

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
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24  
25  
26  
27  
28

Counsel for Respondent

**INDEX**  
**STEVEN DALE FARMER**  
**Case No. 65935**

	<u>PAGE NO.</u>
Amended Criminal Complaint filed 06/17/2008 .....	003-005
Amended Information filed 07/08/2010 .....	289-293
Amended Notice of Witnesses and/or Expert Witnesses filed 06/05/2009 .....	193-195
Amended Order Granting State's Motion to Consume Entire DNA Samples for Y-STR Testing by Outside Laboratory filed 05/08/2012 .....	366-367
Criminal Complaint filed 05/20/2008 .....	001-002
Defendant's Motion for Recordation of All Proceedings Including Bench Conferences & Contingent Motion for Stay of Proceedings in the Event the Motion for Recordation of Bench Conferences is Denied filed 01/21/2014 .....	419-425
Defendant's Notice of Expert Witnesses, Pursuant to NRS 174.234(2) filed 12/02/2011 .....	323-330
Defendant's Opposition to State's Notice of Motion and Motion for Videotaped Testimony of Victim, Marcia Peterson filed 09/16/2010 .....	301-307
Defendant's Proposed Jury Instructions Not Used at Trial filed 04/10/2014 .....	486-490
Defendant's Reply to State's Motion to Use Videotaped Testimony of Victim, Marcia Peterson at Trial filed 01/21/2014 .....	414-418
Defendant's Reply to State's Oppositon to Motion for Discovery filed 01/21/2009 .....	147-158
Defendant's Second Notice of Witnesses, Pursuant to NRS 174.234 filed 01/27/2014 .....	433-434
Defense Opposition to State's Motion to Consolidate filed 04/06/2010 .....	254-268
District Court Minutes from 11/17/2009 through 05/28/2014 .....	502-562
Eighth Supplemental Notice of Witnesses and/or Expert Witnesses filed 01/27/2014 ....	435-441
Ex Parte Motion for Release of Medical Records filed 01/22/2009 .....	159-160
Ex Parte Motion for Release of Medical Records filed 01/22/2009 .....	161-162
Ex Parte Motion for Release of Medical Records filed 01/22/2009 .....	163-164
Ex Parte Motion for Release of Medical Records filed 01/22/2009 .....	165-166
Ex Parte Motion for Release of Medical Records filed 01/22/2009 .....	167-168
Ex Parte Motion for Release of Medical Records filed 01/22/2009 .....	169-170
Ex Parte Order filed 03/23/2010 .....	252-253
///	

1	Ex Parte Order for Transcript filed 05/09/2011.....	315-316
2	Ex Parte Order for Transport filed 10/23/2009 .....	217-218
3	Ex Parte Order for Transport filed 11/03/2009 .....	219-220
4	Ex Parte Order for Transport filed 11/05/2009 .....	221-222
5	Ex Parte Order for Transport filed 02/25/2010 .....	223-224
6	Ex Parte Order for Transport filed 03/17/2010 .....	251
7	Ex Parte Order for Transport filed 02/11/2011 .....	310-311
8	Ex Parte Order for Transport filed 08/08/2011 .....	317-318
9	Ex Parte Order for Transport filed 08/30/2011 .....	319-320
10	Ex Parte Order for Transport filed 02/27/2012 .....	352
11	Ex Parte Order for Transport filed 01/31/2013 .....	380
12	Expedited Ex Parte Order for Transcript filed 05/15/2009 .....	183-184
13	Farmer's Motion to Sever Counts Involving Separate Counts Involving Different Accusers filed 06/04/2010.....	269-288
14	Fifth Supplemental Notice of Witnesses and/or Expert Witnesses filed 10/22/2012.....	373-379
15	Fourth Supplemental Notice of Witnesses and/or Expert Witnesses filed 01/20/2012....	331-350
16	Indictment filed 11/19/2008 .....	086-089
17	Indictment Warrant filed 11/19/2008 .....	090
18	Indictment Warrant Return filed 11/20/2008 .....	091-092
19	Information filed 07/02/2008.....	008-011
20	Instructions to the Jury filed 02/28/2014.....	453-482
21	Judgment of Conviction filed 06/02/2014.....	493-495
22	Justice Court Minutes from 05/21/2008 through 07/01/2008 .....	006-007
23	Motion for Discovery filed 12/30/2008.....	123-131
24	Motion to Continue Trial Date filed 01/20/2009.....	143-146
25	Motion to Continue Trial Date filed 06/05/2009.....	188-192
26	Motion to Continue Trial Date filed 02/23/2011.....	312-314
27	Motion to Continue Trial Date filed 07/11/2012.....	370-372
28	///	

1	Motion to Continue Trial Date filed 02/14/2013 .....	381-385
2	Notice of Appeal filed 06/16/2014 .....	496-497
3	Notice of Appeal filed 06/20/2014 .....	498-501
4	Notice of Motion and Motion in Limine to Limit Cross Examination of Roxanne and Scott Cagnina on an Order Shortening Time filed 01/28/2014 .....	442-447
5	Notice of Motion and Motion to Consume Entire DNA Samples for Y-STR Testing by an	
6	Outside Laboratory filed 02/27/2012 .....	353-359
7	Notice of Witnesses and/or Expert Witnesses filed 06/04/2009 .....	185-187
8	Objection to State's Request for Destructive Testing of DNA Samples for Y-STR Testing filed	
9	03/30/2012 .....	360-363
10	Order for Transcript filed 01/31/2012 .....	351
11	Order Granting State's Motion for Videotaped Testimony of Victim, Marcia Peterson filed	
12	11/17/2010 .....	308-309
13	Order Granting State's Motion to Consolidate and Partially Denying Defendant's Motion to	
14	Sever filed 11/02/2011 .....	321-322
15	Order Granting State's Motion to Consume Entire DNA Samples for Y-STR Testing by Outside	
16	Laboratory filed 04/17/2012 .....	364-365
17	Order Releasing Medical Records filed 02/04/2009 .....	171-172
18	Order Releasing Medical Records filed 02/04/2009 .....	173-174
19	Order Releasing Medical Records filed 02/04/2009 .....	175-176
20	Order Releasing Medical Records filed 02/04/2009 .....	177-178
21	Order Releasing Medical Records filed 02/04/2009 .....	179-180
22	Order Releasing Medical Records filed 02/12/2009 .....	181-182
23	Plaintiff's Proposed Jury Instructions Not Used at Trial filed 04/10/2014 .....	491-492
24	Real Party in Interest and Victim Roxanne Cagnina's Response to Defendant Steven Farmer's	
25	Motion to Continue Trial Date filed 02/22/2013 .....	386-401
26	Reporter's Transcript of Preliminary Hearing heard 07/01/2008 .....	012-085
27	Reporter's Transcript of Proceedings heard 11/18/2008 .....	093-122
28	Second Amended Information filed 02/24/2014 .....	448-452
	Second Amended Order Granting State's Motion to Consume Entire DNA Samples for Y-STR	
	Testing by Outside Laboratory filed 05/22/2012 .....	368-369
	Second Supplemental Notice of Witnesses and/or Expert Witnesses filed 09/28/2009...	207-210

1	Seventh Supplemental Notice of Witnesses and/or Expert Witnesses filed 01/24/2014 .....	426-342
2	.....	
3	Sixth Supplemental Notice of Witnesses and/or Expert Witnesses filed 01/09/2014.....	402-408
4	State's Notice of Motion and Motion for Videotaped Testimony of Victim, Marcia Peterson filed 03/08/2010.....	246-250
5	State's Notice of Motion and Motion for Videotaped Testimony of Victim, Marcia Peterson filed 08/20/2010.....	294-300
6	State's Notice of Motion and Motion to Consolidate filed 03/08/2010 .....	225-245
7	State's Notice of Motion to Use Videotaped Testimony of Victim, Marcia Peterson at Trial filed 01/16/2014 .....	409-413
8	State's Opposition to Defendant's Motion for Discovery filed 01/16/2009 .....	132-142
9	Supplemental Notice of Witnesses and/or Expert Witnesses filed 09/28/2009 .....	196-206
10	Third Supplemental Notice of Witnesses and/or Expert Witnesses filed 10/16/2009 .....	211-216
11	Verdict filed 02/28/2014.....	483-485
12		

#### **TRANSCRIPTS**

15	Transcript of Proceedings, <b>Jury Trial—Day One</b>	
16	Date of Hrg: 02/03/2014.....	866-995
17	Transcript of Proceedings, <b>Jury Trial—Day Two</b>	
18	Date of Hrg: 02/04/2014.....	996-1179
19	Transcript of Proceedings, <b>Jury Trial—Day Three</b>	
20	Date of Hrg: 02/05/2014.....	1180-1350
21	Transcript of Proceedings, <b>Jury Trial—Day Four</b>	
22	Date of Hrg: 02/06/2014.....	1351-1596
23	Transcript of Proceedings, <b>Jury Trial—Day Five</b>	
24	Date of Hrg: 02/07/2014.....	1597-1699
25	Transcript of Proceedings, <b>Jury Trial—Day Six</b>	
26	Date of Hrg: 02/10/2014.....	1700-1820
27	Transcript of Proceedings, <b>Jury Trial—Day Seven (Excludes Sealed Bench Conference)</b>	
28	Date of Hrg: 02/11/2014.....	1821-2034

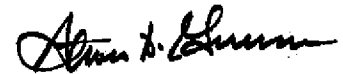
1	Transcript of Proceedings, <b>Jury Trial—Day Eight</b>	
2	Date of Hrg: 02/12/2014.....	2035-2199
3	Transcript of Proceedings, <b>Jury Trial—Day Nine</b>	
4	Date of Hrg: 02/13/2014.....	2200-2398
5	Transcript of Proceedings, <b>Jury Trial—Day Ten</b>	
6	Date of Hrg: 02/14/2014.....	2399-2504
7	Transcript of Proceedings, <b>Jury Trial—Day Eleven</b>	
8	Date of Hrg: 02/19/2014.....	2505-2590
9	Transcript of Proceedings, <b>Jury Trial—Day Twelve</b>	
10	Date of Hrg: 02/20/2014.....	2591-2637
11	Transcript of Proceedings, <b>Jury Trial—Day Thirteen</b>	
12	Date of Hrg: 02/21/2014.....	2638-2735
13	Transcript of Proceedings, <b>Jury Trial—Day Fourteen</b>	
14	Date of Hrg: 02/24/2014.....	2736-2784
15	Transcript of Proceedings, <b>Jury Trial—Day Fifteen</b>	
16	Date of Hrg: 02/27/2014.....	2785-2796
17	Transcript of Proceedings, <b>Jury Trial—Day Sixteen</b>	
18	Date of Hrg: 02/28/2014.....	2797-2805
19	Recorder's Transcript, All Pending Motions	
20	Date of Hrg: 03/07/2011.....	760-766
21	Recorder's Transcript, Calendar Call/ All Pending Motions	
22	Date of Hrg: 01/27/2014.....	855-865
23	Recorder's Transcript, Calendar Call; Defendant's Motion for Discovery and Defendant's Motion to Continue Trial	
24	Date of Hrg: 02/04/2009.....	595-626
25	Recorder's Transcript, Defendant's Motion for Discovery	
26	Date of Hrg: 01/12/2009.....	581-584
27	///	
28		

1	Recorder's Transcript, Defendant's Motion for Discovery	
2	Date of Hrg: 01/21/2009.....	588-591
3	Recorder's Transcript, Defendant's Motion for Discovery/ Defendant's Motion to Continue Trial Date	
4	Date of Hrg: 02/02/2009.....	592-594
5	Recorder's Transcript, Defendant's Motion to Continue Trial Date (Both)	
6	Date of Hrg: 02/25/2013.....	846-854
7	Recorder's Transcript, Defendant's Motion to Continue Trial Date (C245739)	
8	Date of Hrg: 07/23/2012.....	843-845
9	Recorder's Transcript, Defendant's Motion to Continue Trial Date/ Calendar Call	
10	Date of Hrg: 06/17/2009.....	631-636
11	Recorder's Transcript, Grand Jury Indictment Return	
12	Date of Hrg: 11/09/2008.....	573-575
13	Recorder's Transcript, Motion to Consolidate	
14	Date of Hrg: 07/07/2010.....	710-735
15	Recorder's Transcript, Sentencing	
16	Date of Hrg: 05/28/2014.....	2806-2819
17	Recorder's Transcript, State's Motion for Videotaped Testimony of Victim, Marcia Petersen/ State's Motion to	
18	Consolidate	
19	Date of Hrg: 03/17/2010.....	647-649
20	Recorder's Transcript, State's Motion for Videotaped Testimony of Victim, Marcia Petersen/ State's Motion to	
21	Consolidate	
22	Date of Hrg: 03/22/2010.....	650-654
23	Recorder's Transcript, State's Motion for Videotaped Testimony of Victim, Marcia Petersen/ State's Motion to	
24	Consolidate	
25	Date of Hrg: 04/07/2010.....	655-657
26	Recorder's Transcript, State's Motion to Consolidate	
27	Date of Hrg: 05/05/2010.....	662-663
28	Recorder's Transcript, State's Motion to Consolidate/ State's Notice of Motion and Motion for Videotaped Testimony	
	of Victim, Marcia Petersen	
	Date of Hrg: 05/19/2010.....	664-703

1	Recorder's Transcript, State's Motion to Consolidate with C245739/ State's Notice of Motion and Motion for 2 Videotaped Testimony of Victim, Marcia Petersen Date of Hrg: 06/07/2010.....	704-706
3	Recorder's Transcript, 4 State's Motion to Consolidate with C245739/ State's Notice of Motion and Motion for Videotaped Testimony of Victim, Marcia Petersen 5 Date of Hrg: 06/28/2010.....	707-709
6	Recorder's Transcript, 7 State's Motion to Consolidate with C245739/ State's Notice of Motion and Motion for Videotaped Testimony of Victim, Marcia Petersen/ On Calendar Per Department 8 Date of Hrg: 09/01/2010.....	736-738
9	Recorder's Transcript, 10 State's Motion to Consume Entire DNA Samples for Y-STR Testing by an Outside Laboratory (C245739) Date of Hrg: 04/04/2012.....	839-842
11	Recorder's Transcript, 12 State's Notice of Motion and Motion for Videotaped Testimony of Victim, Marcia Petersen Date of Hrg: 09/22/2010.....	739-748
13	Recorder's Transcript, 14 State's Request to Continue Trial Date of Hrg: 10/28/2009.....	640-643
15	Recorder's Transcript, 16 Status Check (Both) Date of Hrg: 10/17/2011.....	767-773
17	Recorder's Transcript, 18 Status Check (Both) Date of Hrg: 02/06/2012.....	837-838
19	Recorder's Transcript, 20 Status Check: Hearing: Preservation of Witness Testimony (Both) Date of Hrg: 12/14/2011.....	779-783
21	Recorder's Transcript, 22 Status Check: Pending Court Dates (Both)/ Further Proceedings/ Status Check (Both) Date of Hrg: 10/25/2010.....	749-755
23	Recorder's Transcript, 24 Status Check: Reset Video Deposition (Both)/ Status Check: Amended Information/ Consolidation (Both)/ Further Proceedings: Video Deposition of Victim (Both)/ Status Check: 25 As to Severed Counts (Both) Date of Hrg: 12/13/2010.....	756-759
26	Recorder's Transcript, 27 Status Check: Trial Date and Video Exam (Both) Date of Hrg: 10/19/2011.....	774-778
28	///	



1	Recorder's Transcript of Hearing, Arraignment	
2	Date of Hrg: 07/08/2008.....	563-565
3	Recorder's Transcript of Proceedings, Calendar Call	
4	Date of Hrg: 01/27/2009.....	585-587
5	Recorder's Transcript of Proceedings, Calendar Call	
6	Date of Hrg: 05/19/2009.....	657-630
7	Recorder's Transcript of Proceedings, Hearing: Preservation of Witness Testimony	
8	Date of Hrg: 01/20/2012.....	784-836
9	Recorder's Transcript of Proceedings, Initial Arraignment; Indictment Warrant Return	
10	Date of Hrg: 12/02/2008.....	576-577
11	Recorder's Transcript of Proceedings, Initial Arraignment; Indictment Warrant Return	
12	Date of Hrg: 12/11/2008.....	578-580
13	Recorder's Transcript of Proceedings, Trial Setting	
14	Date of Hrg: 07/14/2009.....	637-639
15	Recorder's Transcript of Proceedings, Trial Setting	
16	Date of Hrg: 11/17/2009.....	644-646
17	Recorder's Transcript of Proceedings, Trial Setting	
18	Date of Hrg: 05/04/2010.....	658-661
19	Reporter's Transcript, Hearing	
20	Date of Hrg: 08/18/2008.....	566-568
21	Reporter's Transcript, Hearing	
22	Date of Hrg: 08/20/2008.....	569-572
23		
24		
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CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,	.	CASE NO. C-245739
	.	CASE NO. C-249693
Plaintiff,	.	
	.	DEPT. NO. 5
v.	.	
	.	<b>TRANSCRIPT OF</b>
STEVEN DALE FARMER,	.	<b>PROCEEDINGS</b>
	.	
Defendant.	.	
.....	.	

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 8**

WEDNESDAY, FEBRUARY 12, 2014

APPEARANCES:

FOR THE STATE:	JACQUELINE M. BLUTH, ESQ. BRIAN J. KOCHER, ESQ. Chief Deputy District Attorneys
FOR THE DEFENDANT:	JEFFREY S. MANINGO, ESQ. RYAN J. BASHOR, ESQ. Deputy Public Defenders

COURT RECORDER:

LARA CORCORAN  
District Court

TRANSCRIPTION BY:

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(303) 798-0890

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## INDEX

WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
<u>STATE'S WITNESSES:</u>					
Christine Murray	13	34	48	54	
Lorraine Wescott	56	69	73		
Scott Cagnina	76	93	101		
Linda Ebbert	105	136	155	162	

EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
<u>STATE'S EXHIBITS:</u>	
Exhibits 20 and 21 . . . . .	16
Exhibits 2 through 8 . . . . .	125
Exhibits 22 and 23 . . . . .	125

1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 12, 2014, 1:05 P.M.

2 (Outside the presence of the jury)

3 THE COURT: This is Case No. C245739, State of  
4 Nevada versus Steven Farmer. The record will reflect the  
5 presence of defendant with his counsel, the Deputies District  
6 Attorney prosecuting the case, all officers of the court, and  
7 we are outside the presence of the jury.

8 Mr. Maningo, you had something outside the presence.

9 MR. MANINGO: Yes, Your Honor. Thank you. During  
10 the testimony of both Heather Shank and her husband, Mr.  
11 Lehan, and then also the testimony of Roxanne Cagnina, we had  
12 objected contemporaneously to the, what we refer to as the  
13 victim impact information, the way that they had acted  
14 afterwards. And we're -- we're renewing that objection at  
15 this time regarding that testimony due to the fact that we  
16 feel that it's opened so many doors now throughout the rest of  
17 the trial.

18 The big -- the main prejudice that we feel that Mr.  
19 Farmer suffers from this comes in particular from Ms. Cagnina  
20 when she testified, which I had objected to, that she had a  
21 suicide attempt and took a number of Xanax pills and ended up  
22 on life support. What's so problematic about this, and it  
23 really came -- it really hit me last night when I turned on  
24 the news and watched how the media is reporting things, is  
25 that they follow that up with immediately, oh, and by the way,

1 Marcia Petersen actually killed herself.

2           So now what we've got is this inference building  
3 that the reason Ms. Petersen committed suicide is because of  
4 this case. Now, I think that is extremely prejudicial to Mr.  
5 Farmer, and we can't, obviously, go into any expanded  
6 cross-examination now with Ms. Petersen regarding this. I  
7 think it -- it also causes problems and open doors because we  
8 expect today testimony from Scott Cagnina, and -- and he will  
9 testify to some more of this victim impact.

10           I think that that's problematic for two reasons.  
11 One, it's bolstering the credibility of another witness, and,  
12 secondly, it's -- the primary objection is that it's  
13 irrelevant. I think the harm that it causes is that we've  
14 already had rulings and -- and the defense has completely  
15 accepted certain parameters that we are not going to discuss  
16 with Mr. or Ms. Cagnina during their cross-examination, such  
17 as Ms. Cagnina's arrest for child abuse and losing custody of  
18 her children.

19           However, now if Mr. Cagnina gets up here and says,  
20 well, she was a different person, she was acting strange and  
21 depressed and tried to kill herself, it would make sense,  
22 then, it seems, from our perspective, of course, that I could  
23 then ask Mr. Cagnina, well, maybe she was depressed because of  
24 the fact that she was arrested for child abuse. Maybe she was  
25 depressed because she had lost custody of her children to you,

1 and these are actually the sources of her depression and her  
2 change in behavior and not something else.

3 And that's -- that's not a path that we had planned  
4 on trying to go to. I mean, when the motion in limine was  
5 filed, we basically said, okay, we won't talk about that, we  
6 won't talk. But now we feel like because all of this other  
7 information on how we were impacted afterwards, now we have to  
8 defend against things that happened five years, four years  
9 after the incident that the State is asked to prove beyond a  
10 reasonable doubt.

11 So because of that we feel that Mr. Farmer has been  
12 prejudiced. We would move for a mistrial at this point. If  
13 the Court is not so inclined, then we would ask for an  
14 instruction regarding the -- the victim impact information  
15 that's already been done and ask that the State be prohibited  
16 from exploring that any further. And, obviously, there's  
17 nothing we can do about Ms. Petersen's testimony. It's --  
18 it's locked in. That's all I have.

19 THE COURT: What was -- you're asking for a jury  
20 instruction?

21 MR. MANINGO: Yes.

22 THE COURT: What would that jury instruction be?

23 MR. MANINGO: Well, it's something that myself and  
24 Mr. Bashor would -- would have to work with the Court,  
25 obviously, to construct, but it would be something along the

1 lines that the jury is instructed to not consider the -- the  
2 testimony of these witnesses regarding how they were affected  
3 years after the incident in deciding whether or not the State  
4 has proven the acts of May 16, 2008, beyond a reasonable  
5 doubt. That's strictly off the top of my head, but we would  
6 -- we would certainly be willing to work with the -- with the  
7 Court and with the State in coming to an instruction that  
8 would serve everyone.

9 THE COURT: And the State.

10 MS. BLUTH: Good afternoon, Your Honor. I want to  
11 make sure it's on the record because I'm not sure that we  
12 placed it on the record before. But before we had opening  
13 statements, the State and the defense met about, you know, the  
14 pictures that would be in opening statement and some of the  
15 information. One of the things that we agreed neither side  
16 would hide from was the fact that Marcia Petersen committed  
17 suicide. So that was something that both parties agreed that  
18 was going to come into evidence that the jury would find out.

19 Now, no one is going to walk through those doors and  
20 say, hey, because of what Steven Farmer did to Marcia Petersen  
21 she committed suicide. No one is going to come in and claim  
22 those things. It's not even going to be brought up. I mean,  
23 Marcia Petersen had a very difficult life as Your Honor saw  
24 during the deposition because of the seizures. So, no, the  
25 State is not going to be discussing that in any way.

1 Scott Cagnina will come in to testify this  
2 afternoon. And we have very -- we have limited his testimony  
3 very much because of Your Honor's previous rulings. And so we  
4 discussed with him, you know, that we will -- we will ask you  
5 shortly after this did you see a change in Roxanne.

