior to that I was in patrol.

18 Q During your time as a detective it -- you know, you said all of that was
19 focused on juveniles?

20 A Correct.

21 Q So what were some of your duties as a juvie detective?

22 A Basically to investigate all juvenile-related cases on day shift;
23 specifically ones that were nine and under.

24 Q What kind of training and experience do you have that allowed you to
25 be a detective specifically within sexual assault and then specifically within sexual

1 assault on children?

2 A While I was up at sexual assault I obtained training, specifically forensic
3 training to conduct interviews with juveniles. I also previously obtained a training for
4 basic and advanced investigations, interviewing sexual deviants and basically at the
5 time I was transferred to the unit due to the fact that it was a new transfer for me, all
6 new transfers basically do go through a program where they sit with and ride with a
7 senior detective at the time and they overview some of your work product and
8 determine whether you're able to proceed on a regular basis by yourself.

9 Q Additionally, the background -- education background that you have --
10 that you made -- that you obtained before you came into Metro, did that also focus
11 somewhat on children, juveniles, and their development?

12 A It did. I had obtained an undergraduate along with a graduate degree.
13 Some of that course study included counseling, mock interviews, human
14 development, along with specifics in psychology and that matter. And I also worked
15 for a period of time at a place in Indiana called the Youth Opportunity Center. Our
16 primary function was to provide 24-hour coverage of the juveniles, a secure
17 environment.

18 A lot of them had psychiatric chemical dependency issues, sexual
19 deviant issues, and suicidal issues. We basically made sure that we provided 24-
20 hour coverage, they were assigned counselors, but we dealt with them on a regular
21 basis and also provided counseling support.

22 After continuing my education and fulfilling it I also obtained a job with
23 the State of Indiana at the South Bend Juvenile Correction Facility. I was hired to
24 implement a day program to best basically help prepare juveniles who had just
25 released from parole to enter in back into society and to help prevent them re -- to

1 recidivate and go back into the system.

2 Some of those duties involved counseling the juveniles along with the
3 parents and building basic skills to get them prepared for the general society again.

4 Q Okay. What is a forensic interview?

5 A Basically a forensic interview is a structure interview that's done with
6 the child to develop their cognitive abilities and to also demonstrate whether or not
7 they understand specifics in regards to truths and lies. You also try to make an
8 attempt to determine if they're going to correct you if you make a mistake.

9 AI -- you also try to identify if the child understands certain colors and if
10 they can count and the type of vocabulary that is used during the interview. All
11 this is done prior to going in to attempting to obtain a disclosure; to try to determine
12 the specifics on a juvenile.

13 Q Okay. I want to direct your attention back to July of 2010; specifically
14 July 14th of 2010. Were you working as a detective within juvenile sex assault at
15 that time?

16 A I was.

17 Q And as a detective within Metro will you often get a case referred to you
18 either through a 3-1-1 call, a 9-1-1, so kind of through dispatch, or a patrol officer's
19 report?

20 A Routinely.

21 Q On that day then, July 14th of 2010, did you get a case to further
22 investigate reference a victim by the name of Jocelyn Coleman?

23 A I did.

24 Q How was it that that case came to you?

25 A On that day I was assigned duty to receive any calls in reference to any

1 alleged sexual abuse in reference to juveniles. I had received a phone call from
2 Jocelyn's mother at that time; Nicole. She indicated that there -- she believed that
3 possibly the child was a victim of alleged sexual abuse and the perpetrator was
4 possibly related to Dustin, which was her uncle. She further described that the child
5 had disclosed to her that she had been touched and somebody had also dug in to
6 her private area.

7 Q Okay. And who was that somebody?

8 A Dustin.

9 Q Okay. What did you do then pursuant to the phone call that you had
10 from Nicole?

11 A I spoke with her briefly; we tried to establish a timeline and when it
12 actually occurred. She indicated that she believed it occurred between the 10th and
13 the 12th. My proto --

14 Q And why was that?

15 A During that time she indicated that the child had spent the night over at
16 the residence at that time and that's why she was pretty sure it happened on those
17 two -- either one of those two days.

18 Q When you say the residence, who's residence?

19 A Dustin and Megan Barral.

20 Q Okay. So, you tried to determine a timeline on that first phone call with
21 Nicole.

22 A Yes.

23 Q Then what did you do?

24 A She indicated that she believed it happened on I believe that Saturday
25 and due to the fact that it was possibly within -- again she indicated Saturday or

1 Sunday. If it was possibly on Sunday it could also be within that 72-hour period.
2 Basically our protocol is if the child discloses any sexual abuse within 72 hours it's
3 beneficial to have the child taken down to Sunrise and have a SCAN exam
4 administered to her.

5 Q The ladies and gentlemen of the jury just heard from Dr. Cetl of
6 Sunrise. So is that the emergency room -- the acute exam that you then would refer
7 to -- a possible victim to if the disclosure may have been in the 72 hours?

8 A Correct.

9 Q Now, with the information that you got from Nicole you said that it was
10 unsu -- she was sure at that time that it happened on the weekend.

11 A Correct.

12 Q So you did not know then if it was Saturday or Sunday. IS that right?

13 A Correct.

14 Q So you just told Nicole what to go down to Sunrise and get an exam.

15 A In addition to that also, you know, it's imperative that I try to interview
16 the child as soon as possible due to the fact that there was a closed time span. We
17 did have doctors at the facility but you do have to schedule appointments with the
18 doctor and it was very close to the end of the week so in my mind-set our protocol
19 was anytime it falls generally within the 72 hours we're going to send them down to
20 Sunrise Hospital for that SCAN exam.

21 Q All right. So you referred her there and then what did you do?

22 A At that point, I made an appointment with her to follow-up for her --
23 follow-up the following day and meet me with -- at the Child Advocacy Center and
24 schedule an interview with the [indiscernible]

25 Q Where did you meet her?

1 A She met me at the facility.

2 Q Okay. So sorry. So the next she came down and --

3 A Yes.

4 Q -- met you at the -- at where?

5 A At the child -- Children's Advocacy Center. It's located at -- I believe it's
6 71 Pecos, North Pecos.

7 Q Okay. And again, the ladies and gentlemen of the jury heard from Dr.
8 Cetl where she performs exams there. Is that the same Child Assessment Center or
9 Child Advocacy Center?

10 A Excuse me. Can you repeat?

11 Q Is it the same place that Dr. Cetl would at times perform examinations?

12 A As far as that particular doctor, I'm not sure. There is a doctor on staff
13 that does perform examinations there but the examination was performed I believe
14 at Sunrise.

15 Q Okay. And sorry, I was probably confusing on that. Same assessment
16 center or Children's Advocacy Center where a child can get an examination, they
17 can also get interviewed, they can get counseling; it's kind of a one-stop shop for a
18 kid to come --

19 A Yes.

20 Q -- and do all --

21 A The detectives are also at the location.

22 Q Okay.

23 A Along with CPS.

24 Q Okay. And is that the -- is that where you met with Nicole and with
25 Jocelyn?

1 A It was.

2 Q When was that?

3 A It was the following day being the 15th.

4 Q So you met them down at the CAC, what's the environment like for a
5 child when they come there for an interview?

6 A It's child-friendly environment. Basically they come down there and it's
7 try to make them as comfortable as possible. There's an interview room which
8 basically you take them to and it's set-up you know to be as child-friendly as
9 possible. Everyone on staff for the most part are in plain clothes; the uniformed
10 officers generally are not present during that time. Even the detectives at most
11 times conceal their weapons for the most part. But it's an environment to try to
12 introduce the children to like a friendly environment.

13 Q Who came with Nicole and Jocelyn that day on the -- on July 15th?

14 A I believe it was just -- I went back and I reviewed the information that I
15 had and on that particular day it was just Nicole and it was Jocelyn.

16 Q What was Nicole's demeanor when she came and met with you at the
17 CAC?

18 A Nicole's demeanor was calm, collected. I spoke with her after the
19 information and basically there was no -- anything out of the norm other than
20 concern for her child.

21 Q Did she then relay to you again what she had on the phone which was
22 just a -- the basic summary of what she had learned from her daughter?

23 A After I interviewed the child -- I interviewed the child first and then I
24 concluded that interview and met with Nicole.

25 Q What information did you have going in to your interview with Jocelyn

1 about what had happened or what the allegation was?

2 A Basically that she had spent the night at the residence over that past
3 weekend and that she had returned home to her house and that she had disclosed
4 that her Uncle Dustin had looked at, touched, and dugged into her private area.

5 Q So that's the information you're armed with when you sit down with your
6 interview with Jocelyn?

7 A Correct.

8 Q Now, you said that you employed techniques that you -- your --
9 you -- that you learned through forensic interview classes. What was the first thing
10 that you did in order to kind of ingratiate yourself or build some rapport with Jocelyn?

11 A Basically you sit down and try to find out the family dynamics. Get to
12 know the child and talk to them a little bit. Explain who you are and explain to them
13 that you're willing to talk to them about the truth. You sit down and you basically
14 have them illustrate to you who lives at their household, who their family members
15 are, and you go from there.

16 Q Do you also try to gage their mental capacity or their ability to perceive;
17 their ability to relay information?

18 A You do.

19 Q And what kinds of things did you do with Jocelyn that day in order to
20 make yourself comfortable going forward in the interview?

21 A A part of the interview it's rapport of building and you're trying to get an
22 introduction of their vocabulary skills. Part of that assessment is also a cognitive
23 assessment. You provide the child with markers that -- and introduce to them the
24 different markers. At that time I also had her explain to me what the coloring of
25 those particular markers were when I held them up. She was able to identify the

1 majority of them. She had a little trouble with pink and purple. She also was able to
2 count up to eight.

3 During our interview I asked her what the difference is between the
4 truth and a lie and which one was better to tell. She indicated that it was better to
5 tell the truth and she brought forth something in relation to God and Jesus and that
6 he didn't want you to be mean to people. I told her that I only wanted her to speak
7 about the truth and she agreed.

8 In addition to that, we also discussed if at any time she doesn't know
9 something I want her to tell me that she doesn't know and in -- the way I introduced
10 this is I asked her what five plus five was. She immediately responded I don't know
11 and that should be the reaction of the child. You advise a child that's exactly what
12 you want her to do anytime she's not sure of something or she does not know, I just
13 want her to tell me, Tim, you -- I don't what's -- what the answer is that or I have no
14 idea.

15 And -- in addition to that we also go through and discuss a body sheet.
16 We discuss certain elements of the body sheet. We pull out an anatomically correct
17 sheet that looks like a juvenile and we introduce, do you take a bath or do a take a
18 shower. Generally that's so the child's not too shocked when they see the drawing.
19 We go through; we label all the different area on the body and try to determine
20 specifically with their language what they call those particular areas on the body.

21 Q Now then are you taught -- you said with their language, then are you
22 taught to use their language; the terms that they use to describe parts of their body
23 throughout your interview?

24 A Correct. And I guess a more appropriate term would be their
25 vocabulary.

1 Q Okay. Additionally, do you do your best not to use leading questions?

2 A Correct.

3 Q Not to insert ideas in to their mind or in to the interview until they've
4 given it to you.

5 A Correct.

6 Q Did you do that to the best of your ability with Jocelyn?

7 A I did.

8 Q Through the in -- through the beginning of the interview did you ask her
9 if she had been inappropriately touched on one of her body parts?

10 A I asked specifically about touching. She indicated that she wanted the
11 information about a juvenile who was four years old who had kissed her on the arm
12 and her private part and also illustrated that it was okay for her parents to touch her
13 in those private areas.

14 Q Okay so with the -- with regard to the boy at school she said that he had
15 kissed her on her -- was it on her shoulder I believe and then she talked about then
16 her parents when you asked if someone had touched her on her private parts, she
17 said her parents had; just her mom and her dad. And --

18 THE COURT: Hold on --

19 MR. BECKER: I believe that's misstating what his testimony was.

20 THE WITNESS: Okay.

21 THE COURT: All right. Rephrase the question.

22 MS. FLECK: Then Judge, can we approach?

23 THE COURT: Yes

24 [Bench Conference Begins]

25 MS. FLECK: It never says in there kiss on the private and you know that he's

1 -- that's cut out of the thing so I mean, we are rehabilitating him and we're going
2 straight to the fact that it's the parents that touched -- just the parents that touched
3 the privates.

4 MR. BECKER: Actually but that's not what he said and these things happen
5 in a trial where things come out.

6 MS. FLECK: It's not in there.

7 MR. BECKER: That's what he said that she said that a four-year old student
8 had kissed her and touched her private --

9 MS. FLECK: But they're going to see the video.

10 MR. BECKER: -- that's what he said.

11 MS. FLECK: So they can see if it says that.

12 MR. BECKER: But that's redacted. You can't now make it --

13 MS. FLECK: No. He said kissed and then touched -- that the parents --

14 MR. BECKER: Well, we can look at the testimony but we can't have the D.A.
15 now mislead the jury about what he said. Because what he said --

16 MS. FLECK: Well, we'll --though -- they can watch it.

17 MR. BECKER: But we're playing a game here because that part is redacted
18 from the video but they can't try to undo what happened by creating a false set of
19 facts; that would be absolutely false to suggest that he didn't say what he said. And
20 if we have to go back --

21 MS. FLECK: Okay. We're going to have --

22 MR. BECKER: -- and look at the testimony --

23 MS. FLECK: -- to do something outside the presence right now or --

24 MR. BECKER: Okay.

25 MS. FLECK: -- we're just going to have to go forward and do it on a break

1 because what he's doing is so -- I mean, it's -- out of the shady things he's done in
2 trial, it's the shadiest.

3 MR. BECKER: I didn't do --

4 MS. FLECK: He knows exactly what happened --

5 MR. BECKER: I didn't do --

6 MS. FLECK: -- and knows exactly what he's doing.

7 MR. BECKER: I didn't do anything. And I -- and to be frank the suggestion --
8 I mean, if we want to go outside the presence -- I didn't do this; they did it.

9 THE COURT: Why don't you took --

10 MR. BECKER: They didn't advise their witness not to --

11 THE COURT: All right.

12 MR. BECKER: -- testify about this.

13 [Bench Conference Concludes]

14 THE COURT: Ladies and gentlemen, I'm going to have to ask you to step out
15 for just a minute. During the recess you're not to talk or converse amongst
16 yourselves or with anybody else on any subject connected with the trial. Or read or
17 watch or listen to any report of or commentary on the trial. Or one connected with
18 this trial by any medium of information including without limitation newspapers,
19 television, radio, or the internet. Or form or express an opinion on any subject
20 connected with the trial until the case is finally submitted to you.

21 Just take five minutes, please.

22 [Outside the presence of the jury]

23 THE COURT: All right. Jury's gone.

24 MR. BECKER: I think that -- well, perhaps this should be done outside the
25 presence of the witness.

1 A Right.

2 Q So you had -- you had to actually go away or go into a separate area
3 just to be able to talk to Dustin.

4 A Correct.

5 Q And is it fair to say that Dustin, he was upset about these allegations?

6 A Right.

7 Q In fact, he was upset that he was accused --

8 MS. FLECK: Objection as to anything that the Defendant -- I mean --

9 MR. CASTILLO: I would submit, Your Honor --

10 MS. FLECK: How -- it's all --

11 THE COURT: Sustained.

12 MS. FLECK: It's all speculation and --

13 MR. CASTILLO: Well --

14 MS. FLECK: She's not the proper witness to elicit this from.

15 THE COURT: Sustained.

16 MR. CASTILLO: Your Honor, just for the record I would submit it goes to
17 state of mind.

18 THE COURT: Sustained.

19 MR. CASTILLO: NRS 51.

20 BY MR. CASTILLO:

21 Q But suffice it to say Dustin was upset about hearing this.

22 THE COURT: The objection was sustained.

23 MR. CASTILLO: I'll move on, Your Honor.

24 BY MR. CASTILLO:

25 Q And after these events in question, you didn't talk to your parents for

1 some time. Right?

2 A Correct.

3 Q And you didn't talk to your sister for some time. Right?

4 A Right.

5 Q And going back briefly to your conversation with Jocelyn. Isn't it correct
6 that the story sounded somewhat rehearsed by the time it got to you?

7 A Well, she had already spoken to a couple other people by the time she
8 had spoken to me.

9 Q All right. Do you recall stating words to the effect it sounded
10 rehearsed?

11 A I do remember stating that. Yes.

12 Q Okay. And further, it felt like she had already said this a couple times.

13 A Right. Because she spoke with my sister and I bel -- I'm --

14 Q Did any detectives or police officers from Metro -- did they ever come to
15 your home to investigate this case?

16 A Child purs -- child protective services came out.

17 Q But did anyone from Metro, any detectives like Detective Hatchett, or
18 anyone else; did they come over to the home, take pictures, anything along those
19 lines?

20 A Not that I recall. No.

21 MR. CASTILLO: Court's indulgence, please.

22 At this time, Your Honor, Defense passes the witness.

23 THE COURT: Thanks.

24 **REDIRECT EXAMINATION**

25 BY MS. FLECK:

1 Q Okay Megan, Mr. Castillo asked you if you had said at some point to
2 the detective that it was already rehearsed by the time you talked to Jocelyn. Do
3 you remember having that conversation with the detective?

4 A I do, yes.

5 Q What did you mean by that?

6 A She was four years old and our conversation wasn't long so it felt like
7 what she told me she had said it a couple times. And rehearsed probably wasn't the
8 proper word to use but this was a statement ten days after the incident, you know.

9 Q In fact, when you're talking to the detective did you in fact say -- you
10 were asked -- you were upset because you weren't the first one. And then you say,
11 no, I'm not upset that I wasn't first person told --

12 MR. CASTILLO: Objection, leading.

13 MS. FLECK: It isn't leading. I'm putting into context what the Defense
14 elicited.

15 MR. CASTILLO: In NRS 50.115 states that on redirect it can't be leading the
16 way she does it.

17 THE COURT: All right. I'll overrule the objection; allow it.

18 BY MS. FLECK:

19 Q So then you said no, I'm not upset that I wasn't the first told but I felt like
20 it --

21 Detective says: Yes, I understand what you're saying.

22 You say: It was already rehearsed by the time it got to me.

23 Detective: Mm-hmm.

24 And then you say: I'm not saying --

25 THE COURT: Why?

1 MS. FLECK: -- that it was rehearsed --

2 THE COURT: Are you refer --

3 MR. CASTILLO: Objection.

4 MS. FLECK: -- in the first place.

5 MR. CASTILLO: No question pending.

6 THE COURT: Don't cut me off again, Counsel.

7 MR. CASTILLO: Sorry, Your Honor.

8 MS. FLECK: And I'm happy to put --

9 THE COURT: Okay.

10 MS. FLECK: -- the entire statement --

11 THE COURT: Ask --

12 MS. FLECK: -- into evidence.

13 THE COURT: Well --

14 MS. FLECK: But --

15 THE COURT: Ask her a question and then refresh her recollection rather
16 than you read from a transcript.

17 MS. FLECK: And I'm -- I don't want to refresh her recollection because she
18 remembers saying this. What I'm asking to do is to put it into context. The Defense
19 has elicited something from the statement without putting in to context and they're
20 not reading the second part which is where she then goes on to say: I'm not saying
21 it was rehearsed in the first place. And says --

22 THE COURT: Well, ask her if she remembers saying that.

23 MS. FLECK: Okay.

24 BY MS. FLECK:

25 Q At that time, you talked about the fact that it was rehearsed.

1 A Correct.

2 Q Today you say rehearsed isn't probably the best word. Do you
3 remember saying that at that time also?

4 A Yes, ma'am.

5 Q Okay. What did you s -- tell the detectives? And I can refresh your
6 memory if you'd like.

7 A Please.

8 MS. FLECK: Page 30.

9 BY MS. FLECK:

10 Q Does that help to refresh your memory?

11 A Yes.

12 Q Okay. So what did you say?

13 A I stated that I felt that it had been rehearsed but it -- in other words, I
14 didn't mean rehearsed that it had been said a couple of times and so it felt that way.
15 But like I said rehearsed really isn't the proper word for that.

16 Q Okay. And in your statement to the police you in fact said -- you
17 clarified: I didn't mean rehearsed --

18 A Right.

19 Q -- in the traditional sense. There was just something maybe that had
20 been lost in the effect because Jocelyn had already told her mom and your mom.

21 A Correct.

22 Q Okay. When you gave the statement to the police -- I mean, you've
23 described that you were angry, you've described then that you went through
24 moments of disbelief. At that time what did you say about your feelings in terms of
25 your niece saying this, or Jocelyn saying this, a four year old child saying this; what

1 were your feelings about that?

2 A My feelings in that where does a four-year old get something like that?

3 Q And in fact, you've always said that. Is that right?

4 A I've always said that.

5 Q Can you put into words the magnitude of this event on your life?

6 MR. CASTILLO: Object, relevance.

7 THE COURT: Overruled.

8 BY MS. FLECK:

9 A In a few words my entire life has been flipped upside down.

10 Q Throughout trying to process it, have there been times that, you know,
11 obviously you've wanted it to go away but you've wanted to believe that this did not
12 happen?

13 MR. CASTILLO: Objection, leading.

14 MS. FLECK: It's just -- I'm asking for a little bit of leeway in this particular
15 area.

16 THE COURT: Overruled.

17 BY MS. FLECK:

18 Q Have you expressed that? I just -- I don't -- that you don't want to
19 believe that this has happened.

20 A I don't want to believe that it happened. No.

21 Q But have you ever one time said that you don't believe Jocelyn?

22 A I've never said that.

23 Q Defense counsel had talked to you about a portion in your transcript
24 where you then went on to say: Well, that's not what the whole thing says and this
25 is about your husband being accepted into the family. Do you remember those

1 questions?

2 A Yes, ma'am.

3 MS. FLECK: Page 32.

4 BY MS. FLECK:

5 Q Mr. Castillo said that you told the police well, he's never been truly
6 accepted. You said that there's a second portion. What's the second portion of the
7 statement you told the authorities?

8 A That he didn't allow himself to be.

9 Q Okay. So you told the police he's never been accepted but he's never
10 even allowed himself to be accepted into your family.

11 A Correct.

12 Q And is that how you felt that even if they made efforts he wasn't -- he
13 didn't really reciprocate?

14 A It was both ways like, you know, if the -- I'm sorry can you repeat that?

15 Q Well, I mean the implication from the Defense was that your family just
16 kind of threw their hands up to the sky and never accepted him. Was it your feeling
17 through the second part of that same sentence that he also did not allow himself to
18 be accepted or tried to ingratiate himself?

19 A Correct.

20 MR. CASTILLO: Objection, asked and answered.

21 THE COURT: Overruled.

22 BY MS. FLECK:

23 Q Now, Defense counsel also referred back to a family court transcript
24 where you had said that you didn't tell -- you specifically did not tell Dustin where
25 Jocelyn was sleeping. Is that right?

