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Docket 65935 Document 2015-05724

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,

Plaintiff,

v.

STEVEN DALE FARMER,

Defendant.

CASE NO. C-245739

CASE NO. C-249693

DEPT. NO. 5

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 10

FRIDAY, FEBRUARY 14, 2014

APPEARANCES:

FOR THE STATE:

JACQUELINE M. BLUTH, ESQ.
BRIAN J. KOCHVAR, 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:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

INDEXWITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
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Michael Saunders	25	70			
Jeanine Martin	79	90	99		

* * * * *

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1 LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 14, 2014, 1:08 P.M.

2 (In the presence of the jury)

3 THE COURT: Thank you. Please be seated. This is
4 the continuation of State of Nevada versus Steven Farmer.
5 Case No. C-245739. The record will reflect the presence of
6 the Defendant, with his counsel, the Deputies District
7 Attorney prosecuting the case, all officers of the court, all
8 12 members -- oops, are we -- yeah, someone's just leaning
9 over. I can't see them -- all 12 members of the jury and the
10 four alternates. Will counsel so stipulate?

11 MS. BLUTH: Yes, Your Honor.

12 MR. BASHOR: Yes, Your Honor.

13 THE COURT: Good afternoon, ladies and gentlemen.
14 How's everybody? All right, good. You may call your next
15 witness.

16 MR. KOCHEVAR: The State would call Lora Cody.

17 DETECTIVE LORA CODY, STATE'S WITNESS, SWORN

18 THE CLERK: You may be seated.

19 THE WITNESS: Thank you.

20 THE CLERK: And could you please state your name
21 and spell it for the record.

22 THE WITNESS: It is Lora Cody, L-o-r-a, C-o-d-y.

23 THE COURT: You may proceed.

24 MR. KOCHEVAR: Thank you, Judge.

25 DIRECT EXAMINATION

1 BY MR. KOCHVAR:

2 Q Good afternoon Laurie -- Lora. How are you
3 employed?

4 A With the Las Vegas Metropolitan Police Department.

5 Q And how long have you been employed at that
6 department?

7 A About approximately, 12 and a half years now.

8 Q And what is your current assignment with that
9 department?

10 A I'm a detective in the Internet crimes against
11 children task force.

12 Q Okay. Have you worked in other bureaus or other
13 divisions within the department?

14 A Yes, I have.

15 Q And what others have you worked in?

16 A I've spent several years in sexual assault and
17 sexual abuse, juvenile.

18 Q Okay. Prior to becoming a police officer, did you
19 have any sort of medical training in your background?

20 A Yes, I do.

21 Q And what training was that?

22 A I have an associate's degree in paramedicine from
23 the University New Mexico, and I worked for approximately 16
24 years as a paramedic.

25 Q Okay. I'd like to direct your attention back to May

1 16th of 2008. Were you employed with the Metropolitan Police
2 Department at that time?

3 A Yes, I was.

4 Q And what division or assignment did you have at that
5 time?

6 A In the Sexual Assault Division.

7 Q Okay. On May 16th, did you become involved in the
8 investigation of a sexual assault at Centennial Hills
9 Hospital?

10 A Yes, I did.

11 Q As part of that, did you actually respond to
12 Centennial Hills Hospital?

13 A Yes.

14 Q Did you go there alone or with other detectives?

15 A I went with several other detectives.

16 Q Do you recall which detectives?

17 A Detectives Mike Saunders, Sergeant Misty Pence,
18 Detective Craig Jex.

19 Q Okay. As part of the investigation at the hospital,
20 did you make attempts to speak to employees at the hospital?

21 A Yes, I did.

22 Q Describe for us how that process went and whether
23 they were cooperative or uncooperative with you?

24 A Upon arriving at the hospital, we were advised of
25 the crime that we were supposed to be actually investigating.

1 At that point, it was determined that I would try to make
2 contact with several of the hospital officials in attempts to
3 identify the suspect, perhaps, get more information as to
4 when the victim had come into the hospital, specifically what
5 times, how long she had been there. And the hospital was,
6 frankly, very uncooperative in supplying us that information.

7 Q Okay. Was the victim of the sexual assault that you
8 were investigating at that time an individual by the name of
9 Roxanne Cagnina?

10 A Yes, she was.

11 Q As part of your -- how many employees or hospital
12 personnel did you attempt to speak to?

13 A I attempted to speak with specifically like in human
14 resources department in order to, again, identify the
15 suspect, individuals in the emergency room. And what I did
16 is, is I handed out my card and other contact information,
17 and I was told on numerous times that it was a violation of
18 their policy and a violation of HIPAA to provide us any
19 information.

20 Q Okay. As part of your investigation at the
21 hospital, did you and your fellow detectives leave some of
22 your work cards at the hospital so that people could contact
23 you if somebody became -- remembered something or became
24 aware of any information?

25 A Yes, numerous cards.

1 Q Okay. Were they cards that you left, along with
2 Sergeant Pence, Detective Saunders, the others that were
3 involved?

4 A Yes.

5 Q As part of the investigation that was conducted,
6 were you able to identify a suspect by name of the sexual
7 assault of Roxanne Cagnina?

8 A Yes.

9 Q And who was that individual?

10 A Steven Dale Farmer.

11 Q Okay. As part of the investigation at the hospital,
12 were you able to obtain a cell phone number for Mr. Farmer?

13 A Yes.

14 Q Using that cell phone number, did you take steps to
15 try to locate Mr. Farmer?

16 A Yes, we did.

17 Q What steps did you take in trying to locate him
18 using that cell phone number?

19 A I obtained a PIN register.

20 Q And describe for us exactly what a PIN register is
21 and how that process works.

22 A A PIN register is basically a lawful or legal order
23 from a Judge to a specific cell phone carrier, such as T
24 Mobile, Verizon Wireless, that type of a thing. What the PIN
25 register does is orders that specific cell phone carrier to

1 provide us with basically GPS information as to where the
2 cell phone is.

3 Using that information, other detectives,
4 specifically detectives of our technical analytical section,
5 will use some of their computer devices to, what we call,
6 ping cell phone towers, and that's, again, trying to locate
7 the cell phone itself, where it is specifically at. And at
8 that point, the TAS detectives were able to locate Farmer's
9 cell phone at a specific area.

10 Q After obtaining that information of the location of
11 Mr. Farmer's cell phone, did you obtain a search warrant to
12 go and try to locate Mr. Farmer?

13 A At that time, we did not obtain a search warrant to
14 locate Mr. Farmer.

15 Q Okay.

16 A We conducted a knock and talk at the address that we
17 believed where the phone was at least.

18 Q Okay. And do you recall the address of where that
19 was?

20 A It was on Leonard Street and the numeric's, I want
21 to say, 1941 Leonard, perhaps.

22 Q So, does 1841 sound familiar?

23 A Yes, yes.

24 Q Okay. That's here in Las Vegas?

25 A Yes, it is.

1 Q So, did you actually travel to that location?

2 A Yes, I did.

3 Q Alone or with other detectives?

4 A Myself, Sergeant Misty Pence, Craig Jex and another
5 Detective Ron Miller.

6 Q Describe for us what happened at 1841 Leonard.

7 A We conducted what's called a knock and talk.

8 Knocked on the door, and a gentleman answered and identified
9 himself as the roommate of Steven Farmer.

10 Q After this gentleman identified himself as his
11 roommate, did you inquire whether Mr. Farmer was at the
12 house?

13 A Yes, I did. I asked if Mr. Farmer was there, and
14 the roommate said he was, and that he was down the hall in
15 his actual room.

16 Q Did you actually go down to the room where the
17 roommate had indicate the that Mr. Farmer was located?

18 A Yes, we did.

19 Q And what happened at that point?

20 A At that point, we knocked on the door, and we could
21 hear a lot of rustling on the other side of the door. We
22 announced who we were, that it was the police, and that we
23 wanted to speak with Mr. Farmer. And we heard some kind of
24 moaning, groaning, something to the effect of an, I'm not
25 dressed, just a minute. And at that point, we made the

1 decision to open the door.

2 Q And why did you decide to open the door?

3 A Because there were so much, I should say, strange
4 noises coming, and we were actually afraid that he may have a
5 weapon, that he may escape, and so using officer safety
6 standards, we went ahead and opened the door to make sure
7 that the officers were safe.

8 Q Upon opening the door, what did you discover?

9 A We saw Steven Farmer laying in his bed, and as I
10 recall, I believe he was wearing blue scrubs.

11 Q Okay. Did you say something to Mr. Farmer or did he
12 say something to you at that point?

13 A At that point, as I recall, we announced ourselves
14 as Metro police officers, and he began to stand up.

15 Q What was Mr. Farmer's demeanor at the time when you
16 opened the door and you see him lying in the bed?

17 A He was pretty -- he was very calm, actually. He was
18 very calm and started to walk towards us.

19 Q Okay. Do you see Mr. Farmer here in the courtroom
20 today?

21 A Yes, I do.

22 Q Could you point to him and describe an article of
23 clothing he's wearing in court today.

24 A He is in the table over right next to you, and he's
25 the third gentleman from my right to left, and he's wearing a

1 gray jacket and a lighter gray shirt with a blue tie.

2 MR. KOCHEVAR: Your Honor, will the record reflect
3 the witness identified the Defendant?

4 THE COURT: It will.

5 MR. KOCHEVAR: Thank you.

6 BY MR. KOCHEVAR:

7 Q So you've seen Mr. Farmer lying on the bed, and what
8 do you do at that point?

9 A At that point, we took Mr. Farmer into custody.

10 Q Okay. Based upon the allegations that Ms. Cagnina
11 had told you and your fellow detectives told you about at
12 Centennial Hills Hospital?

13 A Yes.

14 Q Did you notice anything unusual about the area where
15 Mr. Farmer was lying on the bed?

16 A On his nightstand right next to the bed was a
17 business card belonging to Sergeant Misty Pence.

18 Q And Sergeant Pence was one of the detectives that
19 had responded to the hospital?

20 A Yes.

21 Q Help us understand the time frame when you were at
22 the hospital until now you're at the Defendant's room
23 arresting him, how much time had transpired?

24 A I would say, approximately nine to ten hours, if not
25 more.

1 Q Okay. After placing the Defendant under arrest,
2 what did you do with him at that point?

3 A He was transported to our Investigative Services
4 Division.

5 Q Okay. Is that the -- did you take him down there in
6 order to obtain some DNA samples from him?

7 A Yes.

8 Q Prior to obtaining those DNA samples, did you seek a
9 search warrant authorizing you to get those samples?

10 A Yes, I did.

11 Q Describe for us at the detective bureau where the
12 Defendant was placed during that time period.

13 A The Investigative Services Division is a former
14 place for detectives to investigate crimes. And it's common
15 for us when we're either talking with suspects or witnesses,
16 for that matter, to place them into interview rooms. And at
17 that time, there were three separate interview rooms on the
18 first floor of the Investigative Services Division. The
19 fourth room is what we call an observation room.

20 Q Okay. Describe for us what happens in the
21 observation room.

22 A The -- it is policy of Metropolitan Police
23 Department that to always have some sort of visual on our
24 suspect witnesses or whomever. So there's always a detective
25 on the inside of the observation room. There are cameras

1 which are a live feed that not only are sound activated but
2 also motion activated, and it gives us a live video of
3 whatever is going on in that specific room.

4 Q Was Mr. Farmer placed in one of those rooms to be
5 observed while you awaited the search warrant in order to get
6 the DNA samples from him?

7 A Yes.

8 Q Did you ultimately obtain a search warrant to get
9 DNA samples from Mr. Farmer?

10 A Yes.

11 Q After obtaining that search warrant, did you go in
12 to advise Mr. Farmer that you had obtained the warrant and
13 you were going to be seeking DNA samples from him?

14 A Yes, I did.

15 Q After advising Mr. Farmer this information, what was
16 his response, if any?

17 A He looked -- he read what we call a duplicate
18 original search warrant, and he immediately started to clench
19 his hands in a kind of a grasping motion. At that point, I
20 then exited the room and joined my partner, Craig Jex, in the
21 observation room. The purpose of that is we were awaiting
22 for criminalistics individuals to come in and take the DNA
23 samples.

24 Q Okay. So you, yourself -- the detectives,
25 themselves, are not the ones that actually recover DNA

1 samples or swabs from an individual?

2 A That's correct, yes.

3 Q So you rely upon the crime scene analyst to do that?

4 A Yes.

5 Q When you got into the observation room, could you
6 see on the video monitor system Mr. Farmer in the room where
7 he was located?

8 A Yes.

9 Q And what, if anything, did you observe him doing?

10 A I observed him to immediately start picking his
11 fingernails one by one on each hand. He would also bite
12 his fingernails, and he would also begin to really clench his
13 hands in a very rough manner on the front and on the back,
14 and several times he would actually take his entire fingers
15 and place them into his mouth and suck them off, I assume
16 would be a proper terminology. And then he would go back to
17 trimming his fingernails.

18 Q Did this cause you any concern when you were
19 observing these actions?

20 A Yes, it did.

21 Q Why?

22 A Because I felt he was destroying evidence.

23 Q What evidence possibly?

24 A Possible DNA evidence of not only of himself but
25 also of a victim of the sexual assault.

1 Q Did you advise Mr. Farmer when you went in to tell
2 him about the search warrant and the DNA process that was
3 going to be done, that part of that process would be to swab
4 his hands and to take fingernail scrapings?

5 A No, I was not specific.

6 Q Okay. On the duplicate search warrant that you
7 indicated that you showed Mr. Farmer, did it have that
8 information?

9 A Yes, it did.

10 Q Making those observations on the monitor system,
11 what steps did you take, if any, to stop Mr. Farmer from
12 doing that?

13 A At that point, myself and Craig Jex placed him back
14 into handcuffs.

15 Q Did you specifically handcuff him in a specific
16 position in order prevent him from doing that any longer?

17 A With his hands behind his back in a sitted position
18 and seated on a chair that we had in the observation room.

19 Q At some point in time, did the crime scene analyst
20 arrive to obtain the DNA samples from Mr. Farmer?

21 A Yes.

22 Q Were you still there at that time?

23 A Yes, I was.

24 Q Ultimately, which one of the detectives involved in
25 this investigation was the lead detective or in charge of

1 this investigation?

2 A Detective Mike Saunders.

3 Q At some point in time, did you advise Detective
4 Saunders of the things you had observed Mr. Farmer doing in
5 this room?

6 A Yes.

7 MR. KOCHEVAR: May I approach the witness, Judge?

8 THE COURT: You may.

9 BY MR. KOCHEVAR:

10 Q Detective, I'm showing you what's been marked as
11 State's Exhibit 9, and Proposed Exhibits 10 through 13. I'd
12 ask if you could look through those and then tell me when
13 you're done.

14 A Yes.

15 Q Do you recognize what's in those photographs of
16 State's Exhibit 9, and Proposed Exhibits 10 through 13?

17 A Yes.

18 Q Can you describe for us what they are?

19 A Those are crime scene photos of Steven Farmer that
20 were taken inside our interview room.

21 Q Do they fairly and accurately depict how Mr. Farmer
22 appeared when you saw him on May 16th, when he was taken to
23 the detective bureau?

24 A Yes.

25 MR. KOCHEVAR: I'd move for the admission of

1 State's Proposed Exhibits 10 through 13.

2 MR. BASHOR: No objection.

3 THE COURT: Those will be admitted.

4 (State's Exhibits 10, 11, 12 and 13 admitted)

5 BY MR. KOCHEVAR:

6 Q I want to go through real briefly. I'll zoom out so
7 we can (indiscernible). Showing you State's 10. Does that
8 appear to be the clothes and the condition that you found
9 Mr. Farmer when you located him at his house?

10 A Yes, it is.

11 Q And State's 11 is just another angle, but the same
12 -- and these pictures were taken where?

13 A In the Investigative Services Division in one of our
14 interview rooms.

15 Q And State's 12, same thing?

16 A Yes.

17 Q And finally, State's 13. And these are all just
18 pictures of him taken at different angles in order to get a
19 full perspective of how he appeared?

20 A Yes.

21 MR. KOCHEVAR: Court's indulgence. I have no
22 further questions.

23 THE COURT: Cross.

24 MR. BASHOR: Yes.

25 CROSS-EXAMINATION

1 BY MR. BASHOR:

2 Q Detective, you have the ability to write reports,
3 correct?

4 A Yes.

5 Q In fact, that's the routine -- something that you
6 routinely do in your investigations, correct?

7 A Yes.

8 Q In this investigation, did you write a report?

9 A No.

10 Q You told the ladies and gentlemen of this jury that
11 you were concerned that Mr. Farmer was destroying evidence,
12 correct?

13 A Yes.

14 Q You didn't think that was important enough to write
15 in a report?

16 A It's not my responsibility at that time to write the
17 report.

18 Q It's not your responsibility to write a report if
19 you suspect destruction of evidence?

20 A No.

21 Q Now, you obtained a PIN registry of Mr. Farmer's
22 cell phone, correct?

23 A Yes.

24 Q And using that technique of investigation, you found
25 where he lives?

1 A Yes.

2 Q In his own room?

3 A The PIN register only gives us to actually where the
4 cell phone is, not the individual.

5 Q Fair enough. You found Mr. Farmer in his bedroom,
6 correct?

7 A Yes.

8 Q In his bed?

9 A Yes.

10 Q Now, you said you had to enter the room -- you made
11 the decision to enter the room for your safety, correct?

12 A Yes.

13 Q And when you got inside that room, one of the
14 reasons for your safety is that you suspected there could be
15 a weapon?

16 A Yes.

17 Q You didn't find a weapon, did you?

18 A No.

19 Q And you also indicated that there was a card left
20 behind or you saw a card on a nightstand; is that correct?

21 A Yes.

22 Q And that was of a Sergeant Pence?

23 A Yes.

24 Q Did you impound that business card?

25 A No.

1 Q Probably not your responsibility either, correct?

2 A It's --

3 MS. BLUTH: Objection. Argumentative.

4 BY MR. BASHOR:

5 Q Now --

6 THE COURT: Sustained.

7 BY MR. BASHOR:

8 Q -- Mr. Farmer was placed into one of your interview
9 rooms; is that correct?

10 A Yes.

11 Q And those interview rooms have the ability to video
12 record; is that correct?

13 A Yes.

14 Q Was a video recording of Mr. Farmer conducted while
15 he was in that observation room?

16 A No.

17 Q Now, you also indicated to Mr. Farmer that you left
18 him a duplicate of a search warrant, correct?

19 A Yes.

20 Q And on direct examination you explained that you
21 were not specific with him as to what was about to happen
22 with the analyst; is that correct?

23 A That's correct.

24 Q Yet, you state and observe -- you state that you
25 observed him, well, biting his fingernails and sucking on his

1 fingers?

2 A Yes.

3 MR. BASHOR: May I approach your clerk, Your Honor?

4 THE COURT: Yes.

5 MR. BASHOR: May I publish State's Exhibit No. 9,
6 Your Honor?

7 THE COURT: Yes.

8 BY MR. BASHOR:

9 Q On direct examination you referred to these -- this
10 and the other photos as crime scene photos; is that correct?

11 A Yes.

12 Q This photo was taken at the Las Vegas Metropolitan
13 Police Department; is that fair to say?

14 A Yes.

15 Q This is not a picture of a crime scene?

16 A We refer to any pictures taken when we serve a
17 search warrant as a crime scene.

18 MR. BASHOR: Court's indulgence.

19 BY MR. BASHOR:

20 Q Now, referring back to that business card that you
21 located on the nightstand, did you ask or did you, yourself,
22 photograph that business card?