6 And he is going to say she turned to pills and  
7 alcohol and she just -- she wasn't there anymore, she wasn't  
8 the wife anymore, she wasn't the mother that she would have  
9 been. And we are leaving it at that. We will discuss that it  
10 was one of several contributing factors to their divorce and  
11 then we completely tailored his testimony to that and he was  
12 admonished.

13 But in regards to the motion in limine, I mean, the  
14 defense did -- the defense did want to bring in all of that  
15 bad stuff that goes with that and that's why we did the motion  
16 in limine and that's why Your Honor already ruled on that.  
17 Because the fact of the matter is is she's assaulted, she goes  
18 down this, you know, downhill spiral and then she starts using  
19 these pills and the alcohol. And then she has the domestic  
20 violence issues and the -- you know, the child abuse issue.  
21 So it is kind of checkers that are going down along the way,  
22 but it can be argued that it all started with the assault. We  
23 don't need to get into all of that. It's going to be very  
24 short and concise, much shorter than it was with Ms. Cagnina.  
25 In regard to the --



1 THE COURT: All right. Before -- before you move  
2 on --

3 MS. BLUTH: Sure.

4 THE COURT: Okay. Obviously, I'm concerned -- I  
5 don't know when the alleged arrest for child abuse occurred  
6 because in your motion you said, well, that we talked about  
7 things that happened years afterwards. I have gotten no sense  
8 of timing --

9 MS. BLUTH: Okay.

10 THE COURT: -- from Ms. Cagnina's --

11 MR. MANINGO: Okay.

12 THE COURT: -- testimony. So I --

13 MR. MANINGO: Yes, Your Honor.

14 THE COURT: And so I don't --

15 MR. MANINGO: Let me -- let me just look it up.

16 THE COURT: What I don't -- what my concern is is  
17 that, yes, you brought a motion in limine, but that doesn't  
18 ever mean that you can't end up opening the door.

19 MS. BLUTH: Oh, I totally understand.

20 THE COURT: And so it's one thing to ask a witness  
21 if you notice any immediate behavioral changes right  
22 afterwards, but it's another thing to say, well, you know, did  
23 she -- did she afterwards turn to pills and alcohol. Because,  
24 first of all, that's a leading question and it's probably not  
25 a good one to ask, but the other thing is we don't have any

1 time parameters on that.

2 MS. BLUTH: Right.

3 THE COURT: Now, as far as the -- the concern about  
4 the media, I mean, we're admonishing this jury every single  
5 time that they go anywhere and we've admonished them before  
6 that they're not to be discussing the case. And I  
7 specifically even told them don't read the paper. But, you  
8 know, they're actually hearing both sides, whereas the media  
9 is reporting only certain things and partly because they  
10 haven't stayed for cross.

11 So, I mean, this jury heard the cross-examination,  
12 so they probably know more than what is actually being  
13 reported in the media, so I'm not so concerned about that. I  
14 mean, I understand you read that and you think, okay, would  
15 you want to be trying to get the jury out of -- after people  
16 have read this, but we already have a jury and they've been  
17 admonished not to watch or listen to anything and not make a  
18 decision and I specifically additionally told them don't even  
19 read the paper --

20 MS. BLUTH: Right.

21 THE COURT: -- or watch the news. You know, have  
22 your family read that and if there's anything in the paper,  
23 then don't -- you know, tell them not to show it to you. So I  
24 think we've done everything we can. I can't prevent the media  
25 from reporting on the story, you know, and I can't control

1 what they say. They choose to say what they say. As far as  
2 -- now you can go ahead. I just wanted to --

3 MS. BLUTH: Oh, no, I just --

4 THE COURT: -- you know, comment about my concern  
5 that you could open the door. And I --

6 MS. BLUTH: And I -- and we have spoken to that with  
7 Mr. Cagnina about Your Honor's ruling on, you know, the  
8 divorce and -- and all of those things. And so he knows.  
9 He's been admonished on several different things, you know, to  
10 not say certain things that you've ruled on. And so that's  
11 why -- and we spoke with Mr. Bashor and Mr. Maningo that in  
12 certain portions of his testimony it's probably better to lead  
13 him through it so that nothing blurts out, and they've agreed  
14 with us on that.

15 And then the last thing that Mr. Maningo brought up  
16 was a possible jury instruction. And I thought he was going  
17 down a different route, more of that, you know, you're not to  
18 consider the testimony of the effects, you know, to garner  
19 your sympathy or anything like that. The point of this  
20 evidence was to show, you know, this happened and that these  
21 things happened to them as evidence that this actually  
22 happened.

23 Because the whole thing with Roxanne Cagnina, their  
24 entire defense is that she made this up for money. So it's  
25 most important with Roxanne Cagnina to say, no, that she was

1 affected by this and her family noticed a difference because  
2 this really happened. Roxanne Cagnina is the most important  
3 witness of why this evidence should come in, because their  
4 entire defense is that she made this up. And by her making  
5 this up and going to the media, it made everybody else think  
6 these crazy things that didn't really happen to them. So  
7 that's why it's most important with Ms. Cagnina.

8 THE COURT: You know, and I agree it should come in  
9 for that reason, but, again, you run the risk if -- depending  
10 on how the questions are asked of opening the door because if  
11 it's did you see a character change or a change -- not a  
12 character change, but a behavioral change immediately after  
13 the incident, then I don't have a problem with that because,  
14 of course, the defense can certainly say if they have some,  
15 you know, basis for asking. Well, I mean, I don't know what  
16 your case is, so I'm only using this by way of example if you  
17 had something. Well, you know, isn't it true that she was  
18 depressed beforehand? Like I think you -- you brought that up  
19 on cross --

20 MS. BLUTH: Right.

21 THE COURT: -- that she was already taking an  
22 anti-anxiety medication --

23 MR. MANINGO: Yes, Your Honor.

24 THE COURT: -- or something like that. I mean, that  
25 limits it and it -- but it doesn't get us all into the weeds

1 of all these other things that are going to cause problems and  
2 -- and go beyond what we're looking for, so --

3 MR. MANINGO: Okay.

4 THE COURT: -- that's -- that's how I want to limit  
5 it.

6 MS. BLUTH: Okay.

7 MR. MANINGO: Thank you, Your Honor.

8 THE COURT: Thank you. Anything else?

9 MS. BLUTH: I think that's it.

10 THE COURT: Okay. So the motion for mistrial is  
11 denied.

12 MR. MANINGO: Yes, Your Honor.

13 THE COURT: All right. Thank you.

14 MR. MANINGO: Thank you.

15 THE COURT: Bring them in.

16 (Inside the presence of the jury)

17 THE COURT: Thank you. Please be seated. The  
18 record will reflect we're back in the presence of all 12  
19 members of the jury, as well as the four alternates. And the  
20 defendant is present with his counsel, the Deputies District  
21 Attorney prosecuting the case are present, as are all officers  
22 of the court.

23 Will counsel so stipulate?

24 MS. BLUTH: Yes, Your Honor.

25 MR. MANINGO: Yes, Your Honor.

1 THE COURT: Good afternoon, ladies and gentlemen.

2 JURY PANEL: Good afternoon.

3 THE COURT: How are you today? Good? Everybody  
4 good?

5 JURY PANEL: Yes.

6 THE COURT: All right. And, Ms. Bluth, you may call  
7 your next witness.

8 MS. BLUTH: Thank you, Your Honor. The State would  
9 call Christine Murray.

10 CHRISTINE MURRAY, STATE'S WITNESS, SWORN

11 THE CLERK: You may be seated. And please state  
12 your name and spell it for the record.

13 THE WITNESS: Christine Murray; C-H-R-I-S-T-I-N-E  
14 M-U-R-R-A-Y.

15 THE COURT: Thank you. You may proceed.

16 MS. BLUTH: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MS. BLUTH:

19 Q Good afternoon, Ms. Murray.

20 A Hi.

21 Q How are you employed?

22 A I'm an RN.

23 Q Okay. And how long have you been a registered  
24 nurse?

25 A Going on 11 years.

1 Q I'd like to turn your attention back to 2008. In  
2 2008 where were you working as a registered nurse?

3 A Centennial Hills Hospital.

4 Q In what portion of the hospital were you working at?

5 A On the seventh floor.

6 Q And on the seventh floor, what type of patients were  
7 you treating?

8 A We were treating joint replacement, but we were also  
9 treating anybody else that needed a bed that we didn't have  
10 one elsewhere.

11 Q Okay. And so I'd like to turn your attention  
12 specifically now to May 16, 2008. On that day were you  
13 working on the seventh floor at Centennial Hills Hospital?

14 A Yes, I was. And on that date did you treat a  
15 patient by the name of Roxanne Cagnina?

16 A Yes.

17 Q And like you said, you were on the seventh floor, so  
18 which area of the hospital did Ms. Cagnina come from?

19 A From the ER.

20 Q And I don't expect you to remember all the specific  
21 times, so if you ever need to look at the medical records,  
22 please just let me know. Do you remember when it was -- or,  
23 excuse me, what time it was that you were alerted that she was  
24 admitted to the hospital?

25 A It was after 2:00 in the morning.

1 Q Okay. And because I'm a stickler, I'm going to  
2 bring you these so we can know the exact times if that's okay.

3 A Uh-huh.

4 MS. BLUTH: May I approach, Your Honor?

5 THE COURT: Yes.

6 MS. BLUTH: We're going to have these marked --

7 THE COURT: Okay.

8 MS. BLUTH: -- after speaking with Mr. Maningo.

9 May I approach, Your Honor?

10 THE COURT: Yes.

11 MS. BLUTH: Okay. Thank you. I'm

12 BY MS. BLUTH:

13 Q I'm showing you what's been marked for purposes of  
14 identification as State's Proposed Exhibit 20. Do you  
15 recognize what that is?

16 A Yes, this is the -- the assessment sheet that we  
17 would -- that we would fill out when we got a new patient onto  
18 the floor.

19 Q Okay. And are those in regards -- your notes in  
20 regards to patient Roxanne Cagnina?

21 A Yes, they are.

22 Q And in the upper right-hand corner, does that state  
23 the patient Roxanne Cagnina's name, date of birth, etcetera?

24 A Yes, it is.

25 Q And then are those the notes pertaining to your



1 admission assessment on Ms. Cagnina?

2 A Yes, they are.

3 Q Okay. And these are records that are kept by the  
4 hospital in the course of their business; is that correct?

5 A Yes. Yes, they are.

6 Q Thank you.

7 MS. BLUTH: Your Honor, at this time I move to admit  
8 into evidence State's Proposed 20.

9 MR. MANINGO: The defense would stipulate to these,  
10 Your Honor, to the admission of these.

11 THE COURT: All right. And that's Exhibit 20. And  
12 are you stipulating to another admission, or just --

13 MS. BLUTH: 21.

14 THE COURT: -- 20 at this time?

15 MR. MANINGO: Yes, to both.

16 THE COURT: Okay.

17 (State's Exhibits 20 and 21 admitted)

18 BY MS. BLUTH:

19 Q Okay. All right. So I am going to put this up on  
20 the Elmo and it's going to come up on that computer in front  
21 of you.

22 A Oh, okay.

23 Q That way we can both look at it. Just one second.  
24 So before I get the specifics of this document and how it --  
25 and how it pertains to Ms. Cagnina, what is this document

1 called?

2 A This is called a MAR. This -- oh, no. This is the  
3 admission log. This was started down in the ER and this would  
4 tell what meds were given while she was down there at what  
5 time.

6 Q Okay. And so in regards to this section up here,  
7 just the first block pertains to Ms. Cagnina; is that correct?

8 A Uh-huh.

9 Q Okay. And so --  
10 THE COURT: Is that a yes?

11 THE WITNESS: Yes.

12 THE COURT: Okay. Thank you.

13 BY MS. BLUTH:

14 Q Sorry. It's hard to get used to. Now, this time  
15 right here, 02:35, it shows the time room was assigned, and  
16 what does that mean?

17 A That means that's when they would have decided that  
18 this patient should go up to the floor and what room she would  
19 be taken to.

20 Q Okay. And I'm going to show you -- I'm going to let  
21 you keep State's 20 with you, which is your nursing notes.

22 A Okay.

23 Q And pertaining to your notes, what time are you  
24 alerted that she'll be coming on the floor?

25 A At 2:42.

1 Q Okay. And so someone from emergency room just  
2 notifies you guys upstairs, hey, just so you know, you have a  
3 patient coming up.

4 A Yes, they would notify the charge nurse, and then  
5 she would tell -- tell whichever nurse would get the patient.

6 Q Okay. So at 2:35 is when the room is assigned, Ms.  
7 Cagnina is assigned to the room.

8 A Uh-huh.

9 Q And that -- I'm sorry, is that a yes?

10 A Yes. Yes.

11 Q Okay. And at 2:42 is when your unit on the seventh  
12 floor is notified that she'll be coming up?

13 A Yes.

14 Q Okay. Now, when someone actually arrives onto your  
15 floor, is the time that they come on actually documented?

16 A Usually -- usually what we do is when we see the  
17 patient first, that's when we start our assessment. And when  
18 you do your assessment, admission assessment, you would  
19 document what time you saw her for the first time.

20 Q Okay. And then on this particular document is it  
21 documented by someone on your floor when she actually arrives  
22 onto the floor?

23 A I believe it was documented by the charge nurse or  
24 the unit clerk because I did not see her arrive on the floor.

25 Q Right. And -- and just take away Ms. Cagnina, but

1 just generally does someone on your floor for record keeping  
2 purposes document when the patient comes to the floor?

3 A Yes, they do.

4 Q And that individual, whoever it was, whether it be a  
5 charge nurse or -- documented Mr. Cagnina arriving onto your  
6 floor at 03:51?

7 A Yes.

8 Q Is that correct?

9 A Yes, it is.

10 Q Okay. Now, like you said, you -- you don't actually  
11 see when she arrives onto the floor?

12 A Not always, no.

13 Q And specifically Ms. Cagnina, you don't see when she  
14 came to the floor?

15 A No, I do not.

16 Q And were you with another patient?

17 A Yes, I was.

18 Q Okay. And do you remember that -- oh, no, I'm  
19 sorry. Let me back up here. Who was it that transported Ms.  
20 Cagnina up to the second floor?

21 A That was this gentleman here.

22 Q Okay. And you see that person here in the court  
23 room?

24 A Yes.

25 Q And can you please point to him and describe an

1 article of clothing that he's wearing?

2 A Yes, he is sitting right here and he's wearing a  
3 tie. It looks like it's checkered or striped.

4 Q Okay. And what color hair does he have?

5 A White.

6 MS. BLUTH: Your Honor, may the record reflect that  
7 the witness has identified the defendant?

8 THE COURT: It will.

9 MS. BLUTH: Thank you.

10 BY MS. BLUTH:

11 Q Did the defendant let you know that she had come  
12 onto the floor?

13 A Yes, he did.

14 Q And where were you when he did that?

15 A I was inside the patient -- the patient that I was  
16 with at that time, he stepped into the room and he told me  
17 that he had brought her up, that I didn't have to worry about  
18 going to see her right away because she had had several drugs  
19 downstairs and she really wouldn't know if I was there or  
20 not --

21 Q Okay.

22 A -- right away.

23 Q So let me ask you a few questions about that  
24 interaction. Number one, when you say you were in a patient's  
25 room, you were in another patient's room?

1 A Yes, I was.

2 Q Okay. You were treating a different patient?

3 A Yes, I was.

4 Q So when Mr. Farmer comes to have this conversation  
5 with you, you're physically treating another individual?

6 A Yes.

7 Q Okay. Did you find that conversation between you  
8 and the defendant odd in that setting?

9 A I found it inappropriate.

10 Q Okay. And what about that is inappropriate?

11 A That violates HIPAA law and HIPAA law is just -- we  
12 just live by that. I mean, that's -- you know, that's -- what  
13 he said in front of another patient, you know, letting that --

14 MR. MANINGO: Objection, Your Honor. This regarding  
15 the medical statutes and so forth, this is not relevant. It's  
16 an uncharged act or conduct. We can approach if we want to  
17 discuss it further.

18 MS. BLUTH: However you would like to handle it.

19 THE COURT: Approach.

20 (Bench conference)

21 MR. MANINGO: Jeff Maningo. Your Honor, my  
22 objection is just that this is -- now we're getting into an  
23 uncharged bad act when she's saying that it violates a law  
24 regarding HIPAA. And so -- and I don't think it's relevant to  
25 the testimony regarding Mr. Farmer.

1 MS. BLUTH: Jacqueline Bluth. I disagree. It's not  
2 an uncharged bad act, number one. And number two, it's  
3 clearly relevant because for the defendant to go in in front  
4 of another patient when he knows it's inappropriate to talk  
5 about another patient in front of another patient and say,  
6 hey, you don't need to go see that lady right away, take your  
7 time because she's pretty loopy on some drugs clearly shows  
8 his motive and intent to create a buffer between the time he's  
9 with Roxanne Cagnina and this nurse sees her.

10 MR. MANINGO: Well, Your Honor, I don't -- I don't  
11 object to that testimony and I didn't object to that  
12 testimony. I think that's fine and perfectly relevant and I  
13 understand where the State is coming from. I just don't think  
14 it's relevant, nor appropriate, to get into her opinion that  
15 it's a violation of a law regarding HIPAA. I mean, the fact  
16 that he came in and made this statement and she thinks it's  
17 odd or inappropriate because of the timing, I understand.

18 MS. BLUTH: You just have a problem -- you just have  
19 a problem with the violation of HIPAA testimony; is that  
20 right?

21 MR. MANINGO: Right, saying it's a violation of the  
22 law and that it's -- it's misconduct and should be -- you  
23 know, that kind of thing.

24 THE COURT: All right. It seems to me like the best  
25 way to address this is to lead her out of this because, yeah,

1 I don't want to get into --

2 MS. BLUTH: I understand.

3 THE COURT: I mean, it's not a criminal violation,  
4 but it's true that nurses aren't supposed to be mentioning,  
5 and I don't know whether he did mention anything that she's  
6 saying in front of another patient, etcetera. But try and get  
7 out and lead with this.

8 MS. BLUTH: I understand.

9 THE COURT: Leading her out of it.

10 MS. BLUTH: Yes, ma'am.

11 THE COURT: Okay.

12 MR. MANINGO: Thank you.

13 (End of bench conference)

14 BY MS. BLUTH:

15 Q And so basically to sum it up, it was inappropriate  
16 for Mr. Farmer to have a conversation regarding Patient A in  
17 front of Patient B?

18 A Yes.

19 Q Okay. And had he ever done that before in your  
20 working with him?

21 A Well, the fact is I have never -- I never worked  
22 with him. That was the first interaction I had ever had with  
23 him.

24 Q Okay. Do you remember telling the police that you  
25 had worked with him for two months around that time period?



1           A     We worked at -- we both worked at Centennial Hills.  
2 I didn't work with him as far as like I would do our regular  
3 CNAs that are assigned to that floor all the time.

4           Q     Sure.

5           A     He was an agency CNA. He was called in when he was  
6 needed.

7           Q     Right.

8           A     And I really didn't have any conversations or any --  
9 I mean, we might have worked the same shift, but we didn't  
10 have any interactions.

11          Q     I see. So you had had comings and goings with  
12 him --

13          A     Uh-huh.

14          Q     -- but you had never worked on the same patient.  
15 Would that be correct if I put it that way?

16          A     Yes.

17          Q     Okay. Now, when you had this conversation with the  
18 defendant and you're still treating that other patient, is it  
19 your belief that he's then leaving the floor?

20          A     Yes. I thought he was letting know what had  
21 happened and that the patient was in her bed and he was on her  
22 way.

23          Q     After treating that initial patient, did you leave  
24 that individual and then go to Ms. Cagnina's room?

25          A     Yes, I did.

1 Q And how much time do you think transpired between  
2 the time you were done with that patient and moved on to Ms.  
3 Cagnina?

4 A Maybe five or ten minutes, not very long.

5 Q Okay. When you got to Ms. Cagnina, do you know  
6 around the time you -- it was that you got to her?

7 A I couldn't say off -- no.

8 Q And do you remember telling the police officers that  
9 it was about 4:20 in the morning when you arrived?

10 A Probably, yes.

11 Q Okay. And if any --

12 A That would be about right.

13 Q And if any of this doesn't make sense --

14 A Uh-huh.

15 Q -- just let me know and I'll provide you with your  
16 voluntary statement.

17 MS. BLUTH: Is there a phone ringing?

18 THE COURT: Does somebody have a phone that's  
19 ringing?

20 MR. MANINGO: I think it's next door.

21 THE COURT: It sounds like it's loud coming through  
22 the walls. All right. Let's proceed.

23 MS. BLUTH: Okay.

24 BY MS. BLUTH:

25 Q And so you arrived to treat Ms. Cagnina about 4:20

1 in the morning. Now, when you got to Ms. Cagnina's room, did  
2 you see anything outside of it that surprised you?

3 A Yes, the gurney from the ER was still out in the  
4 hall in front of the door, and I had been under the impression  
5 that he had taken -- he had left.

6 Q And when you walk into the room, what do you first  
7 see?

8 A When you first step in, the bathroom is right here.  
9 He was helping her go to the bathroom.

10 Q Okay. And when you say the bathroom was right here,  
11 so if I'm walking through the door right now, is the bathroom  
12 to my right or to my left?

13 A To your left.

14 Q To my left. Okay. So when you walk in, you look in  
15 and you see that the defendant is helping Ms. Cagnina use the  
16 restroom?

17 A Yes.

18 Q Okay. So the fact that he was inside the room, do  
19 you think that was odd?

20 A Yes, because usually they -- you know, transporters  
21 they need them to come right back to transport somebody else.  
22 So they usually don't hang around.

23 Q Normally when a transporter or a CNA, whoever is  
24 doing the transporting of the patient, when they get to the  
25 room, run me through what do they do.

1           A     It would depend if the patient was alert and  
2 oriented, could get up and get off the gurney. They would  
3 just make sure they got into the bed safely. If they were  
4 unconscious they would ask for help to transfer the patient  
5 over to the bed. But that's pretty much it.

6           Q     Okay. So they normally get in there, situation  
7 them, and they're gone?

8           A     Yes.

9           Q     And so when you see him helping her going to the  
10 bathroom, what do you say to him?

11          A     I just -- I told him that the other CNA, the female  
12 CNA that had come with me would go ahead and handle it from  
13 there. And he said fine and he walked out.

14          Q     Did you ever see him again on the floor after that?

15          A     No, I didn't.

16          Q     What was Ms. Cagnina's state or demeanor when you  
17 saw her initially?

18          A     She had had -- my understanding she had had several  
19 pain killers downstairs. She was -- she was not oriented to  
20 what was going on. She had a very unsteady gait. We each had  
21 to take a side of her and walk her to the bed. She kept  
22 asking who is around me, who is around me, who is around, you  
23 know.

24          Q     Was she concerned whether there were any males in  
25 the room?

1           A     Yeah, she kept asking if there were -- are we all  
2 females, are we all females? And we kept saying yes. Because  
3 she had gotten her gown caught and she wanted it straightened  
4 around, but she didn't want us to do it if there was a male in  
5 the room.

6           Q     And did you straight -- did you help her out with  
7 that?

8           A     Yes, we got her all straightened out and got her  
9 tucked in the bed.

10          Q     Now, I know we discussed it briefly before. You  
11 have been working with the defendant on and off for about two  
12 months. And you've -- you've previously read your transcript  
13 with the police, correct, before coming in here?