1 A Right.

2 Q You don't know if he knew himself. Is that right?

3 A Correct.

4 Q And in fact, at that statement after -- ten days after to the police at that
5 time, which we talked about on direct, you remembered that when he came home
6 you were in the process of putting the kids to bed?

7 A Correct.

8 Q And certainly he knew that Nicole was in the hospital.

9 A Right.

10 Q And certainly he knew that Katelyn and Levi were in your room.

11 A Right.

12 Q And certainly he knew Jocelyn wasn't in your room.

13 A Correct.

14 Q Now, with regard to the monitor, there was -- the baby monitor was in
15 Joshua's room.

16 A Right.

17 Q Is that right?

18 A Correct.

19 Q Can you manipulate the baby monitor from either your room or
20 Joshua's room? Meaning it could be unplugged from either room, it could be turned
21 off from either room, that kind of thing?

22 A Correct. It can be turned down. It can be -- I mean --

23 Q So it could be turned off, it could be turned down, it could be unplugged.

24 A Right. I mean, if you were to unplug the one in Joshua's room it would
25 send off a signal to the other one. Like it would make a really --

1 Q Loud noise.

2 A -- loud noise. But if you were to do the opposite it wouldn't, you know.

3 Q What about turning it down from Joshua's room?

4 A The you just wouldn't hear anything from the monitor.

5 Q In your room.

6 A Correct.

7 Q Now, I just want to --

8 MS. FLECK: On page 19 of her voluntary statement.

9 BY MS. FLECK:

10 Q Regarding -- and then again this is from the voluntary statement that
11 you specifically told the detective that you were asleep; that he had to wake you. He
12 woke me up and told me what happened. Do you remember telling the detectives
13 that?

14 A I do remember telling them that.

15 Q And then later in that same interview on page 26 -- after you called him
16 and confronted him at your parent's house and he said: I told you what happened.
17 And you specifically said to him: Yes, I remember. You woke me up. Is that right?

18 A Correct.

19 Q So whether you were in and out of asleep, your state of mind at that
20 time was he had to wake you up to tell you.

21 A Correct.

22 Q Now Mr. Castillo talked to you a little bit about your turn or his turn to go
23 in and take care of the kids and that was at the family court proceeding. You talked
24 about it that that night was his turn. Would you agree that at that hearing what
25 you're talking about, what you're saying is is that that night was his turn as in other

1 nights might be your turn.

2 A It wasn't -- I wouldn't say it was a nightly thing. It was the fact that I had
3 cared for four children for two weekends in a row and I was exhausted and it was his
4 turn like I was tired.

5 Q Right. Like get up and get the baby.

6 A Right.

7 Q Okay. And just to clarify -- just -- I think -- not that it matters really
8 whose turn it was but is it your recollection that throughout that night, you weren't
9 taking turns like one time you would get up, and then he would get up, and then you
10 would get up. But that night in its entirety was his turn such that every night
11 someone got up to get Joshua or to check on the baby; it was him.

12 A Right. Because I don't recall getting up that night.

13 Q Okay. Mr. Castillo talked to you about your relationship with Nicole
14 and that you know, at some points you described it as rocky. Is that true?

15 A Correct.

16 Q Rocky like siblings can be rocky or rocky as in you didn't like her?

17 A We're sisters and we're 10 months apart. Like, it -- we -- we're two
18 totally different people. And that's what I mean by rocky is like we just -- we were
19 two different people but when it came to like our children and things like that like
20 that's -- that was like how -- that was our strength in each other like we had rocky
21 times but you know, what sisters don't.

22 Q Okay. And I mean, you've now lost her because of this.

23 A Yeah.

24 Q Just -- and I'm almost done, with regard to the actual disclosure when
25 you come back to the house and then you talk to the detective saying that, you

1 know, you thought it was weird that you were cut off and you wanted to talk to her
2 more. At that time, did you realize that no one had asked any follow-up questions of
3 Jocelyn? Like when you're describing the feeling that you had that night, feeling cut
4 off.

5 A Right.

6 Q At that time, did you know what the conversation had been between
7 Jocelyn and Nicole?

8 A Not in its entirety. No.

9 Q Did you know what the conversation had been between your mom and
10 Jocelyn?

11 A No.

12 Q So you didn't know whether or not either of them had asked any follow-
13 up questions of this child?

14 A Not that I know -- that -- no. I wasn't told really only but what she had
15 originally said, that she had been hurt.

16 Q Okay. And again, when you gave the statement to the police and you
17 said that you know, that was frustrating for you. Now, three years later I think your
18 response in cross-examination was I think she had been through enough that night.

19 A Correct.

20 Q Has time and perspective given you sort of a different idea of how that
21 evening transpired?

22 A Yes, ma'am.

23 Q And that's with having no relationship with your mom, no relationship
24 with your dad, and no relationship with your sister or Jocelyn.

25 A Right.

1 MS. FLECK: I'll pass the witness.

2 MR. CASTILLO: Briefly, Your Honor.

3 **RECROSS-EXAMINATION**

4 BY MR CASTILLO:

5 Q The State just asked you to clarify further your full statement in terms of
6 Dustin never been truly accepted and not allowing himself to be accepted. But do
7 you recall what you said in your voluntary statement after you talked about the
8 acceptance?

9 A Not at this time. No.

10 Q Would looking at your voluntary statement, page 32, refresh your
11 recollection?

12 A Sure.

13 MR. CASTILLO: May I approach, Your Honor. Please.

14 THE COURT: I want you to lay a foundation on it. When it was given?

15 MR. CASTILLO: Okay. Not a problem.

16 BY MR. CASTILLO:

17 Q Isn't it correct that after you talked about Dustin's -- whether he was
18 accepted or not, you went on to describe the fact that it's because you basically ran
19 off and got married?

20 A That's probably the statement I made. Yes.

21 Q Okay.

22 A There's more to it than that.

23 Q Okay. Thank you. And turning your attention --

24 THE COURT: When was the statement made, Counsel?

25 BY MR. CASTILLO:

1 Q You spoke to Detective Hatchett on or about July 22, 2010?

2 A Yes, sir.

3 Q Turning your attention back to State's Exhibit A -- Defense Exhibit A
4 rather. Of the baby monitor and you can point to it if you like, which end of the baby
5 monitor would've been in Joshua's room?

6 A The top --

7 Q The top one.

8 A -- picture.

9 Q That -- is that the one right here? [points to exhibit]

10 A Yes, sir.

11 Q All right. And you previously stated on direct that if that -- and if I
12 mischaracterize it please correct me. If that top one had been turned off there would
13 have been a beeping sound. Right?

14 A Correct.

15 Q And do you see a volume on this top one?

16 A The volume switch would be on the bottom one.

17 Q Well do you see -- isn't it correct that the volume is only on the one in
18 the master bedroom?

19 A Correct.

20 MR. CASTILLO: Thank you. No further questions.

21 MS. FLECK: Nothing further from the State. Thank you.

22 THE COURT: The jury have any questions of this witness? Okay. Seat
23 number 7, your name.

24 [Bench Conference Begins]

25 THE COURT: I'm going to ask it. I don't care.

1 MS. FLECK: Can I see?

2 THE COURT: Nah.

3 MS. FLECK: Okay.

4 THE COURT: Yeah. Yeah you guys can sit down. I'm going to ask it
5 [indiscernible.]

6 Now we're going to break for lunch. What time is your doctor ready?
7 What time is your doctor ready?

8 MS. FLECK: When we tell her to be here.

9 THE COURT: 12:15 wasn't it?

10 MS. FLECK: No. We'll tell her --

11 MS. EDWARDS: No. We'll tell her when to be here.

12 MS. FLECK: Yeah. We'll just tell her when to be here.

13 THE COURT: When?

14 MS. EDWARDS: When we tell her to be here.

15 MS. FLECK: We have two other lay witnesses anyway. Quickly. We didn't
16 think this would take too long. We won't do it this morning but we'll -- right after
17 lunch.

18 THE COURT: All right.

19 MS. FLECK: So we have still call -- we still have to call the doctor and have
20 her -- we'll probably have her come -- what were you -- what time were you thinking
21 to have them back? 1:15?

22 THE COURT: Yeah.

23 MS. FLECK: 1:30?

24 THE COURT: It depends on how long you go with this. Does anybody have
25 an objection to this?

1 MS. FLECK: No. She's done.

2 THE COURT: No. I get to ask this question.

3 MR. CASTILLO: Okay.

4 MS. FLECK: Yeah.

5 THE COURT: Unless there's an objection.

6 MS. FLECK: No.

7 MR. CASTILLO: No objection.

8 MR. BECKER: No objection.

9 THE COURT: Okay.

10 [Bench Conference Concludes]

11 **EXAMINATION BY COURT [JURY QUESTIONS]**

12 BY THE COURT:

13 Q Were you still seeing Dustin around the time you first appeared in
14 court?

15 A Referring to family court?

16 Q I can't supplement the question. When you first appeared in court?

17 A In not supplementing the questions, yes.

18 Q Were you still seeing Dustin?

19 A Until last year, yes.

20 Q Okay.

21 THE COURT: The State have any questions?

22 **FOLLOW-UP EXAMINATION**

23 BY MS. FLECK:

24 Q Just have you appeared -- the -- when you first appeared in court was
25 that at the family court proceedings?

1 A That was the first and only time --

2 Q Okay.

3 A -- that I testified, yes.

4 Q Okay. And then you were still seeing him up until that point. Were you,
5 also through child protective services and family court throughout these years,
6 having to maintain contact because of your children?

7 A Correct.

8 MS. FLECK: Thank you. Nothing further.

9 THE COURT: Defense have any questions?

10 MR. CASTILLO: Nothing further, Your Honor, for this witness.

11 THE COURT: Thank you. You can step down.

12 THE WITNESS: Thank you.

13 THE COURT: We're going to take a -- our lunch recess. During the recess
14 you're admonished not to talk or converse among yourselves or with anyone else on
15 any subject connected to this trial. Or read or watch or listen to any report of or
16 commentary on the trial. Or any person connected with this trial by any medium of
17 information including without limitation newspapers, television, radio, or the internet.
18 Or form or express an opinion on any subject connected with the trial until the case
19 is finally submitted to you.

20 Be back at 1:15 please.

21 [Outside the presence of the jury]

22 THE COURT: All right. Doors closed. Mr. Barral under the Constitution of
23 the United States and under the Constitution of the State of Nevada you cannot be
24 compelled to testify in this case. Do you understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: You may at your own request give up that right and take the
2 witness stand and testify. If you do, you'll be subject to cross-examination by the
3 Deputy District Attorneys and anything that you may say be it on direct or cross-
4 examination will be a subject to fair comment when the Deputy District Attorneys
5 speak to the jury in their final argument. Do you understand that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: If you choose not to testify, the Court will not permit the Deputy
8 District Attorneys to make any comments to the jury because you have not testified.
9 Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: If you elect not to testify and if your attorneys specifically
12 request the Court will give the jury instruction encompassing the following legal
13 proposition -- it may be this or it may be a different one but it'll say somewhat this:
14 The law does not compel a Defendant in a criminal case to take the stand and testify
15 and no presumption may be raised and no inferences of any kind may be drawn
16 from the failure of a Defendant to testify.

17 Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you have any questions about those rights?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Your -- and I don't think there's anything her but let me further
22 instruct you on this. You're further advised if you have a felony conviction and more
23 than ten years has not elapsed from the date you have been convicted or
24 discharged from prison, parole, or probation whichever is the latter, the Defense is
25 not -- and the Defense is not sought to preclude that from coming before the jury

1 and you elect to take the stand and testify, the Deputy District Attorneys in the
2 presence of the jury will be permitted to ask you the following: Have you been
3 convicted of a felony? What was the felony and when did it happen? However no
4 details may be gone into. Do you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And I instruct you about this so that over the break you can talk
7 to your attor -- I don't need an answer right now. You talk to your attorneys and you
8 make that decision. Thank you.

9 THE DEFENDANT: Thank you.

10 MR. BECKER: Your Honor, just so I may. We are not going to make a
11 decision until the State --

12 THE COURT: That's fine.

13 MR. BECKER: -- has presented -- and I would ask that we have some time to
14 confer -- once the State rests that we be given an opportunity to confer with --

15 THE COURT: Well, you --

16 MR. BECKER: -- Mr. Barral.

17 THE COURT: -- should be doing that right now as well. And if you need
18 more time, I'll give you more time.

19 MR. BECKER: I'd only say that it's such a marginal call that I think we're
20 going to need no more than five minutes.

21 THE COURT: That's fine.

22 MR. BECKER: All right.

23 THE COURT: That's fine.

24 MR. BECKER: Thank you.

25 THE COURT: All right. See you guys about 1:15. I'd make it 1:10.

1 MR. CASTILLO: 1:10. Thank you, Your Honor.

2 [Recess taken at 12:07 p.m.]

3 [Trial resumed at 1:20 p.m.]

4 [Outside the presence of the jury]

5 THE COURT: You guys ready?

6 MS. EDWARDS: Ms. Fleck still [indiscernible]

7 MR. CASTILLO: Yes, Your Honor.

8 THE COURT: Oh, where did Fleck go?

9 THE CLERK: Restroom.

10 MS. EDWARDS: I don't know.

11 THE COURT: All right.

12 [Pause in proceedings]

13 THE COURT: All right. No secrets. What two witnesses are you going to call
14 first?

15 MS. FLECK: We're recalling Nicole based on the limited question of basically
16 what the Defense did is they asked the seven-year old about her mom helping her
17 prepare for court. Well, they hadn't asked mom that. So, now it's sort of left with the
18 jury that there may have been something backhanded going that -- coupled with the
19 fact that one of the witnesses -- or the juror asked that. We don't want to leave it
20 like that.

21 THE COURT: All right.

22 MS. FLECK: They didn't give her the chance to talk about that.

23 THE COURT: All right.

24 MS. FLECK: It's very limited. And then we're also calling the brother, Michael
25 and then the doctor.

1 THE COURT: We don't have a hearing --
2 MS. FLECK: Okay.
3 THE COURT: -- for Michael?
4 MS. FLECK: No.
5 MS. EDWARDS: No.
6 MS. FLECK: And then Detective Hatchett. I think that's it.
7 THE COURT: And the doctor.
8 MS. EDWARDS: Right.
9 THE COURT: All right. Let's get started. You ready?
10 MS. EDWARDS: Yes. Michael Hammonds, yes.
11 THE COURT: Michael --
12 MS. EDWARDS: Mm-hmm.
13 THE COURT: -- first?
14 MS. EDWARDS: Yes.
15 THE COURT: Bring the jury in first.
16 THE MARSHAL: All rise for the jury.

17 [In the presence of the jury]

18 THE MARSHAL: And be seated.
19 THE COURT: Stipulate to the presence of the jury
20 MS. FLECK: The State does. Thank you, Your Honor.
21 MR. CASTILLO: Yes, Your Honor.
22 THE COURT: Call your next witness, State.
23 MS. EDWARDS: The State calls Michael Hammonds.

24 **MICHAEL HAMMONDS**

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

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

3 THE WITNESS: Michael Hammonds; M-I-C-H-A-E-L, H-A-M-M-O-N-D-S

4 THE CLERK: Thank you.

5 THE COURT: Go ahead.

6 **DIRECT EXAMINATION**

7 BY MS. EDWARDS:

8 Q Good afternoon, Michael. What is your relationship to Jocelyn
9 Coleman?

10 A Jocelyn is my niece.

11 Q And are you related to her mother or her father?

12 A Her mother. She's my sister.

13 Q Okay. And do you have any sisters other than Jocelyn's mother?

14 A Yes. Megan

15 Q Okay. And Jocelyn's mom's name is?

16 A Nicki -- Nicole.

17 Q Okay. You went to college, correct?

18 A Yes.

19 Q Where did you go to college?

20 A I went to a little catholic in South Dakota. Mount Marty College.

21 Q How long or what years were you in school?

22 A 2006 -- well the end of 2005 to 2009.

23 Q While you're in college, were you aware that your sister Megan was
24 married?

25 A Yes.

1 Q Did you make any efforts to attend that wedding?

2 A As much as I could. I was kind of a broke college kid. So.

3 Q What efforts did you make to try to attend the wedding?

4 A Well, I tried to set-up to where I could get home but I was also playing
5 baseball and it was kind of in the midst of my baseball season.

6 Q Okay. Did you have contact with Megan about wanting to go to the
7 wedding?

8 A Yeah. No, I had expressed to her over the phone that, you know, I was
9 kind of surprised that I didn't have the opportunity to get there I guess.

10 Q Now, before you left for college, where were you living?

11 A At home, with my folks.

12 Q And their names are?

13 A David and Joanna.

14 Q Fair to say you grew up in the home with them until you left to go to
15 college?

16 A Yeah. Yeah.

17 Q How often while you were at college out of state would you come home
18 to [indiscernible]?

19 A Holidays. With the exception of spring break. We were playing
20 baseball so it would have been just Thanksgiving and Christmas.

21 Q Did you ever come home for summers?

22 A And summers except for my last year. I stayed there.

23 Q While you were away at school, did you keep in contact with your
24 family?

25 A Of course.

1 Q How did you keep in contact with your family?

2 A Over the phone, e-mails, texts.

3 Q How frequently would you communicate with Megan while you were
4 away at school?

5 A I guess as often as I could, you know, like a lot of times the family
6 would call me when they were together and I would talk to her or she'd reach out to
7 me, you know.

8 Q How often did you keep in contact with Nicole while you were away at
9 school?

10 A The same. We would speak -- I'd -- pretty regularly but, you know, I
11 was busy with school. I guess I couldn't pinpoint an exact time but pretty often.

12 Q So while you're away at school Megan marries Dustin. Correct?

13 A Mm-hmm.

14 Q Is that a yes?

15 A Yes.

16 Q At some point in time after they are married, did you have the
17 opportunity to meet and interact with Dustin?

18 A Yes.

19 Q Under what circumstances or occasions?

20 A Family occasions; barbecues at the house, get-togethers.

21 Q How would you describe your interaction with Dustin on a regular
22 basis?

23 A Pretty standard, you know. We would talk at the house or, you know, if
24 he was over at the house, we would be watching sports or something.

25 Q Able to engage in friendly conversation?

1 A Yeah.

2 Q Able to sit down and hang out with him for periods of time?

3 A Yeah.

4 Q Now, you finished in 2010. Is that correct?

5 A Well, 2009. And then to clarify, I was in South Dakota for another year.

6 I worked at the college after I graduated. So 2010 would have ended the time that I

7 was there I guess.

8 Q When you were done with college, did you move back to Clark County?

9 A Yes.

10 Q Approximately when did you move back to Clark County?

11 A It would have been that summer of 2010.

12 Q Do you remember approximately what month of the year you moved

13 back?

14 A It would've been earlier in the summer. I want to say probably June.

15 Q Where were you living when you moved back to Clark County?

16 A I moved back with my aunt and my uncle.

17 Q And what is your aunt's name with whom you moved back with?

18 A Angel.

19 Q And so you moved back; how often did you interact with your parents?

20 A With my parents, pretty regularly; weekly, you know, every other day or

21 so. I wasn't -- I had just got back so, you know.

22 Q And how often did you see Nicole?

23 A About the same.

24 Q What about how often or how frequent was your contact with Megan in

25 2010?

1 A Not as often. She lived on the other side of town. So -- but regularly I
2 guess.

3 Q In 2010, once you moved back, did you spend time with your nephews?

4 A Yes.

5 Q And what are their names?

6 A Levi and Josh.

7 Q Did you also spend time with your nieces?

8 A Yes.

9 Q Is that Jocelyn and Katelyn?

10 A Yes.

11 Q Directing your attention to July of 2010, there was a point at which
12 Nicole was in the hospital. Correct?

13 A Yes.

14 Q And did you try to help out with her daughters, Jocelyn and Katelyn
15 while she was in the hospital?

16 A Yeah, of course.

17 Q What was your role in helping out with the family during that time?

18 A I was pretty much whatever was needed, you know. I had just got back
19 so, you know, I was looking for work and, you know, she would just ask me to pick
20 up the girls or, you know, take the girls to their dad's or something like that.

21 Q At that time, right before Nicole went into the hospital in July of 2010,
22 how would you describe the family dynamics as a whole; between your sisters, their
23 families, your parents, and you?

24 A Could you just repeat the question? I'm sorry.

25 Q Immediately prior to Nicole being in the hospital, how would you

1 describe the large Hammonds family dynamics for lack of a better way to phrase?

2 A You know, pretty standard for our family; you know, what I mean? Get-
3 togethers when we could and you know, I guess just my family, you know.

4 Q How frequently did -- were there family get-togethers?

5 A I couldn't put a exact time-frame on it but you know, Sunday afternoon
6 we'd have a barbeque, you know, the family'd come over or you know, maybe we'd
7 go to my uncle's or something.

8 Q After you'd moved home in 2010, did you ever have the opportunity to
9 see Dustin at any of these family gatherings or get-togethers?

10 A Yeah. I think so. I think we did a barbeque when I had got back or a
11 few of them. You know, they were pretty, you know, hey come over for -- come over
12 to eat, kind of thing.

13 Q He was included in the family gatherings.

14 A Yes.

15 Q You were still able to be friendly with him and interact with him at that
16 time.

17 A Yeah.

18 Q Now back to when your sister was in the hospital. Do you remember --
19 did you ever take the girls anywhere or help transport them?

20 A Yeah. I think specifically around that time I had picked them up from
21 Megan's and taken them to their dad's.

22 Q Do you remember approximately what day of the week that was?

23 A You know, I want to say that it would've been a Monday --

24 Q Okay

25 A -- because I think they were staying the weekend with Megan.

1 Q Okay. And then I -- I believe it was Monday approximately the 13th
2 would that be fair to say? Or the 12th?

3 A Yeah. Yeah.

4 Q Do you remember approximately what time of day you picked them up
5 and took them over to their dad's house?

6 A It would've been the evening or early evening; four or five, somewhere
7 around there.

8 Q Did you have any interaction with Dustin when you picked the children
9 up?

10 A It was real brief. I guess I just saw kind of as he got home from work
11 and you know, there wasn't really any though I guess.