23 A No, I did not.

24 Q And --

25 MR. BASHOR: Court's indulgence.

1 BY MR. BASHOR:

2 Q And were any photos taken of Mr. Farmer while he was
3 in the observation room?

4 A Those would be the photos.

5 Q Okay. Were there any photos of Mr. Farmer taken
6 biting his fingernails?

7 A No.

8 Q Were there any photos taken of Mr. Farmer sucking on
9 his fingers?

10 A No, there was not.

11 MR. BASHOR: Pass the witness, Your Honor.

12 THE COURT: Redirect.

13 REDIRECT EXAMINATION

14 BY MR. KOCHEVAR:

15 Q Detective, is it common if a person is placed in one
16 of the observation rooms or in one of the rooms just for
17 purposes of observation, is it common to record them if
18 you're just observing them?

19 A No, it's not a common practice.

20 MR. KOCHEVAR: May I approach the witness, Judge?

21 THE COURT: You may.

22 BY MR. KOCHEVAR:

23 Q Showing you what's been marked, Detective, as
24 State's Proposed Exhibit No. 24. Do you recognize that
25 proposed exhibit?

1 A Yes. It's a duplicate original search warrant.

2 Q Does this appear to be a fair and accurate copy of
3 the duplicate original search warrant that you showed or
4 provided to Mr. Farmer while he was in the room at the
5 detective bureau?

6 A Yes.

7 MR. KOCHEVAR: I'd move for the admission of
8 State's Proposed Exhibit 24.

9 MR. BASHOR: No objection.

10 THE COURT: It will be admitted.

11 (State's Exhibit 24 admitted)

12 MR. KOCHEVAR: Permission to publish, Judge.

13 THE COURT: Granted.

14 MR. KOCHEVAR: Thank you.

15 BY MR. KOCHEVAR:

16 Q Detective, does this appear on State's Exhibit 24,
17 to be the description of the types of evidence that you were
18 seeking to obtain from Mr. Farmer as a result of the search
19 warrant that you had obtained?

20 A Yes.

21 Q And specifically, it says, a buccal swab, finger
22 swabs and fingernail clippings.

23 A That's correct, yes.

24 MR. KOCHEVAR: I have no further questions.

25 THE COURT: Recross.

1 MR. BASHOR: Yes, ma'am. May I approach your
2 clerk?

3 THE COURT: Yes.

4 RECROSS-EXAMINATION

5 BY MR. BASHOR:

6 Q This is a duplicate original search warrant; is that
7 correct?

8 A Yes.

9 Q This handwriting here, this was something that you
10 filled out?

11 A Yes.

12 Q And so you wrote things down?

13 A Yes.

14 Q Okay. You would agree that this incident occurred
15 six years ago, correct?

16 A Yes.

17 Q And one of the reasons that you write reports and
18 write things down to memorialize them?

19 A Yes.

20 Q And at the passing of time, things can be forgotten,
21 correct?

22 A Yes.

23 Q And that they're useful for you as a detective to
24 refresh your recollection?

25 A Yes.

1 Q It's also tools that you know the State will utilize
2 in the prosecution of a defendant, correct?

3 A Correct.

4 Q And eventually, those reports would be turned over
5 to the defense?

6 A Correct.

7 MR. BASHOR: Nothing further.

8 MR. KOCHEVAR: Nothing further, Judge.

9 THE COURT: May this witness be excused?

10 MR. KOCHEVAR: Yes, Judge.

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

12 Call your next witness.

13 MS. BLUTH: State calls Detective Saunders.

14 THE CLERK: Raise your right hand.

15 DETECTIVE MICHAEL SAUNDERS, STATE'S WITNESS, SWORN

16 THE CLERK: Please be seated.

17 THE WITNESS: Thank you.

18 THE CLERK: Please state your name. Spell it for
19 the record.

20 THE WITNESS: My name is Michael Saunders,
21 S-a-u-n-d-e-r-s.

22 THE COURT: You may proceed.

23 MS. BLUTH: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. BLUTH:

1 Q Good afternoon, Officer Saunders. How are you
2 employed?

3 A With the LVMPD for the last 14 and a half years.

4 Q Okay. And I'd like to turn your attention back to
5 2008. During that time period, what section were you working
6 in, within the Las Vegas Metropolitan Police Department?

7 A I was assigned to the Crimes Against Youth and
8 Family Division, particularly sexual assault.

9 Q Okay. And how long was it that you worked in sexual
10 assault?

11 A A little over three years.

12 Q Specifically, now I'd like to turn your attention to
13 May 16th of 2008.

14 A Um-h'm.

15 Q Obviously, during that time period you were employed
16 in the Sexual Assault Division?

17 A Yes, ma'am.

18 Q And were you called to Centennial Hills Hospital
19 about a sexual assault that had occurred on property?

20 A Yes, I did.

21 Q And about when did that call come in?

22 A I'm going to say it was sometime just after 9:00
23 o'clock. 9:20ish or so.

24 Q And did you arrive shortly thereafter?

25 A Yes, we did.

1 Q And when you arrived originally, who did you arrive
2 with, or did you arrive with anyone?

3 A I believe, it was Detective Cody.

4 Q Okay.

5 A And possibly Sergeant Pence.

6 Q Okay. And Detective Cody, is that the individual
7 that just left --

8 A Yes.

9 Q -- the room? Okay. So Sergeant Pence is --
10 Sergeant Pence's first name Misty Pence?

11 A Misty Pence, yes.

12 Q Thank you. After responding to the hospital, what
13 was the first thing that you did?

14 A Made contact with the victim up on the seventh floor
15 of the hospital.

16 Q And when you made contact with her, shortly
17 thereafter, did you interview her?

18 A Yes, I did.

19 Q And when you interviewed her, were any other people
20 allowed to be present in the room?

21 A Just Sergeant Pence.

22 Q Okay. So not her husband or any nurses or anything
23 like that?

24 A No.

25 Q Did you have any issues with understanding Ms.

1 Cagnina when she spoke with you?

2 A No.

3 Q Did she appear to have any problems in understanding
4 you?

5 A No.

6 Q What was her demeanor during your interview?

7 A She was excitable. Forthcoming, but like eager to
8 tell me what had happened.

9 Q Okay. Was she anxious or nervous in any way?

10 A Yes, anxious and nervous would be a good way to
11 describe that.

12 Q And did she tell you what had happened to her while
13 she was staying at the hospital earlier that morning?

14 A Yes, ma'am.

15 Q Did she discuss with you the fact that she believed
16 she had taken photos during the assault?

17 A Yes, she did.

18 Q And as part of your investigation, did you take her
19 cell phone?

20 A Yes, I did.

21 Q And look at it?

22 A Yes, I did.

23 Q Okay. And what did you find?

24 A That there was two cell phone pictures that were
25 taken at approximately, 04:47 and another one -- and within

1 that time frame, and they were both black screens.

2 Q Okay. Did you ever take any pictures on her phone
3 yourself to see if that, you know, the camera was working
4 correctly with the clock?

5 A No, I did not.

6 Q As part of your interview with Ms. Cagnina, did she
7 discuss with you the fact that she believed she had called
8 911 during the assault?

9 A Yes.

10 Q Okay. And did you check her phone to see if -- you
11 know, to look at her call log?

12 A Yes, ma'am, I did.

13 Q And what did you see, if anything?

14 A I did not see a 911 call in the time that she said
15 that she had called while the assault was taking place.

16 Q Okay. Did you find a 911 call in her log?

17 A Yes, I did.

18 Q And what time was that at?

19 A I believe, that was 7:19. No, I -- I'm sorry, I
20 don't know right off the top of my head.

21 Q That's okay. Do you remember writing a report in
22 this case?

23 A Yes, I did.

24 Q Okay. And would looking at that report help refresh
25 your recollection as to what time it was?

1 A Yes, ma'am.

2 Q Okay.

3 MS. BLUTH: Court's indulgence, Your Honor. May I
4 approach the witness?

5 THE COURT: You may.

6 BY MS. BLUTH:

7 Q If you could just read this to yourself, and let me
8 know --

9 A Um-h'm.

10 Q -- when you're finished, please.

11 A Okay.

12 Q And after looking at that, does that help refresh
13 your recollection as to what time you saw on the call log?

14 A Yes, ma'am.

15 Q And what time was that at?

16 A 07:54 hours.

17 Q Okay. Thank you. As part of your investigation,
18 did you also contact or go look at the Las Vegas Metropolitan
19 Police Department's records incoming calls from that cell
20 number?

21 A Yes, ma'am, I did.

22 MS. BLUTH: May I approach again, Your Honor?

23 THE COURT: Yes.

24 MS. BLUTH: Thank you.

25 BY MS. BLUTH:

1 Q I'm showing you what's been marked for purposes of
2 identification as State's Proposed 18.

3 A Um-h'm.

4 Q Do you recognize what this is?

5 A Yes, I do.

6 Q And what is this?

7 A It is a call report that comes in from the 911
8 operators when we receive a 911 call.

9 Q Okay. So -- well, first, before I ask any more
10 questions, is that a fair and accurate depiction of the copy
11 you provided the District Attorney's Office of the call log?

12 A Yes, ma'am, there is one.

13 MS. BLUTH: Your Honor, I'd move to admit into
14 evidence State's Proposed 18.

15 MR. BASHOR: No objection.

16 THE COURT: It will be admitted.

17 (State's Exhibit 18 admitted)

18 BY MS. BLUTH:

19 Q So when someone calls the Las Vegas Metropolitan
20 Police Department, the department has technology that can
21 show you later what number called, how long the conversation
22 was; is that correct?

23 A Yes, ma'am.

24 Q Okay. So this call came in, did you say, at 7:55?

25 A Yes, ma'am.

1 Q And what was the duration of the phone call?

2 A It appears to go for total of 21 seconds.

3 Q Twenty-seconds, okay. And there was no conversation
4 during that phone call; is that correct?

5 A No, ma'am, according to them, yes, no, nothing came
6 through.

7 Q Okay. So -- but just to be clear, the records from
8 the police department show that phone call coming in from Ms.
9 Cagnina's cell phone at 7:50 -- about 7:55 in the morning?

10 A Yes, ma'am.

11 Q Did you discuss with Ms. Cagnina how long it had
12 been since she and her husband had been sexually active?

13 A Yes, I did.

14 Q And what was the time period she gave you?

15 MR. BASHOR: Objection.

16 THE WITNESS: She said --

17 MR. BASHOR: Hearsay.

18 THE COURT: I believe --

19 MS. BLUTH: Yesterday, Mr. Maningo stated -- can we
20 approach? I don't want to do --

21 THE COURT: Yes.

22 MS. BLUTH: -- speaking --

23 (Bench conference began)

24 MS. BLUTH: Jacqueline Bluth. Yesterday,

25 Mr. Maningo had stated that it was Ms. Cagnina's testimony

1 that it was 72 hours, and I objected. I said in the state of
2 the evidence that it was -- she originally said 72 hours and
3 then she said, I -- no, I don't know it was more like a week.
4 Well, in her interview she says to the detective it was more
5 than a week. So, I was just clarifying that, so I -- in my
6 mind, it's not an inconsistent statement because I believe
7 she testified to it the right way, if that makes sense. But
8 it's Mr. Maningo's understanding that it was 70 -- that Ms.
9 Cagnina said 72 hours, right?

10 THE COURT: That's what you said in your argument
11 in front of the jury, right?

12 MR. MANINGO: Right. I mean --

13 THE COURT: You're not --

14 MR. MANINGO: -- and the --

15 THE COURT: And the argument's hearsay or, I mean,
16 the objection's hearsay.

17 MR. MANINGO: Right.

18 THE COURT: All right.

19 MR. MANINGO: And -- well, yeah, Mr. Bashor --

20 THE COURT: Oh, sorry.

21 MR. BASHOR: I mean, it's an out-of-court
22 statement, Your Honor, offered for its truth without an
23 exception. We've heard from Ms. Cagnina. As Your Honor
24 correctly instructed the jury yesterday, it's their
25 recollection of the testimony and --

1 THE COURT: Is it a prior consistent statement?

2 MR. MANINGO: I'm sorry, what?

3 THE COURT: Is it a prior consistent statement?

4 MR. BASHOR: If it's a prior consistent statement,
5 Your Honor, then it's just a form of vouching for what we've
6 already been told.

7 MR. MANINGO: And otherwise, unless we're going to
8 go through his entire interview for every inconsistency that
9 she states compared to what her testimony was, and her
10 deposition was, and everything else, and then the State will
11 have to go through every --

12 MS. BLUTH: Are you going to do that anyways,
13 though?

14 MR. MANINGO: No. No, not at you will.

15 MS. BLUTH: I assumed that you were.

16 MR. MANINGO: No.

17 MS. BLUTH: Good.

18 THE COURT: I can't hear you, and I'm sure --

19 MS. BLUTH: I'm sorry.

20 THE COURT: -- that nothing's going to be recorded
21 on that. So, say it again.

22 MS. BLUTH: That was just a -- that was just a
23 conversation between us. It doesn't need to be on the
24 record. It was just a question on where their questioning
25 was going, so I'll keep that off the record. Court's

1 indulgence. So you're saying you're not going to do that?
2 Because I'll let it go if you're not going to do it.

3 MR. MANINGO: (Inaudible). All right.

4 MS. BLUTH: I'll withdraw the question and we'll
5 move on.

6 THE COURT: Okay.

7 (Bench conference concluded)

8 THE COURT: You're withdrawing the question?

9 MS. BLUTH: Yes, Your Honor.

10 BY MS. BLUTH:

11 Q Now, did she give you a name of the suspect that you
12 were to be looking for?

13 A Yes.

14 Q And what was that name?

15 A Steven. Steve.

16 Q Would it surprise you that in her voluntary
17 statement she gave you the name of Dave? That the suspect
18 had gave her the name of Dave?

19 A I don't recall that.

20 Q Okay. Shortly after your interview with Ms.
21 Cagnina, was she taken for a sexual assault nurse
22 examination?

23 A Yes, she was.

24 Q And we've already heard a little bit of testimony of
25 chain of custody and how that works, but if you could explain

1 when someone has a sexual assault nurse examination done on
2 them, what is the process Metro goes by in collecting what's
3 called a sex assault kit?

4 A Okay. The sex assault kit will consist of different
5 things, swabs, things along those lines, that only a trained
6 nurse in the sexual assault -- sexual assault nurse examiners
7 have to be certified in order to collect these certain type
8 of evidence kits. She will then, upon completion of her SANE
9 exam, as we call it, will -- she'll keep that evidence, and
10 then she will log it and then they have their own evidence
11 drop at the UMC Hospital.

12 Q Okay. And then after it goes to University Medical
13 Center Hospital --

14 A Um-h'm.

15 Q -- then does a Metro (sic) of the Las Vegas
16 Metropolitan Police Department go there and retrieve the
17 evidence?

18 A Yes, ma'am.

19 Q And then once the officer or the detective retrieves
20 the evidence, then where is it taken?

21 A Well, it's picked up by our evidence vault
22 personnel, and then it's taken over to our evidence vault
23 where it is secured and handled properly, whether it needs to
24 be refrigerated or not, and then they do what they do over
25 there with that.

1 Q And then if any further analysis needs to be done,
2 such as DNA natural advice, things like that, is it then
3 checked out to the DNA lab or whichever lab is processing it?

4 A Yes, ma'am.

5 Q While you were at the hospital in the morning of May
6 16th, did you have the opportunity to speak to the head nurse
7 or the nurse in charge, Lorraine Wescott?

8 A Yes, ma'am, I did.

9 Q And did you feel as though Ms. Wescott was
10 cooperative in helping you in this situation or with your
11 investigation?

12 A No, ma'am, she was not.

13 Q And when you say she was not helpful, what was she
14 doing that made you believe that?

15 A Very resistant to questions. When I would try to
16 ask her specifically, I need, you know, who was the guy that
17 was up here, who was the man that brought this up or
18 transferred her to her room, things along those lines, asking
19 her for records, the medical records of Ms. Cagnina, her
20 transfer logs, things along those lines, it just seemed that
21 she would drag her feet when -- almost like she was busy, she
22 needed to do something else other than something that was
23 much more important that we needed in order to secure Ms.
24 Cagnina's safety.

25 Q Okay. Did you feel like she was just brushing you

1 aside?

2 A In some ways, yes, ma'am.

3 Q Okay. Did you have to give her a warning if she
4 didn't start becoming more helpful?

5 A Yes. I admonished her at this point that this was a
6 felony investigation, and if she continued to obstruct my
7 investigation, she's looking at possibly facing charges.

8 Q Okay. Did you speak to her about the fact that no
9 one at the hospital had called 911?

10 A Yes, I did.

11 Q And what was her response?

12 A Very curt, very frank. Well, I notified my
13 supervisors.

14 Q So she acknowledged that she, nor any other employee
15 of that hospital called 911?

16 A No, ma'am.

17 Q She acknowledged that fact?

18 A She acknowledged that, yes, ma'am.

19 Q Did you speak to other individuals, hospital staff
20 personnel as well?

21 A Yes, ma'am.

22 Q And what did you -- how did you feel their reaction
23 to you was?

24 A One nurse, Ms. Murray, was cooperative that day, was
25 -- I remember being able to speak with her. Another nurse

1 that was down in the ER, it was kind of hard getting in touch
2 with her. I believe she had already gone home for the day --

3 Q Okay.

4 A -- and we just had to leave messages.

5 Q And then --

6 A Other staff there on the floor was helpful as we
7 were going back and forth.

8 Q And in regards to -- I assume hospitals have video
9 systems or surveillance systems?

10 A Yes, ma'am.

11 Q Did you ever contact anyone in the -- either the HR
12 department or security in an effort to receive video?

13 A Both. Actually, we had a security sergeant on
14 scene, as well as another officer and in addition to risk
15 management I had spoke to that morning. Told them that we
16 have -- there's cameras on either end of the hallway, I
17 needed that video, and they said that they would attempt to
18 get that to me as soon as possible.

19 Q Okay. And so, I think I asked this previously --

20 A Um-h'm.

21 Q -- but did you make an effort to figure out which
22 nurses had been working with Mr. Farmer on Ms. Cagnina?

23 A Yes, ma'am.

24 Q And were you able to get that information?

25 A Yes, I was.

1 Q Did you ever receive the video that you had
2 requested on May 16th?

3 A No, I did not.

4 Q Did you ever go back in an attempt to get the video?

5 A Yes, I did.

6 Q And was that on several occasions?

7 A On several occasions.

8 Q And what were you told on those occasions?

9 A At first it was, we're still working on it, we're
10 trying to get to it. Then it was, oh, there's a problem.
11 Again, we're still trying to work on it.

12 MR. BASHOR: Your Honor, at this point, I'm going
13 to object as to relevance. This is State versus Mr. Farmer,
14 not state versus Centennial Hills Hospital, whether or not
15 they were cooperative.

16 MS. BLUTH: I think it goes to motive of many of
17 the witnesses who testified in this case, number one. And
18 number two, he has to discuss that he conducted an
19 investigation and what he did in order to conduct that
20 investigation, and video surveillance would be a very
21 important piece of that investigation.