14          A     Uh-huh.

15          Q     Is that a yes?

16          A     Yes. I'm sorry. Yes.

17          Q     That's okay. We understand it's hard to get used  
18 to. Did you feel that he was somewhat overly helpful with  
19 female patients?

20          A     It's hard for me to say. He --

21               MR. MANINGO: Objection, Your Honor. There's no  
22 foundation. I believe the witness testified that she had seen  
23 Mr. Farmer one time and that she didn't even work with Mr.  
24 Farmer.

25               THE COURT: Well, I've got to sustain it. You've

1 got to lay a better foundation.

2 MS. BLUTH: Sure.

3 THE COURT: Otherwise, it sounds like it's  
4 speculative.

5 MS. BLUTH: Okay.

6 BY MS. BLUTH:

7 Q Well, do you remember speaking to the police about  
8 this, about that question?

9 A Well, I remember other nurses and CNAs that said  
10 that he was helpful at different times.

11 Q Okay.

12 MS. BLUTH: Court's indulgence, Your Honor.

13 BY MS. BLUTH:

14 Q Do you remember what you spoke to -- what your  
15 answer was to the police when you answered that question word  
16 by word?

17 A No --

18 Q Okay.

19 A -- not word by word.

20 Q Would it help -- would looking at your voluntary  
21 statement --

22 A Sure.

23 Q -- help refresh your recollection?

24 A Sure.

25 MS. BLUTH: May I approach, Your Honor?

1 THE COURT: Yes.

2 BY MS. BLUTH:

3 Q Okay. Just go ahead and read this to yourself.

4 MS. BLUTH: And, counsel, I'm sorry, at page 12.

5 BY MS. BLUTH:

6 Q If you would just read this paragraph to yourself  
7 and just let me know when you're done.

8 A Yes.

9 Q Okay. And do you -- are you done reading that?

10 A Yes.

11 Q And does that help refresh your recollection as to  
12 the way you answered that question when you were interviewed  
13 by the Las Vegas Metropolitan Police Department?

14 A Yes, he was helpful to -- like I said, I did not  
15 work with him myself, but other CNAs and nurses would say  
16 that --

17 MR. MANINGO: Objection. Hearsay.

18 THE COURT: Sustained.

19 THE WITNESS: Okay.

20 BY MS. BLUTH:

21 Q But your answer -- that's okay. But your answer on  
22 the day you met with the detectives was not about what other  
23 nurses told you, it was about what you observed, correct, in  
24 regards to the --

25 A What I observed, yes.

1 Q Okay. And so you can --

2 A Not what I --

3 Q -- answer --

4 A -- talked to him about, but what I observed, yes.

5 Q And what did you observe?

6 A That he would offer to do things that were needed to  
7 be done. You know, if somebody was in a hurry and this had to  
8 be done, say, oh, I can do that, you know, and he would go  
9 ahead and do it.

10 Q Okay. And specifically to what procedures did you  
11 say that he consistently offered to help on?

12 A He offered to help on the placing of -- we call them  
13 dots for heart monitors.

14 Q Okay. So EKG things?

15 A EKG leads, yes, and they have to go here and here,  
16 and here and here.

17 Q And --

18 MR. MANINGO: Objection, Your Honor. Is this  
19 witness testifying to the one time that she was around Mr.  
20 Farmer and that she observed this the one time, or is she  
21 actually testifying to what other people have heard or said or  
22 anything else? Because I think she testified that she was  
23 with Mr. Farmer one time.

24 THE COURT: Are you testifying from your own  
25 personal knowledge?



1 THE WITNESS: What I'm saying is that even though I  
2 did not work with him directly, when you're at the nurse's  
3 station I would hear him say I can do that and take the  
4 telemetry and go in and put on, yeah.

5 BY MS. BLUTH:

6 Q And -- and in regards to the question whether you  
7 felt he was overly helpful with both, you stated that you felt  
8 more with females?

9 A Yes.

10 Q When you are treating a female patient, and I'm just  
11 going to use females as an example because I'm sure there's  
12 similar situations where you need to treat male patients the  
13 same, but in regards to female patients, when you are working  
14 in an area, let's say, around their breast, do you use methods  
15 so that it can be done discreetly?

16 A Yes, you would use the gown to -- you would uncover  
17 only the one part where you were putting the electrodes. You  
18 would close that up, then you would expose the other and put  
19 that on. You keep as much of the body covered as possible.

20 Q Okay. If you were working on, you know, the -- the  
21 -- you call them dots; is that correct?

22 A That's what we call them, yeah, dots.

23 Q Okay. If you were working on the dots, and I think  
24 you referenced the upper part of your breast when you were  
25 answering the other --

1 A Uh-huh.

2 Q -- the first question, you know, unless the patient  
3 was coding or having something severe happen to them, would  
4 there ever be a reason to open up the gown entirely exposing  
5 both breasts?

6 A No.

7 Q Would it ever be appropriate in an elevator, a  
8 public elevator, nonetheless, to open up a gown and expose a  
9 woman's breast to work on any type of lead or dot?

10 A Absolutely not.

11 Q If you saw something like that happening, would you  
12 say something?

13 A Yes.

14 Q The elevators that you use to transport the  
15 patients, are those open to the public, as well?

16 A Yes.

17 Q And those discreet methods that we've just spoken  
18 about, are those pretty basic guidelines and rules and policy  
19 that nurses and CNAs use?

20 A Yes, they're standard.

21 Q Okay. I have nothing further. Thank you, Ms.  
22 Murray.

23 A Uh-huh.

24 THE COURT: Cross.

25 MR. MANINGO: Thank you, ma'am.

## CROSS-EXAMINATION

BY MR. MANINGO:

Q Hello, Ms. Murray.

A Hello.

Q You said if you ever saw something like that, something inappropriate, you would say something; correct?

A Yes.

Q Did you?

A Did I what?

Q See something inappropriate like that, someone opening the gown in the elevator?

A I wasn't in the elevator, no.

Q Okay.

A Huh-uh.

Q So then the answer is you didn't see anything like that; correct?

A No, I did not see that.

Q Okay. Do CNAs only do transport?

A No.

Q Okay. You said that CNAs can do the placing of the dots; correct?

A Yes, they can. If they've been trained, yes, they can.

Q Okay. And if they have not been trained, you wouldn't allow them to -- to place the dots?

1 A No.

2 Q Okay. So on the floor, when you're observing from  
3 the nursing station Mr. Farmer, you know that he's been  
4 trained to do that; correct?

5 A I didn't know if he was trained to do that. How  
6 would I know?

7 Q Okay. So you didn't care, then, that he was  
8 offering to help place the dots? That wasn't a concern to you  
9 on your many observations of Mr. Farmer?

10 A I would -- my feeling is if a nurse allowed a CNA to  
11 do that that they were aware that they were trained.

12 Q Okay. You said that in placing the dots that you do  
13 need to expose one breast at a time; correct?

14 A Yes.

15 Q And if you're placing the dots on a female patient,  
16 you do have to oftentimes move the breast --

17 A Yes.

18 Q -- in order to place a dot underneath?

19 A Yes.

20 Q Okay. How long have you been working at hospitals?  
21 I'm sorry.

22 A A little over 11 years.

23 Q 11 years. Is it a fair statement to say that  
24 hospitals are busy places?

25 A Yes, they are.

1 Q Okay. On the -- the night or early morning that  
2 we're talking about, May 16, 2008, you were working with  
3 another CNA also; correct?

4 A Yes.

5 Q And her name is Carine Brown?

6 A Yes.

7 Q Okay. You did not see Mr. Farmer and Ms. Cagnina  
8 get off the elevator; correct?

9 A No, I did not.

10 Q Okay. When your first contact with Mr. Farmer was  
11 when he came in to a different patient's room?

12 A Yes.

13 Q Okay. And you were speaking to -- speaking to that  
14 other patient and their family?

15 A Yes.

16 Q Okay. Now, you said today that it was -- it was  
17 inappropriate.

18 A Yes.

19 Q Okay. Did you -- did you write up that in a report  
20 or anything?

21 A No, I did not.

22 Q Okay. Did you notify anybody else --

23 A No.

24 Q -- about that? Okay. In fact, you remember taking  
25 a sworn deposition in the civil matter for this case; correct?

1 A I think it was about four years ago. Yeah.

2 Q Not as long as when the event actually took place;  
3 correct?

4 A No.

5 Q Okay. Not as long as your -- all your observations  
6 that you had of Mr. Farmer?

7 A No.

8 Q Okay. Actually, more recent in time than that;  
9 correct?

10 A Uh-huh.

11 Q Okay. So today you said it was -- it was  
12 inappropriate. In that deposition you actually stated, no, I  
13 thought it was very nice that he came around and told me that  
14 he dropped her off because a lot of the transporters just put  
15 the patient in there, drop off the paperwork, and they're  
16 gone.

17 A Uh-huh.

18 Q Yes?

19 MR. KOCHVAR: Can I have a reference to page,  
20 Counsel?

21 MR. MANINGO: 56.

22 MR. KOCHVAR: Thank you.

23 BY MR. MANINGO:

24 Q Is that correct?

25 A I don't know. I would have to see that. That was,

1 like I said --

2 Q Sure.

3 A -- over four years ago.

4 MR. MANINGO: May I approach?

5 THE COURT: Yes.

6 BY MR. MANINGO:

7 Q Read the question right above it.

8 A Okay.

9 Q Those are your words; correct?

10 A Yes.

11 Q That you thought it was very nice that he  
12 transported -- or that he came and notified you of the  
13 transport?

14 A Uh-huh.

15 THE COURT: Is that a yes?

16 THE WITNESS: Yes.

17 THE COURT: Thank you.

18 BY MR. MANINGO:

19 Q Nothing in what you read there about how it was  
20 inappropriate that he came in and told you; correct?

21 A Correct.

22 Q Okay. When you -- when you went into first meet  
23 with Ms. Cagnina, that was at -- and you can refer to the  
24 records that you have in front of you. Do you still have  
25 those?

1 A Uh-huh.

2 Q Okay. If you're not sure, if you can't remember,  
3 you can feel free to look at those. You first went in and met  
4 with Ms. Cagnina at 4:45 a.m. --

5 A Yes.

6 Q -- approximately?

7 A Uh-huh.

8 Q Okay. And at that time I believe --

9 THE COURT: Wait. Wait a minute. My court recorder  
10 is saying she can't hear the witness.

11 THE RECORDER: No, it's the --

12 THE WITNESS: Oh, I'm sorry.

13 THE RECORDER: -- uh-huhs.

14 MR. MANINGO: Oh.

15 THE WITNESS: Oh, yes. Yes, 4:45.

16 THE COURT: Please try to avoid the "uh-huhs"  
17 because that doesn't translate.

18 THE WITNESS: Okay.

19 THE COURT: Okay. Thank you.

20 BY MR. MANINGO:

21 Q Okay. So at 4:45 you walk in and you are with  
22 Carine Brown?

23 A Yes, I am.

24 Q Okay. You also went into Ms. Cagnina's room at  
25 approximately 5:30 a.m.?



1 A Yes.

2 Q Okay. And at approximately 5:40 a.m. you did a pain  
3 assessment?

4 A Yes.

5 Q Okay. And then at 5:44 another pain assessment?

6 A I'm not seeing that on here.

7 Q Okay. That might just -- we'll come back -- we'll  
8 come back to that one. The 5:40 one you said you did do a  
9 pain assessment?

10 A Uh-huh.

11 Q Yes?

12 THE COURT: Yes?

13 THE WITNESS: Oh, I'm sorry. Yes. Yes.

14 BY MR. MANINGO:

15 Q It's okay. She just has to record it.

16 A Yes.

17 Q Okay. Thank you. And then at 5:47 vitals were  
18 taken by Carine Brown?

19 A Yes.

20 Q Okay. At 6:00 a.m. we have a pain assessment?

21 A Yes.

22 Q Okay. And you did that one?

23 A Yes, I did.

24 Q Okay. And let's see. So during that -- those early  
25 morning hours, you stopped into Ms. Cagnina's room

1 approximately six different times, or I should say yourself or  
2 Ms. Brown?

3 A Yes.

4 Q Okay.

5 MR. MANINGO: And may I approach?

6 THE COURT: Yes.

7 MR. MANINGO: This is just one of the medical  
8 records.

9 MS. BLUTH: Okay.

10 BY MR. MANINGO:

11 Q I think you have this one in front of you, Ms.  
12 Murray. I don't know. And this may be -- maybe you can tell  
13 us is that correct, pain assessment 5:40, and then it says  
14 5:44 there, also; correct?

15 A These are times that I would have gone into the  
16 computer, not necessarily the time that something was done.

17 Q Okay.

18 A This is where.

19 Q I see. Okay. That clears it up.

20 A Yeah.

21 Q Okay. Thank you.

22 A Uh-huh.

23 Q So 5:44 was just when it was logged into the  
24 computer?

25 A Yes.

1 Q Okay. Okay. So we said about -- between yourself  
2 and Ms. Brown about six visits into Ms. Cagnina's room?

3 A Yes.

4 Q Okay. And during none of those six visits did Ms.  
5 Cagnina ever express to you that she had been sexually  
6 assaulted?

7 A No, she did not.

8 Q Okay. She at no time during those six visits had  
9 said that she needs the police called or she needs help or  
10 anything like that?

11 A No, she did not.

12 Q Okay. Now, when you first walked into Ms. Cagnina's  
13 room, you said that Mr. Farmer was in the room; correct?

14 A Yes, he was.

15 Q Okay. Now, from the time that he had told you that  
16 he had your patient and the time that you went into Ms.  
17 Cagnina's room, that was approximately three to five minutes?

18 A No, it was approximately five to ten minutes.

19 Q Okay. And in your -- when you spoke to the  
20 Metropolitan Police Department and did your voluntary  
21 statement --

22 MR. MANINGO: And I'm looking -- for counsel, I'm  
23 looking at page 8.

24 MS. BLUTH: Thank you.

25 ///

1 BY MR. MANINGO:

2 Q -- you had stated that the other patients -- and it  
3 took me, I'd say, three to five minutes to finish up there and  
4 walk around where her room was.

5 A I don't know, but, I mean, it was eight years ago.  
6 I'm --

7 Q Right. No, I understand.

8 A Yeah.

9 Q I understand, Ms. Murray. When you made this  
10 statement saying three to five minutes, this was much closer  
11 in time --

12 A Okay.

13 Q -- to the incident than it is now; correct?

14 A Yes.

15 Q Okay. So it -- would it be fair to say your memory  
16 was probably fresher then than it is now eight years --

17 A Absolutely.

18 Q Okay.

19 A Uh-huh.

20 Q Okay. Now, when you walked in you stated that Mr.  
21 Farmer was assisting Ms. Cagnina to go in the bathroom?

22 A Yes.

23 Q Okay. And when you and Ms. Brown walked in, you  
24 told Mr. Farmer that you'll take it from there?

25 A Yes.

1 Q Okay. Mr. Farmer left?  
2 A Yes, he did.  
3 Q Without incident?  
4 A Yes.  
5 Q Okay. Ms. Cagnina wasn't crying?  
6 A No.  
7 Q She wasn't on her bed --  
8 A No.  
9 Q -- frozen?  
10 A No.  
11 Q Okay. She wasn't in the bathroom frozen?  
12 A No.  
13 Q Okay. She wasn't on her cell phone trying to call  
14 anyone?  
15 A No.  
16 Q Okay. You said that you had been informed that Ms.  
17 Cagnina was on a lot of pain medication?  
18 A Yes.  
19 Q And when you walked in there and saw Ms. Cagnina,  
20 she had an unsteady gait?  
21 A Yes.  
22 Q In fact, you and Ms. Brown had to escort Ms. Cagnina  
23 back to her bed; correct?  
24 A Yes, we did.  
25 Q So if you were going the other direction, let's say

1 she wanted to use the bathroom, you would have had to escort  
2 her and help her to the bathroom?

3 A Yes, we would.

4 Q Because you weren't -- you would be concerned that  
5 she wouldn't be able to walk over there and make it herself?

6 A Absolutely.

7 Q Okay. Now, when you walked in and you -- and you  
8 first spoke with Ms. Cagnina, she asked is it just girls in  
9 here?

10 A Yes.

11 Q Okay. And you told her yes?

12 A Uh-huh.

13 Q And then she -- she said, good, because I want to  
14 adjust my gown?

15 A She said her gown was bothering her so she wanted it  
16 fixed.

17 Q Okay. It was like choking her or something?

18 A Yeah.

19 Q Okay. Her gown wasn't like pulled up over her body  
20 or anything like that?

21 A No.

22 Q Okay. When she was asking you if it's just girls  
23 and talking to you about the gown, she wasn't distressed at  
24 that time?

25 A No.

- 1 Q She didn't appear to be scared or afraid?
- 2 A No.
- 3 Q Okay. And Mr. Farmer had just left; right?
- 4 A Yes, he had.
- 5 Q Just within seconds?
- 6 A Yes.
- 7 Q Okay. She did explain to you that her headache is
- 8 still bothering her?
- 9 A Yes, she did.
- 10 Q Okay. Now, when you -- when you got Ms. Cagnina
- 11 back into the bed, one of the things -- one of the first
- 12 things you do is show her how to use the call button; correct?
- 13 A Yes.
- 14 Q Okay. And you actually give the call button to her?
- 15 A Yes, if she can't hang on to it, we pin it to the
- 16 gown.
- 17 Q Oh, okay.
- 18 A It has a clip.
- 19 Q Okay. So it stays right there with her?
- 20 A Uh-huh.
- 21 Q Okay. And you do that because you want to make sure
- 22 it's within reach?
- 23 A Absolutely.
- 24 Q Okay. And at any time during your shift did Ms.
- 25 Cagnina hit the call button?

1 A No.

2 Q Okay. So you were never called in to Ms. Cagnina's  
3 room through the call button to -- to help her from being  
4 sexually assaulted?

5 A No.

6 Q Okay. In the three to five minutes or five to ten  
7 minutes, whichever it was that you were in the other patient's  
8 room before going into Ms. Cagnina's room, how far away was  
9 the other room?

10 A You mean feet wise?

11 Q Sure. Like approximate distance.

12 A I'm not good with that, but I don't know, it was  
13 like two doors down.

14 Q About two doors down.

15 A Uh-huh.

16 Q Okay. That -- that's fine. That's fine. We don't  
17 need that measurement.

18 A Okay.

19 Q But is it fair to say that if someone were -- were  
20 screaming and hollering from Ms. Cagnina's room that you could  
21 have heard it?

22 A Absolutely.

23 Q Okay. I think -- I think we've already covered  
24 this, but when you walked in and you first saw Ms. Cagnina,  
25 she wasn't exposed in any way?



1 A No.

2 Q Okay. She had her -- she did have her gown on?

3 A Yes, she did.

4 Q Okay. And then for the rest of your shift while you  
5 made -- while you and Ms. Brown made approximately six visits  
6 into her room, you never saw Mr. Farmer again --

7 A No, I did not.

8 Q -- during that time?

9 A Huh-uh. No.

10 MR. MANINGO: Court's indulgence.

11 Thank you, Ms. Murray.

12 I have no further questions. Pass the witness.

13 THE COURT: Redirect.

14 MS. BLUTH: Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. BLUTH:

17 Q Forgive me for not asking you this earlier. When  
18 did you stop working for Centennial Hills Hospital?

19 A When did I stop?

20 Q Yeah, like month, year?

21 A I think it was in -- it was about July or August, I  
22 believe, of 2008.

23 Q Of 2008?

24 A Uh-huh.

25 Q Okay.

1 THE COURT: Is that yes?

2 THE WITNESS: Yes.

3 THE COURT: Okay.

4 BY MS. BLUTH:

5 Q When you met with the detectives at the Las Vegas --  
6 or the detective with the Las Vegas Metropolitan Police  
7 Department, that was on June 13, 2008; is that correct?

8 A Yes.

9 Q And during that interview you did discuss with the  
10 detective how inappropriate you felt Mr. Farmer's conduct was  
11 in that other patient's room?

12 A Yes.

13 Q In regards to the medical records, if you need that  
14 in front of you just let me know. Let me get to a specific  
15 page. When you -- I'll approach with 20 and see if you can  
16 answer my question. In regards to the -- the times that you  
17 see on the top of -- of that document -- and you know what, so  
18 the jury can see it, I'm going to put it on the Elmo and you  
19 can look at it up here on this --

20 A Okay.

21 Q -- computer. Sorry. So that way we can all --

22 A No, that's all right.

23 Q -- follow along. I appreciate it. Okay. So,  
24 again, this is the admission assessment that I had previously  
25 discussed with you; is that correct?

1 A Yes.

2 Q Okay. And can you explain to us kind of the  
3 charting process that -- that you did Centennial Hills  
4 Hospital, how that worked?

5 A Okay. When I first got notice that she was coming  
6 up, they would have faxed all of the information, all the  
7 records that they had done there up to the floor and I would  
8 have been given them. They would have said this is your new  
9 patient. So at 2:42, what that's indicating is that's when I  
10 went into the computer the first time and starting putting  
11 things like age, diagnosis, and that into the computer under  
12 -- and the -- and the room she would be in.

13 Q Okay.

14 A The 4:50 was after she had come to the floor and I  
15 had done an assessment on her, even though I had done it more  
16 around 4:30, 4:40. When you go into the computer, because you  
17 obviously can't do the assessment and put it into the computer  
18 at the same time --

19 Q Right.

20 A -- what it's saying is that I actually put the  
21 information in at 4:50. But when I did it it would have been  
22 -- and I would have noted that next to it, 4:40, 4:45.

23 Q Okay. And you actually notate later on that -- that  
24 you saw her. And I can take it to you, that you saw her  
25 around 4:45.

1 A Uh-huh.

2 Q Would that be correct? Would you agree with that?

3 A Yes. Uh-huh.

4 Q Okay. And then in regards to you seeing her, you or  
5 Ms. Brown seeing her at six different times --

6 A Uh-huh.

7 Q -- where -- what are the times that you saw her at?  
8 And if you could state whether she was awake or asleep.

9 A Okay. When she came to the floor and we got her  
10 back in the bed, that's when she first asked for pain meds.

11 Q Okay. And so when you first saw her, that was  
12 around, you discussed, like 4:40, 4:50 --

13 A Right.

14 Q -- sometime.

15 A Right.

16 Q Okay.

17 A And I would say getting her back into the bed, maybe  
18 five or ten minutes. She asked immediately for pain meds for  
19 her headache.

20 Q Okay.

21 A I had to go down and check the MAR, which is the  
22 list of medications that she had been given downstairs in the  
23 ER. And there was nothing available at that time because  
24 there is usually a four to six-hour window before you can give  
25 a drug.

1 Q Okay.

2 A So I went back to tell her that and she had already  
3 gone to sleep.

4 Q And so do you notate when it was you went back? Is  
5 that on the paperwork or do you just note that she's asleep by  
6 the time you get back?

7 A No, just that she would be asleep. No, I wouldn't  
8 assess a time for that. I would assess when I gave her --  
9 when I actually drew the med out and gave it to her and what  
10 her pain level was at that time.

11 Q Okay. And so after this 4:45, you know, the initial  
12 assessment, she wants more meds, you go to get them, you  
13 immediately come back and she's asleep?