12 Q Can you tell me -- did -- okay, so you saw him come home from work
13 you said?

14 A Mm-hmm. Yeah.

15 Q And where were you when you saw him?

16 A I had just put the girls in the car. Pretty sure he had just pulled up from
17 getting home from work.

18 Q Was he ever in close proximity to you? Was he really far away from
19 you?

20 A You know, I think he had parked kind of behind me. He walked like into
21 the house. So. So, not really I guess,

22 Q Did you make any effort to have any communication with him at that
23 point?

24 A Yeah. I said hey how's it going kind of thing. Just the what's up and I
25 guess there was no reply and --

1 Q Was that normal or different from your interaction with Dustin?
2 A I guess different. I mean, generally I would go out of my way to say hey
3 and he would say hey back and I guess at that moment it didn't happen.
4 Q Did he interact with the girls or say anything to the girls as they were
5 leaving?
6 A Not that I recall. No.
7 Q So, you took them to Fred's house. Correct?
8 A Yes.
9 Q Did you help transport them anymore that weekend that you recall?
10 A No. I just walked them up to their dad's and then that was kind of it.
11 Q Any problems with taking them to their dad's?
12 A No.
13 Q Did they seem like themselves in the car for the most?
14 A Yeah. For the most they were pretty quiet. We stopped for slurpees
15 and they had slurpees so there wasn't much to say.
16 Q Okay. Are you -- they usually pretty quiet with you?
17 A If, you know, I guess if there's slurpees, I don't know. Not usually.
18 Usually it's fun, you know. Playing a game or something.
19 Q Sometime on Tuesday night -- were you at your parent's house on
20 Tuesday?
21 A Yes.
22 Q And what were you at your parent's house for?
23 A Standard dinner. I got a free meal I guess.
24 Q You went over there often for meals I guess.
25 A Yeah. Yeah. Especially when I moved -- first moved back because I --

1 like I said I was staying with my uncle and you know, whoever was cooking that
2 night.

3 Q Okay. Do you recall who was at dinner that night?

4 A Yeah. I know it was just like my immediate family.

5 Q And who --

6 A Sorry.

7 Q If you could tell us all -- who all the members if you --

8 A So, me, my folks, both my sisters, and their kids.

9 Q At some point in time, did you leave the house?

10 A No. I guess I didn't leave. I mean, I guess at some point that evening I
11 did.

12 Q Okay. Did you get called back to the house that evening?

13 A Yes. Yeah. Oh. You know what, yeah, I was leaving and then I got
14 called back by my folks.

15 Q Did you go back to the house?

16 A Yep.

17 Q Did you know why you were called back to the house?

18 A No clue. But it sounded pretty serious.

19 Q Do you remember which parent called you?

20 A Not specifically. I believe it would have been my -- I think it was my
21 mom.

22 Q Okay. When you got back to the house what was kind of the dynamics
23 in the house at the time you arrived?

24 A You know, they just asked if I would take the girls -- the kids and go
25 upstairs I guess. And so we just went up and they were like just, you know, be with

1 the kids, you know.

2 Q You were comfortable with taking the kids upstairs.

3 A Yeah. Of course. Yeah.

4 Q Keeping them occupied?

5 A Mm-hmm.

6 Q Is that a yes?

7 A Yes. I'm sorry.

8 Q Your parents when you got back to the house were they acting the
9 same or different from when you had left the house?

10 A You know, kind of just that straight forward tone, you know, pretty
11 serious I guess. I could tell something was up.

12 Q Was that the same or different from when you left?

13 A Different from when I left.

14 Q Did you have the opportunity to see Nicole that evening when you'd
15 returned to the house?

16 A Yes, briefly. And I could tell that she had a pretty serious -- things -- the
17 tone, the vibe was a little different.

18 Q At any point that evening did Megan return to the house while you were
19 there?

20 A Yes.

21 Q Okay. But you -- fair to say you were upstairs when she returned to the
22 house?

23 A Yeah. Yeah, I was with the girls at that point.

24 Q Do you know how much time you actually spent upstairs; occupying the
25 kids and hanging out with them?

1 A Probably a half hour, forty-five minutes or something.

2 Q Okay. When you go back downstairs from occupying the children,
3 what's the scene or what's the tone that you see at the house?

4 A Similar. I believe Megan was pretty upset; she was crying. Yeah, like I
5 said the vibe was just a little different. It was a little awkward and you know, she
6 was really upset.

7 Q At some point in time do you find out what's been going on at the
8 house?

9 A Yes.

10 Q And how do you find that out?

11 A You know, my folks had pulled me aside and I believe my mother told
12 me.

13 Q You never had a specific conversation about Jocelyn or anything that
14 happened to her. Correct?

15 A Actually they had told me what she had told them.

16 Q Jocelyn never spoke to you directly and told you.

17 A No.

18 Q Once you found out what was going on, what were your immediate
19 thoughts?

20 MR. CASTILLO: Objection, as to relevance.

21 MS. EDWARDS: I'll withdraw and re-ask the -- a different question.

22 THE COURT: All right.

23 BY MS. EDWARDS:

24 Q Once you found out what had been going on or what was going on in
25 the household, did anything from that weekend specifically come to mind?

1 A I guess I recalled this scenario where, you know, given the
2 circumstance -- the scenario where I had picked them up and you know, that kind of
3 awkward transaction between me and Dustin happened.

4 Q And why did that come to mind or what about it brought that to your
5 mind?

6 A I think it's just because the timing of it all and also I remember I had
7 kind of noted that as like a weird instance at that time, you know. And it's -- it had
8 sounded like it was whatever weekend that was that that might have happened.

9 Q Okay. So your interaction with Dustin was Monday night. Correct?

10 A Yeah. I believe so.

11 Q Okay. And all this at your family's house was Tuesday night. Correct?

12 A Yeah. I believe so.

13 Q Okay. After those events, how is your relationship with Nicole?

14 A After those events?

15 Q Yes.

16 A Good, you know. I've always been close with my sisters, you know. As
17 good as it is I guess, you know.

18 Q Have you been able to stay in contact with Megan since then?

19 A Yeah. To some extent.

20 Q What do you mean to some extent?

21 A You know, we -- you know, she'll text me; see how things are going.

22 You know, ask me about life and I'll do the same. And I, you know, I guess I see her
23 probably every couple months or so.

24 Q Were you still in Clark County during the -- are you aware there was an
25 investigation as a result of what happened at the house?

1 A Yes.

2 Q Were you still in Clark County during that time?

3 A Yes.

4 Q Were you ever -- I'm sorry. Strike that. Did you go with your sister at
5 any point in time during this investigation?

6 A Yeah. I know there was a moment -- there was a time where they had
7 called obviously to ask her questions and I just told her that if she needed someone
8 to go with that I would be that person.

9 Q Were you that person for her?

10 A Yes.

11 Q What did you do to help her in that time?

12 A Well, you know, I just kind of, you know, took care of the boys, you
13 know, just, you know, as she had to go in and have her meeting and then you know,
14 just trying to be there for her. I knew she was in a tough spot and you know she's
15 my sister.

16 Q Did you actually go with her to the meeting or did you watch the boys
17 and she went by herself?

18 A Well, I went to the meeting with her and then when she went to speak
19 to the detective or whatever I hung out with the boys. So I was there but you know, I
20 was in a different room.

21 Q Was the Defendant with the two when she went to speak with the
22 Detective?

23 A Was the Defendant with the two -- no.

24 Q And do you know who Dustin Barral is?

25 A Yes.

1 Q And who is he? How do you know who he is?

2 A He's my sister's ex-husband.

3 Q Do you see him in the room anywhere?

4 A Yes.

5 Q Please indicate something he's wearing and where in the room you see
6 him.

7 A Green shirt, loose tie.

8 THE COURT: The record will reflect he's identified the Defendant.

9 BY MS. EDWARDS:

10 Q So the Defendant wasn't with you when she went to the interview?

11 A No.

12 Q Did you have any contact with him after you found out about everything
13 at your parent's house?

14 A No way.

15 Q How would you describe Megan's demeanor in going to the interview
16 and your interaction with her?

17 A Scared, confused, emotional, you know.

18 Q Is that typical of her or different than what [indiscernible]?

19 A Definitely not like that, you know. She's very fragile I guess. I guess I
20 look at her that way too because she's my sister, you know. But, you know,
21 emotional.

22 Q Did you try to help her in any way or be supportive in that regard?

23 A Yeah. I just tried to encourage her and you know, just try to help her
24 think through it.

25 Q What about that, helping her think through it, did you participate in?

1 A Well, she just felt, you know, obviously so confused about everything
2 and you know, to some extent seemed like you know, she wasn't sure if she was
3 doing the right thing by going and speaking to the detective and really just trying to
4 sort through all her thoughts and everything.

5 Q Did you encourage her one way or the other as far as her cooperation
6 with the detective?

7 A Yeah. Yeah, of course. I told her, you know, what's your concern
8 about going to see him and hear his questions, you know?

9 Q And what did you find out as a result of that?

10 A Well she seemed like --

11 MR. CASTILLO: Objection, calls for a hearsay response.

12 THE COURT: Calm down.

13 Ask that question again, please.

14 MS. EDWARDS: What did you find out as a result of that?

15 THE COURT: Okay. Restate that question.

16 MS. EDWARDS: The question was -- the question prior to that was asking
17 about if he offered any --

18 THE COURT: Yeah.

19 MS. EDWARDS: -- opinion or insight as far as --

20 THE COURT: Are you trying to elicit information from someone else; out of
21 court statement?

22 MS. EDWARDS: I'm trying to elicit his insight into a situation that he's
23 observing that involves multiple people.

24 THE COURT: Okay. Ask him that. If he --

25 MS. EDWARDS: Based on --

1 THE COURT: If he observed anything.

2 BY MS. EDWARDS:

3 Q Based on your -- supporting your sister Megan, going with her to the
4 interview and you global observations, did you make any determinations as far as
5 the dynamics with respect to Megan at that time?

6 A Yeah. I mean, she had even reference to me how she kind of felt guilty
7 about going to do that --

8 MR. CASTILLO: Objection, hearsay; motion to strike. Same objection
9 please.

10 THE COURT: Sustained.

11 BY MS. EDWARDS:

12 Q Do you know how the Defendant felt about her cooperation?

13 A Yeah, actually --

14 MR. CASTILLO: Objection, calls for speculation.

15 THE COURT: Sustained.

16 BY MS. EDWARDS:

17 Q What did the Defendant if anything say about Megan's cooperation with
18 law enforcement?

19 A That she needed to --

20 MR. CASTILLO: Objection, lack of foundation.

21 MS. EDWARDS: It's an admission, Your Honor.

22 THE COURT: Yeah. Ask some more -- lay a foundation.

23 BY MS. EDWARDS:

24 Q Did you have any knowledge as to the Defendant's perspective on his
25 wife talking to Metro?

1 A Yes.

2 Q Okay. Based on that knowledge, what was the Defendant's statements
3 as far as his wife cooperating with Metro.

4 MR. CASTILLO: And Your Honor, I respectfully say that it's double hearsay
5 and still lack of foundation.

6 THE COURT: It's not double hearsay but it is -- there is -- did you talk to the
7 Defendant about your sister going to see Metro?

8 THE WITNESS: I didn't directly talk to him. I didn't see him after that
9 incident.

10 THE COURT: Sustain the objection.

11 BY MS. EDWARDS:

12 Q Based on your observations of Megan and her process in this situation,
13 did you make any determinations about kind of what she was going through with this
14 investigation?

15 A Yes. She was emotional.

16 MR. CASTILLO: Objection, Your Honor. It calls for speculation and still relies
17 on the hearsay.

18 THE WITNESS: May I continue?

19 THE COURT: Yeah. You can answer that.

20 BY MS. EDWARDS:

21 A Yes. She had even I guess expressed to me that --

22 THE COURT: Don't tell us what she said --

23 MS. EDWARDS: Without telling me what Megan said.

24 THE COURT: Just tell us what you observed.

25 BY MS. EDWARDS:

A What I observed was her being emotional and confused like I said, you know, she was definitely confused about the whole situation. I know that I could just feel kind of the pressure that was put on her being in this situation.

Q What do you mean feel the pressure that was being put on her?

A Well, you know, I know she felt just -- you know, it seemed she felt, you know, really guilty about having to go do that with the detective, you know. And, you know, she was hesitant at first when I spoke to her about if that was the right thing to do or not.

Q Were you able to ask ascertain if she still felt any pressure from your parents or that side of the family?

MR. CASTILLO: Objection, calls for hearsay.

THE COURT: Overruled.

THE WITNESS: Not necessarily.

THE COURT: Not what -- just what you observed. Not what people said to you.

BY MS. EDWARDS:

Q I'm sorry?

A Not necessarily, no.

MS. EDWARDS: I don't have any more questions for this witness.

MR. CASTILLO: Thank you, Your Honor.

THE COURT: Cross?

MR. CASTILLO: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. CASTILLO:

Q I believe you stated on direct examination that you picked up Jocelyn

1 and Katelyn on a Monday evening. Is that correct?

2 A Yeah. I believe so.

3 Q All right. And when you picked up Jocelyn and Katelyn at Megan and
4 Dustin's house, isn't it correct that everything seemed pretty normal?

5 A Decently. Until the transaction that I had with Dustin.

6 Q Well, you recall speaking -- do you recall speaking to a Detective --

7 THE COURT: Wait a minute.

8 MR. CASTILLO: Hatchett in an --

9 THE COURT: Wait a minute

10 MR. CASTILLO: -- interview.

11 THE COURT: What transaction you had with Dustin?

12 THE WITNESS: Well, like I was explaining earlier I guess it wasn't much of
13 one but he had shown up and pretty much went straight in the house. I tried to say
14 hey. He did not say hey.

15 BY MR. CASTILLO:

16 Q And we'll talk about that but when you first arrived isn't true that
17 everything seemed pretty normal?

18 A Yeah and also to note, I don't think he was there yet. I think he was just
19 getting off work.

20 Q Okay. But, again just to clarify, you got to the house; everything
21 seemed normal. Right?

22 A Yes, like I said.

23 Q And in fact, when you interacted briefly with Dustin, you didn't know his
24 schedule for that evening. Right?

25 A No. I'm not sure why I would know that.

1 Q So you didn't know if he had -- if he was in a hurry to go anywhere;
2 bowling, or errands, or whatever.

3 A No.

4 Q And you were asked about that brief interaction with Detective Hatchett.
5 Right.

6 A Yes.

7 Q And isn't it correct at the time you really didn't think much about it?

8 A What do you mean? I'm sorry.

9 Q In other words, you just thought well, you know, he's kind of a quiet guy.

10 A Oh, in reference to Dustin.

11 Q Yes.

12 A Oh, I thought you were talking about Hatchett.

13 Q In reference to Dustin, sorry.

14 A Yes.

15 Q And at the time you just thought well, he just got off work or whatever.

16 A At the time. Yeah well -- but also to note -- I mean, he was my --

17 MR. CASTILLO: Well, I would ask as -- I would to move to strike as
18 unresponsive --

19 THE WITNESS: Yeah. I'll just --

20 MR. CASTILLO: -- to the additional statement.

21 THE WITNESS: -- finish.

22 MR. CASTILLO: Your Honor.

23 THE COURT: Well, he's answering your question.

24 THE WITNESS: Yeah. You just asked me that.

25 THE COURT: You asked the question.

1 BY MR. CASTILLO:

2 A So like I was saying, he's my brother-in-law at the time. So, generally
3 we would've said hello to each other.

4 Q But at the time you didn't think much of it. You just thought hey, he just
5 got off work or whatever.

6 A Yeah, kind of. I remember vividly noting like oh that was strange he
7 didn't say hey right similar.

8 Q But this wasn't extraordinarily out of the normal. Right?

9 A Not too bad. He's pretty quiet I guess.

10 Q Okay. And is it fair to say that Dustin was never really accepted by the
11 family?

12 A I wouldn't say that.

13 Q I'm sorry. You would or would not?

14 A I said I would not say that.

15 Q All right. Well, he was never accepted by you. Right?

16 A That's not what I said. No.

17 Q I'm asking. Was he accepted by you?

18 A Of course.

19 Q Well, isn't it correct that you've also stated that you didn't like the way
20 your sister, Megan was around Dustin?

21 A I don't recall saying that I guess. But --

22 Q Well, did you like -- did you like Dustin and Megan together?

23 A I didn't mind it. You know, she married him. He's my brother-in-law. I
24 love my sister.

25 Q And the time you picked up Jocelyn and Katelyn, when you took them

1 for a car ride, nothing ordinary or notable happened in the car. Right?

2 THE COURT: Hold on. Nothing ordinary?

3 MR. CASTILLO: I'm sorry. I'll rephrase, Your Honor. Thank you.

4 THE COURT: Okay.

5 BY MR. CASTILLO:

6 Q Nothing out of the ordinary happened in the car. Right?

7 A No.

8 Q Jocelyn never said hey Uncle Michael, I need to tell you something?

9 A No.

10 Q Okay. And in fact, the kids were happy.

11 A Yeah. I told them right away when I saw them I was going to get them
12 slurpees.

13 Q Right. And so you got -- so you stopped and got slurpees and
14 everyone had a good time. Right?

15 A Yep.

16 MR. CASTILLO: Court's indulgence, please.

17 Your Honor, I'll pass the witness.

18 THE COURT: Thank you.

19 MS. EDWARDS: No questions.

20 THE COURT: The jury have any questions of this witness?

21 Seeing no hands. Sir, you're free to go. Thank you.

22 Call your next witness.

23 MS. EDWARDS: Nicole Hammonds.

24 THE COURT: This is a recall. Yes?

25 MS. EDWARDS: Yes, Your Honor.

1 THE COURT: Okay.

2 **NICOLE HAMMONDS**

3 [having been recalled as a witness and being previously sworn, testified as follows:]

4 THE COURT: I'd just remind you you're still under oath to tell the truth.

5 Okay.

6 THE WITNESS: Yes.

7 THE COURT: Go ahead.

8 **FURTHER DIRECT EXAMINATION**

9 BY MS. EDWARDS:

10 Q Okay. Let's be very narrow. Generally speaking, you remember what
11 we discussed in your testimony yesterday. Correct?

12 A Yes. That's correct.

13 Q You remember at no point in time in your testimony was it ever
14 discussed or asked of you whether you not you had allegedly practiced with Jocelyn
15 regarding her court testimony. Correct?

16 A Correct.

17 Q Did you ever practice with Jocelyn as to what she was going to say in
18 court?

19 A No.

20 Q After Jocelyn made her initial disclosure, does she ever bring up again
21 what had happened with Uncle Dustin?

22 A Yes.

23 Q What would you do in the time she would bring up the substance of
24 what happened with Uncle Dustin?

25 A I would just let her talk. I would just reassure her that she was safe and

1 would never have to be around him again.

2 Q Did you ever write down the details of what she told you?

3 A I did initially. I don't know what happened to that piece of paper.

4 Q Okay. And what was the purpose of you writing that down?

5 A Just so I had it.

6 Q Okay. And the details based on your testimony yesterday was such
7 that she was asleep in the room with Josh. Right?

8 MR. BECKER: Well, I'm going to object that this is cumulative, asked and
9 answered, and this is --

10 THE COURT: Yeah. This --

11 MR. BECKER: -- not the limited purpose.

12 THE COURT: This is -- the limited purpose was to elicit whether she
13 prompted --

14 MS. EDWARDS: Yes, Your Honor.

15 THE COURT: -- the little girl what to say.

16 MS. EDWARDS: Then if I may. The implication is that Jocelyn was coached;
17 that she was somehow reminded of what her testimony should or shouldn't be; that
18 they didn't elicit the--

19 THE COURT: Okay. Ask those questions, directly.

20 BY MS. EDWARDS:

21 Q When Jocelyn would talk to you about whatever had happened with
22 Uncle Dustin, would you fill in any holes that you may or may not have noticed?

23 A No.

24 Q Did you ever remind her of what Josh's name was?

25 A No.

1 Q Did you ever remind her of any of the details she had told you?

2 A No.

3 Q Did you ever talk to Jocelyn about coming to court?

4 A We would talk about coming to court. Yes.

5 Q In what context?

6 A Just that she needed to come in and answer any question that was
7 asked of her and be brave.

8 Q Did you ever tell her what she should or shouldn't say?

9 A Never. No.

10 Q When she came to you about this substance of what she -- or did she
11 ever come to about this substance of what she may or may not say at court?

12 A No.

13 Q Did you ever refer here to Betsy to discuss things?

14 A I would tell her to talk to her about being nervous or things she could do
15 to like, people she could look at, things to think about while she in court, never about
16 her actual testimony.

17 Q Why do you think -- or why did you refer Jocelyn to Betsy for how to be
18 brave or how to handle things in court?

19 A Because Betsy helped her with her feelings about everyth -- about the
20 whole situation.

21 Q And what kind of feelings did -- as far as you know, did Jocelyn have
22 about coming to court?

23 A She's very nervous.

24 Q And how did she express her nervousness to you?

25 A She would tell me she was nervous. Leading up to the time you could

1 just tell she was deep in thought. She would ask questions, she had a countdown of
2 when we were coming to court.

3 Q What do you --

4 A Things like that.

5 Q What do you mean ask questions?

6 A How far away court was? How many days until court?

7 Q Okay. Did you ever have to explain the court process to her?

8 A I don't believe I did. I think other people did when she was -- came in to
9 talk to you guys and Betsy. But I'm not sure what her conversations with Betsy
10 were.

11 Q Did you ever have to prepare her for seeing the Defendant in court?

12 A She would ask if she had to see the Defendant. Yes.

13 Q How would you handle those times she asked about that?

14 A I would tell her not to look at him unless she had to.

15 Q Did you ever discuss anything of this substance of what she would say
16 about the Defendant?

17 A No

18 THE COURT: Cross.

19 **FURTHER CROSS-EXAMINATION**

20 BY MR. BECKER:

21 Q Well, did you also speak to Betsy Morgan?

22 A I would speak to her. Yes.

23 Q And were you aware that she had told Betsy that she was wanting to
24 practice for testifying in court?

25 A No.

1 Q Are you aware that she testified that she practiced with you in the days
2 and weeks leading up to testifying in court?

3 MS. EDWARDS: I'd object, misstates the child's testimony.

4 THE COURT: Yeah. And I'm not sure if we really could elicit out of her what
5 that practice meant. If it was just coming into court --

6 MR. BECKER: Well --

7 THE COURT: Come and see a guy wearing a --

8 THE COURT: I'd say the record speaks for itself, Your Honor.

9 THE COURT: -- black dress. And sitting up her seven years old, I would be
10 nervous.

11 MR. BECKER: Your Honor --

12 THE COURT: I'd want to --

13 MR. BECKER: -- I'm going to ask that the Court strike the statements as
14 editorial from the bench.

15 THE COURT: This is my courtroom and will editorialize when I feel like it's
16 necessary to control the courtroom. Thank you so much.

17 MR. BECKER: May I get a ruling on my objection?

18 THE COURT: Overruled.

19 BY MR. BECKER:

20 Q So you wrote all of the stuff down that she told you?

21 A Initially. Yes.

22 Q And you're not sure what happened to it?

23 A I'm not. I've moved three times since then.

24 Q Okay. No further questions.

25 THE COURT: Jury have any questions limited to that -- just that element of

1 whether she was prompted.