22 THE COURT: I'm going to allow it. I think it goes
23 to the motive or bias of witnesses.

24 THE WITNESS: Eventually, I was told that there was
25 some type of problem and that the video had been erased, and

1 it was not able to be brought back up and it was gone.

2 BY MS. BLUTH:

3 Q And so you were never even allowed the opportunity
4 to review at that video?

5 A Yes, ma'am, exactly.

6 Q In the process of speaking with different staff
7 personnel on the morning of May 16th --

8 A Um-h'm.

9 Q -- did you let them know that you were looking for
10 Mr. Farmer and needed, you know, either to speak with him or
11 to find him, et cetera?

12 A Yes.

13 Q Okay. And did you and other detectives or sergeants
14 meet -- I'm sorry, pass out business cards?

15 A Yes.

16 Q Okay.

17 A With our desk phone numbers, our cell phones.

18 Q In regards to your conversations with Ms. Cagnina --

19 A Um-h'm.

20 Q -- did you -- was she able to give you a description
21 of the individual?

22 A Yes, ma'am.

23 Q And were you able to then to pass along that
24 description to the nurses that were in that area or had
25 worked with Ms. Cagnina that --

1 A Yes, ma'am.

2 Q So were you able to identify the Defendant?

3 A Yes, ma'am.

4 Q And do you see him here in court today?

5 A Yes, I do.

6 Q Can you please point to him and describe an article
7 of clothing that he's wearing?

8 A It would be the gentleman right there in the gray
9 suit and the blue tie.

10 MS. BLUTH: Your Honor, may the record reflect that
11 the witness has identified the Defendant?

12 THE COURT: It will.

13 MS. BLUTH: Thank you. May I have the Court's
14 indulgence?

15 THE COURT: Yes.

16 BY MS. BLUTH:

17 Q And after you ID'ed the Defendant, were you able to
18 obtain a photo of him and then produce what's called a six
19 pack?

20 A Yes, ma'am.

21 Q Okay.

22 MS. BLUTH: And may I approach, Your Honor?

23 THE COURT: Yes.

24 BY MR. BASHOR:

25 Q Showing you what's been marked for purposes of

1 identification as State's Proposed 17, do you recognize this?

2 A Yes, I do.

3 Q And can you please describe what it is you're
4 looking at?

5 A This is what we call a photo lineup witness
6 instructions, and it basically tells a witness or a victim
7 that we're going to show them a series of pictures. And
8 these series of pictures are going to look alike, the suspect
9 may or may not be in there, this person that we allege may
10 have done this to you.

11 At that point, we take six different photographs
12 that are similar in nature, but not identical by any means,
13 and then we make -- or we have the witness and/or victim
14 identify who they believe was involved in the incident.

15 Q Okay. And this in front of you, how many pages do
16 you have?

17 A There should be three pages.

18 Q Three pages, okay.

19 A Yes, ma'am.

20 Q And all three of those make up the one court
21 exhibit; is that correct?

22 A Yes, ma'am.

23 Q Okay. And is this a fair and accurate depiction of
24 the paperwork you used in conducting the photo lineup on May
25 16th, 2008 with Roxanne Cagnina?

1 A Yes, ma'am, this is my writing.

2 Q Okay.

3 MS. BLUTH: And Your Honor, I'd ask to move into
4 evidence State Proposed 17.

5 THE COURT: Any objection?

6 MR. BASHOR: No, Your Honor.

7 THE COURT: Just to clarify --

8 THE WITNESS: Yes, ma'am.

9 THE COURT: -- the photographs, each one, there are
10 six; is that correct?

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Are they of different --

13 THE WITNESS: Different --

14 THE COURT: -- individuals?

15 THE WITNESS: -- individuals, yes, ma'am.

16 THE COURT: Okay.

17 MS. BLUTH: Thank you.

18 (State's Exhibit 17 admitted)

19 MS. BLUTH: And permission to publish, Your Honor.

20 THE COURT: Granted.

21 MS. BLUTH: Okay.

22 THE COURT: It's admitted.

23 BY MS. BLUTH:

24 Q So, I'm going to zoom out here for a second. All
25 right. Now -- okay. So, in regards to the top of the photo

1 lineup, that would be Ms. Cagnina's name and personal
2 information, correct?

3 A Yes, ma'am.

4 Q And then with every incident or we can call it an
5 event, that someone calls the police about, is an event
6 number generated for that specific call?

7 A Yes, ma'am.

8 Q And the event number here would be 080516, sorry,
9 1021?

10 A Yes, ma'am.

11 Q Okay. And just for the education for the jury, what
12 -- this would be May 16th of 2008?

13 A 2008, yes.

14 Q Is that correct?

15 A Yes.

16 Q And --

17 A We go the year, the month, the day and then --

18 Q And then the four digits after 1021 would be -- this
19 was the 1,021th call --

20 A Of that morning.

21 Q -- 21st call of that morning?

22 A Yes, ma'am.

23 Q Okay. So you're a little busy?

24 A Yes, ma'am.

25 Q And then, like you said, the victim is admonished

1 about the guidelines of the six pack identification --

2 A Yes.

3 Q -- process?

4 A I actually, me, personally, I would read that to my
5 witnesses and/or victims to make sure that they understood
6 it, and I would always make sure I have a, yes, a verbal yes
7 from them.

8 Q Okay. And then the second page of this are you keep
9 track of the individual's names and information; is that
10 correct?

11 A Exactly, ma'am.

12 Q And those numbers correspond with the six
13 individuals that you see here?

14 A Yes, ma'am.

15 Q Okay. And when you sat down with Ms. Cagnina on May
16 16th of 2008, did you -- did she identify and initial on one
17 of these individuals?

18 A Yes, she did.

19 Q And which individual is that?

20 A It would be number 3, Mr. Farmer.

21 Q Okay. And on her statement, she wrote out, It's
22 either two or three, and then slash, definite -- it's either
23 two or three definitely and then slash, three looks more like
24 him, the mustache is thinner.

25 A Yes, ma'am. And just to clarify, I wrote that for

1 her at the time.

2 Q Okay. And why is that?

3 A Just at that time, it just -- it was easier for me
4 to do it. I don't remember why, the specifics, but I wrote
5 it because that's what she was saying.

6 Q Okay.

7 MS. BLUTH: And Your Honor, State's Proposed 1 is
8 just a picture of Centennial Hills Hospital, and the parties
9 are stipulating that it will come in.

10 MR. BASHOR: That's correct, Your Honor.

11 THE COURT: All right, it will be admitted as 1.

12 (State's Exhibit 1 admitted)

13 MS. BLUTH: Thank you.

14 BY MS. BLUTH:

15 Q And that's the Centennial Hills Hospital that's here
16 located in Clark County, Las Vegas, Nevada?

17 A Yes, ma'am.

18 Q So after the interviews that we've spoken about in
19 the hospital with Ms. Cagnina and various nursing staff as
20 well as the six packs -- six pack identification, what was
21 the next step in your investigation?

22 A We continued then to try to locate or find where
23 Mr. Farmer would have been or was living at the time,
24 information provided to us from the hospital, the addresses
25 were not any good. I had placed a phone call, I believe, on

1 Mr. Farmer to see if he would answer his phone, which he did
2 not.

3 And at that point, based on the severity of the
4 crime, I began to work on an arrest report for if we came
5 into contact with him.

6 Q Okay. And we've already heard from Detective Cody
7 that the process of getting a PIN register and what that
8 means.

9 A Yes, ma'am.

10 Q And was Detective Cody working on that at the same
11 time you were working on your arrest reports, et cetera?

12 A Yes, ma'am.

13 Q Okay. Now, that evening did you have a -- an event
14 you needed to go to that was outside of work related?

15 A Yes, ma'am.

16 Q And what was that?

17 A My family was in town. I was graduating from
18 college.

19 Q Okay. And so that evening, since you were
20 graduating from college, after you got done doing your work,
21 did you then go home?

22 A Yes.

23 Q And on your way home, did you receive a call from
24 your sergeant?

25 A Yes, I did.

1 Q And had your sergeant, had they received what's
2 called a ping or a hit on the PIN register?

3 A Exactly, ma'am, yes.

4 Q And like you said, since you were graduating, you
5 did not take part in going to the home or anything like that?

6 A No, ma'am. She said -- because we -- I had been
7 working on it all day, and I was still at the office working
8 on things, that when the ping hit, she said that they could
9 -- they could take it from there because the next morning is
10 when I was walking.

11 Q But do you stay in somewhat contact with the members
12 of your team and do they let you know what's going on?

13 A Yes, ma'am. My cell phone.

14 Q And were you informed that the Defendant was found
15 and arrested?

16 A Yes, ma'am.

17 Q Oftentimes, or in certain situations, does the Las
18 Vegas Metropolitan Police Department release what's called a
19 media release?

20 A Yes, ma'am.

21 Q And what is the point of media releases?

22 A The point of a media release is to alert the public
23 for one, that we're looking for a subject or suspect involved
24 in a crime. The other one is to warn them for potential of
25 them being a victim or of becoming a victim or potential

1 victim of a crime, and also to have the local citizens assist
2 us in just locating them.

3 Q Okay. And in the evening hours after the Defendant
4 was arrested, was a media release sent out by your sergeant,
5 Misty Pence?

6 A Yes, ma'am, it was.

7 Q But -- and in that media release, was any
8 information -- any specific information about the sexual
9 assault of Roxanne Cagnina released to the public?

10 A Not at all.

11 Q Okay. So it was just the fact that there had been a
12 sexual assault at the hospital?

13 A And that there was a victim.

14 Q Okay. Was a photo of the Defendant included in that
15 media release?

16 A At the time, I personally do not recall whether it
17 was or not.

18 Q Okay. Was there, you know, a description, though,
19 given of him, height, weight?

20 A Yes, ma'am.

21 Q And were other names that he was found to have been
22 using --

23 A Yes.

24 Q -- released in that media release?

25 A Yes, ma'am, they were.

1 Q You spoke earlier about speaking to a few of the
2 nurses just briefly on May 16th.

3 A Um-h'm.

4 Q Did you conduct in your follow-up investigation
5 subsequent, you know, sit-down formal interviews with those
6 nurses?

7 A Yes, I did.

8 Q And was one of those individuals a nurse by the name
9 of Karen Goodhart?

10 A Yes, it was.

11 Q And where was it that -- I'm sorry, where was it
12 that you interviewed Ms. Goodhart?

13 A I believe it was back at Centennial Hills Hospital.

14 Q Do you remember the date of your interview with her?

15 A May 29th or 30th.

16 Q Okay. Let me just check so we can make sure. May
17 30th sounds about right. And that was done at Centennial
18 Hills Hospital, like you said?

19 A Yes, ma'am.

20 Q And was that done in the presence of any other
21 individuals who weren't, like your partner or your sergeant?

22 A No, ma'am, it was just myself.

23 Q Did you have any subsequent interviews with her at
24 her home?

25 A Not that I recall.

1 Q Okay. I mean, if you had a subsequent interview
2 with her, would it have been documented and usually
3 transcribed?

4 A Yes.

5 Q Did she discuss with you her treatment of Roxanne
6 Cagnina?

7 A Yes.

8 Q And did she verify that Mr. Farmer had been working
9 with her that evening?

10 A Yes, ma'am.

11 Q At any point in time in her interview, did she
12 discuss with you concerns about Roxanne's medication intake?

13 A No, ma'am.

14 Q Did she ever say anything that she was sucking meds
15 down like they were candy?

16 A Not at all, ma'am.

17 Q Did she ever say she took so much medication it
18 could kill a horse?

19 A No, ma'am.

20 Q Any concerns in that realm at all about Roxanne
21 Cagnina?

22 A No, ma'am.

23 Q In fact, did she talk to you about what Roxanne's
24 mental/physical state was when she left Ms. -- Nurse
25 Goodhart's presence on the emergency room floor?

1 A Yes, ma'am.

2 Q And what did she state about that?

3 A She said that she was drowsy from the medication,
4 but her motor skills should be fine, as in, walking or
5 needing to transfer from a gurney to a bed, along those
6 lines.

7 Q Did she ever say anything about Roxanne crying
8 because one of the male nurses wouldn't come in to see her?

9 A No, ma'am.

10 Q At the end of your interview with Ms. Goodhart --
11 with Nurse Goodhart, did you even ask her, is there anything
12 else that you think's important that you need to tell me?

13 A Yes, that's usually one of my closing lines that I
14 use when I'm finishing up an interview.

15 Q And her response was what?

16 A None at all. Nothing else.

17 Q After -- or so during this process, are you going
18 back and forth to the hospital, gathering information, et
19 cetera?

20 A Yes, ma'am.

21 Q And one of those days, are you approached by a nurse
22 named Margaret Wolfe?

23 A Yes, I am.

24 Q And can you explain how that happens.

25 A I believe, it was -- I was there to go attempt to

1 pick up the video, and I want to say I either had another
2 interview to do with one of the nurses, and she approached me
3 very quietly while I was in the ER area, and she told me,
4 she's like, I -- if you have a moment, I would like to speak
5 with you. So I was like, sure, let's talk. And she told me,
6 not here. I can't talk to you hear about this, but I think
7 there might be another person.

8 And I said okay. And I said, well, where would you
9 like to meet? And she said, there's a Einsteins right over
10 there, and we can get a coffee. And that's where we went.

11 Q And so after sometime did the -- was she able to
12 meet you there?

13 A Yes, ma'am.

14 Q When you met with Ms. Wolfe, did she know anything
15 about the facts of Roxanne Cagnina's case?

16 A Not at all.

17 Q Okay. She knew there had been a arrest and a sexual
18 assault, but she didn't know any of the facts?

19 A None of the details, no, ma'am.

20 Q Do you share with her any of those facts?

21 A No, ma'am.

22 Q Okay. And then does she discuss with you what she
23 observed the Defendant do to a patient of hers?

24 A Yes, ma'am.

25 Q And does she provide you with those details?

1 A Yes, she did.

2 Q And does she provide you with that patient's
3 information --

4 A Yes.

5 Q -- just her name?

6 A Yes, she did.

7 Q And that name was Denise Hanna?

8 A Denise Hanna, yes, ma'am.

9 Q And did you take that information and then meet with
10 Ms. Hanna?

11 A I sure did.

12 Q And how did you do that?

13 A I found out where she was working at. I was able to
14 track that down. I then went over and asked her to come
15 downstairs. I approached her and said, hi, my name is
16 Detective Saunders, I'm with the Las Vegas Metropolitan
17 Police Department. I did not identify what section that I
18 worked in. I told her that there's an investigation going
19 on, and I asked her just out of curiosity, has she had any
20 medical treatment lately, and she said yes, but she almost
21 immediately started to flush. I could tell that I struck a
22 nerve.

23 Q Okay.

24 A And I asked her did anything out of the ordinary
25 occur while you were -- you know -- actually, I'm sorry, let

1 me back up. I said, and where were you at, and she said
2 Centennial Hills Hospital ER. I said did any --

3 MR. BASHOR: Your Honor, I'm going to object at
4 this point. We've heard from Ms. Hanna.

5 MS. BLUTH: That's fine. I'll move on.

6 THE COURT: All right.

7 BY MS. BLUTH:

8 Q And so did -- with your conversation, were you able
9 to identify that she had been a patient at Centennial Hills
10 Hospital and that something had happened to her?

11 A Yes, ma'am.

12 Q And was she able to give you a name as well as a
13 description of the individual?

14 A Yes.

15 Q And was she -- did she give you the Defendant's
16 name?

17 A Yes.

18 Q So after speaking with Nurse Wolfe and Denise Hanna,
19 was the Defendant then charged with open and gross lewdness
20 for the facts against Ms. Hanna?

21 A Yes, ma'am.

22 Q And you said that that was -- the interview with
23 Ms. Hanna -- I'm sorry, I should have asked you -- was that
24 the same day that you spoke with Ms. Wolfe? And I can --

25 A I --

1 Q -- look for you.

2 A -- don't -- I want to say yes, but I honestly do not
3 recall at the moment.

4 Q Okay. If your report shows that you spoke to both
5 of them on May 30th, would it be correct?

6 A Yes, ma'am, then it would be.

7 Q Okay. I know this was a long time ago, so just let
8 me know if looking at your report would help refresh, and
9 I'll approach with it.

10 A Thank you, ma'am.

11 Q Now I'd like to turn your attention to the following
12 day, which would be May 31st of 2008.

13 A Um-h'm.

14 Q On that day, did you come into contact with an
15 individual by the name of Ledahlia Spurlock?

16 A Yes, I did.

17 Q And how did that contact with Ms. Spurlock begin?

18 A She had called into our section, and I ended up
19 taking the phone call.

20 Q Okay. And after speaking with her briefly, did you
21 then think it was appropriate to set up interviews with she
22 and some of her family members?

23 A Yes, ma'am.

24 Q And who were those family members to her?

25 A They were both of her aunts.

1 Q And did you then sit down with Ledahlia and have a
2 conversation with her regarding a treatment that she had
3 recently had at Centennial Hills Hospital?

4 A Yes, ma'am.

5 Q And was Ledahlia -- did Ledahlia discuss with you
6 something that had happened to her?

7 A Yes, she did.

8 Q And did she tell you the individual who had done
9 that?

10 A Yes, she did.

11 Q And how did -- did she identify him?

12 A She said it was the gentleman that she had seen also
13 on the news and that his -- he was a CNA by the name of Steve
14 who introduced himself to her in the ER room.

15 Q Okay. Did she actually see it on the news or did a
16 family member talk to her about it?

17 A I don't recall, ma'am.

18 MS. BLUTH: Court's indulgence.

19 BY MS. BLUTH:

20 Q Do you have a specific memory of that, of whether
21 she saw it on the news or that family member told her it was
22 on the news?

23 A I'm leaning towards family member, ma'am, but I'm --
24 six years ago.

25 Q Okay, that's okay.

1 A I don't know what she told me.

2 Q I'll come back. I'll come back to it, so I'll leave
3 the (indiscernible) the State. So sitting down and, I'm
4 sorry, was she able to give a description on the individual?

5 A Yes.

6 Q And was she able to give the name Steven?

7 A Yes.

8 Q Did you also have the opportunity to sit down with
9 both of her aunts?

10 A I did.

11 Q And would that be Ada Dotson as well as Ernestine
12 Smith?

13 A Yes, ma'am.

14 Q And when you interviewed Ms. Dotson and Ms. Smith,
15 were they interviewed separately?

16 A Yes, they were.

17 Q And separately from Ms. Spurlock?

18 A Yes, ma'am.

19 Q And I should have asked you, I apologize, in regards
20 to when you were speaking with Ms. Spurlock, did you provide
21 her with any of the facts from any of the other cases?

22 A No, ma'am.

23 Q Is that improper to do in an interview?

24 A Of course.

25 Q I'd like to ask you specifically about some

1 questions that you had asked Ms. Dotson, Ms. Ada Dotson, one
2 of Ledahlia's nurses (sic). In regards to what she observed
3 the Defendant do with her niece's feet --

4 A Um-h'm.

5 Q -- what did she tell you she witnessed?

6 A That he had a hold of her feet, and he was pulling
7 them back towards his groin.

8 Q Did the -- were the aunts able to provide you with a
9 description as well as the same name?

10 A Yes, ma'am.

11 Q Were you ever given the opportunity to look at
12 Mr. Farmer's medical records -- I'm sorry, not medical
13 records, but work records and discern whether or not he was
14 working at the same time that Ms. Spurlock was at the
15 hospital?