14 A Right.

15 Q When is the next time you go to see her?

16 A I was checking on her about every hour because of  
17 her unsteady gait, her not being oriented. I wasn't sure if  
18 she realized she was in the hospital.

19 Q Okay.

20 A So they might try to get up, you know, go to the  
21 bathroom and fall.

22 Q You were also aware that she was a seizure patient;  
23 correct?

24 A Yes.

25 Q So that also adds to concern?

1 A Absolutely.

2 Q So did she stay asleep as you were walking by?

3 A Yes, she did.

4 Q And so --

5 A I would just go in and look at her and she was  
6 sleeping, yes.

7 Q Okay. And so there was never another time that you  
8 went in and you guys had a full blown conversation. Every  
9 time you checked on her she was asleep?

10 A Yes, she was.

11 Q Okay. And then just so I can be clear, your records  
12 notate when you physically saw her.

13 MS. BLUTH: Can I have the Elmo one more time?  
14 Thank you.

15 BY MS. BLUTH:

16 Q Showing you State's 21. This notates specifically  
17 that she arrived on your floor to your unit at 0351, which  
18 would be 3:51 in the morning?

19 A Yes.

20 Q Okay. Nothing further. Thank you, ma'am.

21 A Uh-huh.

22 THE COURT: Recross.

23 MR. MANINGO: Thank you, Judge. Very briefly.

24 ///

25 ///

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BY MR. MANINGO:

Q Now, Ms. Murray, you testified that at 4:45 Ms. Cagnina wanted some more pain meds; right?

A     Shortly after that, after she came to the floor, yes. After we got her back in her bed, after we took her to the bathroom and that, yes.

Q Okay. And then you saw her against at 5:35;  
correct?

A I would walk in, walk in and check on her, yes.

Q Okay. At 5:35 are you aware if Ms. Cagnina asked for more pain medication at that point?

A No, she was sleeping.

Q Okay. At 5:35?

A Yes.

Q Okay. Thank you.

A Uh-huh.

THE COURT: I just have one question. Mr. Maningo asked you if the hospital is busy. Could -- do you recall whether the hospital, the seventh floor of the hospital you were working on 5/16/08 at the time Ms. Cagnina would have been brought up, was -- was the floor busy?

THE WITNESS: The problem with a question like that is each of the nurses have seven patients, and if you have patients who need pain meds or who are nauseous or whatever is

1 going on, if you have patients that keep you busy, it seems to  
2 you the floor is very busy, but --

3 THE COURT: Were there people walking up and down  
4 the hallways?

5 THE WITNESS: Not a lot of people, no.

6 THE COURT: Any questions as a result of my  
7 question?

8 MS. BLUTH: No, Your Honor.

9 MR. MANINGO: One.

10 BY MR. MANINGO:

11 Q When you left the first patient's room to go to Ms.  
12 Cagnina's room --

13 A Uh-huh.

14 Q -- the door to the hallway, was that open or closed?

15 A The -- you mean from her room to the hallway?

16 Q Yes. Yes.

17 A No, it was open.

18 Q Okay. Thank you.

19 A Uh-huh.

20 THE COURT: Anything further for this witness?

21 MS. BLUTH: No, Your Honor. She's excused. Thank  
22 you.

23 THE COURT: Thank you very much for your testimony.

24 THE WITNESS: Uh-huh.

25 THE COURT: You may call your next witness.



1 MR. KOCHEVAR: The State would call Lorraine  
2 Wescott.

3 LORRAINE WESCOTT, STATE'S WITNESS, SWORN

4 THE CLERK: You may be seated. Would you please  
5 state and spell your name for the record.

6 THE WITNESS: My name is Lorraine Wescott;  
7 L-O-R-R-A-I-N-E, W-E-S-C-O-T-T.

8 THE COURT: Thank you.

9 You may proceed.

10 MR. KOCHEVAR: Thank you, Judge.

11 DIRECT EXAMINATION

12 BY MR. KOCHEVAR:

13 Q Good afternoon, Ms. Wescott. Can you tell us how  
14 you are currently employed?

15 A I work as a clinical supervisor. I'm a nurse.

16 Q Okay. And how long have you been a nurse?

17 A More than 35 years.

18 Q Okay. And back in May of 2008 were you working as a  
19 nurse at that time?

20 A Yes, I was.

21 Q Okay. And were you working at a particular  
22 hospital?

23 A Centennial Hills.

24 Q Okay. In what capacity were you working at  
25 Centennial Hills in May of 2008?

1           A     I was the house supervisor.

2           Q     Can you explain for us what are the responsibilities  
3 and duties of a house supervisor?

4           A     A house supervisor is basically the point person.  
5 We're in charge of assigning beds to admissions, sometimes  
6 getting equipment, sometimes dealing with staffing problems,  
7 patient issues. We're basically just the day to day point  
8 person.

9           Q     Okay. At any given time in the hospital, in  
10 Centennial Hills Hospital in May of 2008, at any given time  
11 how many house supervisors would be working at any given time?

12          A     There would be one per shift, one every 12 hours,  
13 one day, one night, seven days a week.

14          Q     So I'd like to direct your attention now  
15 specifically to the early morning hours of May 16, 2008. Were  
16 you working at that time as a house supervisor at Centennial  
17 Hills?

18          A     Yes, I was.

19          Q     At about 7:00 in the morning, were you advised that  
20 a patient wanted to speak with you?

21          A     Not at 7:00 in the morning, no. Later on in the  
22 morning.

23          Q     Approximately, what time to your recollection were  
24 you advised?

25          A     It was probably between 7:30 and 8:00.

1 Q Okay. And was that patient identified to you as  
2 Roxanne Cagnina?

3 A No.

4 Q Were you given any information other than a patient  
5 wants to speak with you?

6 A Right, and the room number. Uh-huh.

7 Q Okay. Where were you in the hospital when you  
8 received this information, do you recall?

9 A I was on the seventh floor at the nurse's station.

10 Q Okay. Is that a customary place where you would be,  
11 find yourself as a house supervisor?

12 A That morning there was a staffing issue, so that's  
13 why I was there.

14 Q Okay. So after receiving the information that a  
15 patient -- do you recall what room it was in? I know it's  
16 been a long time.

17 A It was either 728 or 725.

18 Q Okay.

19 A 720 something.

20 Q So after receiving this information -- well, let me  
21 back up. Do you recall who you received that information  
22 from?

23 A Yes, one of the CNAs who was working came to me.

24 Q Do you recall the name of that person?

25 A Yes, it was Beverly Bartlett.

1 Q Okay. So CNA Beverly Bartlett comes to you and says  
2 patient in Room 725 or 728 wants to speak?

3 A Correct.

4 Q When you received that information, what did you do?

5 A I went to the room.

6 Q Okay. When you went into the room, tell us what you  
7 observed on entering that room.

8 A I found a woman who was crying. She was clutching  
9 her phone. She was very upset.

10 Q Were you able to get information from her to  
11 identify who this person was?

12 A She was able to talk to me, yes.

13 Q Okay. Did she tell you what her name was? Did you  
14 ask --

15 A I believe --

16 Q -- her her name?

17 A I believe she did.

18 Q Okay.

19 A I would have identified myself, also.

20 Q Okay. And the name Roxanne Cagnina, did you  
21 eventually at some point find out that that's who this  
22 individual was?

23 A Yes, I did.

24 Q Okay. You've indicated that she was crying and  
25 upset.

1 A Uh-huh. Yes.

2 Q From the moment you walked in she was crying and  
3 upset?

4 A Yes.

5 Q Okay. In the time that you spoke with her, did that  
6 demeanor continue? Was she continually crying and upset  
7 throughout your interactions with her?

8 A Yes.

9 Q Okay. Approximately how long would you say that you  
10 interacted or spoke with Roxanne that morning?

11 A I would say probably 10, 15 minutes.

12 Q You said that you explained to Roxanne who you are.  
13 And did you explain to her your position or your  
14 responsibility in the hospital?

15 A I identified myself as the house supervisor --

16 Q Okay.

17 A -- and I asked her if I could help her.

18 Q Did Roxanne explain to you why she wanted to speak  
19 to you?

20 A Yes, she told me what was going on.

21 Q Okay. And based upon the information that she  
22 conveyed to you, what did you tell Roxanne?

23 A I told -- I told her that I was going to have  
24 someone come and sit with her, that I wanted her to feel safe.  
25 That was my priority, to make her feel safe.

1 Q Okay. Based upon the information that Ms. Cagnina  
2 provided to you, did you notify police or contact the police?

3 A No, not at that particular moment. I was trying to  
4 comfort the patient.

5 Q Okay. Was there anybody else in the room with you  
6 at the time that you were speaking with Ms. Cagnina initially?

7 A No.

8 Q At some point in time did Ms. Cagnina's husband  
9 arrive at the hospital to the room?

10 A Yes.

11 Q Approximately how long after you had gone into speak  
12 with her did her husband arrive?

13 A To be honest with you, when I -- I would basically  
14 finish speaking with her, I was about to find a CNA to sit  
15 with her, and he arrived.

16 Q Okay. And did you speak to her husband, as well?  
17 Did you have any conversation with him?

18 A He told me that she had called him. He knew what  
19 had happened. I asked if he wanted me to get someone to stay  
20 with her, and he said no, that he would stay with her.

21 Q Okay. So after finding out that Mr. Cagnina was  
22 going to -- her husband was going to stay with her, what did  
23 you do at that point?

24 A I went back out to the nurse's station.

25 Q And what were you going to do at the nurse's

1 station?

2 A Mostly answer my phone which had been going off the  
3 whole time I was with the patient. I had to -- I probably  
4 called the emergency room and asked them to hold some of the  
5 admissions, that I was handling something and I would get back  
6 to them because it just kept going off and going off.

7 Q Was that one of your responsibilities as the house  
8 supervisor, if somebody from the emergency room needed to be  
9 admitted to the hospital, to -- were you the one that would  
10 make that decision about where and what room they were being  
11 assigned to?

12 A Yes, bed placement.

13 Q Okay. At some point in time after speaking with Ms.  
14 Cagnina did you attempt to contact any of your supervisors or  
15 any of your superiors to advise them of what she had told you?

16 A Yes, I did contact my chief nurse officer.

17 Q Okay. Was that after you had gotten out, back to  
18 the nurse's station after leaving Ms. Cagnina's room?

19 A I can't really recall the order. I know I did  
20 contact her.

21 Q When you got back to the nurse's station after  
22 leaving Ms. Cagnina's room, did you attempt to contact police  
23 or authorities at that point when you got back to the nurse's  
24 station?

25 A No, the patient's husband had called the police.

1 Q Okay. And how did you become aware of that?

2 A He came to the nurse's station and told me.

3 Q Okay. How long after you had gotten back to the  
4 nurse's station did he come out to tell you he had already  
5 contacted the police?

6 A It just seemed like minutes.

7 Q Okay. During your conversations with Ms. Cagnina,  
8 did you become aware from what she was relating to you that  
9 she was making allegations against one of the hospital  
10 employees, or somebody that was working in the hospital?

11 A Yes.

12 Q Were you -- did you know the individual that she was  
13 making the allegations against?

14 A No, not exactly.

15 Q Okay. Did you know who he was or in what position  
16 that person worked in the hospital?

17 A She said that it was a nurse from the -- the  
18 emergency room.

19 Q Okay. Ultimately, were you able to identify the  
20 individual that she was referring to?

21 A Yes.

22 Q And how were you able to do that?

23 A She gave me a description, and I -- she also gave me  
24 the person's phone number.

25 Q Okay. When she gave you the description, based upon



1 the description she provided to you, did you have an idea or  
2 did you recognize the person that she was describing?

3 A Yes.

4 Q Okay. And how did you know who that individual was?

5 A From the description.

6 Q Okay. Had you -- and who was that individual that  
7 you thought in your mind she was describing?

8 A It was one of the CNAs.

9 Q Okay. Did you know that person's name?

10 A Yeah, it was Steve Farmer.

11 Q Okay. Were you familiar with Mr. Farmer at that  
12 time?

13 A Yes.

14 Q And how were you familiar with him?

15 A He had been working as a CNA at our hospital.

16 Q And had you personally had interactions with him,  
17 worked with him in any capacities?

18 A The nursing supervisor desk is in the same room as  
19 the staffer desk. So people would come in to find out where  
20 they were going to be working that night and pick up badges.  
21 So I saw him at the change of shift.

22 Q Okay. Do you see Mr. Farmer here in the court room  
23 today?

24 A I believe so.

25 Q Could you point to him and identify something he's

1 wearing today?

2 A A black jacket.

3 Q Okay. Can you tell us what color his hair is?

4 A It's white.

5 MR. KOCHVAR: Let the record reflect that the  
6 witness identified the defendant.

7 THE COURT: It will.

8 MR. KOCHVAR: Thank you.

9 BY MR. KOCHVAR:

10 Q During your conversations with Ms. Cagnina, did she  
11 provide you with some -- with a telephone number and contact  
12 information for Mr. Farmer?

13 A Yes.

14 Q And how did she provide -- or what manner did she  
15 provide that to you?

16 A She told me that she had received wonderful care  
17 from two nurses in the emergency room, so much so that she got  
18 their phone numbers. She referred to the fact that her  
19 husband was a cop and perhaps she could help them out with  
20 something in the future, I guess.

21 Q Okay. Did she have that information documented or  
22 written down somewhere?

23 A It was in her check ledger. She showed it to me.

24 Q Okay. When she showed it to you, did you write down  
25 that phone number somewhere so that you could utilize it or

1 preserve it for your own records?

2 A Yes.

3 Q At some point in time did you attempt to call that  
4 phone number to speak to whoever would answer?

5 A Later on in the morning, yes.

6 Q Okay. When you say later on, approximately how --

7 A I don't --

8 Q -- much later?

9 A -- remember.

10 Q After you had gone back to the nurse's station?

11 A Yes. Oh, definitely. Yes.

12 Q After you had spoken to your supervisor?

13 A Yes.

14 Q After Mr. Cagnina had come to you to tell you that  
15 he had called the police?

16 A Yes.

17 Q When you called that telephone number, tell us what  
18 -- what happened.

19 A The -- actually, I guess I can call him Steve,  
20 answered the phone. And I said -- you know, I asked is this  
21 -- you know, Steve is this you? And I said this is Lori. And  
22 it was rather awkward because I didn't know what to say. So I  
23 said I was checking on him and ended the conversation.

24 Q Why did you want to make that phone call?

25 A I don't know if it was instinct. I was worried

1 about, you know, staffing for that night. Obviously, with an  
2 allegation like that you're not going to want to bring  
3 somebody back in to work, so --

4 Q And did you tell Mr. Farmer anything in that  
5 conversation other than just you were calling to check on him?

6 A That was all I said.

7 Q Okay. Based upon the information that you had  
8 received from Ms. Cagnina, was a decision made to transfer her  
9 to a different room in the hospital?

10 A Yes.

11 Q Were you the one that was responsible for making  
12 that decision?

13 A No. No. By that time administration was dealing  
14 with that.

15 Q Okay. To your knowledge, do you know where she was  
16 transferred to, what department or what floor in the hospital?

17 A Yes, I do.

18 Q And what floor was she transferred to?

19 A She was transferred to the women's floor because it  
20 was a locked unit. We were hoping she would feel more safe  
21 there.

22 Q Okay. When you say a locked unit, describe for us  
23 what it means that it's a locked unit?

24 A The women's floor is where the newborns and the moms  
25 are. And in order to enter, you have to be -- you have to

1 identify yourself and be buzzed in.

2 Q Okay. Other than placing her in the women's floor  
3 where it's a locked unit, were there other precautions taken  
4 to provide her with protection?

5 A After her husband told me he had called the police,  
6 I had notified my security. They had come up and they were  
7 outside her door, and then the police arrived.

8 Q Okay. To your knowledge was there also set in place  
9 a password that needed to be used in order for someone to get  
10 past the security guards into her room?

11 A I'm -- I'm not aware of that, no.

12 Q Okay. You said that you have worked for over 30  
13 years as a nurse, and during those 30 years have you ever had  
14 to place EKG patches on a patient or remove those patches from  
15 a patient?

16 A Yes, many times.

17 Q Okay. What steps, if any, do you take if you are  
18 placing those patches on a female patient, what steps, if any,  
19 would you take to protect their privacy?

20 A Well, you try and place them basically like through  
21 the gown without, you know, exposing it. For men, too. We  
22 try and keep their privacy.

23 Q And during your years of experience in placing those  
24 patches and removing them, have you ever found it necessary to  
25 completely open up a gown and expose a women's -- both of a

1 women's breasts in order to place the leads, remove the leads,  
2 check the leads?

3 A No.

4 MR. KOCHVAR: I have no further questions, Judge.

5 THE COURT: Cross.

6 MR. MANINGO: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. MANINGO:

9 Q Hello, Ms. Wescott.

10 A Hi.

11 Q I just have a couple of questions. Back when this  
12 -- this incident came to your attention in May of 2008, you  
13 spoke with the Metropolitan Police Department; correct?

14 A Yes.

15 Q Okay. And then you also testified in a deposition  
16 for the -- the civil aspect of this case?

17 A Yes.

18 THE RECORDER: She needs to speak up.

19 BY MR. MANINGO:

20 Q I'm sorry. You need to speak up a little bit for --

21 A Yes.

22 Q -- our recorder. Thanks. When you -- when you  
23 spoke to the police officers, you had talked about when you  
24 met with Roxanne, yes?

25 A Yes.

1 Q Okay. And Roxanne Cagnina had told you that Mr.  
2 Farmer came to her room and touched her private areas between  
3 7:00 and 7:30 a.m.; correct?

4 A Yes.

5 Q Okay. She also stated that it started at 3:00 a.m.;  
6 correct?

7 A Yes.

8 Q And that it happened all on the elevator?

9 A What I recall is that she was brought to her room at  
10 3:00 a.m. and some things had happened on the elevator, and  
11 that she was put into bed and then later on he returned.

12 Q Okay. And -- and -- and actually touched her  
13 between 7:00 and 7:30 in the morning?

14 A That's what she told me.

15 Q Okay. Now, you arrived at her room at what time?

16 A Somewhere between 7:30 and 8:00.

17 Q Okay. So immediately after that time that she says  
18 things happened?

19 A Yes.

20 Q Okay. She also had told you that he -- he tried to  
21 penetrate her with his fingers --

22 A Yes.

23 Q -- but that someone had walked in and then he left?

24 A Yes.

25 Q Okay. Now, that word tried, the police asked you

1 about that a couple of times, didn't they?

2 A I don't recall, so --

3 Q No, that's okay. I know it was a long time ago.

4 Would it refresh your memory if I were to show you your -- the  
5 statement that you --

6 A Sure.

7 Q -- you made? Okay.

8 MR. MANINGO: And I'm looking at page 5.

9 MS. BLUTH: Thank you.

10 MR. MANINGO: Sure.

11 May I approach?

12 THE COURT: Yes.

13 MR. MANINGO: Thank you.

14 BY MR. MANINGO:

15 Q I'm showing you page 5 of your voluntary statement.

16 A Okay.

17 Q And I'm looking at this area here. If you just want  
18 to read that over to yourself and let me know when you're  
19 done.

20 A Okay.

21 Q Okay. Does that refresh your recollection as to  
22 what you said?

23 A Uh-huh.

24 THE COURT: Is that a yes?

25 ///



1 BY MR. MANINGO:

2 Q You've got to say yes or --

3 A Yes. Sorry. Yes.

4 Q Thank you. And so the police did ask you if it was  
5 an attempt to penetrate and to -- and to clarify that?

6 A Yes.

7 Q Okay. And -- and you admitted that in your notes  
8 that you took from your meeting with Ms. Cagnina that they  
9 said that he tried.

10 A That's what she told me.

11 Q Okay. And you also said, no, that's the only thing.  
12 I wrote it down exactly what she told me.

13 A Right. When -- you try and take quotes when a  
14 patient has, you know, a complaint basically.

15 THE COURT: I need you to keep your voice up --

16 THE WITNESS: Sure.

17 THE COURT: -- because I couldn't hear that last  
18 part.

19 THE WITNESS: As a house sup you try and do quotes  
20 from exactly what the patient tells you.

21 BY MR. MANINGO:

22 Q Okay. Great. As -- as far as you knew, based on  
23 what your job was at the time Centennial Hills, everyone  
24 actually really enjoyed working with Mr. Farmer; correct?

25 A Yes. I didn't receive any complaints.

1 Q You actually -- I think you stated that you had rave  
2 reviews about him from staff.

3 A Uh-huh.

4 Q Is that correct?

5 A Yeah, he worked the night shift, but, yes.

6 Q Okay.

7 A I work days.

8 Q Thank you, Ms. Wescott.

9 A Sure.

10 THE COURT: Redirect.

11 MR. KOCHEVAR: Thank you, Judge.

12 REDIRECT EXAMINATION

13 BY MR. KOCHEVAR:

14 Q In regards to counsel asked you several questions  
15 about the statement that Ms. Cagnina made to you when you went  
16 into her room and spoke to her.

17 A Yes.

18 Q Do you recall those questions? Did she tell you  
19 that a male nurse came in and started adjusting her blankets?

20 A That was in the elevator.

21 Q Okay. But that is what she told you?

22 A Yes.

23 Q Did she tell you that he came back and touched her  
24 private areas?

25 A Yes.

1 Q Did she tell you that the male nurse told her how  
2 beautiful she was and touched her breasts?

3 A Yes.

4 Q Did she tell you that he had stroked her legs?

5 A Yes.

6 Q And did she describe that person that had done this  
7 to her as an older man, white hair and a beard?

8 A Yes.

9 MR. KOCHVAR: I have no further questions, Judge.

10 THE COURT: Recross?

11 MR. MANINGO: Nothing else, Your Honor.

12 THE COURT: May this witness be excused?

13 MR. KOCHVAR: Yes.

14 THE COURT: Thank you very much for your testimony.

15 How is my jury doing? Need a break?

16 JUROR: Yeah.

17 THE COURT: Okay. We're not trying to torture you.

18 JUROR: We're not camels.

19 THE COURT: All right. So we're going to take --  
20 we'll take a 15 minute recess. This is will be your main  
21 recess for the afternoon.

22 During this 15 minutes recess it is your duty not to  
23 converse among yourselves or with anyone else on any subject  
24 connected with the trial, or to read, watch, or listen to any  
25 report of or commentary on the trial by any person connected

1 with the trial or by any medium of information, including,  
2 without limitation, newspaper, television, radio, or Internet,  
3 and you are not to form or express an opinion on any subject  
4 connected with this case until it is finally submitted to you.

5 And we'll be in recess for the next 15 minutes. I  
6 have to 2:36 on the clock.

7 (Jury recessed at 2:36 p.m.)

8 THE COURT: All right. The record will reflect we  
9 are outside the presence of the jury. Are there any matters  
10 outside the presence before we recess?

11 MS. BLUTH: Not on behalf of the State, Your Honor.

12 MR. MANINGO: No, Your Honor.

13 MR. BASHOR: No, Your Honor.

14 THE COURT: Thank you. We'll be in recess for 15  
15 minutes.

16 (Court recessed at 2:37 p.m., until 2:56 p.m.)

17 (Inside the presence of the jury)

18 THE COURT: Thank you. Please be seated. The  
19 record will reflect that we're back within the presence of all  
20 12 members of the jury, as well as the four alternates. The  
21 defendant is present with his counsel, the Deputies District  
22 Attorney prosecuting the case are present, as are all officers  
23 of the court.