2 Seeing no hands. Ma'am, you're free to go.

3 THE WITNESS: Thank you.

4 THE COURT: Call your next witness.

5 MS. FLECK: State calls Doctor Sandra Cetl.

6 **DOCTOR SANDRA CETL**

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

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

10 THE WITNESS: It's Doctor Sandra, S-A-N-D-R-A; Cetl, C-E-T-L.

11 THE CLERK: Thank you.

12 MS. FLECK: Can I proceed, Your Honor?

13 THE COURT: Go ahead.

14 MS. FLECK: Thank you.

15 **DIRECT EXAMINATION**

16 BY MS. FLECK:

17 Q Good afternoon, Doctor.

18 A Hello.

19 Q How are you employed? Or where are your employed?

20 A I'm employed at Sunrise Children's Hospital here in town. And I work
21 out of two locations; one location is Sunrise Children's Hospital as well as the
22 Southern Nevada Children's Assessment Center.

23 Q When you are working at the Sunrise Hospital, what unit are you
24 usually working in?

25 A I am called as a consultant to evaluate when there are concerns of child

1 abuse; whether it's physical abuse, sexual abuse, or neglect. I see patients in the
2 emergency department, on the pediatric floor, as well as the intensive care unit.
3 Additionally, I take shifts in the emergency department seeing whatever comes in
4 through the door about four or five times a month.

5 Q How about when you were on duty over at the -- is it called the CAC?

6 A [nods head yes]

7 Q And what does that stand for?

8 A The Southern Nevada and Children's Assessment Center or CAC and
9 I'm there two days a week; on Mondays on Thursdays. We see children when there
10 are concerns of child sexual abuse that's not of a emergent matter. So, when
11 they've either -- concerns came up much after when a possible contact could've
12 taken place.

13 Q The ladies and gentlemen of the jury have heard a little bit about the
14 CAC but is it fair to say it's sort of a one-stop shop for children; that they can come
15 to one place to get an interview by Metro, they can get an examination by you or
16 another doctor being a physical examination, their family could get interviewed, and
17 it's one place where this can happen?

18 A Yes.

19 Q When you're working at the CAC -- same I guess role or position as you
20 did at Sunrise?

21 A Yes.

22 Q And what did you say your specialty is?

23 A It's in child abuse pediatrics.

24 Q What kind of training and experience do you have to do both your
25 duties at Sunrise Hospital and at the CAC?

1 A So after college, which was a four-year college; I went to University of
2 California Los Angeles, got a Bachelor's in Neuroscience, after which I attended
3 medical school at the University of Vermont. At the end of that I was a medical
4 doctor and then proceeded to pediatric residency, which is a three-year residency
5 program at the University of Nevada, in the Las Vegas program.

6 During that time -- during residency, I did attend several months of
7 training with a child abuse specialist that was working here in town at that time. And
8 then began to work with her once I graduated from residency. At that time I spent
9 about a six-month apprenticeship period with that child abuse pediatrician and
10 continued with education through literature review as well as I attend several
11 conferences every year; a peer review process, and further kind of training
12 facilitation with multidisciplinary groups both at the CAC and at Sunrise Hospital.

13 Q Now you mentioned that your role at Sunrise is more of a consultant. Is
14 that right?

15 A Correct.

16 Q What is the difference between Sunrise Hospital and the CAC in terms
17 of which patients will be seen? From what I understand at Sunrise Hospital they will
18 do examinations with regard to possible sex abuse.

19 A Yes.

20 Q Is that correct? And at the CAC, you'll do similar examinations.

21 A Correct.

22 Q Why would a patient go to Sunrise as opposed to the CAC or vice
23 versa?

24 A At Sunrise, when children are seen for possible sexual abuse it's in a
25 kind of a emergent or an acute timing. Often time it's if their concerns came up

1 married and -- I'm having a hard time remembering where -- she was around; I just
2 can't place how close we were at that time.

3 Q Okay. And not close proximity necessarily but were you and your sister
4 close? Did you have a close relationship?

5 A Yes.

6 Q Now you say that she was married. Did she have kids at the time?

7 A She had one.

8 Q And what was her daughter's name?

9 A Jocelyn.

10 Q Close with Jocelyn?

11 A Yes.

12 Q Your brother was not living in the state. What's his name?

13 A Michael Hammonds.

14 Q And then you said you spent a lot of time with your parents. Were you
15 also emotionally close with them?

16 A Yes, ma'am.

17 Q And was that true of your youth and teenage years as well?

18 A Yes.

19 Q So when you first met Dustin, did you parents have a relationship with
20 him?

21 A It was short-term type thing. Dustin was getting involved at the church
22 and was getting close with them. My -- they weren't happy about the relationship
23 because of how quickly it was going.

24 Q Okay. So there wasn't something -- and event that occurred that gave
25 them concern. It was the pace of the relationship. Is that fair to say?

1 A Correct.

2 Q At some point then you decide -- you and Dustin decide you're going to
3 get married.

4 A Right.

5 Q And tell me about how that went over with your parents. Or the
6 conversations that you guys had or the interactions about that.

7 A It didn't go over well. I had -- events had happened and I decided I
8 wasn't going to go home and we were going to get married. And they weren't happy
9 about that.

10 Q At some point did he ask your dad if he would kind of support your
11 relationship; support your marriage?

12 A He did prior to us deciding we were -- you know -- it was probably like
13 four months in or something that he had asked my dad. And he said -- if I
14 remember correctly it was a yes but not now. I'm not going to approve it right now.

15 Q Okay. The -- he is basically asking you guys to wait.

16 A Correct.

17 Q Your parents are both involved, heavily involved in church. IS that
18 right?

19 A At the time, yes. I'm not sure now.

20 Q Okay. Was there a program through the church that was almost a
21 pre-marriage counseling-type program?

22 A They were trying to put one in place. Yes.

23 Q And did they encourage you and Dustin to participate in that?

24 A Correct. Yeah.

25 Q And did the two of you decline to do that?

1 A When we were asked to not see each other. Yes, we had a hard time
2 with that.

3 Q Part of the terms of that was to kind of maintain -- or not have a
4 physical relationship until you actually got married. Is that right?

5 MR. CASTILLO: Objection, leading.

6 MS. FLECK: Well I just -- you know, I need to lay the foundation as to what
7 the breakdown was with the parents. The Defense has put at issue that there was
8 some big, family to-do and I think that they have every right to know actually what
9 the breakdown was; being her age, being the pace of their relationship --

10 THE COURT: Well --

11 MS. FLECK: -- being them -- not wanting to --

12 THE COURT: Okay. We don't need the talking objection. But go ahead and
13 ask that. With that in mind to answer that question because both parties have
14 brought that up.

15 MR. CASTILLO: Well, Your Honor she still can't suggest the answer.

16 THE COURT: Objection overruled.

17 MR. CASTILLO: Thank you, Your Honor.

18 BY MS. FLECK:

19 Q Let's leave it at this. Did our parents encourage you to participate in
20 this pre-marriage counseling program?

21 A Yes, ma'am.

22 Q And did the two of you decline to do that?

23 A We did.

24 Q And was that part of the breakdown at that time before your marriage
25 with your parents?

1 A Yes.

2 Q Okay. So then you made the decision to go on and get married?

3 A Right.

4 Q And how did that -- how did your parents react to that?

5 A Well, we sent out invites. I planned the wedding by myself and we sent
6 out invites to all of them and they weren't there.

7 Q Okay. At some point after your marriage do you and your parents
8 attempt to reconcile and start your relationship again?

9 A Yes, ma'am.

10 Q How did that happen?

11 A I believe it was around Christmastime that year that we were married
12 that we started talking again and we actually spent Christmas together.

13 Q And that was in 2006?

14 A I believe so. Yes.

15 Q When you say you spent Christmas together would that be you, your
16 parents, and also Nicole and her family?

17 A Correct.

18 Q Throughout -- and Dustin as well.

19 A Yes, ma'am.

20 Q Throughout the years then after 2006 -- so now going into 2007 and on,
21 how did your family and the Defendant interact?

22 A There wasn't a whole lot of interaction. We like -- we did things
23 together but there wasn't a whole lot of conversation entertained in between them.

24 Q Would you spend holidays together?

25 A Yes.

1 Q Would you have family functions together?

2 A Yes.

3 Q Did your children and your sister Nicole's children spend a significant

4 amount of time together?

5 A Yes, ma'am.

6 Q And was that true also for your parents with the grandkids; being your

7 kids Levi and Joshua and Nicole's kids?

8 A Yes.

9 Q Let's see. Aft -- at some point did your brother Michael -- you said that

10 he had moved.

11 A Correct.

12 Q At some point did he move back to Las Vegas?

13 A He did.

14 Q When was that if you remember?

15 A I want to say he had just moved home in 2010.

16 Q So then moving to July of 2010, where were you living at the time?

17 A Dustin and I had just bought a home. Do you want the address?

18 Q You don't need to give us the exact --

19 A Okay.

20 Q -- address. But was here in Las Vegas?

21 A Yes.

22 Q And by 2010, do you and the Defendant and Levi have a new addition

23 to the family?

24 A Yes, ma'am.

25 Q And who is that?

1 A Joshua. He was born in January of 2010.
2 Q Of 2010.
3 A Mm-hmm
4 Q The four of you lived together?
5 A Yes, ma'am.
6 Q And where was your sister Nicole living?
7 A With my parents.
8 Q Had she by that point separated from her husband?
9 A Yes.
10 Q What's her husband's name or her ex-husband's name?
11 A Frederick Coleman.
12 Q We talked about the fact that -- earlier she had a daughter Jocelyn. By
13 2010, does she also have another child?
14 A Yes.
15 Q And what's her name?
16 A Katelyn.
17 Q And so Nicole and her kids were living with your parents, you were
18 living in your own home with your husband, and where was your brother Michael
19 living?
20 A When he came home from school he was living at my uncle's house?
21 Q What's you uncle's name?
22 A Michael Stoker.
23 Q At some point in July did your sister Nicole -- did something happen that
24 caused her to go to the hospital?
25 A Yes.

1 Q And what was that?

2 A I'm still not really sure what it was. She had been in and out of the
3 hospital; like two weekends consecutively. And it was something with her white
4 blood cell count being off that was causing her to be sick.

5 Q Okay.

6 A Some kind of infection they couldn't figure out what it was.

7 Q Okay. When she goes to the hosp -- when she went -- do you recall the
8 day that she went to the hospital?

9 A I don't. No.

10 Q Do you recall the day of the week that it was?

11 A I want to say it was a F -- a Thursday or a Friday.

12 Q Okay.

13 A That she went it.

14 Q If I told you it was Friday, July 9th, does that seem about right?

15 A Yes.

16 Q So she went into the hospital on Friday and what did you as a family do
17 to kind of help out with her family while she was admitted in the hospital?

18 A I was caring for the girls at the time.

19 Q What day did you get the girls?

20 A I believe Saturday.

21 Q Had they stayed at your house before?

22 A Yes, ma'am.

23 Q How often would they stay at the house?

24 A Pretty often. She was working and I wasn't.

25 Q She, meaning Nicole?

1 A Yes. I'm sorry.

2 Q That's okay. So they would be at your house often?

3 A Yes.

4 Q When they were at the house, how did Jocelyn and the Defendant

5 interact with one another?

6 A I don't recall a lot of interaction.

7 Q Okay. Did there appear to be throughout the years any problems

8 between the two of them?

9 A Not that I recall.

10 Q Did Jocelyn ever come to you and say that she didn't like your husband,

11 she didn't like Uncle Dustin, anything like that?

12 A No, ma'am.

13 Q So then that Saturday in July when you're mom's in the hospital, the

14 girls come to your house. Is that right?

15 A Yes.

16 Q Tell me what you remember if anything about that afternoon and

17 evening when you have the girls at your house.

18 A That Saturday?

19 Q That Saturday.

20 A I remember getting them towards the evening. I had made dinner and

21 bathed all the kids and got them ready for bed.

22 Q Taking baths at night, is that something that was customary in your

23 house for all your kids and kids if they were visiting?

24 A Not so much for the boys. The girls having -- needing their hair

25 washed. Yeah.

1 Q Where was the Defendant when you were giving the kids baths and
2 giving them dinner?

3 A He -- his mom was also in the hospital at the time and he had went to
4 visit her.

5 Q Had he been home during the day when all the kids were there playing
6 and stuff?

7 A Not that I recall. I want to say he worked that day and came home and
8 then went to visit his mom.

9 Q So he was out to work, came home and some point, and then left again.

10 A Correct.

11 Q When he got back to the house what were you doing?

12 A Getting ready for bed.

13 Q And how about the kids; what were they doing?

14 A I believe I had them all laid down at that point and were going to sleep.

15 Q Do you remember interaction between the Defendant and some of the
16 kids?

17 A Yes, ma'am.

18 Q What do you remember?

19 A My oldest Levi and Katelyn my sister's youngest were laying on the
20 floor in my room. They want to sleep in there with me. And Levi had asked if daddy
21 would come in and lay down with them and he went in and laid with them.

22 Q So when he came home the children were getting settled but not
23 necessarily sleeping yet. Is that right?

24 A I know for sure that Katelyn and Levi were not asleep at the time.

25 Q Okay. What -- you just said that Katelyn and Levi were sleeping in your

1 room.

2 A Correct.

3 Q Where were Joshua and Jocelyn?

4 A Joshua was in his crib in his room and Jocelyn was on the futon in
5 Joshua's room.

6 Q Can you describe the layout of your home?

7 A From the like the front door or the bedrooms. I'm sorry.

8 Q That's okay. Is it a one story -- is it a home or apartment?

9 A It's a home; a one story. We had two large living spaces that -- you'd
10 walk in and you'd have one to your left and one to your right. And then to the right
11 would lead to the kitchen and then the hallway to the bedrooms. There were three
12 bedrooms and two bathrooms.

13 Q Your -- the master bedroom is -- was obviously you and your -- and the
14 Defendant's room. Is that right?

15 A Correct.

16 Q And is that where Katelyn and Levi were?

17 A Yes, ma'am.

18 Q Is there a bathroom attached to the master bedroom?

19 A Yes, ma'am.

20 Q Do you have to be in the bedroom in order to get into that bathroom?

21 A To that bathroom, yes.

22 Q Where was Joshua's room?

23 A Joshua's room was diagonal from our room.

24 Q If you were standing in the doorframe of your bedroom, could you see
25 into the doorframe of Joshua's room?

1 A Yes.

2 Q What could you see with -- what could you see in that room?

3 A Not a whole lot. I mean you can see into the room but the way that the
4 rooms were set-up, the closet was right to the right of the door so you couldn't see in
5 a whole lot. But you could loo -- you know, if the door was open you could see in
6 there

7 Q But close enough to your bedroom that you can actually see the door.

8 A Correct.

9 Q It's on -- it's in that proximity to your bedroom.

10 A Right.

11 Q And then how about the third bedroom, where is that?

12 A Directly across from the master bedroom. They were all like right next
13 to each other.

14 Q You said that it was a three bedroom, two bath house?

15 A Yes.

16 Q Where's the second bathroom?

17 A Directly across from Joshua's room.

18 Q So if you walked out of Joshua's room would you walk straight into the
19 other bathroom?

20 A Correct.

21 Q You said today that you couldn't quite remember if the kids were awake
22 or not awake that you think that they had been -- that they were already laying done.
23 Is that right?

24 A Correct.

25 Q Do you remember being interviewed by police in this case shortly after

1 this -- the -- a disclosure came out with Jocelyn?

2 A I remember going to s -- the Child Haven office.

3 Q Okay.

4 A And meeting with the detective there and a case worker -- a CPS case
5 worker.

6 Q Fair to say that it was within days after the incident that happened at the
7 house?

8 A Right. The following day we had a case worker come out to the house.
9 And then I want to say -- if I remember correctly it was probably a week or so after
10 that I had gone down to Child Haven.

11 Q Okay. So, some three years ago you gave an interview but that
12 interview was just about a week after the initial disclosure from Jocelyn.

13 A Correct.

14 Q Would you agree that you may remember things better at that time;
15 some certain incidents, some certain details, then you do today?

16 A Yes, ma'am.

17 Q If I showed you a portion of that voluntary statement, might it refresh
18 your memory as to -- at the time whether the kids were already sleeping, whether
19 they were laying down, or if you were in the process of doing that?

20 A Yes, ma'am.

21 MR. CASTILLO: Page, please.

22 MS. FLECK: Page 15.

23 May I approach?

24 MS. FLECK: Just read this portion of your statement and let me know if that
25 refreshes your memory at all. Just read it to yourself.

1 BY MS. FLECK:

2 Q Does that help refresh your memory to whether the kids were already
3 completely sleeping or if you were in the process of doing that?

4 A Yes, ma'am.

5 Q And what did -- at the time what was it that you were doing?

6 A I was getting them ready for bed.

7 Q So, he came home from the hospital while you were in the process of
8 putting the kids down?

9 A Right. I mean, they had already been bathed, and then pajamas, and
10 like in the process of laying them down.

11 Q And certainly the fact that your sister was in the hospital was a
12 conversation that you had had throughout that day with your husband.

13 A Correct.

14 Q Once the kids get put to sleep, do you and your husband stay awake for
15 some time?

16 A Not that I recall. I believe we went to bed shortly after.

17 Q And then what, if anything, happened throughout the night?

18 A I was really tired after two weekends of caring for four little ones. I
19 remember hearing the monitor -- we had a monitor in the room.

20 Q So when you say you had a monitor in the room, was that a monitor in
21 Joshua's room?

22 A Yes, ma'am.

23 Q Okay. And that's a baby monitor?

24 A Yes, ma'am.

25 Q Was there a light that would kind of illuminate from the baby monitor?

1 A I can't recall if that moni -- we had a couple different monitors
2 throughout the years. I can't recall if that monitor had a nightlight on it. His room
3 was close to the front door so that gave off a little bit of light from the front porch into
4 the room.

5 Q If you were going to walk from your room into the baby's room, would
6 you have to turn on a light in order to not bump into a wall or would you be able to
7 walk into Joshua's room on your own?

8 A You could probably walk in there and get to the crib.

9 Q Okay.

10 A But to be able to like see him you would have to turn on like the
11 bathroom light to be able to see -- like see his face, you know.

12 Q So enough light that you can see shapes and stuff like that but you
13 wouldn't have to turn on like the room light in order to walk around in there or to pick
14 him up to hold him or to cuddle him.

15 A Correct.

16 Q And you say that there was street light coming or porch light?

17 A Porch light. Yeah.

18 Q So you said that you were real tired, you went to bed and I think you
19 were starting to talk about the monitor.

20 A Yeah. I don't recall what time in the night that it was. I heard some
21 fussing on the monitor and Joshua hadn't been in his crib very long -- as to how long
22 he had been out of our room in the bassinet. I think that maybe -- have been the
23 first or second night that he was in that room, in the crib.

24 Q Okay. Meaning he'd been sleeping in your guys' room with you?

25 A Correct.

1 Q And he --

2 A Yeah. He went from a bassinet in our room to a pack-n-play bassinet
3 because he was real sick when he was little and so I had a really hard time moving
4 him out of our room. And so he had just moved into the crib in his room.

5 Q When you heard him fussing then would one of you get up to go and
6 check on him?

7 A That night or --?

8 Q That night.

9 A That night. Yes. I remember looking at Dustin and asking him if he
10 would go and he -- so he got up and went and checked on him.

11 Q How many times did he get up throughout the night to go check on
12 him?

13 A I recall the one time; him going to check on him.

14 Q Okay. And again, if I showed you your statement, might it refresh your
15 memory as to a few years ago; how many times you heard him get up through the
16 night?

17 A Yes, ma'am.

18 MS. FLECK: Page 18.

19 Just read that portion and let me know if that refreshes your memory.

20 BY MS. FLECK:

21 Q Does that refresh your memory?

22 A A little bit.

23 Q Okay. At the time how many times did you hear him go in and out of
24 the room to go check on the baby?

25 A It could've been a couple of times. I just remember at that time I was

1 very frazzled and you know, now it's been three years. So to remember how many
2 times --

3 Q Absolutely --

4 A -- is really hard.

5 Q Absolutely understood. At -- would you agree though that at the time
6 you said I thought two or three was how many times I heard him go in and out of the
7 room through the night?

8 A And if I remember correctly, Joshua had been a little sick at the time
9 too. I don't believe that's in the statements anywhere but I do remember that he had
10 been, you know, --

11 Q Fussy.

12 A First few nights in the room and you know, fussy.

13 Q Okay. At some point through the night does he, meaning the
14 Defendant, wake you up to tell you something?

15 A Yes. He did tell me something when he came back in the room.

16 Q And what was that?

17 A I remember rolling over and asking him if Joshua's okay and he said
18 yes, Joshua's okay but I accidentally sat on Jocelyn. And I said is she okay. And
19 he said -- and I remember him saying yeah, she was okay and then -- I'm not really
20 sure how much more you want me to answer that.

21 Q No. That's okay. Were -- I mean -- fair to say that it was -- throughout
22 the night you had heard him or felt him get up a few times to go into the room?

23 A Right.

24 Q When you -- when he would come back, were you kind of like tossing
25 and turning in a half-sleep?

1 A Right.

2 Q You described to the detective at the time that he actually woke you
3 up. So just describe to us --

4 MR. CASTILLO: Objection, leading.

5 THE COURT: Okay.

6 MS. FLECK: Just describe to the jurors what you --

7 THE COURT: That's sustained. Just make sure you ask open-ended
8 questions. You have to refresh her recollection you can do that.

9 BY MS. FLECK:

10 Q Just describe to the ladies and gentlemen of the jury what you, you
11 know, what your state of sleep was and how it was that you came to have that
12 conversation.

13 A Well I remember him getting -- I mean, I heard Joshua on the monitor. I
14 remember, you know, him getting up and going in there and then I don't know if I
15 had completely gone back to sleep or not but I heard him come back in and I rolled
16 over. Whether he woke me up or not I really -- I don't know. And that's been the
17 hardest. I'm sorry.

18 Q No. That's okay. So you two had a conversation where he told you
19 that he sat on Jocelyn.

20 A Right.

21 Q Did you then fall back asleep?

22 A Shortly -- yeah. After I -- I remember him getting back in bed and we
23 went back to bed.

24 Q The next morning was Sunday?

25 A Yes, ma'am.

1 Q Did you as a family or did you and the kids go to do something together
2 on Sunday?

3 A The boys and I went to church.

4 Q Before you left for church, were you and kids and the Defendant all
5 together at the house?

6 A We were. We were all at the house.

7 Q Was there a time that you were all in your bedroom together and had
8 snuggled up in your bed?

9 A There was a time when Dustin, myself, and Jocelyn were sitting on the
10 bed with -- we had just gotten a new dog and the dog was on the bed and we were
11 petting the dog.