16 A Yes, ma'am, I was, and he was on duty that day, yes,
17 ma'am.

18 Q So after meeting with Ledahlia Spurlock, Ada Dotson
19 and Ernestine Smith, since they were able to provide you with
20 a physical description, as well as the name of Steven Farmer
21 and then following that with you confirming he worked at the
22 hospital during the same time as Ms. Spurlock was at the
23 hospital, was he charged with open and gross lewdness for the
24 actions against Ms. Spurlock?

25 A Yes, ma'am.

1 Q Shortly after that, turning your attention to June
2 4th, were you contacted by an individual by the name of
3 Timothy Lehan?

4 A Yes, I was.

5 Q And how was it you were contacted?

6 A By phone. He called the office.

7 Q And I should have been more clear. On the media
8 release that was released, was a number to the detective
9 bureau given?

10 A Yes, ma'am.

11 Q As a point of contact?

12 A Yes, ma'am. Or through Crime Stoppers.

13 Q Okay. And on June 4th, you were contacted by
14 Timothy Lehan?

15 A Yes, ma'am.

16 Q And after your telephone contact with Mr. Lehan, did
17 Mr. Lehan, as well as his then girlfriend, Heather Shank,
18 come in and speak to you?

19 A Yes.

20 Q And again, I know it seems silly, but for the
21 record, were they interviewed completely separate from one
22 another?

23 A Completely separate, yes, ma'am.

24 Q And did each of them discuss with you -- well, with
25 Heather, did she discuss with you what she had observed and

1 what the Defendant had done to her?

2 A Yes, ma'am.

3 Q And did Mr. Lehan tell you what he had observed the
4 Defendant do to Ms. Shank?

5 A Yes, ma'am.

6 Q Were both of them able to give a description of the
7 individual?

8 A Yes, they were.

9 Q And did you provide them with six packs?

10 A I sure did.

11 Q I'm showing you what's already in evidence as
12 State's 16. I'll just zoom in. And if you'd like me to
13 approach, I can. Did you provide Ms. Shank as well as
14 Mr. Lehan with this six pack?

15 A Yes, ma'am.

16 Q And that was done, it looks like on June 4th of
17 2008; would that be correct?

18 A Yes, ma'am.

19 Q And in regards to Ms. Shank, she identified number 3
20 as 100 percent?

21 A Yes.

22 Q And as you previously testified, Mr. Farmer is the
23 individual in number 3?

24 A Yes.

25 Q And in --

1 MS. BLUTH: Your Honor, I apologize. That was
2 State's Exhibit 14 that I published.

3 THE COURT: All right. And that was previously
4 admitted?

5 MS. BLUTH: Yes.

6 BY MR. BASHOR:

7 Q As well as State's 15, Mr. Lehan, number 3, is the
8 man in question, 100 percent sure?

9 A Yes, ma'am.

10 Q Did you ever share with either of those individuals
11 the facts from any of the other victims that you had already
12 spoken with?

13 A Not at all, ma'am, no.

14 Q And after they told you what happened during Heather
15 Shank's hospital stay, and after they correctly identified
16 the Defendant, was he charged with indecent exposure as well
17 as open and gross lewdness for Heather Shank?

18 A Yes, ma'am.

19 Q Lastly, I'd like to turn your attention to June
20 15th. On that date, did an individual by the name of Marcia
21 Petersen call 311?

22 A Yes, she did.

23 Q And when someone calls 311, is -- just like at 911,
24 is an event number generated?

25 A Yes, ma'am.

1 Q And then usually is a patrol person sent out to that
2 individual?

3 A Exactly, yes, ma'am.

4 Q And did that happen in the case of Ms. Petersen?

5 A Yes.

6 Q Okay. After -- so does patrol respond to where
7 Ms. Petersen is?

8 A Yes.

9 Q And then after that, is a report generated and sent
10 to you?

11 A Yes.

12 Q So after you receive that report from the patrol
13 officer on duty, what do you do?

14 A I then do, of course, the follow-up investigation.
15 I make contact with -- well, I made contact with Ms. Petersen
16 and conducted my interview and begin to build my case.

17 Q And when you made contact with Ms. Petersen, where
18 was she?

19 A She was at her house.

20 Q And --

21 A Her residence.

22 Q -- what was -- I'm sorry, I interrupted you.

23 A Her residence.

24 Q And how was her health at that point?

25 A Still pretty poor. She had been in and out of the

1 hospital since due to her epilepsy and was still -- she was
2 lucid, and she knew what she was talking about, but she
3 stuttered and she still had problems from her disease.

4 Q Okay. And so when she was speaking with you, she
5 often -- she stuttered, but she could get through it?

6 A Yes.

7 Q Did she discuss with you that she had stayed at
8 Centennial Hills Hospital?

9 A Yes.

10 Q And do you remember off the top of your head the
11 stay period?

12 A I believe, it was the 13th to the 20th.

13 Q And is that of May?

14 A Yes. I'm sorry, yes.

15 Q That's okay.

16 A Of May 2008.

17 Q That's okay. And do you remember -- and you stated
18 that she had called 311 on June 15th?

19 A Yes.

20 Q Now, did she discuss with you that something had
21 happened to her during her stay --

22 A Yes, ma'am.

23 Q -- during that time period at Centennial Hills
24 Hospital?

25 A Yes, ma'am.

1 Q Was she able to give you the first name of an
2 individual who had done that to her?

3 A Yes.

4 Q And was that Steve?

5 A I believe, it was John at first, and then went to --
6 no, it was Steve. I'm sorry, it was Steve.

7 Q Okay.

8 A Yes.

9 Q And I can show you --

10 A I'm trying to -- I'm trying -- yeah, no, I'm just --

11 Q That's okay. There's lot -- yeah.

12 A I apologize.

13 Q Six years and five victims, I understand.

14 A Yes.

15 Q So if you need a copy of your report, just let me
16 know.

17 A Yes, ma'am.

18 Q But do you remember her giving you the name --

19 A Yes, it was --

20 Q -- Steve?

21 A Yes, it was Steve.

22 Q Okay. And she told you what this individual had
23 done to her?

24 A Yes, ma'am.

25 Q After speaking with Ms. Petersen, did you go back to

1 the hospital and look at Mr. Farmer's work records?

2 A Yes, I was able to get a series of work history of
3 his -- of his scheduled shifts, but I wanted to be specific
4 on what floors he actually worked because it looked like he
5 had maybe done split shifts. Like he'll start on one floor
6 and then later in the shift move to another. So I contacted
7 somebody over at the hospital and was able to get his
8 specific shift and what floors he was on during these certain
9 days.

10 Q Okay. And were you able to -- well, first of all,
11 were you also -- did you also investigate which floors
12 Ms. Petersen had stayed on?

13 A Yes, ma'am.

14 Q And were you able to confirm that the Defendant
15 worked on the floors that Marcia Petersen stayed on --

16 A Yes, ma'am, he did.

17 Q -- during that same time period?

18 A Yes.

19 Q Was she -- did she also give you a physical
20 description of the individual?

21 A She sure did.

22 Q And did that description match the description of
23 Mr. Farmer?

24 A It sure did.

25 Q When you interviewed Ms. Petersen, was anyone else

1 in the room?

2 A No, ma'am.

3 Q And when you interviewed her, did you provide her
4 with any of the other details of the other individuals that
5 you had interviewed?

6 A No, ma'am.

7 Q And after speaking with Ms. Petersen and confirming,
8 like I said, the Defendant's work records, were you then --
9 did you make the decision to charge the Defendant with the
10 acts that Ms. Petersen told you about?

11 A Yes, ma'am.

12 Q In regards to the search warrant that you were not
13 present on, on the Defendant for things such as buccal swabs,
14 fingers, you were not present for that, correct?

15 A No, ma'am, I was not.

16 Q That was the night of the graduation?

17 A All of my -- the graduation was the following
18 morning, but yes, all my family was there, so.

19 Q Okay. When you got back to work within the next
20 coming days, did Detective Cody discuss with you the
21 Defendant's behavior right before that search warrant was
22 executed on his body?

23 A Yes, she did.

24 Q And what did she tell you?

25 A She said while they were in -- he was in the

1 interview room --

2 MR. BASHOR: Objection, Your Honor. Hearsay.

3 MS. BLUTH: I think it's a prior consistent
4 statement.

5 MR. BASHOR: It's vouching is what it is.

6 MS. BLUTH: Well --

7 MR. BASHOR: What Detective Cody has already told
8 the ladies and gentlemen of this jury.

9 MS. BLUTH: But on cross they asked if she told
10 anybody this information.

11 MR. BASHOR: We had asked if it was documented.

12 THE COURT: I'm sorry?

13 MR. BASHOR: What we had asked her, was if she had
14 documented, not whether or not she had told Detective
15 Saunders that information.

16 THE COURT: All right. Well, then, I'll sustain
17 it. Did she tell you some information?

18 THE WITNESS: Yes, she did.

19 THE COURT: Okay.

20 BY MS. BLUTH:

21 Q And did -- and you can't go into what she told you,
22 but did she discuss with you what she observed the Defendant
23 doing shortly before that was executed?

24 A Yes, ma'am.

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

1 (Pause in the proceedings)

2 MS. BLUTH: Your Honor, I've showed defense counsel
3 both of these transcripts.

4 BY MS. BLUTH:

5 Q Just for some clarification, and I can approach if
6 you'd like, but on page 30 of Ms. Cagnina's voluntary
7 statement she tells you that the Defendant had given her the
8 name John.

9 A Thank you. That's --

10 Q All right. And then on page 17 of Ms. Spurlock's
11 statement, she told you that she didn't see the news, but
12 that her family had seen it and alerted her to it?

13 A Yes, ma'am.

14 Q Okay. Hard to remember everything. I understand.
15 Thank you for your time.

16 MS. BLUTH: Pass the witness.

17 THE COURT: Thank you. Cross.

18 MR. BASHOR: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. BASHOR:

21 Q Good afternoon, Detective -- Officer.

22 A Good afternoon, sir.

23 Q Congratulations on your graduation.

24 A Thank you.

25 Q Now, you would agree, first of all, that you were

1 the lead detective involved in this investigation, correct?

2 A Yes, sir.

3 Q And to get to detective you're usually not hired the
4 first day and they throw you into detective role, right?

5 A Right.

6 Q So it's fair to say that you had to go through
7 academy and training?

8 A Yes, sir.

9 Q All right. And beyond physical training and
10 department personnel training, you go through training in
11 report writing, correct?

12 A Yes, sir.

13 Q Okay. And you would agree that a detective's
14 duties, especially in the detective's duties, that there's a
15 lot of report writing that goes on?

16 A Yes, sir.

17 Q And that there's -- that the reports you write are
18 important documents; you would agree?

19 A Yes, sir.

20 Q And that's for a whole lot of reasons, right? It's
21 so that you can refresh your recollection, correct?

22 A Yes, sir.

23 Q Which we've seen you do this afternoon, right?

24 A Yes, sir.

25 Q Because your memory's not perfect?

1 A Right.

2 Q Right? And time has passed, correct?

3 A Yes, sir.

4 Q And you didn't know that when you wrote this report,
5 you would need it six years later, right?

6 A Yes, sir.

7 Q And you would agree that reports, another purpose
8 for them is to include the important facts that you collect,
9 correct?

10 A Yes, sir.

11 Q I mean, you can't write down, you know, every minute
12 detail of what you do, right?

13 A Right.

14 Q You're a human, right?

15 A Yes, sir.

16 Q You've got to sleep, right?

17 A Yes, sir.

18 Q You've got to eat?

19 A Yes, sir.

20 Q But you would agree that the purpose of reports is
21 to write down things that are extremely important to cases,
22 right?

23 A Yes, sir.

24 Q The most relevant of facts?

25 A Yes, sir.

1 Q Now, it would be fair to say that yourself and
2 Sergeant Pence wrote quite a few reports in this case, right?

3 A Yes, sir.

4 Q And another reason why that these reports are so
5 important is it turns out that there are five alleged victims
6 in this case, correct?

7 A Yes, sir.

8 Q And I believe -- this is no slight on you -- you
9 were struggling with keeping the different alleged victims
10 straight during your direct examination?

11 A After six years, yes, sir.

12 Q Right. You even did a hand motion of trying to
13 compartmentalize each alleged victim, correct?

14 A Yes, sir.

15 Q Now, in addition, you had stated that at some point
16 you had to indicate to one of the nurses in this case that
17 this was a felony investigation?

18 A Yes, sir.

19 Q Felonies are serious charges, correct?

20 A Yes, sir.

21 Q Another reason why your reports are so important,
22 correct?

23 A Yes, sir.

24 Q In addition to your utilization of these reports,
25 you turn these reports over to the prosecuting agency, right?

1 A Yes, sir.

2 Q And they use those reports to develop a trial or a
3 case against defendants, correct?

4 A Yes, sir.

5 Q And in your training and experiencing in dealing
6 with prosecutors, you also know that those reports are then
7 turned over to the defense, correct?

8 A Of course, yes, sir.

9 Q Absolutely. And we use them to prepare defense of
10 individuals; you'd agree?

11 A Yes, sir.

12 Q Very important documents all around?

13 A Yes, sir.

14 Q Now, there's various kinds of reports, right?

15 A Yes, sir.

16 Q There's declarations of arrest?

17 A Yes.

18 Q I believe you had began to write one of those in the
19 Cagnina matter before going back to your residence.

20 A Yes, sir.

21 Q And there are incident reports?

22 A Yes, sir.

23 Q Continuation reports?

24 A Yes, sir.

25 Q And a continuation report is -- it's something that

1 you could supplement your original reports with, correct?

2 A A continuation report -- well, yes, I see where
3 you're going with that. Yes, there's continuation reports on
4 that, but a normal continuation report in our department, a
5 continuation report, is for a voluntary statement. One
6 that's somebody's writing out or if your narrative block
7 isn't long enough on a paper report, you do the rest of your
8 narrative on that --

9 Q So on --

10 A -- continuation --

11 Q -- your narrative, you were to run out of room --

12 A You grab a --

13 Q -- you grab --

14 A -- continuation page.

15 Q -- another piece of paper, correct?

16 A Yes, sir.

17 Q You don't just stop writing because you ran out of
18 room?

19 A Right.

20 Q Right?

21 A Yes, sir.

22 Q Because again, you're preserving important facts.

23 A Yes, sir.

24 Q Now, in addition, you've used beyond the report
25 writing in this case, you used recording devices, correct?

1 A Yes, sir.

2 Q And the Las Vegas Metropolitan Police Department has
3 access to both audio and visual recording equipment?

4 A Yes, sir.

5 Q And you used the audio recording equipment to
6 interview several of the witnesses in this case; is that fair
7 to say?

8 A Yes, sir.

9 Q And then you turn those over to transcription
10 people, right?

11 A Yes, sir.

12 Q And those transcripts are then developed and made,
13 correct?

14 A Yes, sir.

15 Q And they're turned over to the prosecuting agency,
16 correct?

17 A Yes, sir.

18 Q And then they're turned over to the defense?

19 A Yes, sir.

20 Q Now, you would agree in this case there was quite a
21 few reports, correct?

22 A Yes.

23 Q Because of the number of the alleged victims, right?

24 A Um-h'm, yes, sir.

25 Q And there were quite a few transcripts generated,

1 correct?

2 A Yes, sir.

3 Q And you had discussed or stated that Detective Cody
4 had given you some information about what she observed
5 Mr. Farmer doing after his arrest, correct?

6 A Yes, sir.

7 Q Can you show me in all of the reports in this case
8 where you document what Detective Cody told you?

9 A It probably is not going to be in there, sir,
10 because I didn't document that fact.

11 Q Thank you.

12 MR. BASHOR: No further questions.

13 THE COURT: Redirect.

14 MS. BLUTH: Nothing further.

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

16 THE WITNESS: Thank you, Judge.

17 THE COURT: All right, it's almost 2:30. Is this
18 good for a break? Yes. All right. All right, let's see,
19 ladies and gentlemen, we'll take a 10 minute recess, I think,
20 at this point in time. Maybe 15, since it's kind of our
21 afternoon break time. A fifteen minute recess.

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

1 trial or by any means of information, including without
2 limitation, newspaper, television, radio or Internet, and you
3 are not to form or express an opinion on any subject
4 connected with this case until it is finally submitted to
5 you. We'll be in recess until 2:45.

6 THE MARSHAL: Rise for the jury, please.

7 (Outside the presence of the jury)

8 THE COURT: The record will reflect the jury has
9 departed the courtroom. Is there any matter outside the
10 presence?

11 MS. BLUTH: No, Your Honor.

12 MR. BASHOR: No, Your Honor.

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

15 (Court recessed at 2:29 p.m. until 3:01 p.m.)

16 THE MARSHAL: Rise for the jury, please.

17 (In the presence of the jury)

18 THE COURT: Thank you. Please be seated. The
19 record will reflect that we are back in the presence of all
20 12 members of the jury and the four alternates. Defendant's
21 present with his counsel. The Deputies District Attorney are
22 present as are all officers of the court. Will counsel so
23 stipulate?

24 MS. BLUTH: Yes, Your Honor.

25 MR. BASHOR: Yes, Your Honor.

1 THE COURT: Thank you. You may call your next
2 witness.

3 MS. BLUTH: Thank you. The State calls Jeanine
4 James.

5 THE CLERK: Please remain standing. Raise your
6 right hand.

7 JEANINE MARTIN, STATE'S WITNESS, SWORN

8 THE CLERK: You may be seated.

9 THE WITNESS: Thank you.

10 THE CLERK: And could you please state your name
11 and spell it for the record?

12 THE WITNESS: It is Jeanine, J-e-a-n-i-n-e. It is
13 now Martin, formerly James. J-a-m-e-s.

14 THE CLERK: It's Martin-James?

15 THE WITNESS: Correct, yes.

16 THE COURT: You may proceed.

17 DIRECT EXAMINATION

18 BY MS. BLUTH:

19 Q Should I refer to you as Ms. Martin? How should
20 I --

21 A Sure, that's fine.

22 Q Okay. Just tell me.

23 A That's fine.

24 Q Thank you. How are you employed?

25 A I am a nurse at Centennial Hills Hospital.

1 Q And how long have you been employed at Centennial
2 Hills?

3 A I have been there since we opened in January of
4 2008.

5 Q And what floor do you work on and what section of
6 the hospital?

7 A I'm in Women Services on the second floor.

8 Q And Jeanine, would you mind scooting up just a
9 little bit because the --

10 A Sure.

11 Q -- little black box in front of you is actually a
12 microphone.

13 A Oh, okay.

14 Q That's all right.

15 A There we go.

16 Q That's okay. Thank you so much. I'm sorry, and I
17 interrupted you --

18 A That's okay.

19 Q -- work in -- on the OB section?

20 A Yes.

21 Q I'd like to turn your attention to May 16th of 2008.
22 On that day were you working in that same section at
23 Centennial Hills Hospital?

24 A I was.

25 Q And do you normally -- at that time, did you

1 normally work the 7:00 p.m. to 7:00 a.m.?