24 Will counsel so stipulate?

25 MS. BLUTH: Yes, Your Honor.

1 MR. MANINGO: Yes, Your Honor.

2 THE COURT: You may call your next witness.

3 MR. KOCHVAR: The State would call Scott Cagnina.

4 SCOTT CAGNINA, STATE'S WITNESS, SWORN

5 THE CLERK: Please be seated. Please state and  
6 spell your name for the record.

7 THE WITNESS: Scott Cagnina, S-C-O-T-T  
8 C-A-G-N-I-N-A.

9 THE COURT: You may proceed.

10 MR. KOCHVAR: Thank you, Judge.

11 DIRECT EXAMINATION

12 BY MR. KOCHVAR:

13 Q Scott, do you know an individual by the name of  
14 Roxanne Cagnina?

15 A I do.

16 Q And how do you know Roxanne?

17 A I was married to her for 18 years.

18 Q Okay. In what year did you guys get married?

19 A '95, 1995.

20 Q Ultimately, did you guys end up getting divorced at  
21 some point?

22 A Yes, we did.

23 Q And what year was that that you got divorced?

24 A It was finalized in 2013.

25 Q Okay. Do you guys have any children together?

1 A Two.

2 Q Without -- I'm not going to ask you names, but boys,  
3 girls?

4 A Two daughters.

5 Q Okay. Back in May of 2008, what were you doing for  
6 a job, for employment at that time?

7 A I worked for Metro.

8 Q In what capacity were you working with Metro?

9 A Corrections officer.

10 Q Okay. Back up even further. Back in about the year  
11 2000, did Roxanne start having some medical issues at that  
12 time?

13 A Yes, she did.

14 Q And what sort of issue was she having?

15 A Seizures and migraine headaches.

16 Q Okay. And how did those -- was there something that  
17 triggered the beginning of those medical issues with the  
18 seizures and the migraines?

19 A She had a bad fall at one of her jobs.

20 Q Okay. Tell me a little bit about the seizures. How  
21 often -- I mean, in the beginning how often was she  
22 experiencing them, how severe were they?

23 A They got worse over time. Usually stress would  
24 bring them on.

25 Q Okay.

1           A     It was a common trigger.

2           Q     About how often was she -- in the beginning about  
3 how often was she experiencing these seizures?

4           A     Wow.

5           Q     Are we talking like every day, every week, every  
6 month?

7           A     No, maybe a few times a month maybe.

8           Q     Okay. And you said over time they got worse. Worse  
9 in severity or worse in the number of them or both?

10          A     Both.

11          Q     Okay. Was she seeking -- did she seek treatment  
12 from a physician or doctor to try to help her with those?

13          A     She did.

14          Q     Was she taking medication over that time period from  
15 the beginning of 2000 through 2008?

16          A     Yes, she was.

17          Q     How did that medication that she was taking affect  
18 her, if at all?

19          A     It really didn't affect her other than usually it,  
20 you know, staved off the seizures.

21          Q     So was the medication she was taking, was it  
22 successful in preventing the seizures or lessening the  
23 seizures?

24          A     Yeah, most of the time lessening.

25          Q     When Roxanne would have these seizures, did she go

1 to the hospital or did you take her to the hospital every time  
2 she would have a seizure?

3 A Off the start, but then we learned how to take care  
4 of it at home. I kept a supply of Ativan, and just, you know,  
5 figured out how to take care of it unless it was really bad.

6 Q Okay. Could you tell -- I mean, over time could you  
7 tell when the seizure was coming on? Were there some sort of  
8 signs or symptoms that you would be able to observe that let  
9 you know that she may be experiencing a seizure sometime soon?

10 A Her speech would get slurred, she would start -- you  
11 know, she wouldn't think right, she'd start staring just off  
12 into space, things like that.

13 Q Okay. Now, I want to direct you specifically to May  
14 15, 2008. On that day do you become aware on that day that  
15 Roxanne had gone to the hospital for a seizure?

16 A Not until later.

17 Q Okay. How did you become aware that she was at the  
18 hospital being treated for a seizure?

19 A I was trying to call her. I think she finally  
20 called me. I'm not sure which one of us called each other and  
21 she told me she was in the ER.

22 Q Okay. Did she tell you that she was there being  
23 treated for another seizure?

24 A Yes.

25 Q Did you -- upon finding that out, did you



1 immediately go to the hospital?

2 A Actually, I was at a recital with my daughter. I  
3 had both my daughters with me and she had a violin recital.  
4 And we were there and so, you know, she said she -- everything  
5 was good, so I just stayed.

6 Q Ordinarily in the past, prior to this incident on  
7 May 15th, in the past would you go to the hospital with her,  
8 or if you found out she had gone to the hospital, would you go  
9 to the hospital to be with her?

10 A Yes.

11 Q So on this particular occasion, why didn't you go  
12 there immediately?

13 A It sounded like -- usually you can't get any help in  
14 the hospital, but this time it sounded like somebody was  
15 always there with her and she said that, you know, she was  
16 being -- anything she needed she was getting right away and  
17 she was being taken care of, so --

18 Q And in your conversations with Roxanne, did she tell  
19 you who this person was that was taking such good care of her?

20 A Sure, it was a nurse, a male nurse.

21 Q Okay.

22 A She said he looked kind of like Santa Claus.

23 Q At some point in time did you go to -- well, first  
24 of all, let's back up. Did Roxanne tell you what hospital she  
25 had gone to on May 15th?

1 A Yes.

2 Q What hospital was it?

3 A Centennial Hills.

4 Q Okay. Was that the hospital that was nearest to  
5 your residence?

6 A Yes.

7 Q Okay.

8 A Well, there's Mountain View, but I think in the  
9 rotation Centennial Hills was in the -- was in the rotation.

10 Q Okay. At some point in time did you eventually go  
11 to Centennial Hills Hospital to check on your wife and see how  
12 she was doing?

13 A Yes, the next morning.

14 Q Okay. Between when you found out on the evening of  
15 the 15th and then the morning of the 16th when you went to the  
16 hospital, were you keeping in contact with Roxanne throughout  
17 the night?

18 A Yes.

19 Q Was that by texting, phone, how were you keeping in  
20 contact?

21 A I know we made phone calls. I might have thrown  
22 some texts in there. I don't even remember. But I know I  
23 talked to her and she seemed fine.

24 Q Do you recall how many times approximately you guys  
25 were in touch with each other?

1           A     It's been too long.

2           Q     Okay. At any point in time in any of those  
3 conversations from the evening when she went to the hospital  
4 to when you ultimately decided to go there, did she ever  
5 express to you any concerns about the treatment she was  
6 receiving?

7           A     Actually, in the past I would go there and I would  
8 just be at her bedside. If she was there a week, I would be  
9 there with her a week. I'd leave, go home, take a shower, and  
10 come back, but we had family and everything that would take  
11 care of the kids. But this time it was a brand new hospital  
12 and I figured, you know, they must not be very busy because  
13 there's always somebody in the room taking care of her so she  
14 must be getting good treatment so I'll lay off the family and  
15 the friends, give them a break this time and, you know, just  
16 wait until the next morning and go see her.

17          Q     At some point in time in the next morning, did you  
18 receive a call from Roxanne expressing some concerns to you?

19          A     Yes.

20          Q     Do you recall approximately what time that was that  
21 you received that call?

22          A     I was just getting ready to take the kids to school.

23          Q     And what time ordinarily would you take the kids to  
24 school at that time?

25          A     Somewhere around 7:00 we're getting ready to go.

1 Q Okay. So it was some time just prior to that --

2 A Yes.

3 Q -- that you received the call from Roxanne? What  
4 did Roxanne tell you in that phone call?

5 A She said that somebody -- one of the nurses touched  
6 her inappropriately, and that's pretty much all she told me.

7 Q Based upon what she told you, what -- what, if  
8 anything, did you tell Roxanne?

9 A I told her to contact, you know, a nurse or a  
10 nursing supervisor or security to let somebody know and, you  
11 know, they'll -- I'm sure they'll take care of you until I get  
12 there.

13 Q Did you tell her that you were coming to the  
14 hospital?

15 A Yes, I just had to drop the kids off at school and  
16 then it was like right in line.

17 Q Okay. And is that what you did after -- did you  
18 drop your girls off at school and then go to the hospital?

19 A Yes.

20 Q Describe for us your experience when you got to the  
21 hospital as you're first walking in. What -- what did you  
22 notice, what did you observe when you first walked in?

23 A The ground floor there was nobody anywhere. I  
24 didn't know where I was going and I figured there would be an  
25 information booth, you know, security, something that I could

1 walk up to and ask them, you know, where to go. There was  
2 nobody. I mean, I thought I was alone in the place. I found  
3 some elevators, went upstairs, you know, went to -- found out  
4 her room number. I could figure out whatever floor number it  
5 was. I don't even remember the room number now, but I went to  
6 that floor, went by the nurse's station, looked on the board,  
7 saw her name up there, and just went down to the room even  
8 stopping at the nurse's station. Any employees I passed,  
9 nobody challenged me, nobody asked me who I was there to see,  
10 if I needed help. It was --

11 Q Okay. Let me back you up for just a second. The  
12 phone call that you got from Roxanne sometime shortly before  
13 7:00, was there any -- did you notice any change in the tone  
14 in her voice or her demeanor that you could tell?

15 A Oh, yeah. She was stressed.

16 Q Okay. And the phone calls you had prior to that,  
17 was she expressing that stress at all?

18 A No, she was like kind of happy. She was not happy,  
19 she wasn't happy being in the hospital, but she was -- she was  
20 fine.

21 Q So eventually you are able to make your way to  
22 Roxanne's room. Tell me what -- what you saw, what you found  
23 when you got to her room.

24 A There was a nursing supervisor sitting next to her  
25 bed writing a report out and they were having a conversation

1 about whatever had happened.

2 Q Okay. Describe for us Roxanne's demeanor when you  
3 first walked in the room and saw her.

4 A She was obviously stressed, crying, you know, upset.  
5 She was visibly upset.

6 Q Did she appear to be coherent and recognize you and  
7 recognize your surroundings, that kind of thing?

8 A Yeah, she was alert, cognitive. She was having a  
9 logical conversation with the supervisor.

10 Q Did you have any sort of conversation with this  
11 nursing supervisor?

12 A Not at that time. They finished up, just like a  
13 minute longer, and then she stepped outside.

14 Q Was there anybody else in the room at that time?

15 A No.

16 Q So now after this nursing supervisor has left it's  
17 just you and Roxanne?

18 A Yes.

19 Q At that point did you -- did you ask Roxanne what  
20 had happened?

21 A Yeah, and she just said somebody touched her.

22 Q Did she provide -- did you ask for any more details?

23 A No, I wasn't going to -- I was going to let her tell  
24 me what she was comfortable telling me.

25 Q Okay. After talking to Roxanne and getting those

1 limited details, what did you do?

2 A I asked her if she wanted me to call the police. Or  
3 I think I might have asked her if anybody called the police.

4 Q Okay. And what did she say?

5 A No, nobody had called them and that she had tried --  
6 she said she had tried to call them from her phone earlier  
7 that morning and she couldn't, and so she told me to call  
8 them.

9 Q So did you call 911?

10 A Yes.

11 Q Do you recall approximately at what time it was that  
12 you called 911?

13 A No idea. 8:00, 8:30.

14 Q If I told you that the 911 call shows it was 8:40,  
15 would you have any reason to dispute that?

16 A No.

17 Q Okay. What did you tell the 911 operator when you  
18 spoke to her or him?

19 A I identified myself, told her what my wife had told  
20 me, and asked them to respond.

21 Q Okay. Did you ever have another conversation with  
22 the nursing supervisor that was in the room when you first got  
23 there?

24 A Unfortunately, yes.

25 Q Was it before or after you called 911?

1 A After.

2 Q Okay. What did you tell the nursing supervisor at  
3 that point in time?

4 A I walked up to her, I told her that I called the  
5 police and they're on their way.

6 Q Okay. And what was her response, if any?

7 A She told me that she had already called Mr. Farmer,  
8 informed him of the allegations that were made against him,  
9 and that me and my wife had nothing to worry about because she  
10 informed him that he was not welcome back at the hospital.

11 Q And how did that make you feel when you heard?

12 A Very angry, just like it still makes me angry.

13 Q Okay. Did you feel like that the hospital was  
14 adequately responding to the assault that your wife had  
15 reported?

16 A No, they were not. I expected at least that much  
17 out of a female supervisor.

18 Q At some point in time was Roxanne moved to another  
19 room in the hospital?

20 A Later on in the morning.

21 Q Okay. Do you recall where in the hospital, what  
22 particular area in the hospital they moved her to?

23 A The maternity ward.

24 Q Okay. In that section was there any additional  
25 security measures provided to make Roxanne feel safer?



1           A     I guess it's one of the only huge places in that  
2 huge hospital that has a video camera, and it has a door that  
3 you have to actually get let through to get in there. So, you  
4 know, there's a lot more security than the rest of the  
5 hospital. There's no security in the rest of the hospital.

6           Q     Do you recall if there was a security guard that was  
7 posted outside of her room after that?

8           A     Yes, there was. There was a security guard finally  
9 arrived sometime after the detectives at the first room, and  
10 then followed her down to the maternity ward.

11          Q     Okay. In addition, was there a password that was  
12 set up that any -- that somebody that wanted to come into the  
13 room would have to provide?

14          A     Yeah, I think so.

15          Q     Okay. Let me back up a little bit. You placed the  
16 call to 911. Did a police officer arrive?

17          A     Detectives arrived.

18          Q     Okay. When you called 911 did you identify yourself  
19 as being an employee of the Metropolitan Police Department?

20          A     That's required.

21          Q     Okay. So detectives arrive. Did they speak to  
22 Roxanne after they arrived?

23          A     Yes.

24          Q     And did they speak to you?

25          A     Yes, separately. They asked me to step out of the

1 room while they spoke to her.

2 Q Okay. At some point in time was a sexual assault  
3 examination performed on Roxanne?

4 A Yes, while she was in the maternity ward.

5 Q Were you there at the time when this exam was  
6 performed?

7 A I -- I had to step out into the hallway.

8 Q Okay. Did you remain with Roxanne after going there  
9 on the morning of the 16th? Did you remain with her the  
10 entire time until she was ultimately discharged from the  
11 hospital?

12 A Yes, I did.

13 Q How long was she in the hospital? Days, weeks?

14 A About two days, about 48 hours.

15 Q Okay.

16 A Something like that.

17 Q And then upon discharge did you take her home?

18 A Yes.

19 Q Describe for us what you discovered when you --  
20 within the days after returning home.

21 A A lot of news people and lawyers walking up and  
22 knocking on our front door.

23 Q Okay. Did you actually have interactions or  
24 conversations with any of these people?

25 A Some of them, yeah. I don't remember exactly. I

1 know I was very angry.

2 Q Describe for us, if you will, the -- any of the  
3 immediate effects that this assault had on Roxanne immediately  
4 after this had occurred in the hospital. Did you notice any  
5 behavior changes immediately?

6 A That's the thing. She tried to -- like right off  
7 the start she tried to just like act like nothing happened, so  
8 -- but that didn't last too long.

9 Q Okay. After making that attempt, were there  
10 behavior changes that you observed?

11 A Yeah, major. She started, you know, slowly, and  
12 then it got worse, abusing drugs and alcohol.

13 Q Okay.

14 A Or her medications, prescription medications.

15 MR. MANINGO: Objection, Your Honor. Relevance.

16 MR. KOCHEVAR: Relevance as we discussed earlier,  
17 Judge, you know, the immediate changes that occurred right  
18 after this alleged assault happened.

19 THE COURT: Lay a better foundation as to the time.

20 MR. KOCHEVAR: Okay.

21 BY MR. KOCHEVAR:

22 Q Are we talking within days, within weeks?

23 A For the first month she kind of pulled it off and  
24 then, you know, I noticed she was sleeping more, kind of  
25 showing signs of depression, you know, and then I noticed she

1 was running out of her medications quicker --

2 Q Okay.

3 A -- calling her doctor for refills.

4 Q Was there any change -- and I apologize for asking a  
5 very personal question, but was there any change in your sex  
6 life with your wife?

7 A Yeah. Yeah.

8 Q Describe for us immediately after the assault.

9 A We didn't have sex for awhile.

10 Q Was that by her choice, your choice?

11 A It was her choice because I wasn't going to do  
12 anything unless she initiated.

13 Q And why didn't you want to initiate any sexual  
14 activity?

15 A Because I didn't know how she would react to it. I  
16 didn't want to do anything to upset her.

17 Q Okay. Ultimately, you've already told us that you  
18 and Roxanne got divorced. And in your opinion were the  
19 effects of the assault one of the contributing factors to that  
20 divorce

21 A Yes, they were.

22 Q Okay. Eventually did you and Roxanne decide to file  
23 a civil suit against Centennial Hills Hospital?

24 A Yes.

25 Q And why did you decide to file that suit against

1 Centennial Hills?

2 A It's their whole reaction to the whole incident. I  
3 mean, nobody even ever said they were sorry. It was just --  
4 they just acted like, oh, well, you know, go home and get  
5 better, that's what you should do.

6 Q Okay. And ultimately you did reach a settlement  
7 with Centennial Hills Hospital; is that correct?

8 A Yes.

9 Q Okay. Let's talk a little bit about your financial  
10 situation in and around this time, early 2008 and after.  
11 Describe for us your financial situation at that time.

12 A We bought a house at the exact wrong time. And,  
13 thankfully, she was smart enough to tell me that we needed to  
14 ditch it as soon as possible, and so we filed bankruptcy. The  
15 bankruptcy was for the house. I mean, all the other creditors  
16 got paid. I paid like 55, \$56,000 to everybody else, but we  
17 just got out of the house.

18 Q So your decision to file bankruptcy was solely  
19 motivated to alleviate the house mortgage that you had,  
20 unfortunately, acquired?

21 A Yes.

22 Q But you said the other creditors you ultimately paid  
23 those creditors?

24 A Yeah. Yeah.

25 Q Okay. Did your financial situation at the time have

1 anything to do with the decision to file the lawsuit against  
2 Centennial Hills Hospital?

3 A I'm sorry. Repeat?

4 Q Did your financial situation --

5 A Uh-huh.

6 Q -- the situation with your house --

7 A Oh, yeah.

8 Q -- did that have anything to do with the decision to  
9 file the lawsuit against Centennial Hills Hospital?

10 A No, we were going to take a bath on the house, so we  
11 just got out of it as quick as we could.

12 MR. KOCHVAR: I have nothing further, Judge.

13 THE COURT: Cross.

14 MR. MANINGO: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. MANINGO:

17 Q Hello, Mr. Cagnina. Just a few follow up questions.  
18 Prior to May 16th of '08, you had obviously known Roxanne for  
19 -- for quite some time; correct?

20 A Yes.

21 Q Okay. And when the two of you first got married you  
22 had come out of another marriage at that time; correct?

23 A Yes.

24 Q Okay. And prior to May 16th of '08 you had filed  
25 bankruptcy twice; correct?

1 A Yes.

2 Q Okay. And one of those bankruptcies was filed just  
3 in -- it was either 2007 or 2008; is that correct?

4 A Something like that, yes.

5 Q Okay. And then you mentioned that you had to -- had  
6 to leave a property for foreclosure?

7 A Yes.

8 Q Okay. But you did pay off about 56,000, 55 to  
9 56,000 to the other creditors?

10 A Yes.

11 Q Okay. And they set you up on a payment plan for the  
12 bankruptcy?

13 A Yes.

14 Q Okay. At the time, at this time still prior to May  
15 16th of '08, Roxanne had also lost her job; correct?

16 A No.

17 Q She was --

18 A She was still working when she was at Centennial  
19 Hills.

20 Q Okay. So are you sure about that?

21 A Yeah, positive.

22 Q Okay. So based on -- based on your memory she  
23 wasn't collecting unemployment at that time?

24 A No.

25 Q Okay. There was a time when she did get fired from

1 Adam Pool -- Adams Pools?

2 A Yes.

3 Q Okay. After she left Adams Pools, at that time she  
4 was on unemployment?

5 A I don't even remember when she went and got on  
6 unemployment.

7 Q Okay.

8 MR. MANINGO: Court's indulgence.

9 I'm looking at a deposition on our page 33.

10 BY MR. MANINGO:

11 Q Mr. Cagnina, in relation to the civil case that you  
12 and Roxanne had filed, you gave a deposition; correct?

13 A Yes.

14 Q Okay. Now, if I were to show you a part of that  
15 deposition, would that refresh your memory regarding Roxanne  
16 being on unemployment?

17 A Well, she was on unemployment, I just don't remember  
18 when she started.

19 Q Oh, okay. Okay.

20 A You asked me when she started.

21 Q Right. Right. No, and that's fine.

22 A I don't remember.

23 Q Okay. That's fine. Now, you had testified with Mr.  
24 Kochevar that prior to May 16th of '08 that you and Roxanne,  
25 you had a healthy sex life, is that fair to say?



1 A Yeah.

2 Q Okay.

3 A Yes.

4 Q You don't remember when the last time that the two  
5 of you were together before May 16th, though?

6 A No idea.

7 Q Okay. On May -- the early morning of -- of May 16th  
8 of 2008, and the evening before when Roxanne went into the  
9 hospital, you said that you had a chance to speak with her by  
10 phone a number of times; is that correct?

11 A Yes.

12 Q Okay. And she would call you and you would call her  
13 back and forth?

14 A Yes. I don't remember how many times.

15 Q No, that's okay. No, I'm just saying you were able  
16 to check in on her and make sure she was doing okay?

17 A Yes.

18 Q Okay. Do you remember did she call you with her  
19 cell phone?

20 A I believe so.

21 Q Okay. And at this point early -- early on after she  
22 was first in the emergency room and so forth, she was telling  
23 you that things were going fine as far as being in a hospital  
24 for a seizure can go?

25 A Yes.

1 Q Okay. And that she was receiving good care at that  
2 point?

3 A Yes.

4 Q Okay. And you had no cause for concern at -- at  
5 that point?

6 A Not at that point.

7 Q I mean, other than the normal concern, of course.

8 A Yes.

9 Q Okay. You testified a little bit about this a few  
10 minutes ago. I didn't really catch it. Did you say that  
11 there were text messages or you don't remember?

12 A I can't remember.

13 Q Okay. And that's fine. Was it -- would it have  
14 been normal for you and Roxanne to text each other? Do you  
15 remember? Did you guys used to do that?

16 A I didn't really like texting.

17 Q Okay. Fair enough. So you would prefer to call or  
18 have her call you?

19 A Yes.

20 Q Okay. Now, it wasn't until -- it wasn't until the  
21 following morning, closer to around 7:00 in the morning or so  
22 that you heard from Roxanne regarding something happening?

23 A Yes.

24 Q Okay. And when she called you at that point, she --  
25 she gave you a general idea that something bad had happened?

1 A Yes.

2 Q Okay. And then once you were able to drop off your  
3 -- your daughters, then you went straight to the hospital?

4 A Yes.

5 Q Okay. Backing up just a -- just a second, prior to  
6 -- prior to this event in -- in May of 2008, Roxanne was  
7 prescribed Xanax, as well as her other medications; correct?