12 Q And did you have a conversation with Dustin and with Jocelyn about
13 what happened the night before?

14 A Yes, ma'am.

15 Q Tell me about that.

16 A I had said to Jocelyn -- I said something to the aspect of wasn't it funny
17 that Uncle Dustin accidentally sat on you last night; do you remember that? And
18 she looked at me like she had no idea what I was talking about.

19 Q So she looked kind of confused?

20 A Confused and just kind of like shrugged it off and I just -- I don't
21 remember the conversation going from there, really.

22 Q You don't remember if the Defendant said anything in response to that.

23 A Not that I recall.

24 Q At the time did it seem significant at all?

25 A Wh -- I don't understand.

1 Q Well, at the time did you attach any significance to the conversation? I
2 mean, were you just saying, you know, isn't -- wasn't it funny that that happened?

3 A It was just conversation. It was like, you know, everybody had just
4 gotten up, we were, you know, everybody rested well, and it was just like, you know,
5 it was conversation.

6 Q Okay. Now you say that then you went to church with the boys?

7 A And the girls. I took the four kids to church with me.

8 Q And what did your husband do?

9 A If I recall he had a bowling tournament that weekend.

10 Q At some point, did he also meet you at church?

11 A After church, yes; to get the boys for me.

12 Q What was happening that he was -- why was he going to come get the
13 boys?

14 A So that I could go visit with my sister in the hospital.

15 Q When he got to the church, do you remember where your mom and the
16 girls were?

17 A My mom was upstairs in her office and we -- I kept my purse in her
18 office and I'm not sure where my sister was -- the girls were. It was you know, it --
19 there was like a second home for everybody; the church was. So, everybody was
20 all over the place that I can remember. But, I know for sure my mom was in the
21 office and I had sent Dustin up to get my purse for me.

22 Q And now, just -- I think maybe mis -- you must have misspoke about
23 your sister because you said I wasn't my sister was --

24 A Oh. I'm sorry.

25 Q No that's okay. That's okay. So your -- but your sister Nicole was at

1 the hospital at that time.

2 A Right. Yes.

3 Q So your -- and then your mom you said was up in her office.

4 A Right.

5 Q You said you sent Dustin up to get your purse. And what happened
6 after that?

7 A The boys left with Dustin and the girls went with my aunt and we went
8 to the hospital to visit with my sister.

9 Q Did you go up to the office, if you remember, with Dustin?

10 A I don't recall going up there. No.

11 Q At some point before Dustin left church, did you have a now third
12 conversation with him about him sitting on Jocelyn?

13 A I know that there was a conversation brought up between him and my
14 mom. I can't recall if it was before he left the church or if it was later that he had
15 brought that up to me.

16 Q You weren't to your recollection there for the conversation between he
17 and your mom?

18 A Not I recall.

19 Q But you were there when he brought it up to you; hey, I had this
20 conversation with your mom.

21 A Right.

22 Q And what did he say to you?

23 A He said that he had mentioned to my mom that he had accidentally sat
24 on Jocelyn when he went to check on Joshua and from what he told she shrugged it
25 off.

1 Q He -- she --

2 A Because she's -- she was so busy at the church like trying to talk to her
3 on Sundays was like talking to the wall. So.

4 Q But he told you that he felt -- or that he relayed to your mother what had
5 happened about him sitting on her.

6 A Correct.

7 Q Did he talk to you about Jocelyn's reaction to him saying this to your
8 mom?

9 A No. If I recall, she was in the office with them. Now that I'm -- it's --
10 trying to remember all of it I don't -- I'm not sure what he reaction was at that point.

11 Q Would it refresh your memory if you looked? If you read that part of the
12 statement?

13 A I can read it yeah.

14 MS. FLECK: Page 22.

15 BY MS. FLECK:

16 Q Does that help to refresh your memory?

17 A A little bit. Yes.

18 Q So, at the time when he was relaying to you this conversation he had
19 with your mom, what did he tell you about Jocelyn's reaction?

20 A That she still had kind of just -- wasn't sure what was being talked
21 about. That --

22 Q Did you say to the detective that she still had the look on the face like
23 that she didn't remember where this was coming from?

24 A Right.

25 Q Or where -- or remember him --

1 A Correct.

2 Q -- sitting on her. So you said that then you went to the hospital, did you
3 spend the day with your sister?

4 A I spent -- I went to the hospital. If I remember correctly my mom, my
5 dad, and I left to have some lunch and then we came back. And then I stayed with
6 my sister until she got released.

7 Q And where were the girls?

8 A The girls at the time were with my aunt.

9 Q Do you know what they were doing with your aunt?

10 A I believe they went to lunch and then they went back to her house to get
11 things ready to go swimming.

12 Q And then at some point on Sunday evening, does your sister get
13 discharged?

14 A Yes. I want to say it was in the evening like around five.

15 Q How did she get home?

16 A I took her home.

17 Q Did you still have the kids at your house?

18 A Not at the time. The kids were still with my aunt.

19 Q Okay. Bad question. Did they stay the night with you on Sunday night?

20 A They did.

21 Q They didn't go back to Nicole's even though she was home?

22 A Right. Because she was still really sick.

23 Q When you got back to your house on Sunday and everyone is back to
24 the house by this point -- Dustin and all four kids and you, what'd you guys do that
25 night?

1 A I don't remember. I remember getting everyone ready for bed.

2 Q Do you remember that part of that process that night included taking

3 baths?

4 A No. They didn't have baths until the next morning.

5 Q What was the sleeping arrangement that night?

6 A They -- I believe they all slept on the floor in Levi's room.

7 Q So all -- all three of the kids slept --

8 A I'm sorry. All three of them and then Joshua was in his crib.

9 Q Okay. That next day then being Monday, tell me what happened?

10 A Monday, the girls were supposed to go to their dad's that evening. So I

11 gave them baths and did their hair for them before they went. That way when they

12 got home from their dad's they were hopefully still clean. And then later in the

13 evening my brother came to get them.

14 Q Is that how they got over to their dad's house?

15 A Correct. My brother took them.

16 Q On Tuesday, did there come a point that you and the boys went over to

17 your parent's house for dinner?

18 A Correct.

19 Q What was the cause of that? Like how did that family dinner come

20 about?

21 A I went with my sister to pick the girls up from their dad's house and took

22 them back and got them all settled in at my parents on Tuesday evening and we just

23 stayed and had dinner.

24 Q Who all was at that family dinner?

25 A My parents, my brother, my sister, my boys, and my sis -- and the girls.

1 Q Was the Defendant at that family dinner?

2 A No.

3 Q Do you remember why not?

4 A No.

5 Q What time do you think you left your parent's house after dinner?

6 A Well we had picked the girls up in the evening; it was probably 8ish. I'm
7 not positive on the time.

8 Q You left -- you picked the girls up from Fred's in the evening.

9 A Yeah.

10 Q Went back and dinner. Then did you leave fairly soon after you guys all
11 ate?

12 A Fairly soon after dinner. Yes.

13 Q Then at -- after you left did you get a phone call from your parent's
14 house asking you to come back?

15 A Yes.

16 Q Who called you?

17 A My mom called. I -- She said to me did your dad get a hold of you?

18 And I said I hadn't even heard my phone. I had put a movie on for the boys in the
19 car and I didn't get the phone call until I had stopped at the gas station.

20 Q What was her demeanor when she called you?

21 A She was panicked; really panicked. And I just remember her being
22 panicked.

23 Q What was she asking of you?

24 A To come back to the --

25 MR. CASTILLO: Objection; asked and answered.

1 THE COURT: Overruled.

2 BY MS. FLECK:

3 Q What was she asking of you?

4 A To come back to the house right away.

5 Q Okay. What'd you say?

6 A I said is everything okay. Do I need to take the boys home? Should --
7 and she said no, just come back. I said should I go get Dustin? Should he come
8 with me? No. Just come back to the house right away. I said okay. And I briefly
9 remember calling Dustin to tell him that I had to go back; that there was an
10 emergency. And that I --

11 Q What did he say?

12 A I'm sorry?

13 Q What did he say to you at that time?

14 A I don't remember what was said.

15 Q Did he have any indication of what the emergency was about at that
16 time; in that phone call?

17 A No, ma'am.

18 Q So when you got back who was there -- or to your parent's house who
19 was there?

20 A My brother had come back because he had left as well. He rode his
21 bike back to my uncle's house. So, you know, I thought maybe brother got hit by a
22 car or something and that's why they were calling me back. But he had rode his
23 bike -- I think he rode his bike back or drove back; he was there. My mom and my
24 dad. And then as far as I the sister and the girls were upstairs.

25 Q What was the -- emotionally kind of, what was the scene at the house

1 when you got there?

2 A It was really tense. My brother -- Joshua was in a carrier seat still and
3 he had basically taken -- grabbed both of them from me and took them upstairs.
4 And it's like I walked into a house of ghosts almost. They were all just kind of like
5 panicked, shocked -- I don't know. It was really tense when I walked in.

6 Q And then what happened?

7 A The boys went upstairs with Mikey and my parents took me in the front
8 room and asked me to sit down, that they needed to talk to me. And so I said am I
9 ready for this? I just kind of like looked at them like am I ready for this? And my
10 mom said just sit down and so I sat down and they both took my hands and they
11 said that they had -- Jocelyn had given some disturbing news. And that -- they said
12 that Jocelyn said that Dustin had touched her and hurt her. And I flipped. I freaked
13 out.

14 Q Okay. After they told you that, did you ask to talk to Nicole or did Nicole
15 come down to talk to you?

16 A My sister eventually came down. I don't remember when or why or if I
17 asked to talk to her or I can't remember.

18 Q Do you remember the interaction between the two of you?

19 A She told -- I told her I was sorry that I didn't what happened and that I
20 didn't know what was going on. And she said to me I don't blame you.

21 Q At some point does Jocelyn come down or do you ask to talk to her?

22 A My mom and -- my mom -- I remember my mom asking me if I wanted
23 to talk to Jocelyn and hear her side of the story; that it wasn't just coming from them.

24 Q I mean --

25 A And I --

1 Q And I know that this sounds obvious. You know, you said that you
2 freaked. Like what are your -- what are you thinking at that time?

3 A At the time my first reaction was why is he doing this to me? That was
4 like the first words that came out of my mouth. Why is he doing this to me?
5 Because I didn't know what to think, you know. I went from panicked to you know,
6 from why is he doing this to me to there's no way he could have done this, you
7 know.

8 Q So anger, disbelief; a mix of emotions then.

9 A Right.

10 Q And then your mom at some point says do you want to talk to Jocelyn?

11 A Correct.

12 Q So does she come downstairs?

13 A Not right away. I asked her to give me a few minutes to calm down.

14 Q You say that you kind of freaked. Were you visibly emotional?

15 A Yeah. Like my parents had to hold me up. I was that emotional.

16 Q Were you able to gather yourself for her to come down?

17 A Yes.

18 Q And then what happened?

19 A We went back in the front room and she looked so scared and I sat her
20 on my lap and I said are you okay. And she said yeah. And I said -- I said did
21 something happen with Uncle Dustin? And she said yeah. And I said honey what
22 happened? She said Uncle Dustin touched me and he hurt me. And I said were
23 you sleeping? And she said -- I don't remember what she said. I can't remember
24 because my mom said okay that's enough and she took her away from me. And
25 that's like the last interaction I had with her. So.

1 Q So after your mom took her did she take her back upstairs?

2 A Yeah. They took her back upstairs.

3 Q Did you at some point then call Dustin?

4 A I did. I can't remember if I called him before or after I talked to Jocelyn
5 but I called him.

6 Q And what did you say to him?

7 A My dad had already called him so he kind of knew what was going on
8 and I went out back and I called him and I said what is going on? He says I don't
9 know. I told you what happened.

10 Q Did you know what he was referring to when he said I told you what
11 happened?

12 A Yeah. To the -- what he told me when he came back in to the room that
13 night.

14 Q Okay. The sitting on her?

15 A Yes, ma'am.

16 Q So when you said what happened he referred to the night that he sat on
17 here?

18 A Yeah.

19 Q Or told you that he sat on her. Do you -- what -- do you remember what
20 you said to that?

21 A I don't know. It was a lot of confusion. It was -- He was yelling. I was
22 yelling. It was just -- it was a mess and I just remember repeating myself that you --
23 I said what's going -- you know, I -- I don't know. I'm sorry.

24 Q Okay. Do you remember saying to -- in response to him saying you
25 know what happened. Do you remember -- or him saying to you you know what

1 happened --

2 MR. CASTILLO: Objection, leading.

3 MS. FLECK: Okay. Well, she just said she didn't remember so I'm now going
4 through her statement which is --

5 THE COURT: All right.

6 MR. CASTILLO: And, Your Honor --

7 THE COURT: Refresh her recollection. Sustain the objection. Just refresh
8 her recollection.

9 MR. CASTILLO: Page, Counsel.

10 MS. FLECK: Twenty-three.

11 Just read that little section at the end if you wouldn't mind. Tell me if
12 that refreshes your memory.

13 BY MS. FLECK:

14 Q Remember?

15 A Yeah.

16 Q So after he said I told you what happened. I told you what happened.
17 What was the conversation the two of you had?

18 A I said to him -- I said what's going on? And he says I told you what
19 happened. And I said I know you told me what happened but where does a four-
20 year old come up with this? How does a -- how -- you know -- she's four years old.
21 How does a four-year old come up with this?

22 Q What did you ask of the Defendant that night in terms of your living
23 situation?

24 A I asked him to leave.

25 Q And did he?

1 A [nods head yes.] I asked him to be gone by the time I got home.

2 Q And was he?

3 A [nods head yes.]

4 Q Is that a yes?

5 A Yes, ma'am.

6 Q So when you got home that night, was it just you and your two boys?

7 A My brother drove me home and it was just me and the boys and I
8 wanted to be alone.

9 Q Did he ever move back in the house after July of 2010?

10 A No, ma'am.

11 Q Did the two of you maintain contact for some period of time; either kind
12 of working through your own relationship or pursuant to the children and child
13 protective services?

14 A There was a period of time that child protective services felt that I
15 wasn't capable of protecting the boys so there was no contact. I wasn't allowed to
16 supervise any contact between the boys and him. So there was -- I can't remember
17 the period of time. I want to say it was three or four months but they didn't talk on
18 the phone or see each other. But Dustin and I tried to maintain like date nights.
19 Like we -- I would get a sitter and we would try to see each other a couple times a
20 week.

21 Q Okay. After that initial disclosure the night -- that Tuesday night, I think
22 that you said that that was the last interaction that you've had with Jocelyn. Have
23 you -- you haven't seen her again since that?

24 A I saw her one time a couple days later. I didn't really have much
25 interaction with her because I was way too emotional to try to even have interaction

1 with her. We had gone -- it was my cousin's birthday and my mom had asked that I
2 would come to the dinner that we were having. And so I went and she was there but
3 I didn't have much interaction with her that night.

4 Q How about your sister Nicole? After this what's your relationship like
5 with Nicole?

6 A We don't have a relationship. I haven't talked to her since like 3 days
7 after.

8 Q And why is that?

9 A Because I for some time tried to stand by Dustin and in that she felt that
10 I didn't believe Jocelyn.

11 Q Was that true?

12 A No, ma'am.

13 Q How about your parents? What's your relationship like with your
14 parents now?

15 A We're trying. We don't talk a whole lot but we try to get together. It's
16 just a lot of emotions because my mom helps out so much with the girls that it
17 makes it hard to plan things with them.

18 Q Do your boys Levi and Joshua have any significant relationship with
19 their grandparents?

20 A They love them. There's not a whole lot of relationship there right now.

21 Q And how about then with the -- with Levi and Joshua, has any
22 relationship that Jocelyn had with her cousins, has that also disappeared?

23 A They don't know Hammond's sister. They don't know -- they don't
24 remember Jocelyn and Katelyn because I've had to not talk about them because
25 they'd want to see them.

1 Q You said that there was a time you tried to maintain some sort of a
2 connection with the Defendant. Is that right?

3 A Yes, ma'am.

4 Q At some point do you decide that you're going to file for divorce?

5 A Yes, ma'am.

6 Q And when was that?

7 A February, last year.

8 Q So currently are you divorced from the Defendant?

9 A Yes, ma'am.

10 MS. FLECK: Your Honor, I'll pass the witness.

11 **CROSS-EXAMINATION**

12 BY MR. CASTILLO:

13 Q Good morning.

14 A Good morning.

15 Q Prior to the incident in question, you were married for approximately
16 four years to Dustin?

17 A Yes.

18 Q And it was a good relationship. Right?

19 A Yeah. We were strong. We -- yeah.

20 Q In fact, you got along well. Right?

21 A Yes, sir.

22 Q And you parented well together?

23 A Yes, sir.

24 Q And Dustin was a great father to your kids?

25 A He was.

1 Q And I think you said you first met Dustin at church.

2 A Yes.

3 Q And he was part of that church too. Right?

4 A Yes.

5 Q And it was from meeting at church, you began a courtship, and you fell
6 in love. Right?

7 A Yes, sir.

8 Q And it was about -- it wasn't until seven months later that you actually
9 got married. Right?

10 A It was about six months. Yes.

11 Q Six months. Okay. And Dustin was a gentleman in that he actually
12 went to your father and actually asked for his blessing.

13 A He did.

14 Q For your -- for his hand in marriage?

15 A He did.

16 Q And that's kind of an old-fashioned thing to do.

17 A Correct.

18 Q And your father did not give his blessing.

19 A At the time, no.

20 Q But Dustin did make efforts to try to get your family to like him. Didn't
21 he?

22 A Sometimes, yes.

23 Q Well an example would be that you -- together you tried to go into a pre-
24 marriage counseling program. Right?

25 A We started to, yes.

1 Q And isn't it correct that your father declined to -- even though your
2 father was part of the church membership, he actually declined to supervise or upon
3 Dustin's request?

4 A Upon Dustin's request?

5 Q Mm-hmm. Yes.

6 A Can you repeat that please?

7 Q Is it correct that your -- when you did this counseling for pre-marriage
8 that Dustin asked your father you know, to kind of supervise; kind of be a mentor
9 sort of role. And your father declined?

10 A Yes because he was also my father; he didn't want to be the pastor as
11 well.

12 Q All right.

13 A There was a very fine line with that.

14 Q So suffice it to say, Dustin was never truly accepted into your family. Is
15 that a fair statement?

16 A Not entirely.

17 Q All right. Will you recall giving a voluntary statement to Detective
18 Hatchett? Correct?

19 A Yes, sir.

20 Q Would looking at your voluntary statement refresh your recollection in
21 terms of what you said regarding acceptance into your family?

22 A Sure.

23 MR. CASTILLO: And page 32, Counsel.

24 Can I approach, Your Honor?

25 THE COURT: Yes.

1 MR. CASTILLO: Could you please read the top two lines to yourself and just
2 let my know when you're finished please.

3 BY MR CASTILLO:

4 Q And does that refresh your recollection in terms of what you said.

5 A Yes. There's a second part of that statement as well.

6 Q But is it correct that you said to the detective that Dustin's never truly
7 been accepted into your family?

8 A Yes, sir.

9 Q Okay. And you went forward with the wedding. And it was a pretty big
10 wedding. Right?

11 A Yeah.

12 Q Because that was your special day.

13 A Right.

14 Q And you and Dustin both tried to be inclusive. You invited pretty much
15 all your family members. Right?

16 A We sent out invites. Yes.

17 Q There would be invites to your mother, your father, to your brother.

18 A We didn't send one to my brother. No.

19 Q Okay.

20 A He was out of state still.

21 Q But you sent one to your sister Nicole. Right?

22 A Correct.

23 Q And despite the invitations, they did not come to the wedding.

24 A Correct.

25 Q And you were asked on direct about your relationship with Nicole prior

1 to the alleged incident in question. But isn't it true that even prior to July 14th, 2010,
2 your relationship with your sister; it was rocky?

3 A Yes.

4 Q On direct, the State directed your attention to the weekend around July
5 9th or July 10th when you were caring for Katelyn and Jocelyn. And I believe you
6 stated that this wasn't first time the girls had stayed right?

7 A Correct.

8 Q In fact, they had stayed over quite a few times before.

9 A Correct.

10 Q Would at least twice a month be accurate?

11 A That would probably be accurate. Yes.

12 Q All right. And during that time Dustin interacted with Jocelyn and
13 Katelyn. Right?

14 A Yes.

15 Q And there was nothing out of the ordinary with that interaction was
16 there?

17 A Not that I recall. No.

18 Q And in fact, isn't it fair to say that Dustin interacted with Jocelyn in a
19 loving matter; just like he did with his own kids?

20 A Not -- it's not the same kind of love, no; interaction, no.

21 Q But it was appropriate behavior. Right?

22 A It was appropriate.

23 Q And the State asked you about Saturday evening and you were putting
24 the kids to bed and Dustin was gone essentially the entire day.

25 A Correct.

1 Q Because he was working and he was visiting his mother.

2 A Correct.

3 Q And so when -- do you recall what time he came home?

4 Approximately?

5 A No, I don't.

6 Q Would it been -- have been after dusk? After dark?

7 A Well he got off of work in the evening so when he went to visit it his
8 mom it was probably -- it was after dusk. Yes.

9 Q Okay. And what time does he typically get off work? At the time?

10 A It just -- I don't know. I can't recall because he -- if he worked overtime
11 that day or not, I don't remember.

12 Q Okay. But suffice it say, by the time he got home it was already
13 nighttime. Right?

14 A Correct.

15 Q And you had already been in the process of putting the kids to bed.

16 A When he came home from the hospital? Yes.

17 Q Yes. Yes.

18 A Okay. Yes.

19 Q And isn't it correct that although Dustin knew you were taking care of
20 Nicole's kids, Dustin did not know what room Jocelyn was sleeping in?

21 MS. FLECK: Objection, speculation. As to what he knew.

22 MR. CASTILLO: Actually --

23 THE COURT: Sustained.

24 MR. CASTILLO: I'll rephrase the question.

25 BY MR CASTILLO:

1 Q Did you tell Dustin what room Jocelyn was sleeping in?

2 A I don't recall telling him.

3 Q Would looking at -- you recall testifying during a family court
4 proceeding?

5 A Yes.

6 Q Would looking at a transcript refresh your recollection in terms of
7 whether or not you told Dustin where Jocelyn was sleeping?

8 A It may.

9 Q Okay.

10 MR. CASTILLO: May I approach again, Your Honor?

11 THE COURT: Sure.

12 MR. CASTILLO: It's page 23.

13 Directing your attention to the bottom of this page. Please read to
14 yourself and let me know when you're done, please.