2 A At that time, yes.

3 Q Okay. And so I'd like to turn your attention
4 specifically to shift that started on 7:00 p.m. of May 16th
5 and went into 7:00 a.m. of May 17th.

6 A Okay.

7 Q On that date, did you come into contact with a
8 patient by the name of Roxanne Cagnina?

9 A Yes.

10 Q And before I get there, I should talk about the
11 security on that floor. Could you explain to the ladies and
12 gentlemen of the jury the security that your specific section
13 of the hospital has?

14 A We are a secured floor, so it requires special
15 access to get to the floor. Anybody that comes in has a --
16 our main desk, you have to check in, and only certain people
17 do have badge access to the floor.

18 Q And in any other part of the hospital do you have
19 that type of security system in regards to patients?

20 A I know ER does.

21 Q All right. And besides emergency room -- after
22 emergency room, any of the other treatment floors, besides --

23 A No, the --

24 Q -- OB?

25 A -- other floors, fifth, sixth -- I'm not sure about

1 fifth, but the other floors that I know of don't have secured
2 access.

3 Q Thank you. Now, when you get to work on the evening
4 hours of May 16th, are you alerted to the fact that you will
5 be treating a patient that's not a normal OB patient?

6 A Yes.

7 Q Okay. And how does that come about? Who talks to
8 you about that?

9 A We have SBAR, which is a report that we give and
10 receive from the oncoming shift. So it's a -- it's a
11 situation, background assessment, recommendation report. So
12 we just get an overall picture of the patient we'll be caring
13 for.

14 Q Okay. And then also, when you come on shift, do you
15 relieve the nurse that was working with these patients before
16 you?

17 A Yes.

18 Q So are you also kind of given a brief tidbit of the
19 patient that you'll be treating, Roxanne Cagnina?

20 A Yes.

21 Q And so are you given the information of why she's on
22 that floor?

23 A Yes. I don't recall exactly what was addressed in
24 the report itself. I was told it was just -- basically it
25 was a special case, and, you know, our floor again, being

1 secured, it was -- it was a safe place.

2 Q Okay. And so then you take over the care of Ms.
3 Cagnina. Besides the lock -- you know, the main entry doors
4 being locked, were additional safeguards put in place for Ms.
5 Cagnina's safety?

6 A Yes. There was a security guard at the door and --
7 in front of the patient's door, and there was -- there was a
8 password code to have access to see her --

9 Q Okay.

10 A -- for visitors or anybody that was going to be
11 seeing her.

12 Q All right. Have you ever had security placed at the
13 door on --

14 A No.

15 Q -- any of your patients while working at Centennial
16 Hills Hospital?

17 A No.

18 Q Have you ever had a patient where people needed to
19 have a password to pass through a security guard?

20 A No, not -- not through a security guard.

21 Q Okay.

22 A Occasionally, we'll have patients that, you know, if
23 they don't want visitors, they'll request a certain --
24 request it, basically. Not necessarily password protected
25 like it was with -- at that time.

1 Q Okay. When you come on shift, do you -- is it
2 normal for you to do kind of a patient assessment --

3 A Yes.

4 Q -- of how a patient is doing?

5 A Yes.

6 Q And did you do that in regards to Ms. Cagnina?

7 A Yes.

8 Q And as part of that assessment, do you notate a
9 patient's demeanor?

10 A Yes.

11 Q And what did you notate Ms. Cagnina's demeanor to be
12 when you took over her care?

13 A I notated as far as the psychological, I noticed --
14 I notated her anxious and fearful.

15 Q And why did you notate that?

16 A Based on when I had done my assessment, we do not
17 only physical, but obviously, we get psychological as well,
18 and she had talked about some things, and that certainly led
19 to me believing that she was. And things that were said that
20 -- that I -- that I assessed as being anxious and fearful.

21 Q Okay. And on your shift, which is again, 7:00 p.m.
22 to 7:00 a.m., did she express concern about, you know, it
23 becoming evening and it getting dark?

24 A Yes, yes. I'd have to look at my notes exactly, but
25 the expression of it being dark and being fearful of -- of

1 someone, you know, finding her.

2 Q Of someone or someone specific?

3 A I don't know exactly -- I don't remember exactly
4 what -- what she said.

5 Q Okay. You wrote --

6 A I'd have to look at my notes.

7 Q That's okay.

8 A Thank you.

9 Q That's all right. I know it's been a long time.
10 Would looking at your notes help refresh your recollection?

11 A Yes.

12 Q Okay. If you want to just read this section to
13 yourself and let me know when you're done, and then I'll ask
14 you some questions.

15 A Okay. Okay.

16 Q Does that help refresh your recollection?

17 A Yes.

18 Q And what was it that she stated specifically?

19 A That she was on edge, hasn't slept all day, and it
20 was starting to get dark, and she was worried about him
21 finding me.

22 Q Okay. And she previously stated that she had been
23 raped in the ER, correct?

24 A Yes.

25 Q And that was the individual she was afraid that was

1 going to return?

2 A Yes.

3 Q If at any time you need these --

4 A Okay.

5 Q -- if I have further questions, I'll approach with
6 them.

7 A Okay. Thank you.

8 Q Did you have to, you know, put her at ease on
9 different occasions throughout the night and let her know
10 that she was safe and there was security at the door?

11 A I did.

12 Q Was her husband present for her stay?

13 A Yes. I'm not sure if it -- I want to say it was the
14 whole night, but I'm not quite sure. I'm almost certain it
15 was most of the night.

16 Q Did she make any requests in regards to her hygiene?

17 A She did. I'm trying to recall exactly what she had
18 said, but in reference to being -- to wanting to shower and
19 clean her body.

20 Q Did Ms. Cagnina have any seizures while in your
21 care?

22 A She did.

23 Q And after --

24 MS. BLUTH: Court's indulgence.

25 BY MS. BLUTH:

1 Q Your writing's so small. Just one second.

2 A I know, I'm sorry.

3 Q That's okay. And after that seizure, was she having
4 problems speaking for a bit? Would looking at a copy of your
5 notes help refresh your recollection?

6 A Yes. I don't want to speculate, so.

7 Q I'm just going to leave them up here with you.

8 A Okay. Thank you.

9 Q Just read this section. Let me know when you're
10 done, please.

11 A Okay.

12 Q All right. So did she have a seizure?

13 A She did.

14 Q And did she have issues with speaking afterwards?

15 A She did.

16 Q And was she, in fact, bleeding after that seizure
17 from her mouth or from her tongue? I should be more
18 specific.

19 A I don't remember that part, I'm sorry. Oh, yes,
20 yes, yes, sorry.

21 Q Okay.

22 A Yes.

23 Q That's okay. And then also stuttering --

24 A Yes.

25 Q -- when she would try to speak? And what time was

1 that seizure? Do your notes show?

2 A At 21:25.

3 Q Was she complaining -- was she in pain while you
4 were treating her in regards to constant headaches?

5 A Yes.

6 Q And was she given medicine in order to treat those
7 headaches?

8 A Yes.

9 Q Because of her issues with fear and anxiety, were
10 discharge instructions given her -- given to her in order to
11 help her with those issues?

12 A Not on my -- not in my care. Only because I did
13 have her until 7:00 a.m., and I wasn't the nurse discharging
14 her.

15 Q Okay, fair enough.

16 A Generally, that would be the case.

17 Q Okay. In -- I imagine in the maternity ward you
18 deal with a lot of female patients?

19 A Yes.

20 Q Do you use certain precautionary methods or discrete
21 methods when have you to deal with either a patient's breasts
22 or, you know, genitalia, inner thigh, and what type of --
23 you're shaking your head, yes.

24 A Yes.

25 Q And so --

1 A Yes, (indiscernible).

2 Q -- what type of methods do you use to do so in a
3 discrete manner?

4 A Well, I always explain to the patient what I'm
5 doing. So I let them know that I'm doing the assessment,
6 and, you know, we still do a head to toe, and, you know,
7 neurological, cardiovascular, everything. And generally, we
8 do get to the -- to those more of -- those private parts. We
9 -- I do let them know, especially we do a lot of breast
10 feeding in our department, so I usually, you know, ask if,
11 you know, I can help assist with -- you know, ask to see if
12 the -- if I can assist with their breastfeeding, and also, I
13 let them know, because we do have to check bleeding as well.

14 So I will let them know that that's what I'll be
15 checking --

16 Q Okay.

17 A -- and then ask them for -- if they have any
18 questions, and -- and we also have curtains, you know, we
19 instill a lot of privacy.

20 Q Okay. I mean, in regards in something like
21 breastfeeding, there the breasts actually has to become
22 exposed in order --

23 A Yes.

24 Q -- for the child to --

25 A Yes.

1 Q Right? In other procedures, for instance, you know,
2 placing of leads for an EKG or something like that, does the
3 entire breast need to become exposed?

4 A No, you -- you can do it enough to where you're just
5 exposing what you need to see or shielding with a -- you
6 know, a towel or whatever you have, blanket. We do that
7 quite a bit.

8 Q Okay. And is that pretty basic knowledge and
9 training in your field?

10 A Yes.

11 MS. BLUTH: Nothing further. I'll pass the
12 witness.

13 THE WITNESS: Okay.

14 (Pause in the proceedings)

15 THE COURT: Cross.

16 MR. MANINGO: Thank you.

17 CROSS-EXAMINATION

18 BY MR. MANINGO:

19 Q Hello, Ms. Martin.

20 A Hello.

21 Q My name's Jeff Maningo, and I'm just going to ask
22 you a couple of follow-up questions, okay?

23 A Okay.

24 Q You first came into contact with Ms. Cagnina after
25 the alleged incident?

- 1 A Yes.
- 2 Q Okay. So you weren't involved with her care prior
3 to when she says that someone had touched her?
- 4 A No.
- 5 Q Okay. And you were not in the emergency room with
6 Ms. Cagnina?
- 7 A No.
- 8 Q Okay. You weren't on the seventh floor with Ms.
9 Cagnina?
- 10 A No.
- 11 Q Okay. You, yourself, did not witness any
12 inappropriate conduct or anything like that?
- 13 A No.
- 14 Q Okay. You, yourself, had no contact with Mr. Farmer
15 that evening?
- 16 A No.
- 17 Q Okay. Let's just briefly discuss your report that
18 you have in front of you.
- 19 A Okay.
- 20 Q Your first contact -- and we're talking as far as
21 date goes, it's May 16th of 2008, correct?
- 22 A Okay.
- 23 Q Okay. And then -- oh, I'm sorry. Okay. I'm sorry,
24 I thought you had --
- 25 A That's okay.

1 Q -- everything up there.
2 MR. MANINGO: May I approach?
3 THE COURT: Yes.
4 MR. MANINGO: Thank you.
5 BY MR. MANINGO:
6 Q And Ms. Martin, what I'm handing you is -- I think
7 this is the first page here.
8 A May 19, yeah.
9 Q Right?
10 A 19:15, yep.
11 Q Okay. And then you've got --
12 A Yeah, (indiscernible).
13 Q Do you have -- do you have this one?
14 A There's probably another one.
15 Q Yeah, I think this is the third one, right?
16 A After 23:00, there should be one more.
17 Q Oh, that one.
18 A Yep, there we go. (Indiscernible).
19 Q Okay. And this one (indiscernible)?
20 A That's it, yep.
21 Q Just like that?
22 A That's it.
23 Q Okay, great.
24 A Thanks.
25 Q Sure. And then there's the --

1 A Okay.

2 Q And what I handed you was your report and progress
3 notes, correct?

4 A Yes.

5 Q Okay. And then you signed this report, correct?

6 A Yes.

7 Q And then your initials at that time were, JJ?

8 A Yes.

9 Q Okay. And you placed your initials whenever you
10 made a progress note, correct?

11 A Well, it's supposed to be my full signature, but --

12 Q Oh, okay.

13 A -- it's off a little bit, yeah.

14 Q Okay.

15 A Yeah.

16 Q Now, your first contact, then, was at 7:15 p.m.,
17 correct?

18 A Yes.

19 Q Okay. And then it was at 7:30 when Ms. Cagnina told
20 you that her headache was really bad and the medication
21 wasn't working?

22 A Um-h'm, yes.

23 Q Okay. And it was also at that time that she said
24 that she had been raped in the ER, correct?

25 A Yes.

- 1 Q Okay. And that she was on edge?
- 2 A Yes.
- 3 Q She asked you at that point, to notify a doctor
- 4 regarding the pain medication, correct?
- 5 A Yes.
- 6 Q And she had told you that the Dilaudid wasn't
- 7 working --
- 8 A Right.
- 9 Q -- or doesn't work?
- 10 A Yes.
- 11 Q Okay. Then at 8:40 p.m., she is given -- I'm sorry,
- 12 let me go back. When she's telling you at 7:30 that her head
- 13 hurts and that she needs more pain medication, she never
- 14 mentions or complains of any vaginal pain, correct?
- 15 A No, not that I recall.
- 16 Q Okay. And she doesn't mention anything regarding
- 17 any kind of vaginal or genital discomfort?
- 18 A Not that I recall as well. I --
- 19 Q Okay.
- 20 A I don't --
- 21 Q At 8:40 she is given morphine, correct?
- 22 A Yes.
- 23 Q And that is for severe headache?
- 24 A Right.
- 25 Q Okay. And at that point, no complaint of any

1 vaginal pain or discomfort?

2 A None, no.

3 Q Okay. If we go to 10:30, it looks like -- looks
4 like Ms. Cagnina had to -- it said she had to pee, correct?

5 A Sorry.

6 Q At -- that's at 10:30, correct, I think?

7 A Yes. Yes, it is. Sorry.

8 Q Okay, great.

9 A It is small.

10 Q And so the -- Ms. Cagnina urinates at this time,
11 correct, or had urinated before the --

12 A No, she does get out of bed to the bathroom.

13 Q Okay. At 10:30?

14 A Yes.

15 Q Okay. And either during or after her urination,
16 there's no complaint of any vaginal pain or discomfort?

17 A None. None noted, no.

18 Q Okay. At 11:00 o'clock, she is given some Dilaudid,
19 correct?

20 A Yes.

21 Q Okay. And again, it says for headache pain?

22 A Yes.

23 Q Okay. No mention, again, of any vaginal pain or
24 discomfort?

25 A No.

- 1 Q Okay. And Dilaudid is a pain medication, correct?
- 2 A Yes.
- 3 Q And it's stronger than the morphine, correct? I
- 4 mean, if given equal doses?
- 5 A Equal doses, yeah.
- 6 Q Okay. At 11:15 that evening, patient is sleeping,
- 7 no distress, correct?
- 8 A Yes.
- 9 Q Okay. And then at 1:30 in the morning, Ms. Cagnina
- 10 awakes and calls for more pain medication?
- 11 A Yes.
- 12 Q Okay. And she states that she's requesting it for
- 13 pain relief of headache?
- 14 A Yes.
- 15 Q Okay. Nothing regarding vaginal or genital
- 16 discomfort or pain?
- 17 A No.
- 18 Q Okay. And then ten minutes later at 1:40, she's
- 19 given some Restoril, correct?
- 20 A Um-h'm, yes.
- 21 Q And that's a sleep medication?
- 22 A Sleep aid, yes.
- 23 Q Okay. And then at 2:00 in the morning, Ms. Cagnina
- 24 states that she can't sleep, correct?
- 25 A Yes, yes.

1 Q Okay. And so she requests some more Dilaudid?

2 A Yes.

3 Q Okay. At 2:15, she's back to sleep, no distress?

4 A Yes.

5 Q Okay. 5:30 in the morning, she, again, reports head
6 pain, correct?

7 A Yes.

8 Q Okay. But no report of any vaginal pain or
9 discomfort?

10 A No.

11 Q Okay. Now, at 5:35, she's given some more morphine,
12 correct?

13 A Yes.

14 Q And then Ms. Cagnina states that she would like the
15 Dilaudid also?

16 A Yes.

17 Q And she tells you they work good together, correct?

18 A Yes.

19 Q And that's for, she states, her headache, correct?

20 A Yes.

21 Q Okay. So still no complaints of vaginal or genital
22 discomfort?

23 A No.

24 Q Okay. 6:25 in the morning, she tells you that it
25 isn't working but the two medications work good together, I

1 could sleep, but now she can't, correct?

2 A Yes.

3 Q Okay. She reports headache pain?

4 A Yes.

5 Q Okay. She states regarding her medication that it
6 takes too long, doctor needs to be called, correct?

7 A Yes.

8 Q And she also states, I haven't abused the
9 medication. The two helped me sleep and feel better?

10 A Yes.

11 Q Okay. And still no complaints to her vaginal area--

12 A No.

13 Q -- of any pain or discomfort?

14 A No.

15 Q And, in fact, throughout the entire shift that you
16 stayed with her, there were never any complaints of any pain
17 or discomfort to that area of her body, correct?

18 A I mean, I can't recall exactly. I --

19 Q I mean --

20 A Obviously, the -- her primary pain is her headache.

21 Q Right.

22 A Yes.

23 Q But there was nothing noted regarding vaginal --

24 A I did note, no, I did not.

25 Q Okay. And there's -- and based on your notes, there

1 was no treatment or cleaning or ointment applied or anything
2 like that regarding her vaginal area?

3 A Not -- no, because generally for that, I would need
4 orders.

5 Q Right. And so -- and there's nothing about that --

6 A Nothing in there --

7 Q -- at all?

8 A -- right.

9 Q Okay. Thank you, ma'am.

10 A Thank you.

11 MR. MANINGO: Pass the witness.

12 THE COURT: Redirect.

13 REDIRECT EXAMINATION

14 BY MS. BLUTH:

15 Q I'm sorry, how long did you say that you have been a
16 nurse for?

17 A Nine years.

18 Q Nine years, okay.

19 A Um-h'm.

20 Q So safe to say you, you know, deal with all sorts of
21 different people?

22 A Yes.

23 Q You have a lot of experiences can different types of
24 patients?

25 A Yes.

1 Q And Mr. Maningo just went, you know, line by line
2 through those medical records with you?

3 A Right.

4 Q Except you didn't go through that part where she had
5 the seizure?

6 A Right.

7 Q Okay. So my question is, is at any point while she
8 -- you were treating her, did you feel like she was trying to
9 manipulate you to get more medications?

10 A Not at all.

11 Q Did you feel that she was in pain?

12 A Yes.

13 Q And she did, in fact, have a seizure that caused her
14 to --

15 A Yes.

16 Q -- her mouth to bleed?

17 A Yes.

18 MS. BLUTH: Nothing further. Thank you.

19 THE WITNESS: Yes.

20 MR. MANINGO: Nothing further, Your Honor. Thank
21 you.

22 THE COURT: Thank you --

23 THE WITNESS: Thank you.

24 THE COURT: -- very much for your testimony.

25 THE WITNESS: Thank you.

1 MS. BLUTH: May we approach, Your Honor --

2 THE COURT: Yes.

3 MS. BLUTH: -- for scheduling issue.

4 (Bench conference began)

5 MS. BLUTH: Jacqueline Bluth. We just wanted to
6 approach about scheduling because that's it for today.

7 THE COURT: Okay.

8 MS. BLUTH: We have, I believe, three -- did I tell
9 you three? I think, three witnesses on Tuesday and then
10 we're going to play the video. So we definitely only need to
11 be here in the afternoon on Tuesday, because if we do a full
12 day, one of my witnesses is not available until the
13 afternoon. So I figure we just do it all in the afternoon.