8 A Yes.

9 Q Okay. And sometimes she would take the Xanax if she  
10 felt a seizure staring to come on?

11 A Yes.

12 Q And by taking one or two tablets of the Xanax, it  
13 would -- it could possibly prevent the seizure from actually  
14 happening?

15 A Yes, it works a lot like Ativan.

16 Q Okay. And -- but -- and she had this prescription  
17 before May of 2008?

18 A Yeah. I don't know how many years she had it,  
19 but --

20 Q Okay. Now, upon arriving at Centennial Hills, you  
21 at some point obviously met with Roxanne; correct?

22 A I'm sorry?

23 Q Once you arrived at Centennial Hills, you eventually  
24 made it to Roxanne's room; correct?

25 A Yes.

1 Q Okay. And then you stayed with her for the rest of  
2 the time that she was admitted to the hospital?

3 A Yes.

4 Q Okay. And Roxanne still had her cell phone with  
5 her; correct?

6 A I believe so.

7 Q Okay. You didn't take her cell phone away from her?

8 A No.

9 Q Okay. And you didn't make any calls to Channel 8  
10 News from her cell phone?

11 A I don't even remember.

12 Q Okay. Now, I'm talking about while still in the  
13 hospital. So you don't remember taking her phone and calling  
14 Channel 8 or anything like that?

15 A Do not remember.

16 Q Okay. You had your own cell phone, though; correct?

17 A Yes.

18 Q Okay. And I -- I know it's been a long time, but  
19 can you remember what -- if there was -- there were land line  
20 phones in the hospital rooms then?

21 A I do not remember.

22 Q Okay.

23 A There usually are, but --

24 Q Right. Now, you called 911, and I believe Mr.  
25 Kochevar pointed out that it was 8:40 a.m.

1 A That sounds about right.

2 Q Okay. Do you know -- do you know if Roxanne had  
3 called 911 at 7:54 that morning?

4 A No. She told me that she tried to call 911, but  
5 that she was afraid that he would hear --

6 Q Okay.

7 A -- the button presses, so --

8 Q Okay. And she told you she was afraid that he would  
9 hear the button presses. At -- at 7:54, at about 8:00 in the  
10 morning, was that close to the time you arrived?

11 A It's got to be somewhere around there.

12 Q Okay.

13 A I think I arrived maybe a little after 8:00.

14 Q Okay. Now, you had stated that -- that you believe  
15 that -- that the situation at the hospital is one of the  
16 contributing factors to your divorce?

17 A Yes.

18 Q There are obviously other factors that -- that come  
19 in when that decision is made, is that fair to say?

20 A Yes.

21 Q Okay.

22 MR. MANINGO: Court's indulgence.

23 BY MR. MANINGO:

24 Q Just to clarify one matter on the -- on the time,  
25 can you remember -- well, let me rephrase that. Does it make

1 sense that Roxanne had called you to tell you that something  
2 had happened, that was around 7:00 in the morning?

3 A Something like that, yeah.

4 Q I mean, the best you can remember --

5 A Yes.

6 Q -- does that make sense about 7:00?

7 A Yes.

8 Q Okay. And then after that point you dropped off the  
9 kids and -- and arrived at the hospital?

10 A Yes.

11 Q Okay. And then you think you arrived somewhere  
12 around 8:00 or shortly after?

13 A Yes.

14 Q Okay. That's it. Thank you, Mr. Cagnina.

15 MR. MANINGO: Pass the witness.

16 THE COURT: Redirect.

17 MR. KOCHEVAR: Thank you, Judge. Court's  
18 indulgence. May I approach the witness, Judge?

19 THE COURT: Yes.

20 REDIRECT EXAMINATION

21 BY MR. KOCHEVAR:

22 Q Mr. Cagnina, I'm showing you what's been admitted as  
23 State's Exhibit 19, which has previously been identified as  
24 the phone records for Roxanne's cell phone around the time of  
25 May 16th in the early morning hours. I'd ask you if you could

1 to look down through some of those calls that are in the  
2 records from --

3 A Okay.

4 Q -- and ask -- and tell me if you identify or you  
5 recognize some of the phone numbers that were being called.

6 A My phone number several times. Her phone number.  
7 And there's a couple there that I don't really --

8 Q Okay. Let's talk about the ones -- there's an entry  
9 at -- which number is your number?

10 A That one right there.

11 Q That ends in 5435?

12 A Yes.

13 Q Okay.

14 A Or -- no, that's not my number. That's my number  
15 right there.

16 Q It ends in 5458?

17 A 58, yes.

18 Q Okay. And that entry is at 12:57 a.m. on May 16th?

19 A Yes.

20 Q Which would have been approximately 1:00 in the  
21 morning on the 16th, a call for 22 minutes from Roxanne to  
22 you. Do you recognize this other number, the 5435 number?

23 A That's the home number.

24 Q Okay. And there's a call to the home number at 2:53  
25 in the morning; is that correct?

1 A Yes.

2 Q And then the next call is at, to the same home  
3 number, is at 6:16.

4 A Yes.

5 Q Would that be about the time that Roxanne called  
6 home and you spoke to her about the allegations that she gave  
7 to you?

8 A Yeah, she really didn't tell me a lot. She just  
9 told me something happened.

10 Q Okay. And then there's another call to the home  
11 number at 7:29.

12 A Yes.

13 Q And 7:33.

14 A Yes.

15 Q Okay. All on the morning of the 16th.

16 A The 16th.

17 Q And then you previously testified or you  
18 acknowledged that your call to 911 at 8:40 sounds about right?

19 A Yes.

20 Q Okay. And according to the records, there's no  
21 phone calls in between 2:50 something in the morning and 6:16  
22 when Roxanne called you?

23 A Yes.

24 Q And I apologize, again, for the personal nature of  
25 these questions. Mr. Maningo asked you about a healthy sex



1 life. Did that healthy sex life include anything that would  
2 be defined as rough sex?

3 A No.

4 Q Okay.

5 MR. KOCHEVAR: I have no further questions, Judge.

6 THE COURT: Redirect.

7 MR. MANINGO: No further questions.

8 THE COURT: I just have one -- one question. Did  
9 you call Channel 8 news on May 16, 2008?

10 THE WITNESS: I don't recall if I did. I was very  
11 angry. I might have. I don't remember.

12 THE COURT: Okay. Any questions as a result of my  
13 question?

14 MR. KOCHEVAR: Nothing from the State, Judge.

15 MR. MANINGO: No, Your Honor.

16 THE COURT: Thank you. Thank you very much for your  
17 testimony.

18 THE WITNESS: Thank you.

19 THE COURT: You may call your next witness.

20 MS. BLUTH: Thank you, Your Honor. The State calls  
21 Linda Ebbert.

22 LINDA EBBERT, STATE'S WITNESS, SWORN

23 THE CLERK: You may be seated. And could you please  
24 state your name and spell it for the record.

25 THE WITNESS: My name is Linda Ebbert; E-B-B-E-R-T.

1 MS. BLUTH: Are you okay up there?

2 THE WITNESS: Yeah, I just looked over at the little  
3 mark there.

4 MS. BLUTH: Okay. May I proceed, Your Honor?

5 THE COURT: Yes, you may.

6 MS. BLUTH: Thank you.

7 DIRECT EXAMINATION

8 BY MS. BLUTH:

9 Q Good afternoon, Ms. Ebbert. Are you semi-retired  
10 right now?

11 A I am.

12 Q Okay. And before you retired, what was -- I'm  
13 sorry. Yeah. Where -- how were you employed?

14 A I was employed as co-owner of Rose Heart,  
15 Incorporated, which is a group of sexual assault nurse  
16 examiners.

17 Q Okay. And before you were a sexual assault nurse  
18 examiner, were you a registered nurse?

19 A Yes, I was.

20 Q And so how long have you been a registered nurse  
21 for?

22 A 50 years.

23 Q Okay. And where did you go to nursing school?

24 A Meadville City Hospital School of Nursing in  
25 Meadville, Pennsylvania.

1 Q When did you graduate from nursing school?

2 A 1963.

3 Q And shortly after graduating from nursing school,  
4 did you then take what we call is your boards, the testing?

5 A Yes, I took my nursing boards and I was able to pass  
6 them the first time around high enough to practice in any  
7 state.

8 Q And so after passing those tests, where did you  
9 first begin your career?

10 A I worked at Greenville City Hospital in Greenville,  
11 Pennsylvania, and I worked as a floor nurse there.

12 Q And what does a floor nurse do?

13 A Takes care of patients who are in -- in-house  
14 patients.

15 Q And what other areas in the nursing practice have  
16 you worked in?

17 A I have done flight nursing, critical care transport,  
18 ground ambulance, I have done supervision, I have done night  
19 supervisor, day supervisor, and I've also done head nurse in  
20 the emergency room, and I have also worked in OB/GYN, and  
21 probably for five years to do labor and delivery.

22 Q Okay. Now, at some point in your career did you  
23 move to Las Vegas?

24 A I did.

25 Q And when was that?

1 A In 1990.

2 Q And in 1990 when you moved here, what hospital did  
3 you work at?

4 A University Medical Center.

5 Q Okay. And after -- well, what department did you  
6 work in at UMC?

7 A In the emergency room.

8 Q And after working for a certain period of time in  
9 the emergency room, did you think it was then necessary for  
10 you to further your education?

11 A Actually, I hadn't thought about it, but two other  
12 people came to me and asked me to go and form a group to do  
13 sexual assault examinations because there were so many people  
14 walking out because they were waiting for long periods of  
15 time.

16 Q And so then did you get further education to be a  
17 sexual assault nurse examiner?

18 A I did. I went to Cabrillo College in Santa Cruz,  
19 California, for my textbook portion of my training.

20 Q And then when you were done in California, did you  
21 come back and work under a physician here at University  
22 Medical Center in doing those exams?

23 A I did. Dr. Dale Carrison was our director and he  
24 and other ER physicians watched us while we did examinations  
25 until they felt we were capable of doing them accurately on

1 our own.

2 Q And I should have asked you, when was it that you  
3 returned from California and started doing these sexual  
4 assault nurse examinations?

5 A I believe it was late 1993 or '94.

6 Q And since 1994, about how many sexual assault nurse  
7 examinations have you done?

8 A We started doing examinations in 1995 on our own, in  
9 April of 1995, and I've done over 4,000 examinations to this  
10 point.

11 Q And have you also designed and prepared a written  
12 manual that aids other nurses in the state of Nevada in  
13 conducting these types of examinations?

14 A Yes, I did.

15 Q And did you also develop a computer software program  
16 that aids in giving these types of examinations?

17 A Yes, I did.

18 Q And what is that?

19 A It's called SART Smart, which means Sexual Assault  
20 Response Team, and the Smart is because it makes it much  
21 easier to read the case and makes it easier for everybody  
22 involved with the case, actually, to -- because sometimes our  
23 writing isn't as good and it's typed out.

24 Q Okay. And the reason why I started off the  
25 questions with are you semi-retired is do you still come back

1 to Las Vegas to do these types of examinations?

2 A I do.

3 Q And when do you do those or how often?

4 A I -- the last ones I have done were in November, and  
5 I usually come out -- whenever I come out for a trial, I try  
6 to do some examinations while I'm out here, but it's sporadic,  
7 off and on.

8 Q Have you testified in the Eighth Judicial District  
9 Court before?

10 A Yes, ma'am.

11 Q Could you approximate about how many times you've  
12 done so?

13 A Probably about 65 to 70 times.

14 Q Okay. Now, I'd like you to discuss sexual assault  
15 nurse examinations in general. You know, what is the process,  
16 what are they?

17 A The process is to take care of the patient, gather  
18 the evidence, and address any problems that are occurring  
19 because of the assault.

20 Q So -- and we'll get into the specifics of a certain  
21 examination in a moment regarding a patient that you treated,  
22 but just generally how are you alerted that you need to  
23 conduct this type of examination?

24 A When a patient comes to the hospital either by  
25 Metro, by ambulance, however, or just as a walk-in, there is a

1 nurse on call for the sexual assault team and they are called  
2 immediately. Our response time is about 20 minutes. As soon  
3 as we get to the hospital we get them into our room and begin  
4 the examination process.

5 Q When you begin the examination process, what is the  
6 first step you go through?

7 A My first step always with any person that is  
8 presented as a victim is to introduce myself and tell her  
9 exactly what I do, or her or him what I do, and I explain to  
10 them the steps that I'll be performing.

11 Q Okay. And what's the point in explaining the steps  
12 to a patient in what you're going to be doing to them?

13 A This is not an examination that most people or  
14 anybody really wants, but when I tell them why I am doing it  
15 and what I am doing, I believe it makes the process much  
16 easier for the victim.

17 Q Okay. And after you explain -- or after you  
18 introduce yourself and then explain the process, what's the  
19 next step?

20 A I ask them for permission to do the examination, and  
21 I have them sign that it is agreeable with them for me to do  
22 the examination.

23 Q And in this process after you've received their  
24 permission, is it important to get their medical history?

25 A I get the medical history because that gives me

1 information that I need to know if I have to consider extra  
2 things during the examination.

3 Q What would be an example of something extra that you  
4 should consider?

5 A If they're diabetic, if they're -- if they have  
6 seizures, if they have any sexually transmitted diseases that  
7 they haven't had taken care of, that type of thing. Anything  
8 that is unusual that you wouldn't expect during an  
9 examination.

10 Q And after getting their medical history, what's the  
11 next step?

12 A I get a history of the incident that they are there  
13 for. And in doing that, I ask them multiple questions, I  
14 write down information that they give me. And after I have  
15 obtained that, I then know where to look best for injuries,  
16 where to look for other evidence.

17 Q So is it important to get the history of the assault  
18 in order to properly conduct your -- your sexual assault  
19 examination?

20 A That's correct.

21 Q Are there -- when you're doing the sexual assault  
22 nursing examination, are there certain, for lack of a better  
23 term, tools that you use to aid you in that process?

24 A Yes, there is.

25 Q And what are those?



1           A     They have a light that's called a -- it used to be  
2     called an omni light. We use a blue dot light now which shows  
3     injuries before they surface. We also use toluidine blue dye,  
4     which is a dye that adheres to red blood cells, and it rather  
5     outlines the injuries that you're looking at to make it much  
6     easier for you to see the extent of the injury. We also use a  
7     light called a pelvic exam light, and we use a tool called a  
8     vaginal speculum. And the vaginal speculum is a duckbill-like  
9     piece of plastic, and the light goes into that.

10          Q     And then during that process while you're doing the  
11     examination and documenting injuries if there any, do you also  
12     collect evidence?

13          A     Yes, ma'am.

14          Q     And how do you do so?

15          A     I do a head to toe examination. I gather swabs from  
16     the mouth for the assailants if there would be any there. I  
17     also do a swab called a buccal swab, and that's way up in the  
18     cheek, and that would be for the victim's DNA so that if  
19     there's two different DNAs we know that something -- someone  
20     has left DNA there. I also do swabs of any areas that have  
21     been kissed, licked, any -- I do fingernail scrapings, I do --  
22     gather underwear if it's available. I do pelvic examination  
23     and gather swabs from the vagina and from the rectum. And the  
24     reason, even if they haven't been penetrated rectally, I do  
25     swabs from the rectum because the way women are built, the

1 secretions go from front to back and often we'll find  
2 secretions that have come from the vaginal area.

3 Q Okay. Have I missed any steps, or are those all the  
4 steps?

5 A I then give them instructions on how to follow up.  
6 If need be, I give them medication to prevent pregnancy and to  
7 prevent sexually transmitted diseases.

8 Q Thank you. I'd now like to turn your attention to  
9 May 16th of 2008. Were you called to Centennial Hills  
10 Hospital on that date to do a sexual assault nurse  
11 examination?

12 A Yes.

13 Q And was that on patient Roxanne Cagnina?

14 A Yes, ma'am.

15 Q Okay. So when you arrived to the hospital, where  
16 did you respond to in regards to Ms. Cagnina?

17 A Actually, a Metro detective came and picked me up  
18 because I didn't know where Centennial Hills Hospital was and  
19 took me there. And I was taken to the nursing area, the  
20 nurse's station area, and I received permission from Metro and  
21 from the nursing staff to do the examination.

22 Q Okay. And so did they assign you a room or how do  
23 you know where you're supposed to take Ms. Cagnina?

24 A They told me what room the patient was in, and I  
25 went into that room and talked with her and did the

1 examination. It was a private room she was in.

2 Q Okay. And was anyone else in the room during the  
3 examination you did?

4 A No, there wasn't.

5 Q Okay. And then do you have the examination in front  
6 of you?

7 A I do.

8 Q Okay. So if at any point in time, I've spoken to  
9 defense counsel, and if any point in time you need to  
10 reference your documents, just let me know because I'm going  
11 to ask several questions about those, okay? First of all,  
12 when you went into the room, did you do the steps you talked  
13 about, did you introduce yourself and explain the process?

14 A Yes, ma'am.

15 Q And did you get a medical history in regards to Ms.  
16 Cagnina that you noted in your report?

17 A Yes, I did.

18 Q And what was the medical history that you took down?

19 A She said she had a history of seizures. She had had  
20 a cholecystectomy, a hysterectomy. She had been pregnant two  
21 times and had two living children.

22 Q Okay. And just for those who don't know, what is a  
23 cholecystectomy?

24 A It's a gallbladder removal.

25 Q So she had had a full hysterectomy, her gallbladder

1 had been removed, history of seizures, and then she had had  
2 two -- two successful pregnancies?

3 A Correct.

4 Q Okay. Do you also get, you know, personal  
5 information, name, date of birth, address, and such?

6 A I do.

7 Q Okay. Do you also notate any medications that Ms.  
8 Cagnina is on?

9 A Yes, I do.

10 Q And what medications were those?

11 A She was on Dilantin and Phenobarb, which is very  
12 often used for seizures.

13 Q And I should have asked you this earlier, when  
14 you're doing the sexual assault nurse examination, do you also  
15 document whether someone has bathed, urinated, defecated, all  
16 those types of things?

17 A Yes, that's part of the way -- there's a certain  
18 area that asks all those questions. And in this case she had  
19 bathed. She had -- her gown had been changed. She had eaten,  
20 she had drank fluids, and she had urinated.

21 Q Okay. And why is it important to document whether  
22 someone has, you know, urinated or drank or eaten?

23 A Because it can rinse away evidence that we would be  
24 collecting.

25 Q Did you, as part of the assessment process, did you

1 notate the emotional demeanor of Ms. Cagnina?

2 A Yes.

3 Q And what did you notate that to be?

4 A She was complaining of pain, she was able to answer  
5 questions appropriately for me, and she was weepy off and on  
6 throughout the examination. She was pretty devastated.

7 Q Okay. And then as part of your next step after you  
8 get done with medical history you discussed earlier, then you  
9 move onto the sexual assault information, the history of the  
10 assault?

11 A That's correct.

12 Q And during that, do you discuss with Ms. Cagnina the  
13 approximate timing of when she believed the assault occurred?

14 A Yes.

15 Q And what time did she give you?

16 A She said about 4:00.

17 Q And that would be a.m. or p.m.?

18 A A.m.

19 Q Okay. Of the same day you saw her?

20 A That's correct.

21 Q Okay. And I should have -- what time did you  
22 respond? What time was the exam done?

23 A About 11:00 to 11:30 a.m.

24 Q So about seven to seven and a half hours after she  
25 gave you the approximate time of the assault, would that be

1 correct?

2 A That's correct, yes.

3 Q When you are going through the history of the  
4 assault, do you discuss with the patient the different areas  
5 they are touched and penetrated?

6 A Yes.

7 Q And did you do that in this case?

8 A I did.

9 Q In regards to Ms. Cagnina's vagina, did she tell you  
10 that her vagina was penetrated?

11 A She did tell me that her vagina was penetrated.

12 Q In what way?

13 A With fingers.

14 Q Okay. And did she tell you it was penetrated  
15 besides the fingers with any other body part or --

16 A Tongue.

17 Q Okay. And so did you document on your report that  
18 she had stated it was penetrated both by finger and tongue?

19 A That's correct.

20 Q Under the section patient was masturbated, want did  
21 you place under that section?

22 A The patient stated that she was masturbated by the  
23 assailant.

24 Q Is that the same thing as being digitally penetrated  
25 by the assailant?

1           A     Actually, it can be that. It can also be just  
2 fondling and rubbing.

3           Q     Okay. And then in regards to was the suspect's  
4 mouth placed on the patient, as you stated, she stated yes it  
5 was --

6           A     Yes.

7           Q     -- is that correct? In regards to whether or not  
8 the patient had been licked or kissed, what did you notate in  
9 your report for that?

10          A     She had told me that he had tried to tongue kiss  
11 her. She also -- I did swabs from the mouth for that. She  
12 also said the breasts were touched by him. And I swabbed the  
13 breasts. The thighs had been, I swabbed the thighs.

14          Q     The thighs had been what? I'm sorry.

15          A     Had been -- had been licked.

16          Q     Okay.

17          A     And she also said that the labia, which is on a  
18 female there's big lips and smaller lips, those are the labia  
19 majora and minora, and those had been licked.

20          Q     In regards to the question that we had spoken about  
21 earlier when you do the process of evidence collection, did  
22 you do that in this case?

23          A     Yes, I did.

24          Q     And how was that conducted in regards to Ms.  
25 Cagnina?

1           A     As far as the underwear, I did not collect it. She  
2 was not wearing underwear when I went into the room. I did  
3 swab the mouth, the buccal swab, I did swabs of the breasts,  
4 the thighs, the labia. I did fingernail scrapings. I did  
5 vaginal swabs, rectal swabs, and I did pictures of injuries  
6 using the toluidine blue dye and without the toluidine blue  
7 dye.

8           Q     When you saw her when you were doing this  
9 examination, was she still in her hospital gown?

10          A     She was in her hospital gown.

11          Q     Okay. And after you collect these things, like the  
12 fingernail scrapings, the multiple swabs from the area you  
13 discussed, what do you do with those things?

14          A     It comes as a kit. It's in a white bag. I believe  
15 it was at that time. We've changed from box to bag, so I  
16 believe it was a bag at that time. And in that bag are  
17 envelopes, and each envelope has things in it that you're  
18 supposed to use for collection. When I say I collected swabs,  
19 they were put into little cardboard boxes and put into a  
20 sealed envelope with her name on that and her kit number on  
21 it.

22          Q     All right. And just to recap, the areas of the body  
23 that you did the swabs on are consistent with the areas where  
24 she discussed the defendant either touched or licked her?

25          A     That's correct.



1 Q So that was why it was done on the breast, the  
2 thighs, the face, the labia, and the inner mouth --

3 A Yes.

4 Q -- is that correct?

5 A Yes, that's correct.

6 Q And so is that why it's important to get an accurate  
7 accounting from the victim so that you know where to take  
8 those swabs?

9 A That's correct.

10 Q And so what was the history of the assault that the  
11 patient gave?

12 A She stated that she was being admitted to the  
13 hospital and the staff member who was taking her to her room  
14 sexually assaulted her. And she gave the answer to the  
15 questions that I asked on my form as that she was penetrated  
16 vaginally by tongue and fingers, that her breasts had been  
17 touched, her thighs had been touched, there was tongue  
18 penetration of her mouth. She was not sure if her rectum had  
19 penetrated. She knew it wasn't by penis, but otherwise -- and  
20 that was because there's very close proximity there. And  
21 sometimes when you're in a stressful situation you wouldn't  
22 really know whether that happened or not.