15 BY MR. CASTILLO:

16 Q And does that refresh your recollection in terms of what you said?

17 A Yes, sir.

18 Q So it's correct you did not tell Dustin where she was sleeping?

19 A No.

20 Q And while Dustin may have interacted with I believe Levi and Katelyn in
21 your room before you went to bed, not with Jocelyn because he didn't know what
22 room she was in. Right?

23 A Right.

24 Q I believe you said at some time that night you were the one that heard a
25 noise on a baby monitor. Right?

1 A Correct.

2 Q And is it fair to say as a mother you're ver -- you're sorry of sensitive to
3 the sounds of your child?

4 A Correct.

5 Q All right. And the monitor, was it one of those monitors that would have
6 picked -- fairly sensitive; would've picked up noises?

7 A Yes.

8 Q And was that monitor -- did it have a device in your room and also in
9 Joshua's room?

10 A Correct.

11 Q All right.

12 MR. CASTILLO: Your Honor, at this time if I can approach your clerk to have
13 marked for identification Defense-proposed Exhibit A, I believe.

14 THE COURT: Okay.

15 MR. CASTILLO: May I approach the witness, Your Honor?

16 THE COURT: Yes.

17 BY MR. CASTILLO:

18 Q Take a look at that. Can you tell me do you recognize what's in the
19 photograph?

20 A A baby monitor.

21 Q And can you tell how do you recognize it?

22 A It's clearly on the futon.

23 Q So is what's depicted in the photograph the baby monitor that you had
24 at the time?

25 A I believe so.

1 Q And does that photograph fairly and accurately depict that monitor?

2 A I believe so. It was three years ago, sir.

3 MR. CASTILLO: Your Honor, I would move to admit this as Defense-
4 proposed A and publish to the jury.

5 THE COURT: Objection?

6 MS. FLECK: We've never seen this before. It just -- it -- you know -- the fact
7 that she says that she believes so and that's -- it's three years ago. This has never
8 been turned over to us. I've never seen it. I've never -- no idea who took the
9 photograph. I say that there's a lack of foundation and that there's a -- you know,
10 when was it taken --?

11 THE COURT: Let me see it.

12 MR. CASTILLO: If I could approach, Your Honor.

13 MS. FLECK: The first --

14 MR. CASTILLO: Now I note, Your Honor that she has identified it as being on
15 the futon in her home.

16 MS. FLECK: Well, no. There's no dispute that there's a baby monitor in the
17 room. She said she believes this is the one. She recognizes that it's a futon; she --

18 THE COURT: I'll let it in.

19 MS. FLECK: -- believes it.

20 THE COURT: I'm going to let it in.

21 MR. CASTILLO: Thank you.

22 **[DEFENSE'S EXHIBIT A ADMITTED]**

23 MR. CASTILLO: Permission to publish, Your Honor.

24 THE COURT: Yes.

25 MR. CASTILLO: Thank you.

1 BY MR. CASTILLO:

2 Q Showing you on screen what is now admitted as Defense A, that
3 monitor -- the portion at the top; that would've been in Joshua's room. Right?

4 A Yes, sir.

5 Q Okay. And the one here with the light on it; that's the one that's -- was
6 in your room.

7 A Correct.

8 Q And you had that monitor because Joshua was a fairly new child; a
9 young baby and you wanted a monitor that could effectively monitor any sounds that
10 might come from that room. Right?

11 A Correct.

12 Q And it wasn't until you heard a noise on the monitor, that Joshua was
13 fussing, that's when you alerted Dustin to go and check on Joshua. Right?

14 A Right.

15 THE COURT: You got to speak out, please.

16 THE WITNESS: I'm sorry.

17 BY MR. CASTILLO:

18 Q And Dustin went in there because it was his turn to check on the baby.
19 Right?

20 A We took turns, yes.

21 Q But at that point you recall saying that it was actually his turn?

22 A No, sir.

23 Q Okay. Again you recall testifying during the family court proceeding?

24 A Yes, sir.

25 Q Would looking at your statement during the family court proceeding

1 remind you of what you said in terms of whose turn it was?

2 A I'll look it. Yes.

3 MR. CASTILLO: And it's page 29 of mine.

4 May I approach again, Your Honor.

5 THE COURT: Why don't you approach the bench first.

6 MR. CASTILLO: Yes, Your Honor.

7 [Bench Conference Begins]

8 THE COURT: What is the relevance; whether there's monitors there or not?

9 MR. CASTILLO: Well, Your Honor --

10 THE COURT: Whisper.

11 MR. CASTILLO: I'm sorry. Essentially I believe it's relevant for the Defense
12 to establish that Dustin only went in there when there was a noise heard on the baby
13 monitor. And it can also allow to ask this witness whether or not she heard anything
14 else unusual coming from the room based on the monitor.

15 THE COURT: Well, get to it because it doesn't appear to be relevant but I'm
16 going to let you get to that.

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

18 THE COURT: You can argue that if you want but --

19 MR. BECKER: Okay. I mean, this is -- that there is monitoring of the entire
20 events in that room would be highly relevant because he would know that everything
21 that was going on in that room is being heard.

22 MS. FLECK: Is there anything you -- is there anything else that you haven't
23 turned over? Just preliminarily?

24 THE COURT: Yeah. You should've probably turned the photograph over to
25 them.

1 MS. FLECK: Is there anything else you want to give us now that we're --

2 THE COURT: You guys would be jumping up and down.

3 MR. CASTILLO: I don't plan on introducing anything else, Your Honor.

4 THE COURT: All right.

5 MR. CASTILLO: With this witness.

6 THE COURT: You --

7 MS. FLECK: If you plan on it can you just --

8 MR. CASTILLO: Yes.

9 [Bench Conference Concludes]

10 MR. CASTILLO: I'm sorry. Can I approach, Your Honor?

11 THE COURT: Yes.

12 MR. CASTILLO: Thank you.

13 Please take a look at the bottom of that page. And read it to yourself
14 and let me know when you're done please.

15 BY MR. CASTILLO:

16 Q And does that refresh your recollection?

17 A Yes, sir.

18 Q So is it correct to say that it was his turn to go check on Joshua?

19 A That's what I said but there's a statement before that as well.

20 MS. FLECK: Can you -- can we see it because --

21 MR. CASTILLO: Sure.

22 MS. FLECK: -- our pages are off.

23 BY MR. CASTILLO:

24 Q Well you took turns but at that point it was his turn. Right?

25 A That's what I said. Yes, sir.

1 Q And isn't it correct that Dustin was only gone for a couple minutes?

2 A I don't recall how long he was out of the room.

3 Q Do you recall saying that he came right back into your room?

4 A I -- I'm not sure.

5 Q And again, would looking at your -- the family court testimony refresh
6 your recollection in terms of whether or not he came right back in the room?

7 A Correct.

8 MR. CASTILLO: May I approach again, Your Honor. Please.

9 THE COURT: Yes.

10 MR. CASTILLO: And it's the paragraph to your right here. Just tell me when
11 you're done, please.

12 BY MR. CASTILLO:

13 Q And does that refresh your recollection?

14 A Yes, sir.

15 Q So he came right back into your room. Right?

16 A Yes, sir.

17 Q And during --

18 MS. FLECK: What page is that?

19 MR. CASTILLO: Page 14.

20 BY MR. CASTILLO:

21 Q And during the time that he was out you heard nothing unusual coming
22 over the baby monitor. Right?

23 A No, sir.

24 Q No unusual noises. Correct?

25 A Correct. But like I stated before I can't remember if I went back to sleep

1 or not.

2 Q Okay. But to your recollection you heard no children; you heard no
3 noises coming from that monitor.

4 A No, sir.

5 Q Okay. And when Dustin came back into the room you weren't 100
6 percent asleep. Right?

7 A Not that I recall.

8 Q Because he was able to tell you the story about how he accidentally sat
9 on Jocelyn. Right?

10 A Right.

11 Q Okay. And when he relayed that story, you actually thought it was kind
12 of a funny story. Right?

13 A I didn't find it funny. No. I was half-asleep and I was concerned as to
14 whether both the children were okay.

15 Q Then the next morning you had Jocelyn in the room with you. Right?

16 A Right.

17 Q And isn't it true that the next morning when you conveyed that story to
18 Jocelyn you actually used the words that Jocelyn laughed it off?

19 MS. FLECK: Can you please reference something?

20 MR. CASTILLO: Page 20.

21 MS. FLECK: What are you in?

22 BY MR. CASTILLO:

23 Q Well, I'll rephrase the question. You stated on direct that Jocelyn didn't
24 really remember what had happened. Right?

25 A Correct.

1 Q Isn't it correct that you also stated that Jocelyn kind of laughed it off?

2 A Correct. It was in conversation.

3 Q And in fact, on that Sunday morning when you were getting ready for
4 church, Jocelyn acted no different than usual. Right?

5 A Not that I recall. No.

6 Q In fact, she was in a good mood.

7 A She was excited because they all got new outfits to wear to church that
8 morning.

9 Q But you -- it -- you previously testified that she was in a good mood.
10 Right? Ma'am?

11 A Yes, sir.

12 Q And in fact, that morning when you were going to go to church, nothing
13 seemed weird or strange.

14 A Not that I recall. No.

15 Q And you talked a little bit on direct about how your mother Joanna
16 heard the same story and you said she just brushed it off. Right?

17 A She was busy. Yes.

18 Q In fact, isn't it true that she also laughed when she heard the story?

19 A I don't recall that, no.

20 Q Would looking at your voluntary statement refresh your recollection in
21 terms of what you said?

22 A Sure.

23 MR. CASTILLO: Page 22, Counsel.

24 May I approach, Your Honor.

25 THE COURT: Yes.

1 MR. CASTILLO: I'm directing you to the top four lines. Just let me know when
2 you finish please.

3 BY MR. CASTILLO:

4 Q And does the refresh your recollection in terms of what you said to
5 Detective Hatchett?

6 A Yes, sir.

7 MS. FLECK: And Judge the only thing is -- that I'm going to object is just the
8 mischaracterization that Defense counsel is attributing that to something that she
9 heard. The statement is actually what the Defendant told her happened when he
10 relayed that story to the mom and that the mom laughed it off. It's not her saying
11 what the mom did it's her --

12 THE COURT: Right.

13 MS. FLECK: -- attributing what the Defendant recalled happened.

14 THE COURT: Make sure that's clear.

15 MR. CASTILLO: That's fine, Your Honor.

16 THE COURT: All right.

17 BY MR. CASTILLO:

18 Q And at the church on that Sunday you continued to spend some time
19 with Jocelyn off and on during the day.

20 A Correct.

21 Q And Jocelyn relayed nothing else unusual taking place.

22 A Not that I recall. No.

23 Q In fact, later on the kids went swimming together on Sunday. Right?

24 A Correct.

25 Q And again, Jocelyn did not relay anything unusual or strange having

1 taken place. Right?

2 A Not that I recall. No.

3 Q And you've spent -- I mean, it's fair to say that because you have little

4 kids and your sister had small children that you spent lots of time with Jocelyn?

5 A Correct.

6 Q That would include taking baths.

7 A Correct.

8 Q Helping her in the bathroom sometimes if necessary.

9 A Correct.

10 Q Do you know whether or not -- to your knowledge do you know whether

11 or not Jocelyn had any previous issues with infections based on potty training?

12 A Not that I recall. No.

13 Q Do you recall whether or not she had any irritation?

14 A She's a child; probably.

15 Q And I think you said that Jocelyn was picked up by your brother Michael

16 on Monday evening.

17 A Correct.

18 Q And from there they were at their dad's house. Right?

19 A Correct.

20 Q And who actually picked Jocelyn and Katelyn up from dad's house?

21 A Myself and my sister.

22 Q Okay. And what day would've that had been on?

23 A Tuesday.

24 Q Tuesday. And on that Tuesday, Jocelyn never volunteered that

25 anything took place. Right? During the day.

1 A No.

2 Q And in fact, you had family dinner as well. And at the family dinner
3 Dustin wasn't present you said. Right?

4 A Correct.

5 Q And during that family dinner nothing was said, nothing unusual took
6 place during that family dinner either. Correct?

7 A Not that I recall. No.

8 Q And it wasn't until Tuesday evening after your folks said hey come back
9 to the house. That's when you heard the story for the first time.

10 A Correct.

11 Q And when Jocelyn relayed this event, you wanted to ask follow-up
12 questions. Right?

13 A I'm sorry I don't understand.

14 Q You wanted to ask a follow-up question or two to really get to what may
15 have happened?

16 A Right. I wanted to hear more from her.

17 Q And in fact, you started off by asking well, were you sleeping? Right?

18 A Correct.

19 Q And it's -- when you started -- after you asked that follow-up question,
20 isn't that when your mother said that's enough. No more. And she kind of cut off
21 the question.

22 A She had been through enough that night.

23 MR. CASTILLO: Court's indulgence, please.

24 BY MR. CASTILLO:

25 Q Well isn't it correct that you were kind of disturbed? You thought it was

1 strange that they wouldn't even let you talk to Jocelyn thoroughly.

2 A I didn't understand why they wouldn't let me talk to her further.

3 Q And again, the fact that they just took her away right away; you found
4 that weird or unusual. Right?

5 A Not really. No.

6 Q Well, would looking at your voluntary statement to Detective Hatchett
7 refresh your recollection in terms of what you said?

8 A Sure.

9 MR. CASTILLO: Page 14, Counsel.

10 Permission to approach, Your Honor.

11 THE COURT: Yes.

12 MR. CASTILLO: I'm just directing your attention to about the first five or six
13 lines please. Just let me know when you finish.

14 BY MR. CASTILLO:

15 Q And does that refresh your recollection in terms of what you said?

16 A Yes, sir.

17 Q So they took Jocelyn away from you. Correct?

18 A Yes, sir.

19 Q And you thought it was weird that it was so quickly and they wouldn't let
20 you talk to her. Right?

21 A It felt weird is what I stated.

22 Q Okay. And then you called Dustin what -- it was from your parent's
23 house. Right?

24 A Correct.

25 Q And in fact, your parents did not want you to talk to Dustin alone.

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Mar 18 2014 09:25 a.m.
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Clerk of Supreme Court

CASE NUMBER: 64135Ma

(District Court Case No. _____)

Clerk of Supreme Court

Respondent.

(VOLUME III)

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Jennifer Aleman,

Pursuant to NRS 53.045, I declare under penalty of perjury that the

ect. 17 da


An employee of Las Vegas De

1 buddies all their lives, so.

2 Q Do you recall how she interacted with your son on that weekend?

3 A She wasn't as comfortable with him.

4 Q When you say she wasn't as comfortable, what did she do before that
5 suggested to you that she was comfortable?

6 A She was just always a loveable, very loveable child. And after -- on that
7 Sunday, I remember, you know, her just being a little bit -- pushing back a little bit,
8 then being hugging and loveable as, you know, as she normally is.

9 Q At the time you made these observations, did you have any reason to
10 know why she may have been acting differently?

11 A No.

12 Q She didn't --

13 A Not at all.

14 Q She didn't say anything to you or explain to you?

15 A No. She did not say anything to me.

16 Q At some point in time after you had the girls that Sunday, did you learn
17 anything about something happening to Jocelyn?

18 A Yes. I was told what happened to Jocelyn.

19 Q Did that affect your perception of your interaction with Jocelyn that
20 Sunday in 2010?

21 A Did it affect my perception?

22 Q How you understood how she was withdrawn.

23 A I felt like it explained why she was the way she was that weekend. Why
24 she was, you know, quiet and just somewhat sad I guess, is what I would call it.
25 And I just figured that had to have been why.

1 Q After all this came out, did you have additional interaction or spend
2 additional time with Jocelyn and her family?

3 A Yes.

4 Q Subsequent to all these things happening in July of 2010, how soon
5 after that do you believe you were able to spend time with Jocelyn?

6 A Probably within the next couple weeks.

7 Q How would you describe her demeanor over the next couple weeks?

8 A She -- she would like close-up when, you know, the people would try to
9 talk to her, you know, she's -- I mean, I'm talking over months that I witnessed this
10 where, you know, something would happen and she would just become very sullen
11 and just, you know, like, really, like -- I don't know how to describe it.

12 The -- withdraw is what I'll say because she became different then this
13 child that I've known all her life, you know. She just kind of would just shut-down,
14 just, you know -- and then her mom would have to, you know, just hug and just
15 say it's all right. But that went on for months; for a lot of months while she was like
16 that.

17 Q Did Jocelyn ever disclose to you what happened?

18 A No. She's never disclosed to me.

19 Q After all these events in July of 2010, does your relationship with Megan
20 remain the same or change?

21 A No. I have not -- I have spoken to Megan once in the last few years.

22 Q As far as your relationship with Nicole did that relationship change or
23 stay the same?

24 A It's the same.

25 Q As far as your relationship with her sister Joanna did that change or

1 stay the same?

2 A Same.

3 MR. BECKER: I'm going to object. Relevance.

4 MS. EDWARDS: Your Honor, essentially the Defense --

5 THE COURT: Pardon?

6 MS. EDWARDS: The Defense over the course of the witnesses has been
7 making much about the dynamics of the family.

8 THE COURT: Well --

9 MS. EDWARDS: And the relationships.

10 THE COURT: I'll sustain the objection. I think that you've gone into it
11 enough.

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

13 **CROSS-EXAMINATION**

14 BY MR. BECKER:

15 Q Would you say you were close to Jocelyn?

16 A Yes. I've always been --

17 Q You said you had a good relationship with her.

18 A Yes.

19 Q And on this Sunday at the church, how much time did you spend with
20 her?

21 A I spent -- well, after she got out of Sunday school, I believe, all the rest
22 of that afternoon.

23 Q How much time?

24 A A few hours.

25 Q Okay. And was that exclusively with her or --?

1 A Her and her little sister and my kids and fam -- you know.

2 Q And then kids were all playing. Is that correct?

3 A Yeah. They probably were playing.

4 Q Right. And was there a time when you were present when Megan and

5 Dustin had relayed information about some kind of accident that occurred on

6 Saturday night where Dustin, you know, sat on the futon and sat on Jocelyn?

7 A I was never told that by Megan or Dustin.

8 Q Okay. So you weren't present was this conversation took place?

9 A I was not present.

10 Q Now, you say that at some point in time you came to view Jocelyn's

11 behavior as a little bit off. Is that a fair --?

12 A Yes. It was off.

13 Q Okay. Now, on the day in question did you ever call Jocelyn aside and

14 ask her if something was wrong?

15 A No. I did not.

16 Q So, whatever behavior you were observing it was not alarming enough

17 for you to -- to cause you to talk to Jocelyn and ask her if something was bothering

18 her?

19 A No. But her mom was in the hospital so I thought maybe she was upset

20 about that.

21 Q Okay. And maybe she was.

22 A Maybe she was.

23 Q All right. And to be clear, you were never questioned by any police

24 officers or detectives in relation to this investigation. Is that correct?

25 A No. I was not.

1 Q As a matter of fact, the first time you were questioned by anybody was
2 when you spoke Michelle Edwards, the Deputy District Attorney?

3 A Yes.

4 Q And how long ago was that?

5 A That was in April.

6 Q Okay. So the first time you revealed any information to anyone about
7 Jocelyn's behavior this day would've been April, 2013. Right?

8 A Yes.

9 Q Almost three years after the event?

10 A Yes.

11 MR. BECKER: Nothing further.

12 MS. EDWARDS: No questions.

13 THE COURT: Jury have any questions of this witness?

14 Seeing no hands. Ma'am, you're free to go.

15 I think I might pass until tomorrow. Okay.

16 We're going to shut down today; send the jury home until tomorrow
17 morning at nine o'clock.

18 MS. FLECK: Can we just approach regarding the time? Only because some
19 of the wit --

20 THE COURT: What?

21 MS. FLECK: We anticipate finishing.

22 THE COURT: Okay. Approach.

23 [Bench Conference Begins]

24 MS. FLECK: So in the morning we'll have the brother who I was going to call
25 now

1 THE COURT: Okay.

2 MS. FLECK: -- and then we'll have Megan who --

3 THE COURT: And Dr. --

4 MS. FLECK: We have Dr. Cetl --

5 THE COURT: Cetl.

6 MS. FLECK: -- and then the detective.

7 THE COURT: And the detective.

8 MS. FLECK: We have to do a short 51.385 with Megan and the detective.

9 THE COURT: Okay.

10 MS. FLECK: But starting at nine; Cetl can't come until the afternoon and the
11 detective will be after her. So, if we start at nine there's going to be a really long
12 break between brother, Megan, and Dr. Cetl.

13 So, my suggestion is either to -- gonna be start at -- do you just want to
14 start at -- are you going to call any witnesses?

15 MR. BECKER: I'm not -- I'm truly not sure.

16 MS. FLECK: Because I was going to say we could start at -- we could start
17 the leader -- like, you guys could have a longer morning and a lunch earlier and we
18 could start at 12:15 or noon; go from noon to five.

19 MR. BECKER: WE can ask the jurors to eat lunch beforehand.

20 MS. FLECK: Yeah.

21 MR. BECKER: I don't care. I tell you. I really don't care.

22 MS. FLECK: We have four --

23 THE COURT: No. I --

24 MS. FLECK: We basically have four witnesses left.

25 THE COURT: Right.

1 MS. FLECK: Hatchett will take awhile because we're --

2 THE COURT: Pardon?

3 MS. FLECK: Hatchett will take some time but we could -- or we could --

4 THE COURT: I would like to start in the morning. I don't want -- and then we
5 can break for lunch but --

6 MS. FLECK: Okay.

7 THE COURT: We have the hearing, we have that -- and the doctor's
8 available when?

9 MS. EDWARDS: 12:15.

10 MS. FLECK: Yeah. 12:15.

11 THE COURT: 12:15.

12 MS. FLECK: So what if we started at ten and then we can -- or what if we
13 have the jury come back at 10 and we can come back at 9:30 to do the -- Megan's
14 hearing?

15 THE COURT: Yeah. That's --

16 MS. FLECK: The detect --

17 THE COURT: Is that all right with you?

18 MR. BECKER: That's fine.

19 MS. FLECK: The detective --

20 MR. BECKER: Court's pleasure.

21 MS. FLECK: The detective could do his hearing on a 15-minute break. His
22 51.385 hearing.

23 THE COURT: Well, why don't we do his in the morning, too?

24 MS. FLECK: And then --

25 THE COURT: Just get him here --

1 MS. FLECK: -- have him come back.

2 THE COURT: And you'll just have to bounce back.

3 MS. FLECK: Okay. I'll try to do that. Okay.

4 THE COURT: All right.

5 [Bench Conference Concludes]

6 THE COURT: Ladies and gentlemen, we're going to take our evening recess.

7 During the recess you're admonished not to talk or converse among yourselves or
8 with anyone else on any subject connected with this trial. Or read or watch or listen
9 to any report of or commentary on the trial. Or any person connected with this trial
10 by any medium of information including without limitation newspapers, television,
11 radio, or the internet. Or form or express an opinion on any subject connected with
12 the trial until the case is finally submitted to you.