14 THE COURT: Okay.

15 MS. BLUTH: And then I think that I'll let --

16 THE COURT: Did you have a --

17 MS. BLUTH: Yeah, I'll let the Defense know.

18 THE COURT: -- you have a witness issue, too,
19 right?

20 MR. BASHOR: Ryan Bashor, Your Honor. We intend to
21 call three to four witnesses. The one that has a scheduling
22 issue can testify on Thursday.

23 THE COURT: Thursday. Okay. So do you want to
24 then start at 1:00 on Tuesday or do you want to start -- I
25 mean, Tuesday is my non-calendar day, so I could start pretty

1 much any time you want to.

2 MS. BLUTH: Yeah, I would say just start at -- on
3 -- at 1:00 on Tuesday, and then you have three witnesses on
4 Wednesday, you think?

5 MR. BASHOR: We have a total of three to four
6 witnesses, but the only one of any length is the expert,
7 which is Thursday. The others will be -- I believe, the
8 State's going to stipulate so that it will eliminate one, to
9 certain information. And the others I don't foresee being
10 very long at all.

11 THE COURT: Okay.

12 MS. BLUTH: I'm just trying to figure out if we're
13 going to be --

14 THE COURT: Right.

15 MS. BLUTH: -- dark on Wednesday or I'm wondering
16 should we just do everything on --

17 THE COURT: Let me go get my calendar. I've got --

18 MS. BLUTH: Okay.

19 THE COURT: -- so much stuff on it, I --

20 MS. BLUTH: Okay.

21 THE COURT: I'll be right back. All right, just be
22 at ease. I'm going to get my calendar.

23 (Pause in the proceedings)

24 THE COURT: I see Andrew here. He's going to go
25 get it.

1 MS. BLUTH: Okay.

2 (Pause in the proceedings)

3 MS. BLUTH: It's just scheduling. Do you still
4 want me to --

5 THE COURT: Do you want to go off the record for a
6 moment?

7 MS. BLUTH: Yeah.

8 THE COURT: Okay.

9 (Bench conference concluded)

10 THE COURT: All right. Ladies and gentlemen,
11 the --

12 THE COURT RECORDER: Judge --

13 THE COURT: Oh, sorry.

14 THE COURT RECORDER: It takes a second. Okay,
15 there we go. Sorry.

16 THE COURT: Okay. Ladies and gentlemen, we were
17 discussing scheduling. So, we're done for today. The
18 lawyers, you know, are having to schedule these witnesses,
19 and rather than bring you in on Tuesday for only, you know,
20 an hour, we're going to just have you come in on Wednesday at
21 1:30. So you're really going to have a four-day weekend for
22 those of you that don't actually have to go work on your --
23 so we won't back in court until Wednesday at 1:30.

24 We're starting that late, because Monday's calendar
25 won't happen on Monday, my normal calendar. It will all be

1 on Wednesday, so it's going to be big. So, 1:30's probably
2 the earliest we can start on Wednesday. But that's so you
3 don't have to drive all the way downtown and -- for a short
4 amount of testimony on Tuesday.

5 It's possible that the evidence could all be
6 completed by Friday, but I don't want to make you any
7 promises on that, but it's certainly possible. It's looking
8 like we're going to be done in less than the four weeks that
9 -- or five weeks, actually, we told you. All right?

10 So, ladies and gentlemen, during this now several
11 day recess, it is your duty not to converse among yourselves
12 or with anyone else on any subject connected with the trial
13 or to read, watch or listen to any commentary or report of on
14 the trial by any person connected with the trial or by any
15 medium of information, including without limitation,
16 newspaper, television, radio or Internet. And you are not to
17 form or express an opinion on any subject connected with this
18 case until it is finally submitted to you.

19 I will see you on Wednesday at 1:30.

20 THE MARSHAL: Rise for the jury, please.

21 (Outside the presence of the jury)

22 THE COURT: All right. The record will reflect
23 we're outside the presence of the jury. Are there any
24 matters outside the presence?

25 MS. BLUTH: No, Your Honor.

1 MR. BASHOR: No, Your Honor. Thank you.

2 THE COURT: And as far as jury instructions, when
3 you get your -- don't go ahead and mail them -- or e-mail
4 them to my JEA until you've met with each other --

5 MS. BLUTH: Okay.

6 THE COURT: -- because that way we don't have
7 multiple copies that get confusing.

8 MS. BLUTH: Okay.

9 THE COURT: All right, thank you.

10 MR. BASHOR: Thank you.

11 (Court recessed at 3:39 p.m., until Wednesday,

12 February 19, 2014, at 1:32 p.m.)

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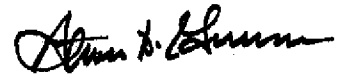
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8-22-14
DATE



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.	.	
	.	TRANSCRIPT OF
STEVEN DALE FARMER,	.	PROCEEDINGS
	.	
Defendant.	.	
.....	.	

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 11

WEDNESDAY, FEBRUARY 19, 2014

APPEARANCES:

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

COURT RECORDER:

LARA CORCORAN
District Court

TRANSCRIPTION BY:

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(303) 798-0890

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produced by transcription service.

INDEXWITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
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STATE'S WITNESSES:

Michele Simmons	31	38	42	46	
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Marshal Petersen	48	68	76		
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Marcia Petersen
(Via video testimony)

* * * * *

EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
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STATE'S EXHIBITS:

Exhibit 25	81
Exhibit 26	82
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1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 19, 2014, 1:32 P.M.

2 (Outside the presence of the jury)

3 THE COURT: All right. This is Case No. C-245739,
4 State of Nevada vs. Steven Farmer. And the record will
5 reflect the presence of Defendant with his counsel, the
6 Deputies District Attorney prosecuting the case, all officers
7 of the court.

8 We're outside the presence of the jury. Are there
9 any matters outside the presence?

10 MS. BLUTH: Yes, Your Honor. A couple of things.
11 I'm going to go in the order of witnesses. We're starting
12 off with Michele Simmons, who was one the directors at
13 American Nursing Services. That's the corporation that
14 employed the Defendant during this time period.

15 Her testimony is going to be very limited. But,
16 you know, one of the things that the Defense has done with
17 previous witnesses who is worked with Mr. Farmer, is state,
18 you know, was he an exceptional employee, did you ever have
19 any complaints, DA, DA, DA, DA. I just want to caution the
20 Defense with Ms. Simmons, the previous complaint that she is
21 aware of before this incident is the Frances Rose incident
22 that happened at Rawson-Neal, which that victim is obviously
23 severed from this case.

24 But it is the State's position if they go down that
25 line of questioning with Ms. Simmons, it then he opens the

1 door, because she had had a previous complaint within months
2 regarding the Rawson-Neal incident regarding victim Frances
3 Rose. So I just wanted to make sure that was clear on the
4 record. And I understand it's your decision, but that is the
5 State's -- where the State's coming from in regard to that.

6 THE COURT: Okay. And does the Defense have a
7 response to that? I mean, you're not going to open the door
8 to that?

9 MR. MANINGO: No. We -- we'll wait and see what
10 Ms. Simmons has to say, but we've reviewed her deposition,
11 and there really wasn't anything to go into that would cross
12 over and get into the Frances Rose case. We're certainly not
13 going to try and walk that line. So I don't see any issue
14 with it.

15 And I'm sure that the State has talked to their
16 witness and -- about that, and if there's certain areas where
17 they feel they need to lead, then I'm not going to have any
18 issue with that as well, so.

19 MS. BLUTH: We've spoken to her about not
20 mentioning Rawson-Neal, Frances Rose. So --

21 THE COURT: Okay.

22 MS. BLUTH: -- she's clear on notice on that.

23 THE COURT: All right.

24 MS. BLUTH: Okay?

25 THE COURT: Very good.

1 MS. BLUTH: In regards to the next witness is
2 Marshal Petersen, which is the son of victim Marcia Petersen.

3 THE COURT: Okay.

4 MS. BLUTH: Something that the -- the Defense came
5 into possession -- I believe, it was last week; is that
6 right, Jeff, of the --

7 MR. MANINGO: Yeah, it was -- yeah, it was after
8 the week one --

9 MS. BLUTH: Okay.

10 MR. MANINGO: -- from the civil case.

11 MS. BLUTH: Sometime either week one, or the second
12 week, Mr. Maningo came in possession of the diary of Marcia
13 Petersen from the civil defense attorney who's been watching
14 this trial. And I believe that -- well, I know that in
15 speaks with Mr. Maningo, it's his -- he's going to be trying
16 to get that into evidence, and so I wanted to discuss this
17 outside the presence of the jury because it's obviously my
18 point -- or my position, excuse me, that it's a hearsay
19 document. I also find it to be irrelevant at this point in
20 time, and so I'm asking that it be kept out.

21 THE COURT: Well, what do you -- what is it and
22 what do you expect that you could get around a hearsay
23 objection?

24 MR. MANINGO: Your Honor, it is the diary that is
25 essentially, the -- it is the equivalent to her suicide note.

1 It is the final, looks like, a couple days before she took
2 her own life. Number one, I don't think that it's hearsay
3 because I'm not admitting any of this for the truth of what
4 is asserted. Even if it were, I think it would fall under
5 the exception of a dying declaration.

6 And as far as the relevance goes, the reason we're
7 asking to admit this, assuming that we can lay the
8 foundation, and I think that we can with her son, because she
9 actually signs it, and it's in her own handwriting, is
10 because she -- it's strictly for the admission of any mention
11 of this case.

12 She talks about that her health has gotten to be
13 too much. There are bad decisions she's made. She doesn't
14 feel like she has any future whatsoever. And we feel that
15 this is important for the Defense to use strictly because of
16 the fact that all the other accusers in this matter have been
17 solicited about, well, now you're drinking more, you know,
18 since this incident, and it's because of Mr. Farmer. And
19 with Ms. Cagnina, it was, you attempted suicide by overdosing
20 on Xanax, and that's because of this event with Mr. Farmer?

21 And the inference has been made now, that with Ms.
22 Petersen, well, she actually went the farthest and committed
23 suicide and actually completed the tragic act, and it's
24 because of Mr. Farmer. And so the reason we're asking to
25 admit these is because in her last days, in her journal, she

1 doesn't mention anything about being sexually assaulted,
2 about a trial, about being harmed. She just talks about her
3 health issues that existed long before she met Mr. Farmer and
4 things with her family.

5 So we think that it becomes relevant from the fact
6 that the State has already elicited so much from the other
7 accusers regarding the impact on their lives after the
8 alleged incident.

9 THE COURT: All right. But it would seem to me
10 like those other witnesses are separate. I thought that I
11 would recall when, was it in opening -- it must have been in
12 opening -- when you said that Ms. Petersen had taken her
13 life, that you also said it wasn't related to the incident,
14 but I don't -- I'm not positive. I was surprised that you
15 had both agreed that that would be something we would -- that
16 would come out in the trial at all, but.

17 MS. BLUTH: May I speak, Your Honor?

18 THE COURT: Sure.

19 MS. BLUTH: Before trial, both parties stipulated
20 that the fact that she committed suicide --

21 THE COURT: Correct.

22 MS. BLUTH: -- was coming in.

23 THE COURT: Right.

24 MS. BLUTH: And I think, you know, it was always my
25 position, and it's still my position today, that the State

1 isn't going to ever make it look like she committed suicide
2 because of what Steven Farmer did to her. I mean, she had
3 awful, awful seizures day in and day out. So she -- you
4 know, in the video she doesn't say anything about her, you
5 know, this -- what has happened to her. Her son isn't go to
6 say, you know, she turned to pills, she did any of that, like
7 the other victims.

8 The other victims had substance abuse issues, et
9 cetera. We're not going down that road with her. But the
10 diary is from 2010 to the present, and this assault happened
11 in 2008. I know that there are other diaries out there
12 because of one of the family members has ten pages from a
13 different diary. So to, you know, show this to the jury and
14 say, well, she didn't say anything about the assault in this
15 portion of the diary, we're going back six years.

16 There's plenty of other situations where she could
17 have written something in the diary. And with the other
18 victims, we were allowed to get into how it affected them,
19 and I believe, Your Honor limited to it directly after with
20 each of the victims. We were only allowed to go into how it
21 affected them directly after. We're talking about six years.

22 Now, if Marshal Peterson took that stand and said,
23 yeah, my mom committed suicide because of what the Defendant
24 did to her, I, 110 percent, agree with the Defense that they
25 could impeach him with this But that's not the State's

1 position, that's not his position. So I don't understand why
2 we're bringing in the diary when it's never been anyone's
3 position that she committed suicide because of this case or
4 because of the things that happened to her.

5 MR. MANINGO: And our concern, Your Honor, is that
6 we understand that the State is not going to, with the son of
7 Ms. Petersen, try to elicit any testimony that she committed
8 suicide because of this act. Unfortunately, they've already
9 made that inference by stating after all of these other
10 individuals, well, the impact on you afterwards now you
11 started drinking more with Ms. Shank --

12 THE COURT: No, I --

13 MR. MANINGO: -- or --

14 THE COURT: -- don't agree that asking other
15 witnesses other questions suddenly makes an inference that a
16 person who, that none of them know, acted a certain way. I
17 don't think that raises an inference there.

18 MR. MANINGO: And --

19 THE COURT: The question to me just is purely an
20 evidentiary one as to why is it not hearsay? And you're
21 saying -- look, I haven't seen the statement, for one thing.

22 MR. MANINGO: Oh, sure, I can -- if I may approach?

23 THE COURT: Yes. Thank you.

24 MR. MANINGO: Sure. And --

25 THE COURT: And what was the date of her suicide?

1 MS. BLUTH: She was found on the 13th, and she
2 passed away on the 10th of July this year.

3 MR. KOCHVAR: Last year.

4 MS. BLUTH: Well, the 13th.

5 (Pause in the proceedings)

6 THE COURT: All right. So I've read the -- it
7 looks like there's the one entry where she signs and dates it
8 at the end, and then there's a subsequent page that starts
9 out, "I love all of you," and it's signed, "all my love,
10 mom."

11 MS. BLUTH: Is -- are --

12 THE COURT: Is that --

13 MS. BLUTH: -- do you have three pages in front of
14 you, Your Honor?

15 THE COURT: Well, I have more than that, but I have
16 those -- I have those three, and then I have another entry
17 with an address --

18 MS. BLUTH: Okay.

19 THE COURT: -- 8200 Neptune Beach Avenue.

20 MS. BLUTH: Okay.

21 THE COURT: And then another page that has -- it
22 looks like, e-mail addresses and --

23 MS. BLUTH: Passwords and stuff?

24 THE COURT: -- passwords, and another page that
25 also has some addresses and phone numbers.

1 MS. BLUTH: I don't think he -- you don't care
2 about that, do you?

3 MR. MANINGO: No, I do not.

4 THE COURT: Okay. So, the part that you -- you're
5 talking about, would be the July 10th entry, or more than
6 that? Because I don't know when this other thing was. "I
7 love all of you, but I can't keep being torn apart."

8 MR. MANINGO: Right. That's the following pages,
9 as it was provided to us through -- by civil counsel. So
10 that's her last entry.

11 THE COURT: Right. And you're saying you're not
12 admitting this for the truth of the matter? I think you are
13 admitting it for the truth of the matter. How is it, it's
14 not for the truth of the matter if you're saying you want it
15 to show that she didn't say anything about the assault, but
16 she did say -- she talks about other things? Isn't it being
17 admitted for the truth?

18 MR. MANINGO: Well, what we're asking that it be
19 admitted for, is for an admission. So the fact that there
20 isn't mention. So, not that she truly no longer has dreams
21 or that she made the wrong decisions regarding custody of her
22 children or anything like that. It's strictly to say that,
23 look, what happened to Ms. Petersen was tragic, she took her
24 own life, but there were other reasons, and it was not this
25 case.

1 And even if it is -- even if the Court were to find
2 that it were hearsay, it's still a dying declaration. It's
3 the last thing that she wrote before taking her life.

4 THE COURT: No, a dying declaration is when you
5 believe that you are literally dying at the moment. This is
6 -- we don't know when this was exactly prepared. I mean, it
7 may have been prepared the same day, but this is not --

8 MR. MANINGO: A person who's about to commit
9 suicide knows that they're going to die and --

10 THE COURT: I understand that --

11 MR. MANINGO: -- so when they make --

12 THE COURT: -- and --

13 MR. MANINGO: -- their final declaration, the idea
14 is that that, must be credible, because they would have no
15 reason to lie at that moment since their life is going to
16 end. And that's the whole basis behind dying declaration and
17 why it is a hearsay exception.

18 THE COURT: Well, it usually comes in for
19 identification purposes, not -- in fact, what's the -- do you
20 have a statute in front of you?

21 MR. MANINGO: No, I don't have the statute in front
22 of me.

23 THE COURT: I didn't bring --

24 MR. MANINGO: I mean, it -- the classic example is
25 the guy who gets shot, he's laying on the street, and they go

1 up, they said who did it, and he says, well, it was this guy,
2 and then he dies.

3 THE COURT: Exactly.

4 MR. MANINGO: Why is it any different for someone
5 to make a statement knowing that they're going to die before
6 they put the gun in their own mouth? I mean, it doesn't --
7 there's nothing in a dying declaration that says it has to be
8 -- that the death has to be caused by natural causes or by
9 someone else's hand.

10 I mean, if someone knows they're going to die and
11 they make a declaration at that point, that's a dying
12 declaration. She knew she was going to die because she was
13 the one in control of it, unfortunately. She was the one
14 taking her own life.

15 There's -- there's no -- that's -- that doesn't
16 distinguish the fact that it's still a dying declaration,
17 just because it's suicide versus someone else shooting her.

18 MS. BLUTH: I'm just going to pull up the statute
19 really quick, Your Honor.

20 THE COURT: I mean, I know -- I understand your
21 theory of why you want it in. I just caution you that it
22 could be interpreted just the opposite of the way you intend,
23 you know, and so have you discussed that with your client?

24 MR. MANINGO: Mr. Farmer's aware of --

25 THE COURT: In other words, because it's vague, the

1 statements in here are vague, a jury could interpret that
2 part of the reason, even though she does -- I mean, she's not
3 specific about much of anything in here. It's pretty vague.
4 That they could interpret it as that this assault was part of
5 it. And I just want you to be aware of that. I don't want
6 there to be some allegation later that there was ineffective
7 assistance of counsel in trying to put something like this
8 in.

9 MR. MANINGO: I understand.

10 THE COURT: And did she overdose? Is that --

11 MS. BLUTH: Well, she did -- I guess, technically,
12 she purposefully took pills to kill herself. So, I mean,
13 overdose is --

14 THE COURT: Well, that's what I meant.

15 MS. BLUTH: Yes.

16 THE COURT: As opposed to --

17 MS. BLUTH: Yes,

18 THE COURT: -- using a gun or --

19 MR. MANINGO: My understanding was that she hung
20 herself.

21 MS. BLUTH: That wasn't my understanding.

22 MR. MANINGO: That's -- but I don't --

23 THE COURT: I only ask because, I suppose, knowing
24 the way -- the manner she took her life would let us know for
25 sure that this is, in fact, you know, a suicide note.