23 Q Did she state whether or not the suspect spoke to  
24 her during the assault?

25 A Yes.

1 Q And what was it that she stated?

2 A She said he put his fingers into her vagina, and he  
3 asked her how do you like those two big fingers.

4 Q And did she state whether or not after leaving he  
5 ever came back?

6 A She said at approximately 7:00 in the morning when  
7 he was leaving his shift he did come back to that area.

8 Q And after speaking of those things to you or while  
9 speaking about those things to you, what was her demeanor?

10 A She -- anytime that I asked her anything other than  
11 what she had told me right off the bat, she would -- she would  
12 get very upset and cry. She had actually told me that she  
13 couldn't believe that a nurse would do that and that she  
14 thought hospitals were a safe place to be. And then she  
15 became very, very emotional over it.

16 Q Because she became so emotional, did you offer her  
17 information that you thought could help her with her emotional  
18 problems during -- in regards to dealing with the assault?

19 A Yes, I told her, I assured her that she had done  
20 nothing wrong, that it -- the assailant was the one who had  
21 done wrong. I also told her I would call a rape crisis  
22 counselor to come and be with her if she would like that, and  
23 she did agree to having me call the rape crisis counselor.

24 Q Do you do that for every patient that you see?

25 A I call a counselor for every patient that I see if

1 they are willing to see them. However, I don't always assure  
2 them that it wasn't their fault that -- that it's the  
3 assailant's fault.

4 Q So why did you think it was appropriate to do that  
5 in this case?

6 A She was very, very upset.

7 Q When you're taking the history of this assault, is  
8 it important to ask the patient the position of the patient's  
9 body during the assault?

10 A That's correct.

11 Q And why is that important?

12 A It helps us to know where to look. She told me that  
13 she was on her back, his fingers penetrated from -- would  
14 penetrate from above, and I found the injuries that I  
15 documented at between 5:00 and 7:00. And with her on her  
16 back, that would be the appropriate area for her to have  
17 trauma.

18 Q Okay. So, I mean, after doing 4,000 exams, when an  
19 individual says to you I was laying in a bed, the person came  
20 to me, was above me and started digitally penetrating me, when  
21 you hear that, in your mind you know where you should see  
22 those injuries?

23 A That's correct.

24 Q And that's between the 5:00 and 7:00 positions on  
25 the vagina?

1 A That's correct.

2 Q Now, we'll go through that in a second with  
3 pictures, but just without the pictures, that would be your  
4 testimony?

5 A That's correct.

6 Q As part of a sexual assault nurse examination, do  
7 you ask a patient when the last time was that they had  
8 consensual sex?

9 A I ask them if they have had sex in the last five  
10 days, 120 hours.

11 Q Did you ask Ms. Cagnina that?

12 A I did.

13 Q And what was her response?

14 A She said, no, she had not.

15 Q She had not had sex in the last five days?

16 A That's correct.

17 Q Okay. Did she report to you any reason, I mean,  
18 obviously besides the assault, that she should have injuries  
19 to her vagina?

20 A No.

21 Q Or that she would be in pain to her vagina?

22 A No.

23 Q I'd like to go through -- the pictures are up here.  
24 Excuse me.

25 MS. BLUTH: May I approach the witness, Your Honor?

1 THE COURT: Yes.

2 BY MS. BLUTH:

3 Q I'm showing you what's been marked for purposes of  
4 identification as State's 2 through 8, as well as 22. Would  
5 you just look through those briefly and let me know if you  
6 recognize them.

7 A Yes, I do.

8 Q And I have one more for you. And while we're  
9 waiting for that, what do you recognize these to be?

10 A These are the pictures that I took when I was  
11 examining the patient.

12 Q Okay. And I have one other one, but I believe --  
13 thank you. I'm showing you what's been marked for purposes of  
14 identification as State's Proposed 23. Do you recognize that,  
15 as well?

16 A Yes.

17 Q Okay. And what do you recognize these pictures to  
18 be? Did you already say it?

19 A Those are the pictures that I took during my  
20 examination.

21 Q Okay. And this new one that I gave you which is  
22 State's Proposed 23, is that also a picture taken from  
23 examination?

24 A Yes, it is.

25 Q Okay. And are these fair and accurate depictions of

1 the photos that you took on May 16th of 2008, during the  
2 sexual assault nurse examination of Roxanne Cagnina?

3 A Yes, ma'am.

4 Q Okay.

5 MS. BLUTH: Your Honor, I move to admit State's 2  
6 through 8, 22, and 23.

7 MR. MANINGO: No objection.

8 THE COURT: They'll be admitted.

9 (State's Exhibits 2 through 8, and 22 and 23 admitted)

10 MS. BLUTH: And permission to publish, Your Honor.

11 THE COURT: Granted.

12 MS. BLUTH: Thank you.

13 BY MS. BLUTH:

14 Q Let me zoom out for you, Ms. Ebbert. Okay. Now --

15 MR. MANINGO: Objection. Can we approach, Your  
16 Honor?

17 THE COURT: Sure.

18 (Bench conference)

19 MR. MANINGO: Jeff Maningo. I'm objecting just  
20 because of the labeling at the top of that picture that the  
21 Court pointed out before. I thought that we were admitting  
22 just the photo. And just where it says date rape drug.

23 MS. BLUTH: I totally forgot that it says date rape  
24 drug. I can cure by -- everybody knows she's on  
25 Phenobarbital, which is a seizure medicine. We can -- I'll

1 just zoom on the picture. We just want to show the picture.  
2 Oh, I'm sorry [inaudible]. I forgot that on the document it  
3 says date rape drug, Phenobarbital, which I think can easily  
4 be cured because she's a seizure patient and we've had  
5 multiple people come in here and say that she was on  
6 Phenobarbital. So I can do it in several ways, but I do want  
7 to show that she documents a picture of the patient because  
8 there's a specific reason why they do a picture. I'll cure it  
9 however you guys want me to.

10 MR. MANINGO: Yeah. No objection to the picture.  
11 Just we'd ask that if it gets put up on the screen that it be  
12 only the photo and not the information above, that list.

13 THE COURT: Let's -- let's do that. I mean,  
14 obviously, if she has testimony about -- has the ability to  
15 give testimony about Phenobarbital that's fine. But if she --  
16 if you can lay a foundation for it, but don't -- let's not  
17 [inaudible].

18 MS. BLUTH: Sure. Okay. Thank you.

19 MR. MANINGO: Thank you.

20 (End of bench conference)

21 BY MS. BLUTH:

22 Q Okay. I'm just going to go through the -- this is  
23 -- for the record, this is now in evidence as State's Admitted  
24 23. Is this the patient image documented as Patient Image  
25 No. 1?

1 A Yes, it is.

2 Q Okay. And who is the individual you see here?

3 A This is Ms. Cagnina.

4 Q Okay. And why is it important to take a picture of  
5 the individual's face?

6 A Most often when we have a case going to court and we  
7 review the records, when we see the -- the patient's face it  
8 makes us remember much better the -- the case and specifics  
9 about it.

10 Q Okay. Did you need a picture of Ms. Cagnina to  
11 remember this case?

12 A No.

13 Q Why?

14 A Because she was so upset and it's a very unusual  
15 case.

16 Q Okay. Showing you what's now in evidence as State's  
17 3. Can you explain to the ladies and gentlemen of the jury  
18 what we're looking at? And then obviously, Ms. Ebbert, I know  
19 you've testified multiple times, but if using the monitor and  
20 writing on it would be helpful, please do so.

21 A This is an overall picture. It just basically gives  
22 you an idea of how I'm looking at the patient. This area up  
23 here is called the mons pubis.

24 MS. BLUTH: I'm sorry. Is that on, Your Honor? How  
25 do I control so that she can --



1 THE RECORDER: Is it not working?

2 THE COURT: Sometimes you have to press it harder.

3 THE WITNESS: Okay. I'm still having trouble, but  
4 up in this area -- there we go -- is the hairy area and that's  
5 called the mons pubis. As you come down, these big lips are  
6 called the labia majora. Inside those lips are smaller lips  
7 called the labia minora. Then you will -- after it's spread  
8 apart you will see other structures, but in general we give an  
9 idea of the position the patient was in and what I actually am  
10 looking at when I -- when I start the examination of the  
11 pelvic area.

12 BY MS. BLUTH:

13 Q And then would you mind tapping it so the little --  
14 or Mr. Kochevar can. Now, we talked a little bit about the  
15 blue dye that you use.

16 A Yeah.

17 Q You said the toluidine dye, is that the correct --

18 A Yes.

19 Q Now, you discussed that that can aid in your being  
20 able to see injuries to the vagina; is that correct?

21 A That's correct.

22 Q Sometimes is it fair to say that you cannot see the  
23 injuries with the naked eye, however, you then apply that and  
24 you can see that?

25 A That's correct.

1 Q In Ms. Cagnina's case, could you see injuries to her  
2 vagina without the blue dye?

3 A Yes, I could.

4 Q And then after using the blue dye, could you -- did  
5 you recognize even more?

6 A Yes, there were some very superficial that didn't  
7 show prior to putting the dye on.

8 Q And then showing you what's now in evidence as  
9 State's 3. And I'm going to zoom in for you. Okay. And if  
10 you could explain to the ladies and gentlemen of the jury what  
11 we're seeing in this photograph.

12 A Okay. Before I put I put any speculum into the  
13 vagina or anything like that, I put the dye on. That's to  
14 show the injuries were there before the I did the speculum  
15 examination. It's wiped off. If it adheres to injuries,  
16 they're recent injuries and it adheres to the red blood cells.  
17 In this case there's a laceration here, a laceration here, and  
18 a laceration here. Now, where the blood -- where it has  
19 adhered, these very, very small areas, there's some extremely  
20 superficial abrasions that would be present there.

21 Q Okay. So the three that you've marked by using the  
22 computer, those were the three major ones that you recognized  
23 without the blue dye?

24 A That's correct.

25 Q And then the other ones that we see with, you know,

1 the other red arrows pointing, those are the ones that you  
2 noted after using the blue dye, do I have that correct?

3 A Yes, that's correct.

4 Q Showing you what's in evidence -- excuse me -- as  
5 State's 4, which is Patient Image 4. Explain what we're  
6 looking at now.

7 A Okay. In this picture, again, this is the first,  
8 this is the second, and this is the third laceration.

9 Q Okay.

10 A And as you can see -- well, you can't because I put  
11 something over it. But they are crescent shaped.

12 Q Okay. I'm going to show you State's 5. Would this  
13 be a better --

14 A That's a better --

15 Q -- picture so we can discuss the shaping and what  
16 that means?

17 A Yes, that's a better picture.

18 Q Okay.

19 A And ask you can see with this, it is crescent  
20 shaped. This is crescent shaped. This, because of the way I  
21 have it, doesn't show as much as the crescent shape. But if I  
22 wasn't stretching the tissue in that area, it -- it also is  
23 very crescent shaped.

24 Q And showing you State's 7. Does this also show --

25 A Okay.

1 Q -- the crescent shape?

2 A And this again is the crescent shape of this. This  
3 is -- and the tissue is being spread apart there, so it  
4 doesn't show it as crescent shaped as it would. The -- the  
5 third laceration would be underneath my finger in this area.

6 Q Okay.

7 A And then lastly, again, are these the three crescent  
8 shaped ones that you've been --

9 Q That's correct.

10 A -- discussing? Okay. Now, explain to the ladies  
11 and gentlemen of the jury what -- what is noteworthy about an  
12 injury being crescent shaped.

13 A If you put -- take your fingernail and you press on  
14 your -- on your skin, you'll notice that you have a crescent  
15 shaped fingernail print, and it's the same thing with the  
16 tissue in the vaginal area. It's thinner, more friable.  
17 Depending on the amount of pressure put on when they're  
18 putting the fingers in, they definitely make a crescent shaped  
19 pattern.

20 Q And out of doing 4,000 examinations, I imagine these  
21 aren't the first crescent shaped injuries you've seen.

22 A That's correct.

23 Q Now, you talked about recency and red blood cells.  
24 Can you explain how you can tell something, you know, is  
25 recent, old blood cells, what that has to do with it?

1           A     If an injury is recent and there are blood cells  
2 present, it will adhere to the dye. The dye would adhere to  
3 those red blood cells. However, if it's an old injury and I  
4 put toluidine blue dye on it, the dye will wipe right off. it  
5 won't adhere to it if there are no red blood cells there.

6           Q     Now, is the vaginal area an area that heals somewhat  
7 quickly compared to other places on the body?

8           A     Yes. It's the same with males and females. When --  
9 when the blood flows into the pelvic area, it's very vascular  
10 for both male and female. And when that tissue is broken or  
11 torn, it becomes much quicker to heal because of the blood  
12 flow to that area.

13          Q     And in regards to -- the toluidine, it's alcohol  
14 based; is that correct?

15          A     It has alcohol in it, yes, it does.

16          Q     So when you -- it seems kind of common sense, so  
17 excuse the question, but when you put alcohol on a recent  
18 injury, does the patient usually have a physical reaction?

19          A     Yes, and in this case she did, as well. She said  
20 that it stung.

21          Q     And would -- would you expect that -- would you  
22 expect -- would you expect that if the injury was recent --

23          A     Yes.

24          Q     -- would you expect it to sting her?

25          A     Yes, I would.

1 Q And if the injury was recent, would you expect the  
2 blue toluidine dye to adhere to the injuries because of the  
3 blood cells?

4 A That's correct.

5 Q Would you expect the toluidine dye to adhere to an  
6 area from an injury over five days ago?

7 A It would depend on the depth of the injury and the  
8 process of where it was in healing. If it's a deeper injury,  
9 possibly, but I would expect in that amount of time that there  
10 would be some healing and there may not be red blood cells  
11 present there.

12 Q And there were red blood cells present, obviously,  
13 in this case?

14 A Yes, there were.

15 Q Would you have expected the patient to have reacted  
16 to the stinging sensation if the injury was over five days  
17 old?

18 A And that would depend on the depth of the injury.

19 Q And we already discussed this earlier in regard to  
20 the positioning. If an individual was on their back and they  
21 were digitally penetrated you would expect to see the injuries  
22 between the 5:00 and 7:00 position. Again, showing you  
23 State's 3. I'm -- I'm assuming this is 12.

24 A That -- that would be -- the top by the hair would  
25 be 12:00. The bottom near the rectum would be 6:00. So on

1 each side of that 6:00 is 5 and 7, and in that area is where I  
2 would expect to see injuries.

3 Q Okay. And where did you find the injuries on  
4 Roxanne Cagnina?

5 A Between 5:00 and 7:00.

6 Q Which was consistent with the history that she gave  
7 you of the assault?

8 A Yes, it was.

9 Q In regards to the lacerations or tears that you  
10 discussed that we see here between the 5 and 7, you noted that  
11 those were crescent shaped?

12 A Yes.

13 Q Which is consistent with fingernails?

14 A Yes, it is.

15 Q Which is consistent with the history of the assault  
16 that Roxanne Cagnina gave you?

17 A That's correct.

18 Q If a part of the vagina is torn, you know, from a  
19 penis or, you know, a larger, hard object, what do those types  
20 of injuries look like?

21 A Usually they're either like a ragged tear or like a  
22 cut, which would be a straight tear.

23 Q Would you expect to see these type of injuries on a  
24 female who had a healthy, normal sex life with her husband?

25 A I'm sorry. I don't understand which -- which one

1 you're talking about.

2 Q The injuries that I showed you on 3.

3 A Oh, the crescent shaped?

4 Q Yeah. Would you expect to see those type of  
5 injuries on a female that just has a normal, healthy type  
6 sexual relationship with her husband?

7 MR. MANINGO: Objection --

8 THE WITNESS: No.

9 MR. MANINGO: -- Your Honor. Vague. Normal,  
10 healthy sex life?

11 MS. BLUTH: Non-rough. I'm trying to use --

12 MR. MANINGO: I think there's a little bit of  
13 variance there for individuals.

14 THE COURT: All right. I think you need to lay a  
15 little better -- better foundation for the witness.

16 BY MS. BLUTH:

17 Q No S&M, not rough sex, just plain old intercourse,  
18 would you --

19 A I would not expect to find those.

20 Q In the percentage of patients that you see how many  
21 -- what's the percentage on patients that you see that like  
22 the feeling of pain?

23 A I would say none.

24 Q All right. Would this be painful? These types of  
25 injuries, would those be painful?



1 A Yes, they are.

2 Q It is -- is it your opinion, you know, due to your  
3 medical findings, as well as Ms. Cagnina's physical reaction,  
4 you know, to the toluidine dye, that these injuries are recent  
5 in nature?

6 A Yes.

7 Q And is it your opinion that these injuries are  
8 consistent with the digital penetration that Ms. Cagnina gave  
9 you in the history of the assault?

10 A That's correct.

11 Q Thank you, Ms. Ebbert. I have not further  
12 questions.

13 THE COURT: Thank you.

14 Cross.

15 MR. MANINGO: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. MANINGO:

18 Q Ms. Ebbert, before conducting the physical part of  
19 the exam, you also obtain information from the patient;  
20 correct?

21 A I obtain a medical and a history of the incident  
22 from the patient, yes.

23 Q Okay. So you speak to the patient and you hear  
24 their allegations before you do your physical exam?

25 A That's correct.

1 Q Okay. So you know what you're looking for or have  
2 an idea of what area to look in before you begin your  
3 examination?

4 A That's correct.

5 Q Okay. And then you also, as a part of your report,  
6 put together a synopsis of the allegations that you hear from  
7 the patient?

8 A I -- I document what the patient tells me, yes.

9 Q Okay. You document it. Now, would that come in the  
10 part of your report where it says nurse's note -- or nurse  
11 notes?

12 A Yes.

13 Q Okay. Now, just looking at your report, I want to  
14 clear something up. I don't know if I had misheard or not,  
15 but in this situation with Ms. Cagnina, had she bathed or  
16 showered?

17 A Yes.

18 Q Okay. Can you look at the front page of your report  
19 on the medical history and assault information.

20 A All right.

21 Q Can you look at the bottom where it says "between  
22 the assault and now has the patient", and then it says check  
23 all of those which apply. Next to bathed or showered is the  
24 box checked?

25 A No, it is not.

1 Q So let me ask you again, did Roxanne Cagnina bathe  
2 or shower before your exam?

3 A I'm sorry. I misspoke there.

4 Q Okay. And you had testified earlier also that she  
5 bathed or showered?

6 A Yes.

7 Q Okay. Ms. Cagnina explained to you that there had  
8 been allegations of oral sex, as well; correct?

9 A Yes.

10 Q Okay. That the -- that the person who did this had  
11 used their -- their mouth on her genital area?

12 A That's correct.

13 Q Okay. Could you review your nurse notes for me?  
14 And there's no mention of that in the nurse notes; correct?

15 A There is mention of -- what I -- evidence I  
16 collected.

17 Q Okay. Now, that's not what I asked you.

18 A Would you repeat the question, please?

19 Q Sure. In the nurse notes where you said earlier  
20 that you put down the information that the patient tells you,  
21 nowhere in that box does it say anything about oral sex being  
22 performed or mouth being used on her genital area.

23 A That's documented previously.

24 Q Okay. And what I'm asking you, ma'am, is in your  
25 nurse notes --

1 A It's not in the nurse's notes, but it is --  
2 Q Okay.  
3 A -- documented in the chart.  
4 Q Okay. In your nurse notes you did mention the  
5 digital penetration with the fingers; correct?  
6 A That's correct.  
7 Q Okay. And you -- and it's -- you mention other  
8 things that the patient tells you; correct? About hospitals  
9 -- I thought hospitals were safe places, that kind of thing.  
10 A Yes, I did.  
11 Q Okay.  
12 A Uh-huh.  
13 Q But you don't mention anything in this -- in this  
14 section about the -- any type of oral sex?  
15 A No, I --  
16 Q Okay.  
17 A -- I always document that --  
18 Q Okay.  
19 A -- what has happened on the question portion.  
20 Q Okay. Thank you.  
21 A As I did in this case.  
22 Q Okay. Now, when you spoke to Ms. Cagnina before  
23 performing your -- the physical part of the examination, she  
24 told you that these events happened at approximately 4:00 in  
25 the morning; correct?

1 A That's correct.

2 Q Okay. Now, she never mentioned to you anything  
3 about anything happening at 3:00 in the morning.

4 A Her -- she gave me an approximate time, which was  
5 4:00.

6 Q Okay. Okay. Now, she -- she also stated to you  
7 that most of this happened in the elevator?

8 A That's correct.

9 Q Okay. Now, as part of the history that you take,  
10 you discovered that Ms. Cagnina took Dilantin for seizures;  
11 correct?

12 A That's correct.

13 Q And she had taken Dilantin at that time or was on  
14 Dilantin at that time I should say.

15 A She takes it on a regular basis.

16 Q Okay. Then as part of your exam, when you find out  
17 background regarding medications, you want to know if the  
18 patient is on certain medications during your exam; correct?

19 A That's correct.

20 Q Okay. And then you also found out that she was  
21 currently being given Phenobarbital?

22 A That's correct.

23 Q Okay. And are you familiar with side effects of  
24 Phenobarbital?

25 A Side effects or effects?

1 Q Side effects. Well, you know, I might be using the  
2 wrong terminology, so -- so --

3 A Well --

4 Q Let me ask you this because that question is not  
5 very clear. Are you -- are you aware that Phenobarbital can  
6 cause confusion?

7 A It can.

8 Q Okay. And that it can cause irritability?

9 A It can cause irritability, yes.

10 Q Yes. And it can cause susceptibility to bruising?

11 A Yes, it can.

12 Q Okay. And it can cause broken blood vessels?

13 A It can.

14 Q Okay. Now, on your report you documented that Ms.  
15 Cagnina -- under current medications you wrote down  
16 Phenobarbital and Dilantin.

17 A That's correct.

18 Q Okay. Did you -- were you made aware of the fact  
19 that Ms. Cagnina was also on morphine that day?

20 A I was not given that information.

21 Q Okay. And -- and you know that morphine is an  
22 opiate based narcotic?

23 A That's correct.

24 Q Okay. Are you aware that she was also on Dilaudid  
25 that day?

1           A     I was not given that information.

2           Q     Okay. And that is also another narcotic?

3           A     That's correct.

4           Q     Okay. And so you -- you weren't provided that

5 information when you did the exam?

6           A     That's correct.

7           Q     Okay. You noted that the -- the injuries that took

8 place are at the 5:00 and 7:00 position of the vaginal area?

9           A     Between the 5:00 and 7:00, yes.

10          Q     Between the 5:00 and 7:00. Okay. That's fine.

11 Now, that is an area that would be most consistent with weight

12 or pressure coming from an above position; correct?

13          A     That's correct.

14          Q     All right. So if, for example, a man and a woman

15 were having sexual intercourse, it would be most consistent

16 with a man being on top, in a top position to the woman.

17          A     Yes, I would -- if there were injuries, I would

18 expect to find them between 5:00 and 7:00.

19          Q     Right. And that's because the weight or pressure is

20 pushing downward, the energy is pushing downward toward that

21 bottom position.

22          A     Correct.

23          Q     Towards the 5, 6, and 7:00 position?

24          A     That's true. However, I would like to explain that.

25 Due to the sexual assault -- or sexual response of a female,

1 if -- if it's consensual sex, blood flows into the area, the  
2 labia opens up, the pelvis raises, and it makes like a slide  
3 for the penis to go down in. And that's why when it's  
4 consensual sex we seldom find injuries.