13 Why don't you come back at ten o'clock tomorrow. We should be able
14 to finish this up tomorrow.

15 All right. Tom close -- Thomas, close the door.

16 All right. The jury is gone. You guys be back at 9:30. We'll do the
17 51.385 hearing tomorrow both for the detective and for Megan; make sure he's here.
18 Okay?

19 MS. FLECK: Okay.

20 MR. BECKER: If I may, Your Honor.

21 THE COURT: Yes.

22 MR. BECKER: My client has asked that I address the Court. Apparently they
23 -- he needs to speak to Megan regarding some kind of co-parenting issue and he's
24 asking if he has permission to do so. Perhaps, we could ask the D.A.'s to relay a
25 message to her unless they have no objection to him contacting her. Apparently --

1 THE COURT: Well, I would prefer to wait until the testimony's over. Until
2 tomorrow.

3 MR. BECKER: Can I -- can I just -- I think he said it's something to do with
4 some fees that are due.

5 MR. BARRAL: It has something to do with my son's book fees. She texted
6 me today. I didn't want to call. I wanted to get permission beforehand and I know --

7 THE COURT: Okay.

8 MR. BARRAL: -- she's coming up tomorrow.

9 THE COURT: You talk to your attorney. The attorney can talk to her.

10 MR. BARRAL: Okay. And then tomorrow after she testifies --

11 THE COURT: Yes.

12 MR. BARRAL: -- I can open communication.

13 THE COURT: Yes.

14 MR. BARRAL: Okay. Thank you.

15 MR. BECKER: And I think that I tried to contact her in the past and she hasn't
16 returned my calls so I'm just going to relay to the --

17 MS. FLECK: Sure. I've got to call her tonight so I'm happy to tell --

18 MR. BECKER: And I'll just relay --

19 MS. FLECK: -- her whatever you'd like.

20 MR. BECKER: -- the message that way.

21 THE COURT: All right.

22 MR. BECKER: All right. Thanks.

23 ...

24 ...

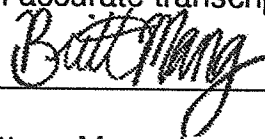
25 ...

1 THE COURT: Thanks.

2 MS. FLECK: Thank you.

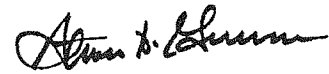
3 [Evening recess at 4:28 p.m.]
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21 ATTEST: Pursuant to Rule 3C (d) of the Nevada Rules of Appellate Procedure, I
22 acknowledge that this is a rough draft transcript, expeditiously prepared, not
23 proofread, corrected, or certified to be an accurate transcript.

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

THURSDAY, MAY 30, 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 THURSDAY, MAY 30, 2013 AT 9:34 A.M.

2
3 THE COURT: All right. Do we have anything you want to put on the record
4 outside the presence?

5 MS. FLECK: May I get Michelle?

6 THE COURT: Sure.

7 MR. CASTILLO: Not from Defense, Your Honor.

8 THE COURT: Okay.

9 MS. FLECK: Hey.

10 THE COURT: Hey.

11 MS. FLECK: Good morning.

12 THE COURT: Okay. Are you ready?

13 MS. FLECK: Lovely day, isn't it?

14 Yeah. I'm ready.

15 THE COURT: All right. Let's start the hearing. C269095, State of Nevada
16 versus Dustin Barral. All parties and attorneys are present. Call your witness,
17 please.

18 MS. FLECK: State calls Detective Hatchett.

19 **DETECTIVE TIMOTHY HATCHETT**

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

21 THE CLERK: Please be seated.

22 THE COURT: Thanks.

23 THE WITNESS: Thank you.

24 THE CLERK: Would you please state and spell your first and last name for
25 the record?

1 THE WITNESS: Timothy Hatchett. T-I-M-O-T-H-Y, H-A-T-C-H-E-T-T.

2 THE CLERK: Thank you.

3 THE COURT: Go ahead.

4 MS. FLECK: May I proceed?

5 Thank you.

6 THE COURT: Mm-hmm.

7 **DIRECT EXAMINATION**

8 BY MS. FLECK:

9 Q Good morning, Detective. For the limited purpose of this hearing I'm
10 just going to direct your attention to July of 2010. How were employed at that time?

11 A At that time I was employed as a detective with the Las Vegas
12 Metropolitan Police Department. And I was assigned to the juvenile sexual assault
13 detail.

14 Q Okay. And as part of your duties, then as a detective within that unit,
15 would you oftentimes either through dispatch or through patrol or through like a
16 9-1-1, 3-1-1 call get assigned to a sexual assault -- possible sexual assault case to
17 further investigate?

18 A Correct.

19 Q And did that happen referenced Defendant Dustin Barral -- or Barral
20 on -- around July 11th -- no, I'm sorry. July 14th of 2010.

21 A That is correct.

22 Q How was it -- what was the nature of the dispatch or the call and how
23 did you get involved?

24 A On that day I was receiving phone calls in reference to any reported
25 abuse. I was the detective who was on-call. I received a phone call from Jocelyn's

1 mother, Nicole Hammond. She indicated that her daughter possibly had been a
2 victim of alleged sexual abuse. She described that her daughter had recently
3 disclosed to her that her Uncle Dustin had possibly looked, touched, and also dug
4 into her private area.

5 Q Okay. So based upon that information, what did you do?

6 A During that time I processed the report in reference to the details, got a
7 specific range and a date. She indicated that she believed that it happened
8 somewhere between the 10th and the 12th. Due to the fact that it was possibly within
9 a 72-hour period -- our protocol is to go ahead and have the child go down to
10 Sunrise Hospital and have a [indiscernible] -- exam administered.

11 Q Okay. At some point then did you in fact meet with Jocelyn?

12 A I did.

13 Q And --

14 A The following day.

15 Q So what day was that?

16 A That would be the 15th.

17 Q Where did you meet with her?

18 A I met with her at -- I believe it's Children Advocacy Center. I think the
19 address is 701 North Pecos.

20 Q Okay. The CAC it's referred to? Kind of --

21 A Correct.

22 Q Okay. Kind of a assessment center for kids where they'll -- kind of a
23 one-stop shop then for kids to come down and get interviewed.

24 A That is correct.

25 Q When she came to the interview who was she with?

1 A At that time she was with her mother and I believe her sister was also
2 with her, Katelyn.

3 Q Where within the CAC did you conduct your interview?

4 A There's a room that we specifically have designed for the children. It
5 conducts video surveillance of the interview and I also conduct a audio recorded
6 interview. In that room is where -- it's a safe environment for the child and it's
7 designated for these types of interviews.

8 Q Okay. What was her demeanor when she came to you that day?

9 A Her -- she didn't seem to be aware specifically of why she was there
10 that evening. She didn't seem upset or anything of that manner. Normal four-year
11 old demeanor.

12 Q How about her mom, Nicole? What was her demeanor?

13 A I don't recall anything specific. More or less the phone call was more of
14 a concern; obviously about the alleged abuse.

15 Q So when she presented to you with her mom, neither of them were in a
16 particularly emotional-like, kind of dramatic state?

17 A No.

18 Q When you conducted your interview with you was her mother present or
19 was it just the two of you?

20 A It was just the two of us.

21 Q Was anyone from Child Protective Services or anyone else from the
22 CAC there?

23 A There's other people located inside the building; however, it was just
24 the child and myself.

25 Q In the room?

1 A Correct.

2 Q What kind of training and experience do you have in interviewing
3 children?

4 A Previous to this I received a bachelor's degree along with a graduate
5 degree. During that time I studied interpersonal relations. It dealt with counseling,
6 conducting mock counseling, human development, sexuality, psychology-related
7 field.

8 Also while working in college, I also worked at the Youth Opportunity
9 Center. We provided 24-hour monitoring of kids who had psychiatric disorder,
10 suicidal disorder, kids who were sexually deviant, and along with chemical
11 dependency issues. During that time we provided more of monitoring but we also
12 established supportive counseling. They had assigned counselors at the facility but
13 when those counselors weren't available we supported them in those needs.

14 Following graduating from college I was employed with Indiana State
15 Department of Correction Juvenile Facility as a psychiatric social specialist. During
16 that time they employed me to create a day program for kids who were recently
17 paroled. During that time I had to provide counseling to both the juveniles and the
18 parents and also create programs to -- basically life skills to try to prevent recidivism
19 once they were released out into the main world -- you know, back into their main
20 community.

21 Proceeding -- basically after that I was employed with the Las Vegas
22 Metropolitan Police Department. Currently a sergeant with the Las Vegas Metro
23 Police. At the time I was, as I noted a detective in sexual abuse and currently I've
24 been employed for approximately nine years. During this time I received additional
25 training. Some of the training that I received while I was in that field was forensic

1 interviewing of children. Basically it's from National Children's Advocacy Center and
2 I also received some training in regards to interviewing sexual deviants and basic
3 and advanced interrogation skills.

4 And also at the time that I was transferred I was placed with a senior
5 detective. She provided me with oversight to determine, you know, whether or not I
6 was at the skill set to go ahead and proceed and do individual-based investigations
7 prior to releasing me with children. So initially that's just the same process that all
8 detectives go through at the time that they're introduced into the new detective
9 experience or the new field that they're particularly going to be investigating.

10 Q Okay. So you then -- you mentioned at the end of that that you were
11 trained in forensic interviews. Is that right?

12 A That is correct.

13 Q Fair to say that that's a technique used with children in order to not taint
14 or pollute the interview and in order to elicit as much information as you can in an
15 unbiased way?

16 A Correct.

17 Q And did you employ the techniques that you learned in courses
18 pertaining to forensic interviews with Jocelyn that day at that CAC?

19 A I did.

20 Q What, if anything, did you learn from her through that in -- well, let me
21 ask you this first. Was the interview recorded or memorialized in any way?

22 A It was. It was both video recorded and audio recorded.

23 Q And was a transcript then made from that audio/video recording?

24 A It was.

25 Q Okay. So what, if anything, did you learn from her that day?

1 A Basically, I met with the juvenile, tried to establish rapport with her.
2 Obviously, she's a extremely young age, only four years of age. During that time
3 you try to determine their cognitive abilities and also the type of vocabulary that they
4 use. Generally speaking, I try to get an understanding of their household, get to
5 understand a little bit about them in particular. I introduce markers. I will allow to
6 identify the different colors of the markers. Also to count out loud indicating the
7 particular number of markers.

8 During the interview we also place ground rules. I asked her during the
9 interview whether or not she understands the difference between a truth and a lie.
10 She indicated that it was better to tell the truth. She also brought forth something in
11 regards to Jesus and God and also the fact that it was -- that He didn't want her to
12 be mean to people. She agreed to only talk --

13 Q He meaning his -- meaning God or Jesus?

14 A Excuse me?

15 Q He, meaning God or Jesus, didn't want her to be mean to people?

16 A That appeared that's what she was trying to describe.

17 Q Okay.

18 A She -- as I mentioned she illustrated and she understood the difference.
19 She agreed to only speak with me about the truth. During the interview I also have
20 a technique that I employ where I provided the child sometimes with a mathematical
21 problem and I think in this particular case I asked her what five plus five was. The
22 child described I don't know. And I immediately told that's exactly what I want you to
23 do.

24 I did not want her to guess at anything during our interview and that I
25 was only going to describe things that are truthful to her. I wanted her to think -- tell

1 me truthful things and if at any time there was something that she was not aware or
2 she did not I did not want her to guess whatsoever and she was okay with just telling
3 me Tim, it's -- I don't know. And I wanted her to do that. I didn't want her to make
4 up any of those -- anything in relation to what she was saying.

5 Q Okay.

6 A She agreed to also doing that.

7 Q Before you went into the interview, did you have the information from
8 her mother regarding the exact allegation that she had made and against who?

9 A Yes, I did.

10 Q Okay. So then what did you learn -- you said that you did all of the
11 techniques you needed to determine basically her competency to --

12 A Correct.

13 Q -- talk to you. She was able to distinguish between truth and a lie. Is
14 that right?

15 A Correct.

16 Q She was able to -- I mean, if you gave a scenario in which you wouldn't
17 expect a four-year old to know, she appropriately said she didn't know.

18 A Correct.

19 Q And so once you were satisfied you did a number of other things to
20 ensure to yourself that she was competent to have a conversation with you.

21 A That is correct.

22 Q Then at some point do you go through body parts with her?

23 A I do.

24 Q Is she able to identify her body parts?

25 A She is.

1 Q And what does she -- what words did she use -- did you use a body
2 chart for that?

3 A I did.

4 Q What --

5 A Anatomically correct body sheet.

6 Q What words did she use to describe her body parts?

7 A She -- for the most part she used common words. When we got to
8 areas that we describe as private areas she advised that she called the vaginal
9 area, privates.

10 Q Okay.

11 A And she indicated that's the place where she goes pee-pee from.

12 Q Okay.

13 A And she also illustrated that her buttocks area is her bottom and that's
14 the place that she goes poo-poo from.

15 Q Okay.

16 A She also described hands and fingers on the body and was able to give
17 common names to other locations. She indicated the breast area as the body.

18 Q At some point then do you start to ask her if anyone's touched her in
19 those areas?

20 A I do.

21 Q And at some point does she say that yes, her mom and her dad both
22 touched her there?

23 A That is correct.

24 Q Is that common for a child to acknowledge that her caretaker's will
25 touch her in those areas?

1 A Yes, it is.

2 Q For washing or cleaning up or having to help them wipe, something like
3 that?

4 A Yes.

5 Q That was of no concern to you?

6 A No concern.

7 Q Okay. Then at some point do you ask her if anyone else has touched
8 her there?

9 A Correct.

10 Q And does she tell you no?

11 A At one point yes, she said no.

12 Q Okay. Are you using the word touch?

13 A I am using the word touch.

14 Q And then at some point do you confront her with somewhat of the
15 statement that you know from her caretakers?

16 A Correct. I do.

17 Q And what was that?

18 A She utilized the word dug. Therefore, at that point I proceeded to use
19 the word dug and that immediately illustrated a response from her.

20 Q What was your exact question to her?

21 A I don't know if this is quote, unquote, but basically I didn't indicate any
22 suggestion of who she told or what we were talking about or who the alleged
23 suspect was. It was something in the context of did you tell someone that someone
24 dug on your private areas.

25 Q Okay. And then what did she say?

1 A She immediately replied Levi's daddy touched on my privates and went
2 on to also refer to him as Uncle Dustin.

3 Q Okay. Then throughout the rest of the interview, what did you learn
4 from her?

5 A Basically, in my opinion from the interview, as you previously mentioned
6 the touch was not the illustration of what she conc -- was a concern of something
7 wrong. It was more of the wording of digging or also dug that she described.
8 Basically, during the interview I asked her clarification questions to try to determine
9 because we automatically have a response as adults to make a conclusion. Well,
10 digging and dugging must be this.

11 Well, kids don't do that. We -- as a forensic interview I have to
12 determine what specifically does a child mean. So therefore, I asked the child
13 open-ended questions to try to get a clarification of what's particularly digging or
14 dugging means in her context. Basically, a little information in regards to who was
15 the person that was doing that or what that was in relation to. And what location she
16 was at when this occurred.

17 Q Okay. So, who did she say was the person that was digging?

18 A She -- as again, she refi -- referred it to Uncle Dustin and also Levi's
19 daddy.

20 Q Did she ever indicate throughout her entire interview that it was anyone
21 else that was digging in her privates?

22 A No.

23 Q Did she -- besides the word digging, did she ever use any other words
24 that indicated to you that it was more than touching? Something that was actually a
25 penetration?

1 A Yes. During the initial phase we do a placement of objects. Again, she
2 utilizes markers, she was able to place the marker inside a box, outside the box,
3 next to the box, a little bit inside the box. During the interview she clearly advised
4 that the subject had place his fingers inside her private area. At one point I asked
5 her to try to describe that on the picture. After she marked some of her private
6 areas she actually at that point used her hand and conducted mannerisms actually
7 showing me on video that she had -- the suspect had place his hand underneath her
8 clothing and basically sunk is the wording she use, quote, unquote, into her private
9 area.

10 Q Okay. He -- and she used it in the -- in a different tense but that she
11 said he was sinking, he was sinking inside my privates. Is that right? And I could
12 show you the transcript if it would help you.

13 A Yes. If it -- if that's incorrect then that is correct.

14 Q Okay. If that's how it reads in the transcript --

15 MR. BECKER: If I could just ask which page --

16 MS. FLECK: 19.

17 MR. BECKER: Okay.

18 BY MS. FLECK:

19 Q If that's how it reads in the transcript.

20 A Yes.

21 Q Okay. Did she talk to you at all about whether or not the Defendant
22 touched her on her butt or her bottom?

23 A She did.

24 Q And what did she say about that?

25 A She also described him placing his fingers into her buttocks area.

1 Rectum.

2 Q Okay. And did she use the same terminology regarding her anus
3 with -- in terms of digging?

4 A At one point I asked her if it was inside the skin, outside the skin, or
5 something else -- you try to provide them with multiple choice answers to -- not to
6 direct them in any particular fashion. She said it was inside the skin. I can't
7 remember if she used the phrase dug or digging in that particular --

8 Q Okay.

9 A -- phase of the disclosure.

10 Q Did she say if he said anything to her while he was doing this?

11 A Yes. She indicated that -- at some course he indicated that he wanted
12 to do it again and again.

13 Q Okay. Did she say if she said anything to him?

14 A She did. She -- I asked her if at any time if she had said anything to
15 him. And she said that she told him to stop.

16 Q Did she tell you where she was when this happened?

17 A She did. She described the room, indicated that she was on a futon,
18 and I believe she used the word Josh-Josh, which is Joshua is her younger -- which
19 is Dustin's younger son. She indicated it was only Josh-Josh and herself who were
20 in the room and that it was in the middle of the night that this occurred.

21 I asked her if she ever actually saw the Defendant and if it was daylight,
22 nighttime, you know, or anything like that. She indicated that she was able to see
23 the Defendant and hear his voice. She also indicated that she could describe the
24 fact that he had no shirt on but had shorts on. And then also gave the other
25 members of the household who were there.

1 Q Did she tell you something about feeling -- or in her mind thinking she
2 was being recorded? Do you remember her saying anything like that?

3 A If she was being recorded --

4 Q That in her mind she's --

5 A -- in regards to the interview or --

6 Q In her mind she thought he was recording. Do you remember her
7 saying that?

8 A I don't recall.

9 Q Okay. I'll -- at -- well at some point through your other interviews did
10 you learn that there was a baby monitor in the room?

11 A Yes, I did.

12 Q Okay. Briefly with regard to the initial disclosure that she gave to you
13 about him being in -- digging in her butt or her bottom, do you remember what
14 question it was that you had posed that elicited her talking about that? And I can
15 refresh your memory with --

16 A It's --

17 Q -- her statement if you don't.

18 A If you could please.

19 MS. FLECK: Page 30.

20 BY MS. FLECK:

21 Q Just starting there. If you could just read that to yourself and see if that
22 refreshes your memory.

23 A Okay. Has any -- oh, excuse me.

24 Q Yeah.

25 A To myself?

1 Q Yeah.

2 A Okay.

3 Q Just to yourself.

4 A I apologize.

5 Q That's fine.

6 Does that refresh your memory?

7 A Yes.

8 Q So what is it that you asked her?

9 A I basically asked her at that point had anybody else had done -- had
10 anybody else ever done anything like that to her. And she indicated no, Uncle
11 Dustin was digging in her butt.

12 Q Okay. So your question was actually has anyone else ever done this
13 and she spontaneously said to you no, but -- no, Uncle Dustin was digging in my
14 butt. He was trying --

15 A Yes.

16 Q -- to dig in my butt. Is that right?

17 A Correct.

18 Q Okay. Then you went on to get details. In fact, you ask is that the
19 same day or a different day?

20 A Yes.

21 Q And what does she say?

22 A She indicated that it was the same day.

23 Q Okay. And then you say how was he trying to dig in your butt? And
24 what'd she say?

25 Again, I can refresh your memory.

1 A If you can, please.

2 MS. FLECK: Page 30, 31.

3 BY MS. FLECK:

4 Q If you could just read the bottom of 30 into the top of 31.

5 A Okay.

6 Q So when you'd asked her how he was doing that, what did she say?

7 A Basically he was digging in her privates and he'd moved to her bottom
8 area.

9 Q So she specifically said that first, he was digging in her privates with his
10 hand. Is that right?

11 A Correct.

12 Q And that after he was digging in his-- in her privates he then moved to
13 dig in her butt with his hands?

14 A Correct.

15 Q Okay. Did she indicate to you how that felt?

16 A Yeah. She indicated that it was painful and she didn't like it and she
17 didn't want him to do it.

18 Q And then in fact, you asked her if it goes inside, outside, or something
19 else when -- with reference to the butt and she said it goes inside.

20 A Correct.

21 Q Did she talk to you about what he did after he touched her?

22 A She did. She described observing him go into the restroom and wash
23 his hands after this had concluded.

24 Q Went to the bathroom to wash his hands?

25 A Yes.

1 Q And that she saw him do that?

2 A Yes.

3 Q Okay. Did you talk to her about how she felt about her Uncle Dustin
4 and her Aunt Megan?

5 A I did.

6 Q And what'd she say?

7 A She indicated -- I don't recall asking her about Uncle -- Megan but I
8 didn't specifically ask her about Uncle Dustin and she indicated that she liked him
9 but that he routinely comes in and checks on her while at her house.

10 Q Do you remember say -- her saying that she thinks that he's nice?

11 A Yes.

12 Q Okay. Did she ever indicate to you throughout the statement that
13 but for this event there was anything about Uncle Dustin that she didn't like or there
14 was any reason that she didn't care for him or like him?

15 A Other than this event, no.

16 Q At any time through the statement did she present to you as anything
17 other than, you know, an -- a four-year old child?

18 A No.

19 Q Like is --

20 A She was -- from my experience she was slightly above normal cognitive
21 ability. Sometimes it's very hard to conduct a forensic interview on children of that
22 age but her vocabulary was normal for that age.

23 Q Okay. Arti -- on the higher end of articulate, would you say?

24 A Correct.

25 Q But didn't use words that were outside of the norm for a four-year old?

1 A No.

2 Q And didn't act out emotionally in any way?

3 A No.

4 Q You said that when she presented she was calm and -- you know, had
5 a normal conversation with her, did that maintain throughout the entire interview?