1 MS. BLUTH: I'm having a hard time with my
2 Internet, Your Honor, for the Nevada Law Library, but for
3 dying declaration, I don't think that the elements --

4 THE COURT: All right. I'll be right back. I'll
5 go get my book.

6 MS. BLUTH: Thank you.

7 THE COURT: I had meant to bring it back any way
8 because we had some other evidentiary issues we need it for.

9 MS. BLUTH: Okay.

10 (Off the record at 1:51 p.m. until 1:53 p.m.)

11 (Outside the presence of the jury)

12 MS. BLUTH: It's -- I found it finally. It's
13 51.335.

14 THE COURT: Right, I got it.

15 MS. BLUTH: Oh, you got it? Okay.

16 THE COURT: "A statement made by declarant while
17 believing that his or her death was imminent is not
18 inadmissible under the hearsay rule if declarant is
19 unavailable as a witness," which clearly the witness is
20 unavailable. Let me see if there's anything in the
21 annotations about imminent. That's why I asked about the
22 manner, so I know.

23 Well, it seems to me like it probably is, in fact,
24 if she was -- she took her life on July 10th, that this could
25 be considered a dying declaration. It doesn't limit a dying

1 declaration to only identification or, well, frankly any
2 matter. Basically, it just indicates in the annotations that
3 it's an exception to the confrontation issue.

4 MS. BLUTH: Right.

5 THE COURT: So as long as the Defendant is --
6 believes that, you know, it's -- he wants this in, knowing
7 the risk that it could be interpreted the other way, then I'm
8 going to go ahead and admit it.

9 Now, I think we need to take out, though -- there's
10 this left page that's in -- looks like it's in blue ink on
11 the first page, the page that has the date July 10th. To the
12 left-hand side of the book there's something that's in blue
13 ink. Something about a ring and who has it, and that's
14 obviously not part of it. That needs to be -- that needs to
15 come out.

16 You know, and what is this blackout part that has
17 the red --

18 MS. BLUTH: That is -- I spoke to the civil
19 attorney this morning. That black inked-out portion is a
20 portion, according to him, that she -- where she discussed
21 matters between he and she. But that's my other issue with
22 this, is that I --

23 THE COURT: All right, well --

24 MS. BLUTH: -- I cannot have someone come in here
25 and build a proper foundation with a huge section missing.

1 THE COURT: Right. We -- you don't have the
2 document itself?

3 MS. BLUTH: Neither of us do.

4 MR. MANINGO: We do not.

5 THE COURT: Well, that's a problem, as well.

6 MS. BLUTH: I guess, Your Honor, what I -- if the
7 son can come in and testify, you know, that his mom had so
8 many health issues and he doesn't know why she committed
9 suicide, I don't understand why that doesn't --

10 THE COURT: Well, you could certainly agree to a --
11 you know, you could stipulate to even tell the jury that the
12 suicide -- the State is not advancing the premise that the
13 suicide was the result of this sexual assault -- alleged
14 sexual assault. That it was separate and apart, her reasons.
15 You could do that. But now we're going to have --

16 MR. MANINGO: We'll agree to that.

17 THE COURT: -- we're going to have a best evidence
18 problem.

19 MR. MANINGO: We'll agree to that.

20 MS. BLUTH: I mean, I can't -- I can't say that it
21 wasn't, but I can't say it was. I can say that I'm -- the
22 State agrees that --

23 THE COURT: It's not arguing that.

24 MR. MANINGO: Right.

25 THE COURT: I mean --

1 MR. MANINGO: The --

2 THE COURT: -- that's different than knowing. No
3 one's ever going to know, really, what was in --

4 MS. BLUTH: Right.

5 THE COURT: -- this poor woman's mind when she took
6 her own life.

7 MR. MANINGO: Right.

8 MS. BLUTH: Right.

9 MR. MANINGO: The Court's proposed stipulation was
10 just the State is not putting forth the theory that it was
11 the cause, which you're not.

12 THE COURT: Because we can't -- you know, if you
13 ask the son --

14 MS. BLUTH: Um-h'm.

15 THE COURT: -- okay, his only knowledge of why his
16 mother may have taken -- you know, taken her own life would
17 be from reading this diary, right?

18 MR. MANINGO: Um-h'm.

19 THE COURT: So then --

20 MS. BLUTH: Oh, no, I mean, I lived with her. He
21 knows about how awful this was. It's not about the diary.

22 THE COURT: Well, yes, and you could -- you could
23 ask him questions about that in general.

24 MS. BLUTH: Right.

25 THE COURT: But to say, why on July 10th, did your

1 mother commit suicide --

2 MS. BLUTH: Yeah.

3 THE COURT: -- nobody can answer that question,
4 really.

5 MS. BLUTH: Right.

6 THE COURT: I mean, even in this note she leaves --

7 MS. BLUTH: It's ambiguous.

8 THE COURT: -- it's unclear exactly.

9 MR. MANINGO: And --

10 THE COURT: I mean, obviously, she -- I saw her
11 testify. She had a terrible, terrible health condition and
12 that she might not have wanted to live with anymore. And
13 that obviously, preexisted this allegation, so.

14 MR. MANINGO: The Defense would agree -- would
15 certainly agree to the Court's proposed stipulation. I think
16 that's the cleanest way to go about it, and then the
17 witnesses' and Ms. Petersen's testimony can focus on whether
18 or not the actual allegations took place, or did not take
19 place, and not be focused on what happened afterwards with
20 whatever was going on in Ms. Petersen's mind. So, we would
21 be fine with that.

22 MS. BLUTH: The clarification for the stipulation
23 purposes, is that just a stipulation that the parties and
24 Your Honor are talking about outside the presence of the jury
25 or is that a stipulation that's going to be read to the jury?

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THE COURT: Well, it would be a -- yeah, it would be a stipulation that would need to be -- because that's the whole purpose of them wanting this in, is to let the jury know that they're indicating -- their argument that she did not take her life because of this alleged sexual assault. And if you're not advocating that position, you have no intent of arguing that, I don't -- I don't see how it hurts your case to go ahead and tell the jury that, that the State has stipulated with Defense that it is not arguing that the reason Ms. Petersen took her life was because of this --

MS. BLUTH: I'm --

THE COURT: -- alleged --

MS. BLUTH: -- fine with the stipulation.

THE COURT: Um-h'm.

MS. BLUTH: I'm just a little -- I don't really like the wording of it.

THE COURT: Well, I'm not going to draft it for you. You can come up with wording that you think is acceptable to both of you.

MS. BLUTH: Okay.

THE COURT: And this is something that you need to do, though, before this witness testifies, right? And he's going to be called second?

MS. BLUTH: Yes.

1 THE COURT: Okay.

2 MS. BLUTH: Yeah. Okay, so --

3 THE COURT: Do you want to work -- do you have
4 another matter outside the presence, a third thing?

5 MS. BLUTH: Let me look at my notes.

6 THE COURT: Then you could go back to the possible
7 stipulation.

8 MS. BLUTH: Just in regards to after Marshal will
9 be speaking, the video of Marcia Petersen --

10 THE COURT: Yes.

11 MS. BLUTH: -- video depo will be played. What
12 I've done is I've marked the CD as State's Proposed 25. The
13 issue with the CD is you cannot hear Marcia Petersen speaking
14 hardly at all. I've had my exhibits people work on it, and
15 I've spoken to the court recorder, and he's having issues
16 with it, too. So we made transcripts, and I would ask that
17 in this situation -- and you can wait to hear it, if you
18 would like -- but in this situation, that a transcript be
19 marked into evidence.

20 Normally, I don't do that, because what they see
21 and what they hear is the best evidence, but in this case,
22 they cannot hear anything. Every once in a while you can
23 hear little answer, but for the most part she's so quiet. So
24 I'm asking that a transcript go back.

25 THE COURT: Who did the transcript?

1 THE COURT RECORDER: We did.

2 MS. BLUTH: The court reporter.

3 THE COURT: Oh, you did. So you -- with it in the
4 ears? All right. And has the transcript been provided in
5 advance to the Defense?

6 MS. BLUTH: Yes.

7 MR. BASHOR: Yes, Your Honor, I -- it's actually in
8 Odyssey.

9 THE COURT: Okay.

10 MR. BASHOR: I reviewed it at State's request for
11 things, you know, red herrings, things like that, and the
12 only concern we had, and the State identified it for me, was
13 that on the first page we're identified as public defenders.
14 She's not going to provide the first page. So other than
15 that, the transcript is fine.

16 THE COURT: All right. And I know there was an
17 issue, and we had already discussed that, and that's on the
18 record, correct, about the -- there was a problem with the
19 JAVS camera showing the Defendant --

20 MS. BLUTH: Right.

21 THE COURT: -- in jail garb.

22 MS. BLUTH: Yes.

23 THE COURT: And that's --

24 MS. BLUTH: And we took out all those sections.
25 They've been blacked out. I provided Mr. Bashor with a copy.

1 He actually found one section that was still there --

2 THE COURT: Okay.

3 MS. BLUTH: -- and I took that part out. So --

4 THE COURT: Okay, have you been able to review the
5 final product?

6 MR. BASHOR: Not the final product, but it was a
7 six-second wide shot that I'm sure the State took care of.
8 Other than that --

9 MS. BLUTH: I did. I looked at that six seconds
10 and it's gone.

11 THE COURT: Okay.

12 MR. BASHOR: I'm not worried because she's taken
13 such great steps to prevent it. I'm sure the final copy's
14 fine. As far the transcript issue, you know, I guess, as
15 it's being played, each individual juror will have a copy of
16 the transcript.

17 MS. BLUTH: Right.

18 MR. BASHOR: Obviously, we'd ask that they not take
19 notes or anything on those copies and that one clean copy, an
20 individual one clean copy of the transcript would be
21 admitted, that's fine, and it can go back to the jury, if
22 that's acceptable to Your Honor.

23 THE COURT: Okay, that sounds like a plan. We'll
24 let them know that -- not to make notes on their copies
25 because they won't be allowed to take them back --

1 MR. BASHOR: Um-h'm.

2 THE COURT: -- to the jury. That they will get a
3 copy and we'll -- do you want to have that marked? Are you
4 going to have it marked as an exhibit --

5 MS. BLUTH: Yes, Your Honor.

6 THE COURT: -- State's exhibit? Okay. All right,
7 good. Do you want to have ten minutes to just see if you can
8 come up with a stipulation?

9 MS. BLUTH: I do, but I just have one more issue.

10 THE COURT: Sure.

11 MS. BLUTH: Sorry, there's a lot of issues --

12 THE COURT: That's okay.

13 MS. BLUTH: -- today. On the last day that we were
14 here, I think it was Friday, when the nurse, Jeanine James
15 was testifying, I kept hearing someone speaking, and I looked
16 up to find -- I believe it's 14, the second chair right here.
17 Yeah, 14 because it says on his notebook. I heard him kind
18 of making like (making noises), like those types of noises,
19 and then he would look to his right and say something to the
20 juror and then look to his left and say something to a juror.

21 And I forgot to tell Your Honor because it was
22 Friday, and there was a lot going on. I went back to my
23 office, and I was talking to Mr. Kochevar about it, and my
24 investigator overheard, and he said, I forgot to tell you
25 when the day we had -- when we had Roxanne Cagnina and the

1 other witness he was doing the same thing. So, I mean, I'm
2 not -- I know you're the Judge, and I'm not sure what to do
3 about that, but he really should not be making any
4 commentary, even if it's just, you know, noises or -- I
5 specifically saw him whispering things over his shoulder, and
6 so I have some great concerns about that type of behavior
7 even from an alternate.

8 THE COURT: Okay. Did the Defense want to have
9 anything to say about that? I'm surprised he -- you guys
10 left him, but.

11 MR. MANINGO: We didn't even notice it.

12 MR. BASHOR: I mean, first of all, Your Honor,
13 obviously, we didn't notice it, maybe given the distance and
14 obstructions, et cetera.

15 THE COURT: Um-h'm.

16 MR. BASHOR: Perhaps the cleanest and easiest way
17 to do this, as opposed to singling out this particular juror,
18 is maybe just a general admonishment by Your Honor, something
19 to the fact that, you know, it's not the time for
20 conversation, that kind of thing, and, you know, the juror's
21 attention as a group should be on the witnesses and the
22 questions being asked.

23 THE COURT: Yeah, that was my plan to address it.
24 I -- I'm not surprised that he was doing that, given how he
25 was responding in voir dire, you know, and his reaction to

1 people around him. That's kind of like -- apparently, that's
2 part of his personality, because I saw that during the voir
3 dire. But I'll address it by, yes, admonishing the entire
4 panel to make sure during testimony don't make -- you know,
5 no comments to each other, discussion, you can't discuss this
6 case or make any kind of comments about it until you get into
7 the jury room. And of course, you may not get into the jury
8 room so far. Knock on wood, we haven't lost anyone, so.

9 MS. BLUTH: That's it for my issues.

10 THE COURT: Okay. Ten minutes, does that --

11 MS. BLUTH: That's fine.

12 THE COURT: -- sound good.

13 MS. BLUTH: Thank you, Your Honor.

14 (Court recessed at 2:07 p.m. until 2:15 p.m.)

15 (Outside the presence of the jury)

16 THE COURT: All right, we're back on the record in
17 State of Nevada versus Steven Farmer, and we're still outside
18 the presence of the jury. Back to our issue of the diary.
19 So, here's my problem. This document that you want to put in
20 evidence is redacted. So it's not a duplicate original. So
21 how are you going to lay a proper foundation with this? If
22 it was -- if we thought it was -- you can't authenticate the
23 document. So --

24 MR. MANINGO: Well --

25 THE COURT: -- if we get past a hearsay objection,

1 but how you going to authenticate it?

2 MR. MANINGO: Well, and what we would do is we
3 would lay the foundation and authenticate her handwriting,
4 and for what does exist in the document for what we have.
5 It's the only evidence that we do have. We received it
6 mid-trial from civil counsel, and it appears that civil
7 counsel, Mr. Murdock, is the one who took it upon himself to
8 do the redactions.

9 But it is all we have. We do not have the original
10 document, so.

11 THE COURT: Right. Well, I can't -- I can't let --
12 if the purpose of it is, as you say, then it needs to be the
13 entire statement, not a redacted version. For all I know, it
14 says, and by the way, you know, the fact that I was assaulted
15 by Steven Farmer is why I'm going to kill myself. I mean,
16 you know, Mr. Murdock apparently has the document. Maybe if
17 you want to have him come in and bring it or give it to you
18 or something, but at this point, now that -- I don't see how
19 you're going to authenticate this as the document, and it's
20 in the a complete -- it's not a complete statement.

21 I thought maybe there was a picture here or
22 something I wasn't getting. I didn't realize that -- that
23 was a redaction.

24 MR. MANINGO: I didn't -- I didn't hear anything
25 about the redaction myself until today from Counsel as well.

1 I couldn't tell what it was either. I thought it was a --
2 maybe a picture or a Polaroid that was turned over or
3 something. I had no idea that it was actually a redaction by
4 Mr. Murdock.

5 MS. BLUTH: And I didn't know either until I spoke
6 with Mr. Maningo and he stated he was going to try to bring
7 it in. So then --

8 THE COURT: All right, well, there's still time for
9 you to figure out how you're going to deal with the
10 authentication problem, because frankly, I don't see how it
11 -- I mean, you could bring Mr. Petersen in as your own
12 witness, if you want to, in your case. But you're going to
13 have to deal with that, because I'm not going to allow it in,
14 in this form, at this point, because it's not a complete
15 statement. We don't know what -- what that is. So maybe you
16 need to talk to Mr. Murdock and find out. Now, and Mr. --

17 MR. MANINGO: That's easier said than done.

18 THE COURT: Oh.

19 MR. BASHOR: Mr. Murdock has been very adverse to
20 cooperating with the Defense. I guess, at this point, we
21 would ask that the documents you have, Your Honor, be marked
22 as court exhibits, and we'll respect your ruling.

23 THE COURT: Okay. Do you want everything marked or
24 only the things you were intending to offer?

25 MR. MANINGO: Just what we were intending to offer

1 Your Honor. Not the address or --

2 THE COURT: Approach and --

3 MR. MANINGO: Sure.

4 THE COURT: -- and designate the portions. If
5 there's anything you weren't that -- why don't you line like
6 through it if -- like, for instance, if you were not
7 intending to offer that. All right.

8 So we'll go ahead and mark these three pages, which
9 appear to be color photocopies of some type of, it looks like
10 a hard bound or book, with the second page bearing a black
11 box on the right-hand page of the book, outlined in red, and
12 that there's been some representations that that is a
13 redaction that was made by Ms. Petersen's counsel,
14 Mr. Murdock. And we'll mark that as next in order court
15 exhibit.

16 THE CLERK: I can make it one, right?

17 THE COURT: Yes, we're going to staple it together
18 and make it one. All right. Anything else?

19 MS. BLUTH: I think we're good.

20 THE COURT: All right, let's bring -- oh, we're
21 missing one?

22 THE MARSHAL: Yeah, he went for a cigarette break,
23 they just told me. I just called them back, so.

24 THE COURT: Okay.

25 (Off the record at 2:21 p.m. until 2:21 p.m.)

1 THE MARSHAL: Rise for the jury, please.

2 (In the presence of the jury)

3 THE COURT: Thank you. Please be seated. And this
4 is the continuation of the trial in State of Nevada versus
5 Steven Farmer, Case No. C-245739. The Defendant is present
6 with his counsel. The Deputies District Attorney prosecuting
7 the case are present, as are all officers of court, all 12
8 members of the jury and the 4 alternates. Will counsel so
9 stipulate?

10 MS. BLUTH: Yes, Your Honor.

11 MR. BASHOR: Yes, Your Honor.

12 THE COURT: Thank you. Good afternoon, ladies and
13 gentlemen.

14 THE JURY: Good afternoon.

15 THE COURT: How was your weekend? Good? Good.
16 I'm sorry to keep you waiting. I know we were going to start
17 at 1:30, and we have been working without you, and sometimes
18 we have to do work in the courtroom, and we can't have you in
19 here. So that -- I just want you to know that we weren't
20 slacking off and just keeping you waiting for no reason.

21 So one thing before we start with the next witness
22 that I just want to remind the jury about, and that is
23 sometimes, you know, you hear testimony and you're surprised
24 or you have some thought come through your mind about it.
25 Don't express that out loud to your neighbors. You'll have

1 time to -- when the case is finally submitted to you, to
2 discuss it in the jury room, but it's not the time to express
3 any opinions or anything on it during -- by audible or
4 inaudible, you know, sounds or anything of that nature, all
5 right? Thank you. The State may call its next witness.

6 MS. BLUTH: Thank you, Your Honor. The State calls
7 Michele Simmons.

8 THE CLERK: Raise your right hand.

9 MICHELE SIMMONS, STATE'S WITNESS, SWORN

10 THE CLERK: Please be seated. And please state
11 your name and spell it for the record.

12 THE WITNESS: My name is Michele Simmons,
13 M-i-c-h-e-l-e, S-i-m-m-o-n-s.

14 THE COURT: Okay, if you could -- there's a
15 microphone that's in front of you on the table, and if you
16 could project into that. Thank you. You may proceed.

17 MS. BLUTH: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. BLUTH:

20 Q Good afternoon, Ms. Simmons. How are you employed?

21 A I'm employed -- currently?

22 Q Yes.

23 A As a staff nurse.

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

1 A I've been a registered nurse going on 17 years.

2 Q Okay. I'd like to your attention way back to May of
3 2008. During that time period, were you working for a
4 corporation called American Nursing Services?