5 Q Okay. So you're talking about like arousal?

6 A Yes.

7 Q Okay. Okay. Now, would you agree that arousal  
8 levels are different for different individuals?

9 A I would guess, yes.

10 Q Okay. Would you agree that arousal levels and --  
11 and lubrication of the vaginal area can be different for women  
12 who are in their 40s versus women in their 20s?

13 A Yes, I would.

14 Q Okay. Would you agree that the arousal and -- and  
15 lubrication levels of the vaginal area can be different for a  
16 woman who, say, has had a hysterectomy?

17 A Yes.

18 Q Okay. And we already know from your report that Ms.  
19 Cagnina had a hysterectomy; correct?

20 A That's correct.

21 Q Okay. And as an expert in -- in sexual assault  
22 nurse examinations, you're not claiming to be an expert on  
23 human sexual nature, are you?

24 A No, I'm -- I'm saying that --

25 Q Okay.



1           A     -- this is a fact that the human sexual response is  
2 something that comes into play when you're talking about  
3 consensual sex.

4           Q     Right. But you don't know what every individual's  
5 sexual response is, do you?

6           A     No, I don't.

7           Q     Okay. And you don't know Ms. Cagnina from before  
8 that day, do you?

9           A     No, I don't.

10          Q     You don't know anything about the sexual behavior of  
11 Ms. Cagnina or her husband Scott Cagnina, do you?

12          A     I don't.

13          Q     Are you aware that there are some people who engage  
14 in consensual sex that includes their hands and their fingers?

15          A     Certainly.

16          Q     Okay. And you would agree that there are  
17 individuals who consensually have digital penetration?

18          A     Yes, I would.

19          Q     Okay. Now, you stated in your report that Ms.  
20 Cagnina had not had consensual sex within 120 hours.

21          A     That's correct.

22          Q     Okay. And, of course, that does make a difference  
23 as to how you view an examination; correct?

24          A     Mainly the reason that we ask that question is  
25 because if they have had sex in the last 120 hours, we often

1 find that there is more than one DNA when we do our swabs. So  
2 that would make a difference as to the findings by the crime  
3 lab.

4 Q Okay.

5 A So we document whether they have had consensual sex  
6 and then been assaulted. You may find two DNAs. That's why  
7 we ask --

8 Q So then the --

9 A -- that question.

10 Q -- answer to the question of would it make a  
11 difference is, yes, it would make a difference?

12 A Yes.

13 Q Okay. Are you aware that Ms. Cagnina has testified  
14 yesterday that it was 72 hours?

15 MS. BLUTH: Objection, Your Honor. Misstates the  
16 evidence. She said it could have been -- she could have --  
17 said 72 hours or a week, she couldn't remember.

18 THE COURT: That's sustained. That's what she said.

19 MR. MANINGO: Well, I have the quote as to what she  
20 said, Your Honor.

21 THE COURT: So do I.

22 MR. MANINGO: It doesn't say a week.

23 THE COURT: The jury will rely on their own memory,  
24 not on Court or counsel's memory of what was said.

25 ///

1 BY MR. MANINGO:

2 Q Ms. Ebbert, as someone who has done 4,000  
3 examinations, would you agree that it does not -- it does not  
4 require what the prosecution has labeled rough sex to cause  
5 lacerations or -- or something like that in the vagina, it can  
6 be done through consensual sex?

7 A There can be injuries in consensual sex, yes.

8 Q Okay. You could have vaginal injuries that appear  
9 that could be self-inflicted. Is that possible?

10 A That's possible.

11 Q Okay. And based solely on looking at the photos  
12 that you took --

13 A Yes.

14 Q -- okay, you can't tell us who caused those  
15 injuries.

16 A What I documented was the injuries were consistent  
17 with what the patient told me.

18 Q My question is based on looking at those pictures,  
19 you cannot tell who caused those injuries; is that correct?

20 A I wasn't there, so I guess I have to say, no, I  
21 could not say that.

22 Q Okay. You also cannot give a specific hour or even  
23 a specific day as to when an injury occurred by just doing  
24 your examination; correct?

25 A I can't give the exact hour, the exact day because a

1 lot of this depends on the depth of the injury and also the  
2 healing process of that particular person.

3 Q Okay. Thank you. And this particular exam you  
4 noted that there was no trauma inside the vaginal walls;  
5 correct?

6 A I did not find any in the vaginal canal or the  
7 cervix.

8 Q Now, you took some photographs; correct?

9 A Yes, sir.

10 Q Okay. Give me just a moment here. Okay. Looking  
11 at what has already been marked as State's Exhibit 3, on this  
12 photograph here?

13 A Yes.

14 Q Okay. Now, you said that you add a blue dye;  
15 correct?

16 A Yes.

17 Q And so this is the -- the blue dye that we're able  
18 to see here right above where your -- your gloves are;  
19 correct?

20 A That's correct.

21 Q Okay. So that's not the nature color of her skin?

22 A No, it is not.

23 Q Okay. And that's not bruising that we're seeing or  
24 some sort of a black and blue injury; correct?

25 A That's not. That's toluidine blue dye.

1 Q Okay. That's the dye that -- that -- that you  
2 placed so that --

3 A Yes.

4 Q -- you could do your examination?

5 A I placed it there --

6 Q Right.

7 A -- and then I wiped it off, and that's the result of  
8 that.

9 Q Okay. So -- so it wasn't that color before;  
10 correct? Before you started your --

11 A Before I started --

12 Q -- examination?

13 A -- my exam, no, it was not.

14 Q Okay. Very good. And then also on this picture,  
15 did you put this picture together?

16 A Yes, I did.

17 Q Okay. And so you also added the arrows and  
18 everything on this photo?

19 A I did.

20 Q Okay. Now, you had testified that we would -- that  
21 you were able to see the injuries before you placed the dye;  
22 correct?

23 A That's correct.

24 Q Okay. Now, you do have one photo, and this is  
25 marked as State's 22. This is the one without the dye;

1 correct?

2 A That is.

3 Q Okay. There's no dye there. There's -- and there's  
4 no arrows pointing; correct?

5 A That's correct.

6 Q Okay. And -- and this is -- this is sort of similar  
7 to the photo I had just shown you with the arrows; correct?

8 A It's similar except there's no dye there.

9 Q Right.

10 A And -- and it's very light. What I could see with  
11 my naked eye were injuries that really don't show well there  
12 because of the color of the picture.

13 Q Right. So -- so the picture where you don't have  
14 the arrows and you don't have the dye, that's the one that --  
15 that's the picture that didn't come out well?

16 A Well, I could see it with my naked eye, but I --  
17 again, on this it's very light and it's difficult to see them.

18 Q Right. You do the head to toe examination in order  
19 to collect evidence; correct?

20 A Yes.

21 Q Okay. You've been through a lot of training to do  
22 that?

23 A Yes.

24 Q You've obviously had a lot of experience doing that?

25 A Yes, I have.

1 Q Okay. And -- and I'm sure that you take that very  
2 seriously, the collection of evidence, is that fair to say?

3 A Yes, I do.

4 Q Okay. There are things that can affect someone's  
5 ability to collect evidence, such as the showering and  
6 urination, those types of things; correct?

7 A Correct.

8 Q Okay. And in this case, as we already covered, Ms.  
9 Cagnina did not take a shower or a bath before the exam?

10 A That's correct.

11 Q Okay. And she was also -- she had moved floors in  
12 the hospital, but was still at Centennial Hills; correct?

13 A I don't know. I don't recall what floor she was on  
14 when I saw her. I was --

15 Q Fair enough.

16 A -- just taken there and given the room, and I went  
17 ahead and went into the room. I don't recall what floor she  
18 was on.

19 Q Okay. Sure. That's okay. Really, my point is she  
20 didn't have a chance to go home or do anything like that  
21 first?

22 A Not that I am aware of.

23 Q Okay. Okay. In -- in the collection of -- of the  
24 evidence, you took DNA swabs; correct?

25 A I did, yes.

1 Q Okay. And you -- when you take a swab for DNA you  
2 could be looking for saliva; correct?

3 A Correct.

4 Q You could be looking for semen; correct?

5 A That's correct.

6 Q There could be blood?

7 A That's correct.

8 Q There could be skin? Yes?

9 A Yes.

10 Q Okay. There could be hair; correct?

11 A That's correct.

12 Q Okay. When you -- let's see, and then with Ms.

13 Cagnina you -- you took the swabs from the vaginal area

14 because you had been told that there was both digital and oral  
15 penetration?

16 A That's correct.

17 Q Okay. And obviously with -- with the oral  
18 penetration there -- you might suspect that there would be  
19 saliva?

20 A It's possible, yes.

21 Q Okay. Now, in the vaginal area you take the DNA  
22 swab and then you send it in so that they can analyze it;  
23 correct?

24 A Yes.

25 Q And you did that properly?



1 A Yes.

2 Q Okay. And you sent it in; correct?

3 A I sealed the kit. The kits are kept in a locked  
4 closet, and Metro comes and picks up the kits two or three  
5 times a week.

6 Q Okay. And are you aware that the -- the tests were  
7 negative?

8 A I don't get any results on any of the DNA or  
9 anything.

10 MS. BLUTH: I'm sorry. Objection. Which tests --

11 MR. MANINGO: Okay.

12 MS. BLUTH: -- are negative?

13 BY MR. MANINGO:

14 Q I'm sorry. The -- the swabs for the vaginal area.

15 A I don't -- I wouldn't know that because the crime  
16 lab does not give me a report of what's found.

17 Q Okay. Fair enough. And -- and since, as you've  
18 stated, you don't know what the -- the results are.

19 A No, I don't.

20 Q But -- but you did test -- besides the vaginal area,  
21 you also tested the chest area; correct?

22 A That's correct.

23 Q And you tested you said --

24 THE COURT: Tested or swabbed?

25 MR. MANINGO: I'm sorry, swabbed.

1 THE COURT: Swabbed.

2 THE WITNESS: Swabbed.

3 MR. MANINGO: Swabbed.

4 BY MR. MANINGO:

5 Q You also took a swab from, I believe you said, the  
6 inner thigh area?

7 A Yes.

8 Q Okay. And then some -- and then did you -- anywhere  
9 else, torso, anything like that?

10 A I did the -- the mouth, the labia, the -- let me  
11 just look so I don't --

12 Q Sure.

13 A -- say the wrong thing. The mouth, the labia, the  
14 inner thighs, the breasts, breasts, thighs, face, and labia.

15 Q Okay. When you say inner labia or is it just -- is  
16 it just labia? Are there different --

17 A Yeah, when I -- I swab up and down in between the  
18 major -- labia majora and the labia minora, which are the big  
19 lips and the smaller lips, and over the clitoral head.

20 Q So all of it. And you took swabs for all -- all of  
21 that?

22 A All of that area, yes.

23 Q Okay. Great. On top of that, you also -- you also  
24 comb the patient's pubic hair for debris; correct?

25 A That's correct.

1 Q Okay. And when we say debris, what we're talking  
2 about is potentially hair from a suspect; correct?

3 A Well, not necessarily. It could be hair, it could  
4 be saliva, it could be skin --

5 Q Skin.

6 A -- cells that are in there, yes.

7 Q Okay.

8 A Any debris that we would be able to find there.

9 Q Okay. Okay. Especially if, say, someone had a full  
10 beard and their face were down there, I mean, that's one of  
11 the things you want to look for to see if you can find facial  
12 hairs or something like that, is that fair to say?

13 A Certainly, yeah. I --

14 Q Sure.

15 A I comb pubic hair on every patient I see --

16 Q Okay.

17 A -- if they have pubic hair.

18 Q Okay. And then you package that all up and that's  
19 part of what's tested; correct?

20 A That's correct.

21 Q Okay.

22 MR. MANINGO: If I could have just a moment.

23 BY MR. MANINGO:

24 Q Thank you, Ms. Ebbert.

25 A You're welcome.

1 MR. MANINGO: Pass the witness.

2 THE COURT: Redirect.

3 MS. BLUTH: Just briefly.

4 REDIRECT EXAMINATION

5 BY MS. BLUTH:

6 Q Mr. Maningo had asked you some questions about your  
7 nursing notes and whether or not you had documented that Ms.  
8 Cagnina had stated that the defendant had licked or kissed her  
9 vaginal area.

10 A That's correct.

11 Q And while that may not be in your nursing notes, you  
12 did document that she did state that to you and checked the  
13 appropriate box of his mouth or tongue touching her vaginal  
14 area?

15 A That's correct.

16 Q And that can be seen in your report?

17 A Yes, it is.

18 Q The medications that you asked Ms. Cagnina for,  
19 those -- was that question the medications that she takes on a  
20 regular basis?

21 A Yes.

22 Q He discussed with you the medications that she was  
23 currently on. Did you have any problems talking with her?

24 A I did not.

25 Q Okay. Was she able to speak to you, did she

1 maintain good eye contact?

2 A Yes, she maintained very good eye contact, which  
3 usually is a signal to me that they're paying attention,  
4 they're interested in what you're asking, and usually they  
5 give good answers. She didn't hesitate or anything during her  
6 answers. She gave direct --

7 MR. MANINGO: Objection. This is vouching and  
8 beyond the scope.

9 MS. BLUTH: She -- she never vouches.

10 THE COURT: Overruled. I don't think -- the witness  
11 isn't -- may not testify about credibility, just what you  
12 observed. That's all.

13 BY MS. BLUTH:

14 Q In regards to -- and correct me if I'm wrong, I  
15 don't see anywhere in your notes where you state she told you  
16 it happened predominantly in the elevator. Mr. Maningo asked  
17 you a question about that. Do you see that anywhere in your  
18 notes?

19 A She did tell me that, yes.

20 Q Okay.

21 A And it is not in my notes.

22 Q Okay. So you just independently --

23 A Recollection.

24 Q -- recollect it. Okay. Knowing -- well, let me  
25 back up. Showing you State's 22.

1 MS. BLUTH: May I have the Elmo. Thank you.

2 BY MS. BLUTH:

3 Q In regards to this picture, could you see the  
4 injuries to Ms. Cagnina with your naked eye?

5 A I could.

6 Q Okay.

7 MR. MANINGO: Objection. Asked and answered.

8 MS. BLUTH: Well, he's questioning her credibility  
9 in regards to not being able to see these, so I ask to --

10 MR. MANINGO: I'm not questioning the doctor -- or,  
11 excuse me, Ms. Ebbert's credibility.

12 THE COURT: All right. It's overruled. It's fine.  
13 Just go ahead.

14 BY MS. BLUTH:

15 Q You could see them -- you could see them with your  
16 naked eye?

17 A I could.

18 Q Are you being honest about that?

19 A Of course.

20 Q Okay. Having Ms. Cagnina's -- you know, knowing her  
21 age, knowing her medical history, that she had a hysterectomy,  
22 knowing all of those things, would you still expect to see  
23 those type of injuries that you saw and you documented in a  
24 normal, regular, marriage, sexual type relationship?

25 MR. MANINGO: Objection, Your Honor. Vague and

1 calls for knowledge beyond the scope of this witness. It  
2 calls for beyond the scope of -- or not beyond the scope, but  
3 it's also been asked and answered. We're just redoing the  
4 direct examination.

5 MS. BLUTH: No, in --

6 THE COURT: Well, I'm going to sustain. You did ask  
7 that before. I don't know how she -- how you lay a foundation  
8 for that as to --

9 MS. BLUTH: As to -- I'm sorry?

10 THE COURT: Well, I don't see how you lay the  
11 foundation for what -- what she knows about what the normal --

12 MS. BLUTH: Well --

13 THE COURT: -- sexual relationship.

14 MS. BLUTH: -- because -- would you like me to do a  
15 speaking objection, or would you like me to approach?

16 THE COURT: Approach.

17 (Bench conference)

18 MS. BLUTH: Jacqueline Bluth. Mr. Maningo's  
19 questions in regard to, you know, people who have had a  
20 hysterectomy and they have different biological responses with  
21 secretions and being able to do that and, you know, people do  
22 -- S&M type relationships, things like that, but these are  
23 findings, even with a hysterectomy, I didn't talk -- I didn't  
24 ask her any questions about a hysterectomy and her age. So my  
25 question is even someone who is older than their 20s, which

1 she is 45, who has had a hysterectomy, unable to produce the  
2 same type of physiological, would you think that regular sex  
3 would cause those injuries, which was his issue on cross.

4 MR. MANINGO: Jeff Maningo. That was actually --  
5 wasn't my issue was in response to -- I simply asked the nurse  
6 that she doesn't know about everybody else's sex life and she  
7 went into, well, in consensual sex there's this kind of, you  
8 know, platform and the bottom of the vagina. And she got into  
9 all of that, so that's the only reason why I even went into  
10 that area. My objection is just to -- Ms. Bluth is -- is  
11 asking this woman about what is essentially normal sex. What  
12 -- how do you define what's normal? She can't do that for --  
13 for Ms. Cagnina. She can't do it for me. She can't -- so --

14 THE COURT: Right.

15 MS. BLUTH: Both the Cagninas said that they don't  
16 have rough sex, so maybe I should use the term non-rough sex.

17 THE COURT: I guess the thing is when you say  
18 normal --

19 MS. BLUTH: Sure. I can say --

20 THE COURT: -- it doesn't -- I mean, what does that  
21 mean?

22 MS. BLUTH: Well --

23 THE COURT: It's like are you asking her, you know,  
24 in missionary position intercourse would you expect --

25 MS. BLUTH: That's why I said I think better asking



1 the question would be sex that's not rough. I mean,  
2 obviously --

3 THE COURT: Well, but that's --

4 MS. BLUTH: How is what -- now we're saying that --

5 THE COURT: What is the question?

6 MS. BLUTH: -- you can't describe --

7 THE COURT: What is the question you want to ask  
8 her?

9 MS. BLUTH: The question is -- the question is in a  
10 female who is in their 40s and has had a hysterectomy, would  
11 you expect to see these types of findings in consensual  
12 relationship that doesn't use rough sex?

13 MR. MANINGO: The witness has -- has -- I'm sorry.  
14 Jeff Maningo. The witness has already answered that she  
15 doesn't -- she doesn't think that it would be from a  
16 consensual sexual relationship, but that, yes, there can be  
17 injuries from consensual sex. I think it's -- it's the same  
18 as in every single examination we've done with every same  
19 expert who gets up here. That's what they say. And she's  
20 already testified to this. I think Ms. -- I don't think Ms.  
21 Bluth can get testimony from her saying, well, in this case  
22 it's not normal and, you know, Ms. Cagnina, her -- you know,  
23 her normal sex is not rough and it's a lot slower than other  
24 people's.

25 MS. BLUTH: Wait just one second. I do have to

1 defend the position, though, Your Honor, that she has had a  
2 hysterectomy, that he brought out that she's had a  
3 hysterectomy so her physiological responses are different and  
4 she's middle-aged. Well, I don't know if she's middle-aged.  
5 I don't know what 40 is, whatever.

6 THE COURT: [Inaudible].

7 MS. BLUTH: But I have to, you know, somewhat -- he  
8 did bring that out on cross, so I have to somewhat defend the  
9 premise that after having a hysterectomy and -- and being the  
10 age that she is, she still wouldn't expect to see that.

11 THE COURT: Okay. But he's -- if you ask that  
12 question, he's going to come back, you know, on recross and go  
13 back over it again. I mean, if he wants to.

14 MS. BLUTH: Okay. That's fine with me.

15 (End of bench conference)

16 THE COURT: All right. Restate the question again.

17 BY MS. BLUTH:

18 Q Knowing the -- the medical history that the patient  
19 gave, her age being -- I don't know how old that you said she  
20 was, in her 40s, and the fact that she had has a hysterectomy,  
21 knowing those things, would you expect to see the injuries you  
22 saw on her if she had a sexual relationship that was not rough  
23 sex?

24 A I would not expect to find injuries.

25 Q Okay. Thank you.

1 MS. BLUTH: Nothing further.

2 THE COURT: Recross.

3 RECROSS-EXAMINATION

4 BY MR. MANINGO:

5 Q Ms. Ebbert, I apologize. I don't mean to sound  
6 crass, but I need to ask you a couple of these questions. Do  
7 you know if Roxanne Cagnina, if her definition of normal sex  
8 is -- is rough? Do you know?

9 A I'm sorry. Could you repeat --

10 Q Do you know if Roxanne Cagnina likes rough sex?

11 A I do not.

12 Q Okay. Do you know how often she and Scott Cagnina  
13 used to have sex?

14 A I do not know that.

15 Q Do you know if Roxanne Cagnina had ever used  
16 lubrication during sex?

17 A I have no idea.

18 Q Okay. Do you know how Roxanne or Scott Cagnina  
19 define normal sex?

20 A No.

21 Q Do you know how Roxanne or Scott Cagnina define  
22 rough sex?

23 A I would not have that -- that information.

24 Q Absolutely not. Thank you.

25 THE COURT: May this witness be excused?

1 MS. BLUTH: Yes, Your Honor.

2 THE COURT: Thank you very much for your testimony.

3 THE WITNESS: Thank you.

4 THE COURT: All right. Ladies and gentlemen, it is  
5 almost 5:00 so we are going to be in recess for the evening.  
6 Tomorrow is Thursday, and so we're going to be starting at  
7 9:00 tomorrow, and we'll take a noon recess and we'll be going  
8 until 5:00.

9 So during this overnight recess it is your duty not  
10 to converse among yourselves or with anyone else on any  
11 subject connected with the trial, or to read, watch, or listen  
12 to any report of or commentary on the trial by any person  
13 connected with the trial or by any medium of information,  
14 including, without limitation, newspaper, television, radio,  
15 or Internet, and you are not to form or express an opinion on  
16 any subject connected with this case until it is finally  
17 submitted to you.

18 I'll see you tomorrow at 9:00.

19 (Jury recessed at 5:00 p.m.)

20 THE COURT: All right. The record will reflect that  
21 the jury has departed the courtroom. Before I forget, I  
22 wanted to ask the question as to Exhibit 23, which is the  
23 photo of Ms. Cagnina, identification photo taken before the  
24 SANE exam. Do we need to redact that before it goes to the  
25 jury as far as that --

1 MR. MANINGO: Yes, please, Your Honor.

2 THE CLERK: Redact what?

3 THE COURT: There is some language that's at the top  
4 that we wanted to redact.

5 THE CLERK: They can just submit a new -- a new one.

6 THE COURT: Do you want to submit a new one in place  
7 where that's been redacted rather than -- and we can remark  
8 it?

9 MS. BLUTH: Yeah. I think we can have exhibits just  
10 -- yeah, just make a copy and erase those things.

11 THE COURT: Right. Because sometimes if you use  
12 whiteout or some other form of redaction it can still be seen.

13 MS. BLUTH: Okay.

14 THE COURT: So it's probably safer --

15 MS. BLUTH: Okay.

16 THE COURT: -- to make a copy that's --

17 MS. BLUTH: I don't have a problem with that.

18 MR. MANINGO: Yes, Your Honor.

19 THE COURT: Any other matters outside the presence?

20 MR. MANINGO: No, Your Honor.

21 THE COURT: All right. Thank you very much.

22 MR. MANINGO: Thank you.

23 (Court recessed at 5:02 p.m., until Thursday,  
24 February 13, 2014, at 9:11 a.m.)

25 \* \* \* \* \*

**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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