6 A It did.

7 Q How about her mom? When you took her back out to her mom did her
8 mom act in any sort of dramatic or emotional way?

9 A No.

10 Q Okay.

11 A And keep in mind the interview I conducted with the mom was by
12 ourselves.

13 Q Okay.

14 MS. FLECK: For the purposes of -- yeah. For purposes of this, I'll pass the
15 witness. Thank you.

16 THE COURT: Cross.

17 MR. BECKER: Briefly.

18 BY MR. BECKER:

19 Q Well actually, Jocelyn told you that he was trying to dig into her butt.
20 Correct?

21 A There might have been both trying and actually digging.

22 Q Okay. But you --

23 MS. FLECK: What page?

24 MR. BECKER: I'm referring to page 30.

25 BY MR. BECKER:

1 Q She uses the word trying several times. Is that correct?

2 A Again, there might have been instances where she indicated trying but
3 she also specifically stated that it was inside.

4 Q Well you specifically asked how long did it go inside for. Right? Page
5 31.

6 A I believe so.

7 Q And she said: Well -- uh -- it like -- well he moved before it was in my
8 privates and he started digging and digging. Correct?

9 A I believe so. Yes.

10 Q All right. And just to be clear, when you first asked her whether
11 anybody else had touched her privates, she kept telling you no. Is that correct?

12 A Again, touching, in my opinion, when I was speaking to her --

13 MR. BECKER: Well, objection; non-responsive.

14 BY MR. BECKER:

15 Q The question was, when you asked if anybody other than her parents
16 had touched her privates she repeatedly said no.

17 A True.

18 Q All right. And it wasn't until you used the word dug that you got a
19 response from her. Correct?

20 A That is correct.

21 Q All right.

22 MR. BECKER: Court's indulgence.

23 No further questions.

24 MS. FLECK: Nothing further.

25 THE COURT: Thank you, Detective. You can step down.

1 THE WITNESS: Thank you.

2 THE COURT: I'll make my finding now on this detective. And I -- again I'm
3 reviewing 51.385 of the NRS. And again the jury is not present. And I'm doing
4 subsection 2. Obviously the statement wasn't necessarily spontaneous. It was a
5 result of going in and talking to the detective. I haven't seen the tape but listening to
6 the detective that he utilized methods so that he wasn't repetitively questioning the
7 girl. And the child does not have to fabricate. And the terminology that she used
8 was unexpected for child of similar age. She was of stable mental state. So --

9 MS. FLECK: And Judge I -- that subsection 4 sometimes can -- I think can be
10 read either way. It's --

11 THE COURT: I don't have subsection 4.

12 MS. FLECK: Well, I'm sorry, (d).

13 THE COURT: D?

14 MS. FLECK: But -- yeah. That the child used terminology unexpected. You
15 know, in this particular case it's unexpected, I think, that she uses dug but expected
16 that she uses words like private.

17 THE COURT: Right.

18 MS. FLECK: Because I've heard it argued that expected -- unexpected
19 meaning if a four-year old came in and said my vaginal area was penetrated by --
20 digitally penetrated --

21 THE COURT: Right.

22 MS. FLECK: -- by my uncle, that that would be unexpected and clearly sort of
23 coached and rehearsed.

24 THE COURT: Right.

25 MS. FLECK: So if we could just clarify unexpected meaning dug but

1 expected --

2 THE COURT: Okay.

3 MS. FLECK: -- privates. Things like that.

4 THE COURT: Thank you.

5 MS. FLECK: And then -- sorry. Go ahead. That's it.

6 THE COURT: Okay. And so I find that this testimony will be presented.

7 MS. FLECK: And then just our -- obviously the best evidence of that will be
8 the video. So we intend to play that this afternoon. Based upon our previous rulings
9 regarding the quote, touching by this or kicking and the kissing on the shoulder by
10 Neco, I have removed that from the video. So I'll go through the Defense -- with the
11 Defense the portions. It's page 18, I believe.

12 THE COURT: And how long is the video? How long is the video?

13 MS. FLECK: I'd say about 40 minutes.

14 THE COURT: Okay.

15 MS. FLECK: My transcript is with our --

16 MR. BECKER: I think it's page 16 you're talking about.

17 MS. FLECK: I think it's page 15. I started -- I cut it where it says is there
18 anyone else that you consider -- is there anywhere else that you consider private
19 that nobody should ever touch. That's it. So, I left that in. Cut it at that's it? Okay.
20 Has there ever been a time that anybody else has touched in the areas. I cut it --
21 started the cut there.

22 THE COURT: Okay.

23 MS. FLECK: Took it all the way through the next page. And then started it
24 again as okay, has there been anybody else who's ever touched you in those
25 private areas. Top of page 17. Ah, no. I left that in.

1 THE COURT: Okay.

2 MS. FLECK: And then on page 18, I removed -- I think 6 or 7 lines down it
3 says has anybody ever touched you in your privates or looked at your privates other
4 than your friend, the four-year old. I simply took out other than your friend the four-
5 year old. So I left in every time that, you know, the detective asked her has anyone
6 touched you and she says no. I left all of that in. The only ind -- the only things that
7 I took were any indica -- any reference to this four-year old child.

8 THE COURT: Okay.

9 MR. BECKER: And --

10 THE COURT: All right.

11 MR. BECKER: And I'll just -- I know the Court's ruled but I'll just submit for
12 the record that when questioned about this specifically by Detective Hatchett,
13 Jocelyn says, with regarding Neco touching her in that area, that my teacher's don't
14 let him do that, which I believe shows that Jocelyn knows that making an allegation
15 like this can get somebody in trouble. And I think along the lines of *Summit*, which
16 we previously argued that it's relevant and should come in. And I'm making that
17 comment for the record.

18 THE COURT: All right. Thank you.

19 MS. FLECK: And just as -- just also for the record that -- again, *Summit* you
20 have to -- the touching has to be of the kind that is -- I mean, even if it was relevant
21 and even if it was somehow sexual conduct for the purposes of this or to show prior
22 knowledge it has to be of the same kind. And certainly a four-year old in a middle of
23 a classroom, you know, hitting her private or kicking her private is significantly
24 different and does not form the same basis of knowledge as a finger digging inside a
25 girl's vagina. So --

1 MR. BECKER: It --

2 MS. FLECK: -- it's not even of the same -- even if -- it's not even something
3 that would be considered under *Summit*. So.

4 MR. BECKER: And if I may, just -- the statement is he touched me on my
5 privates. That's the statement. It's not hitting or kidding[sic]. It's one time one of
6 my friends touched me and then -- that's on page 15 and then he touched me on my
7 privates and kissed me. That -- a -- that is the statement. That's the exact
8 language.

9 THE COURT: All right.

10 MR. BECKER: It's not hitting --

11 THE COURT: All right.

12 MR. BECKER: -- or kidding[sic].

13 THE COURT: Thank you. I think the record is clear and I'm allowing the
14 testimony and the tape to be played -- or the CD, whatever it's called.

15 MS. FLECK: Thank you. And then we'll have -- the State will call one more
16 witness --

17 THE COURT: Okay.

18 MS. FLECK: -- Megan Barral. That should be very, very brief regarding
19 51.385.

20 THE COURT: Okay. And your jury's here, Tom?

21 THE MARSHAL: Yes.

22 THE COURT: All right.

23 **MEGAN BARRAL**

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

25 THE CLERK: Please be seated.

1 THE WITNESS: Thank you.

2 THE CLERK: Would you please state and spell your first and last name for
3 the record?

4 THE WITNESS: Megan Barral. M-E-G-A-N, B-A-R-R-A-L.

5 THE CLERK: Thank you.

6 MS. FLECK: May I proceed?

7 THE COURT: Go ahead.

8 MS. FLECK: Thank you.

9 **DIRECT EXAMINATION**

10 BY MS. FLECK:

11 Q Good morning, Megan. For purposes of this particular hearing I'm just
12 going to direct your attention to July 14th of 2010. Unfortunately, do you remember
13 that day?

14 A Yes. I don't remember specific dates but yes.

15 Q All right. Was there a Tuesday in July that you were at your parent's
16 home, had left with your sons, and you were asked then by your mom to come back
17 because there was somewhat of a -- of an emergency or something that your family
18 wanted to talk to you about?

19 A Yes, ma'am.

20 Q And tell me what you were doing at your family's home earlier before
21 you got called back.

22 A We had dinner together as a family. I had broughten[sic] the girls home
23 to get them settled in with their mom that night.

24 Q Again, we already have a foundation of what was happening --

25 A Okay.

1 Q -- kind of, you know, where Nicole had been and those kinds of things.
2 Where were you when you got a phone call that you needed to come back to the
3 house?
4 A I was at a gas station by my house.
5 Q And who called you?
6 A My mom did.
7 Q And what did she say?
8 A She said there was an emergency and that I needed to come home.
9 Q What --
10 A Come back to the house.
11 Q What'd you say?
12 A I said is everything okay. Should I take the boys home? Do I need to
13 go get Dustin? She said no. Just come back right away.
14 Q And so what -- is that what you did?
15 A That's what I did.
16 Q When you got back to the house, what happened?
17 A I walked in the door. My brother took Levi and Joshua and took them
18 upstairs. And then my parents wanted to sit down and talk to me.
19 Q Okay. Was it both your mom and your dad that sat you down?
20 A Yes, ma'am.
21 Q And where was your sister Nicole at that time?
22 A I believe she was upstairs with all the kids.
23 Q Were the girls upstairs and the boys upstairs?
24 A Yes, ma'am.
25 Q What did you learn then from your parents when you came in the

1 house?

2 A They asked me to sit down and I said am I ready for this? And sh -- my
3 mom says just sit down and they proceeded to tell me that Jocelyn had given them
4 some disturbing news.

5 Q What was their demeanor when they presented this to you?

6 A They were shocked. They looked frazzled.

7 Q And what were you thinking in terms of what was coming?

8 A I thought someone died.

9 Q Okay. At some point then did they share with you what they had just
10 learned?

11 A Yes.

12 Q And then do you have an opportunity to speak with your niece,
13 Jocelyn?

14 A After a while, yes. Sh -- they asked me if I wanted to talk to her and I
15 said to -- I asked for a few minutes. And they said okay, when you're ready. And so
16 when I told them I was ready they brought her downstairs.

17 Q A few minutes to kind of gather yourself?

18 A Yes.

19 Q Who brought her downstairs?

20 A I want to say it was my sister that brought her down because my sister
21 came down originally a little bit after my parents had talked to me.

22 Q So the two of you, you and your sister, had a minute to talk and then
23 she brought Jocelyn down?

24 A Correct.

25 Q When you talked to Jocelyn where were you?

1 A I was in my parent's living room on the couch.

2 Q And where was she?

3 A I had picked her up and sat her on my lap.

4 Q And what was your relationship like with Jocelyn at this time?

5 A Sorry. She was like my daughter, you know.

6 Q The two of you had a close relationship. How about her relationship
7 with your husband, Dustin?

8 A You know they were close. She -- he helped care for them too. They
9 weren't as close.

10 Q So then what did she tell you, if anything?

11 A I asked her if she was okay. And I said sweetie, did something happen
12 with Uncle Dustin? And she said Uncle Dustin touched me and he hurt me.

13 Q Okay. And did you ask her any questions in response to that?

14 A I said were you sleeping? And I can't recall if it was yes or no. At this
15 point she -- I want to say she said yes. And --

16 Q Did she indicate to you where he touched her?

17 A No, not at the time. I -- that was all that we spoke of it really. Once I
18 asked her if she was sleeping, my mom had felt it was enough and she said that's
19 enough and she took her back upstairs.

20 Q Fair to say you were emotional at that time.

21 A Yes.

22 Q How about Jocelyn? How did she -- how was she acting?

23 A She was scared. Very timid, I guess you could say.

24 Q Did you have any other conversations with her about what had
25 happened with Dustin?

1 A No.

2 Q Do you see Dustin in the courtroom today?

3 A [Nods head yes].

4 Q Can you just quickly point him out and describe something he's
5 wearing?

6 A Green shirt.

7 MS. FLECK: Let the record reflect identification of the Defendant.

8 MR. BECKER: We'll stipulate, Your Honor.

9 THE COURT: It will.

10 MS. FLECK: Court's indulgence.

11 For purposes of this particular hearing, Your Honor, I don't think that we
12 really need -- the State doesn't need to get anything further.

13 THE COURT: Cross.

14 MR. BECKER: Court's indulgence.

15 MR. CASTILLO: Court's indulgence, please.

16 No questions, Your Honor, for this witness for this hearing.

17 THE COURT: Thanks. You can step down.

18 THE WITNESS: Thank you.

19 THE COURT: Step back in the hallway.

20 MS. FLECK: Judge and the State just has one thing briefly outside --

21 THE COURT: Okay.

22 MS. FLECK: -- the presence but I'm going to ask to clear the courtroom if we
23 could for -- just of any spectators.

24 THE COURT: Okay. Just of the --

25 MS. FLECK: Just of the -- any family members or anything.

1 THE COURT: -- there's an attorney I have in the back. I allowed him to stay.

2 MS. FLECK: Who?

3 THE COURT: The attorney in the back.

4 MS. FLECK: Oh. Yeah.

5 I don't anticipate that the Defense would in any way go her but there's
6 some extremely graphic, I would deem rather embarrassing for both Megan and the
7 Defendant, details of their sex life in the interview that the detective conducts with
8 Megan. So I, of course, am not going to go into that with her.

9 THE COURT: It's not relevant is it?

10 MS. FLECK: I don't think it's relevant.

11 MR. BECKER: I -- we could -- we couldn't agree more. We would --

12 MS. FLECK: Yeah.

13 MR. BECKER: We would -- I think whatever intimacy issues they had as a
14 couple, we have no intention of getting into any of that.

15 THE COURT: Okay.

16 MS. FLECK: Yeah and I didn't think so but it's so -- I mean, I can't even
17 imagine what it would do to her if --

18 THE COURT: Yeah.

19 MS. FLECK: -- all of a sudden a question like that --

20 MR. BECKER: And --

21 MS. FLECK: -- was asked.

22 MR. BECKER: I -- for the record, I would disagree that -- you know, that this
23 would -- that there was -- I wouldn't disagree it may be embarrassing for anyone to
24 talk about what a couple's intimate sex life but I would disagree to the
25 characterization that -- and I don't know exactly how it was characterized but I think

1 that their sex life fell within the range of normal. Regardless, we don't intend to get
2 into that at all.

3 THE COURT: Okay.

4 MS. FLECK: I can promise you that --

5 THE COURT: You're going to stay out of it too.

6 MS. FLECK: Yeah. And I can promise you that it's not within -- I mean --

7 THE COURT: All right.

8 MR. BECKER: Well, you know, interestingly we had a psychosexual
9 evaluation and Dr. Pacult described it as within the range of normal. So, I'm using
10 language from a doctor who's -- who evaluates people's sex lives.

11 THE COURT: Well, just be careful.

12 MR. BECKER: It may not be traditional Christian but I don't agree that there
13 was anything --

14 THE COURT: All right.

15 MR. BECKER: -- improper or unusual about it.

16 MS. FLECK: No. It's not improper. But it's definitely -- there's jurors that
17 will -- it would blow their mind apart. So.

18 MR. BECKER: We're not going to get into it all.

19 THE COURT: All right.

20 MS. FLECK: Thank you.

21 MR. BECKER: Thank you.

22 THE COURT: Let's just stay out of it. All right. And you've reminded her
23 that --

24 MS. FLECK: I reminded her. I'm going to ask for a little bit of leeway when
25 we get to the area of their separation. I've specifically said that she cannot

1 comment on the fact that he invoked his --

2 THE COURT: You don't need to ask.

3 MS. FLECK: -- right to remain silent.

4 THE COURT: You have permission to lead her in that short bit of area so that
5 we can -- we don't get stuck with problems.

6 MS. FLECK: Yes. I have advised her and she will not go there and I will
7 make sure that -- I can steer her out of that area.

8 THE COURT: All right. Anything else that we need to do outside the
9 presence?

10 MS. FLECK: Do you want rule briefly on the --

11 THE COURT: Yes. I was trying to pull up 51.385 but I find that the testimony
12 of Ms. Megan -- I don't have her last name, this last witness, was within the bounds
13 of 51.385. The discussion, I don't think that it was -- I think it is -- her -- statements
14 to her will be admissible and is consistent with the -- everything staying out of
15 pressuring this little girl too much to give false information. I think it's up to the jury
16 to decide.

17 MR. BECKER: And finally before we bring the jury in, I would just ask again
18 that Counsel confirm that they have relayed to Megan the Court's order with regard
19 to Dustin's assertion of Fifth Amendment rights at the family proceeding so that it
20 doesn't [indiscernible].

21 THE COURT: That's just what we talked about.

22 MR. BECKER: Right. I just want to make sure that that was relayed to
23 Megan.

24 MS. FLECK: I -- yes. Numerous times and I think that the Judge just ruled
25 that he's going to allow me some leeway to kind of lead her through the area of their

1 separation such that we specifically don't. But she's been told numerous and
2 she's --

3 THE COURT: So it doesn't slip out.

4 MR. CASTILLO: Yeah.

5 MR. BECKER: I guess my concern with regard to the leading -- because Ms.
6 Fleck did -- when she did a proffer on this her characterization had to do something
7 to the effect that she had been -- I don't know kind of manipulated and brainwashed
8 by Dustin and stuff. I mean, I don't know if that is part of the leading. I think that it
9 should just be that at some time --

10 MS. FLECK: I think --

11 MR. BECKER: -- after.

12 MS. FLECK: If I ask a -- if I ask her isn't it true that you were manipulated by
13 him and -- that that's --

14 THE COURT: Or she --

15 MS. FLECK: -- why you did --

16 THE COURT: -- believed that she was being manipulated.

17 MS. FLECK: That you believe that I think it would leave a worse impression
18 with the jury for my case such that I can't get that evidence out myself. I mean,
19 there's -- you know, she's capable of saying that if she wants to. Other witnesses
20 that we call are willing to -- or capable of saying that if that's what they've seen. I
21 wouldn't do that. I'm just going to say at some point they --

22 THE COURT: They separated.

23 MS. FLECK: -- separated.

24 ...

25 ...

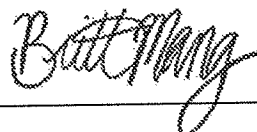
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MR. BECKER: That's fine. Okay.

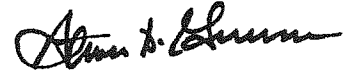
THE COURT: All right. Bring the jury in, Tom.

[Proceeding concluded at 10:20 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual recording in the above-entitled case.



Brittany Mangelson
Independent Transcriber



CLERK OF THE COURT

1 RTRAN

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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

THURSDAY, MAY 30, 2013
TRANSCRIPT OF PROCEEDINGS
JURY TRIAL
DAY 3 - VOLUME III

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Deputy District Attorney

For the Defendant:

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MICHAEL V. CASTILLO, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

TRANSCRIBED BY: BRITTANY MANGELSON, INDEPENDENT TRANSCRIBER

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1 THURSDAY MAY 30, 2013 AT 10:21 A.M.

2
3 THE MARSHAL: All rise, please.

4 [In the presence of the jury]

5 THE MARSHAL: And be seated.

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

7 MS. FLECK: The State does, Your Honor.

8 MR. BECKER: Yes, Your Honor.

9 THE COURT: Ladies and gentlemen, thanks for being prompt.

10 Call your next witness State.

11 MS. FLECK: Thank you, Your Honor.

12 State calls Megan Barral.

13 **MEGAN BARRAL**

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

15 THE CLERK: Please be seated.

16 THE COURT: Go ahead.

17 THE CLERK: Would you please state and spell your first and last name for
18 the record?

19 THE WITNESS: Megan Barral; M-E-G-A-N, B-A-R-R-A-L.

20 MS. FLECK: May I proceed?

21 THE COURT: Go ahead.

22 THE CLERK: Thank you.

23 MS. FLECK: Thank you.

24 **DIRECT EXAMINATION**

25 BY MS. FLECK:

1 Q Good morning, Megan.
2 A Morning.
3 Q Megan, do you have kids?
4 A I do.
5 Q How many kids do you have?
6 A Two boys.
7 Q What are their names?
8 A Levi is the oldest and Joshua.
9 Q How old is Levi?
10 A Levi is five.
11 Q And how old is Joshua?
12 A He's three.
13 Q Do you live here in Las Vegas with your two boys?
14 A My address is in Henderson, yes.
15 Q But do you live with your two boys now?
16 A Yes. I do.
17 Q Are you currently married?
18 A I'm not.
19 Q Pardon me?
20 A No, ma'am.
21 Q Have you been married before?
22 A Yes, ma'am.
23 Q Who were you married to?
24 A Dustin Barral.
25 Q Do you see Dustin in the courtroom today?

1 A Yes, ma'am.

2 Q Can you please point to him and describe something he's wearing?

3 A [Witness points at defendant.] A green shirt.

4 MS. FLECK: Let the record reflect identification.

5 BY MS. FLECK:

6 Q Megan, when did you first meet Dustin?

7 A 2005. I believe it was 2005. Sorry.

8 Q You okay?

9 A Mm-hmm.

10 Q Okay. 2005?

11 A Yes, ma'am.

12 Q And how did you meet?

13 A We were attending the same church.

14 Q Fair to say that you and your parents and your family at that time were
15 quite involved with church?

16 A Yes, ma'am.

17 Q What church was it that you were going to?

18 A We were at the Dream Center of Las Vegas.

19 Q And that was the same church that the Defendant was going to?

20 A Yes, ma'am.

21 Q How old were you when you met him?

22 A Twenty years old.

23 Q How did your and the Defendant's relationship progress from the time
24 you met? Just I'm talk -- just to narrow it down, that's kind of vague -- but just to
25 narrow it down that very first portion of your relationship.

1 A First portion of our relationship went quickly. We basically started
2 hanging and then we weren't apart a day until I think sometime after we were
3 married.

4 Q Okay. Like a zero to a hundred kind of thing.

5 A Yeah.

6 Q Do you -- you start dating quickly, you start spending a lot of time
7 together; do you also marry somewhat quickly?

8 A Yes.

9 Q How long after you knew Dustin did you guys get married?

10 A Six months.

11 Q What was your relationship like with your parents when you were
12 twenty and you first married the defendant?

13 A We weren't speaking at the time when we got married. We were when
14 we were initially together but by the time we decided to marry we weren't speaking.

15 Q Okay. So before you met Dustin and then in your very beginning of
16 your relationship, what was family like? Your family life like?

17 A I'm sorry. Can you repeat that?

18 Q I know. It was a bad question. Before you met Dustin were you close
19 with your family?

20 A Yes, ma'am.

21 Q Describe your relationship with your parents and sister and your
22 brother.

23 A I was still living at home with my parents. I was volunteering at the
24 church so I was with them, you know, all day. We would leave for work together;
25 come home together. My brother was away at college and my sister at the time was