5 A Yes, I was.

6 Q And what type of corporation was that?

7 A It was a health care staffing company.

8 Q Okay. And so when you say it was a health care
9 staffing company, explain to the jury how you staffed the
10 company and where your employees went.

11 A We had branches across country, but specifically
12 here in Las Vegas, we would staff -- we had contracts with
13 facilities, mostly being hospitals. So when hospital would
14 -- we would have contracts with them and when they had a need
15 for an employee, primarily RNs, LPNs and CNAs is what we
16 staffed. They would contact us, and we would try to help
17 them with a temporary employee.

18 Q And how long -- well, what was your position within
19 that company?

20 A I started out as a clinical director, and then by
21 the end of my term there, I was a clinical director -- a
22 regional clinical director of operations, excuse me.

23 Q And what does a regional clinical director of
24 operations do?

25 A Basically, I was in charge of -- operated

1 essentially, as the branch manager of Las Vegas, but I also
2 oversaw some of the operations and clinical -- if one of the
3 branches would have a clinical issue or, you know, as far as
4 they would contact me, or else I would also help them
5 essentially, grow the branch, and I would handle all the
6 trying to seek out more opportunities for the branch as in
7 more contracts, that type of thing.

8 Q Okay. During this time period in 2008, was an
9 individual by the name of Steven Farmer employed with that
10 company?

11 A Yes, he was.

12 Q And did you have a lot of personal contact with him,
13 like in person, I guess, is what I'm saying?

14 A Yeah, honestly, most of our employees came in on a
15 day-to-day basis, and Steven was one of those that we saw
16 quite frequently.

17 Q And do you see him in the courtroom today?

18 A Yes, I do.

19 Q Can you please point to an article of clothing that
20 he's wearing, or just point to him and describe an article of
21 clothing that he's wearing.

22 A Blackish/gray jacket --

23 Q Okay.

24 A -- suit.

25 Q What color hair does he have?

1 A Gray.

2 Q Okay.

3 MS. BLUTH: Your Honor, may the record reflect that
4 the witness has identified the Defendant?

5 THE COURT: It will.

6 MS. BLUTH: Okay.

7 BY MS. BLUTH:

8 Q And what position did the Defendant have within the
9 company?

10 A He was a CNA, registry CNA.

11 Q And did he work in other states besides Nevada?

12 A He did. He -- actually, we had -- he had came over
13 to us from one of our other branches in California. We had
14 -- as I said, we had several branches throughout the company.
15 And he started in our California branch and then came over to
16 us.

17 Q And when you say came over to us, are you meaning
18 the branch in Las Vegas?

19 A The branch in Las Vegas, yes, I'm sorry.

20 Q All right. And as part of his employment, did you
21 staff him at Centennial Hills Hospital?

22 A Yes.

23 Q Now, I'd like to turn your attention to May 16th of
24 2008. On that day, were you contacted by emergency room
25 personnel in regards to an incident that happened with a

1 patient at Centennial Hills Hospital --

2 A Yes, I was.

3 Q -- and the Defendant?

4 A Yes, I was.

5 Q And what time in the morning did that call him in to
6 you?

7 A I think it was approximately 11:30 in the morning.

8 Q Okay. And do you remember who it was that you spoke
9 with?

10 A Yes, I spoke with the ER manager, Amy Bochenek, I
11 believe, was the last name.

12 Q Okay. And did she discuss with you the allegations
13 that the patient had made?

14 A Yes, she did.

15 Q And after that telephone conversation with Ms.
16 Bochenek, did you then have a conversation with Mr. Farmer?

17 A Yes, I did.

18 Q And what time do you believe you made contact with
19 Mr. Farmer?

20 A It was approximately 11:45.

21 Q Okay. So right after the --

22 A Right after.

23 Q -- conversation?

24 A Yes.

25 Q And how was it that you reached him?

1 A I called him by phone.

2 Q And did he answer your telephone call?

3 A Yes, he did.

4 Q And what is it that you said to him?

5 A I basically stated to him that there was a serious
6 allegation, that he's essentially, a DNR, a do not return at
7 Centennial Hills Hospital, that I received a serious
8 allegation against him regarding sexual abuse.

9 Q Okay.

10 A And basically asked him for his side of the story,
11 if there was anything that could have been misinterpreted or
12 what happened?

13 Q When you said -- are you saying, anything that could
14 have been misinterpreted?

15 A Correct.

16 Q Okay. And what was his demeanor when you were on
17 the telephone with him?

18 A Very quiet, very quiet. He did not say very much at
19 all.

20 Q Okay. Did he respond to you in regards to the
21 telephone number situation?

22 A He did. He did admit to me that he did -- as far as
23 he did give the -- his phone numbers were exchanged with the
24 patient.

25 Q Okay. Now, in regards to -- let me get that

1 straight. When you say exchanged, he gave his number --

2 A He gave --

3 Q -- to the patient?

4 A I'm sorry, yes, he gave his number to the patient.

5 Q Okay. Now, while you're on the phone with the
6 Defendant, do you receive a call from Las Vegas Metropolitan
7 Police Department?

8 A Yes, I did.

9 Q And what is it that they're wanting from you?

10 A They're wanting to get ahold of Mr. Farmer and
11 asking for his address and his contact information.

12 Q And did you give that information to them?

13 A I didn't at the time because I -- I wanted to
14 contact our human resources department before I gave out any
15 personal information on one of our employees. So I contacted
16 HR.

17 Q Okay. And so did you tell Metro, I'm sorry, I can't
18 give you that information?

19 A Correct.

20 Q And did that conversation then end?

21 A Then I -- I got that from Metro, their contact
22 information and said that I would relay it to Steven.

23 Q Okay. And after that, did you end the telephone
24 conversation with Metro?

25 A Yes, I believe so.

1 Q Then did you get back on the phone with Mr. Farmer?

2 A Then I spoke with -- with Steven. I gave Steven the
3 -- the contact information of the officer that had -- that
4 was, you know, called.

5 Q And after -- you know, after you hung up with Metro
6 and had the conversation with Mr. Farmer, did he say anything
7 else in regards to that the allegations?

8 A At the end of our conversation, he was very quiet,
9 and he just basically told me that he was very sorry.

10 Q Okay. And I think you wrote down that his words
11 were, "I'm sorry, I'm just sorry. I assume that I'm
12 suspended."

13 A Correct.

14 Q Okay. And you gave him the information that Metro
15 had given you to give to him?

16 A Yes.

17 Q Did you ever call back Metro and give them the
18 information that they requested?

19 A I don't believe -- I actually took it to HR, and
20 they told me to -- that they would handle it from there on
21 then.

22 Q Thank you, Ms. Simmons.

23 MS. BLUTH: I have nothing further.

24 THE COURT: Cross.

25 CROSS-EXAMINATION

1 BY MR. MANINGO:

2 Q Hello, Ms. Simmons.

3 A Hello.

4 Q Very briefly, just a couple of questions.

5 Mr. Farmer was assigned to only Centennial Hills?

6 A He was -- he was assigned to other facilities with
7 us, yes.

8 Q Okay.

9 A Yes.

10 Q So he worked at different hospitals?

11 A Yes, he did.

12 Q And he worked on a lot of different dates?

13 A Yes.

14 Q He worked with a lot of different nurses and
15 doctors?

16 A I would assume so.

17 Q Okay. And you said you saw him frequently?

18 A I saw him in the office frequently, yes.

19 Q Okay. So he worked quite a bit?

20 A Yes, he did.

21 Q Okay. And he worked for your company in California?

22 A Yes.

23 Q And then the company brought him out to Nevada?

24 A Well, the company didn't bring out, but he came out
25 and then he worked for them, so I think he -- it would be an

1 easy transition to work for the same company. And we had a
2 branch here locally, so he came to work for us.

3 Q Okay, sure. But he worked for your company at the
4 time, the same company, in going from two different states?

5 A Yes.

6 Q Okay.

7 A We just didn't -- we didn't bring him out here to
8 work.

9 Q Okay, I get it. Now, once you heard about these
10 allegations, they were regarding a Ms. Roxanne Cagnina,
11 correct?

12 A I believe so. At the time, I was not given the --

13 Q Okay.

14 A -- the person's name.

15 Q But you called Mr. Farmer?

16 A Yes, I did.

17 Q Okay. You told him about the -- what he said -- you
18 told him about the serious allegation, yes?

19 A I said it was a serious allegation against him, yes.

20 Q Okay. And -- but you didn't tell him details or
21 anything like that?

22 A I said it was sexual in -- it was a sexual in
23 nature. I didn't give the specifics of that -- of that,
24 though.

25 Q Okay. And like you just said, you didn't even have

1 the details yourself at the time?

2 A Not fully, no.

3 Q Okay. And after you told him this, you said he
4 became quiet?

5 A Yes.

6 Q Okay. And to the best of your knowledge, he didn't
7 try and flee or do anything like that?

8 A He was on the phone. I mean, I -- that was really
9 my only contact with him.

10 Q Okay.

11 A So.

12 Q Okay. And you said that he had said that he was
13 sorry and asked if he was suspended?

14 A Yes.

15 Q Okay. And that was after you talked to him about
16 the phone number exchange, correct?

17 A Yes.

18 Q Okay. So he told you that he did give Ms. Cagnina
19 his phone number?

20 A He didn't say specifically who it was to me, but he
21 did --

22 Q Okay. The patient?

23 A Yes.

24 Q Okay. Did you know at that time that the patient
25 requested his phone number?

1 A No.

2 Q Okay. Did you ever find out later that the patient
3 had requested his phone number?

4 A No.

5 Q Okay. But it was after that discussion about the
6 phone number that he said he was sorry and he assumes he's
7 suspended?

8 A It was at the end of our conversation, yes.

9 Q Okay. Thank you.

10 THE COURT: Redirect?

11 MS. BLUTH: Just briefly.

12 REDIRECT EXAMINATION

13 BY MS. BLUTH:

14 Q The -- when he says -- you're on the phone with him,
15 you talk about the phone number and the allegations of, I
16 think you used the term "sexual abuse" on direct, correct?

17 A Yes.

18 MR. MANINGO: Objection. Leading. This is still
19 direct examination.

20 MS. BLUTH: Just laying the foundation. Just
21 laying the foundation.

22 THE COURT: Overruled.

23 MS. BLUTH: Okay.

24 BY MS. BLUTH:

25 Q You tell him about the allegation of sexual abuse

1 and the exchange of numbers; is that correct?

2 A I tell him about the exchange of numbers?

3 Q That you became aware that they had -- that he had
4 given his number to a patient?

5 A Yes.

6 Q Okay.

7 A Yes.

8 Q And he was quiet and then said, yes, I gave my
9 number?

10 A He was -- yes, he was -- he was quiet during the
11 conversation, and I believe he did say -- yeah, he did say
12 that he had -- he admitted to giving his number to a patient,
13 yes.

14 Q Okay. And then Metro calls?

15 A Metro calls, yes.

16 Q And you finish the conversation with Metro?

17 A Yes.

18 MR. MANINGO: Objection. Still leading.

19 MS. BLUTH: I'm just trying to get the order down.
20 I don't think it's leading. I mean, they can reask, but I
21 I'm trying to get a specific order.

22 THE COURT: I'll allow it, but.

23 BY MS. BLUTH:

24 Q The conversation with Metro, you hang up with Metro
25 and get back on the phone with Mr. Farmer?

1 A I'm not -- honestly, I'm not sure if I hung up with
2 Metro and got on the phone with him or if it was all -- it
3 was quite a long time ago.

4 Q So you either had him on hold or --

5 A Yeah.

6 Q -- you hung up with him?

7 A Exactly.

8 Q And called him back?

9 A Yeah, I -- or called him back. I think Steven was
10 on the phone at the same. I'm not sure if I actually called
11 Steven back. I don't remember actually doing that.

12 Q Okay.

13 A I don't know if it was at the same time.

14 Q I guess, my point is, is when you get off the phone
15 with Metro, whether you had to call him back or he was on the
16 other line, you start talking to him again?

17 A Yes, yes.

18 Q And you talk about other things. And at the end of
19 that conversation is when he said, "I'm sorry, I'm just
20 sorry"?

21 A Yes --

22 Q So it wasn't like --

23 A -- at the end of that conversation.

24 Q -- you talked about the phone numbers, and he said,
25 I'm sorry?

1 A No.

2 Q That was not in the order?

3 A No, it was at the very end of your conversation
4 after I had spoken to Metro, and about it to him.

5 Q And at no point did he ever say -- was he shocked,
6 or, I didn't do that, that's ridiculous?

7 A No.

8 Q Okay.

9 MS. BLUTH: Nothing further.

10 THE COURT: Recross.

11 MR. MANINGO: Objection. May we approach?

12 THE COURT: Yes.

13 (Bench conference begins)

14 MR. MANINGO: Our objection is --

15 THE COURT: Jeff Maningo.

16 MR. MANINGO: I'm sorry, Jeff Maningo. Our
17 objection is that the State was commenting on our claims of
18 pre-arrest silence, and that that affects his right to remain
19 silent, especially since she's on the phone at the same time
20 with the police officer.

21 MS. BLUTH: Jacqueline Bluth. This is an
22 individual who works for American Nursing Services, who is
23 directly asking him about these allegations. I would never
24 ask a police officer that, but I can ask the lady who works
25 for American Nursing Services if he said that he didn't do

1 it. He has no rights to pre-arrest silence with American
2 Nursing Services.

3 THE COURT: I agree with the State. So, objection
4 is overruled.

5 MS. BLUTH: Okay.

6 MR. MANINGO: Thank you.

7 MS. BLUTH: Thank you.

8 (Bench conference concluded)

9 RECROSS-EXAMINATION

10 BY MR. MANINGO:

11 Q Ms. Simmons, you were just asked is a series of
12 questions by Ms. Bluth. I just want to follow up on them a
13 little bit. When you spoke with Mr. Farmer, he didn't -- you
14 just said he didn't say, oh, I didn't do this, or anything
15 like that, right?

16 A No, he did not.

17 Q Okay. Because you didn't give him a bunch of
18 details or names of the individual or anything else, did you?

19 A It was a very -- pretty quick con saying with him.
20 And no, I didn't know the details of every -- of everything.

21 Q Right, you didn't even know it yourself, so you
22 couldn't give him the details for him to deny any details,
23 correct?

24 A I was not specific. There was some -- there was
25 some -- I knew essentially what type of sexual conduct

1 occurred, but I did not tell Steven Farmer that at the time.
2 I just said it was a sexual in nature as far as --

3 Q Okay. So you --

4 A That is the only thing that I did not explicitly
5 tell him.

6 Q Okay. So you didn't tell him that, and so that
7 wasn't even part of your discussion?

8 A Correct.

9 Q Okay. And when he did say that he was sorry, it was
10 because you were talking about the phone number, giving the
11 phone number?

12 A I don't know if it was related to that or not. I
13 don't know what he really was sorry for, essentially. I
14 can't really say what he said --

15 Q Okay.

16 A -- what he was sorry for.

17 Q Okay. Did he at any time say, yeah, I shouldn't
18 have sexually assaulted anyone?

19 A No.

20 Q Did he ever say that he did sexually assault anyone?

21 A No.

22 Q Did he ever say that he acted in a sexual manner
23 towards any of the patients?

24 A No, he did not.

25 Q Okay, thanks.

1 THE COURT: May this witness be excused?

2 MS. BLUTH: Yes, Your Honor.

3 THE COURT: Thank you very much for your testimony.
4 You may call your next witness.

5 MS. BLUTH: State calls Marshal Peterson.

6 THE CLERK: Please remain standing. Raise your
7 right hand.

8 MARSHAL PETERSEN, STATE'S WITNESS, SWORN

9 THE CLERK: You may be seated. Could you please
10 state your name and spell it for the record.

11 THE WITNESS: Marshal Peterson, M-a-r-s-h-a-l,
12 P-e-t-e-r-s-e-n.

13 THE COURT: You may proceed.

14 MS. BLUTH: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MS. BLUTH:

17 Q And Marshal, just before we get started, the black
18 things in front of you are microphones. So if you wouldn't
19 mind just speaking into those so they can record what you and
20 I are saying, okay?

21 A Okay.

22 Q Are you the son of Marcia Petersen?

23 A Yes.

24 Q And do you have any siblings?

25 A Yes.

1 Q And are they boys or girls?

2 A I have a older sister and a younger brother.

3 Q Okay. I'd like to turn your attention to early
4 2008. Did your mom fall while at work?

5 A Yes.

6 Q Okay. And when she fell, did she hit her head?

7 A Yes.

8 Q And what did she do for a living?

9 A She was a interior designer.

10 Q Okay. And shortly after your mom fell and hit her
11 head, did she start having seizures?

12 A Yes.

13 Q And after she started having seizures, did you and
14 your brother -- the name of your brother is what?

15 A Micah.

16 Q Did you and Micah have to begin taking care of her?

17 A Yes.

18 Q So I'd like to ask you some questions about the type
19 of seizures that your mom had. First of all, were there
20 times when she knew the seizures were coming on?

21 A Yes.

22 Q And how was it she would know?

23 A She would -- she would get a chemical taste in her
24 mouth. She would -- the look on her face would kind of --
25 her eyes would dilate, and the look on her face would kind of

1 go into this blank stare, her speech would slow down, and
2 become very weak, and then a seizure would happen.

3 Q Okay. And when she was having a seizure, explain to
4 us what her body would do.

5 A When she would have a seizure, she would -- she
6 would go out of it. She would clench up real tight, hold her
7 breath, turn -- turn purple and just clench up as tight.
8 Sometimes her arms would reach up and contort in weird ways
9 and towards her face, and then she would release and be able
10 to catch like one gasp of air and then right back into it.
11 Sometimes they would go for minutes and sometimes they would
12 go for 20, 30 minutes, and just numbers of them just
13 repetitively. Yeah.

14 Q Shortly after her fall -- so in the beginning of
15 when you guys are dealing with these seizures -- how often
16 would they be going on during that time period?

17 A At the beginning, right after the fall, they were
18 numerous, numerous.

19 Q All right.

20 A Some days it was three to five seizures in one day.
21 And at the beginning, they were like very intense seizures.
22 Sometimes she would clench up, and sometimes she would flail
23 around a little bit. Yeah, she would have -- right at the
24 beginning, she had three to five seizures a day, maybe four
25 times a week, something like that.

1 Q Okay. And then after, you know, she started getting
2 more and more treatment and they started getting it under
3 control, did they start slowing down or not as many in a day?
4 How would --

5 A Yeah --

6 Q -- that work out?

7 A -- they started tapering off to where, you know, so
8 she would go from like five seizures in one day, to maybe two
9 seizures in a day, the same amount of days. And then slowly
10 progresses towards like, you know, we're talking in a year's
11 time span to where she would get like -- maybe like two
12 seizures in a week, you know, and but this is towards the
13 end. I mean, it's almost to present, you know --

14 Q Okay.

15 A -- if there was a present. I mean, up to her --

16 Q Up to her death?

17 A Yeah.

18 Q Okay. Now, would you guys, in the beginning, you
19 know, when you're still getting this under control, would you
20 go to the hospital often? Would she always go to the
21 hospital?

22 A Yeah. We -- yeah, we were freaking out. We didn't
23 know -- we didn't know what was going on. So, you know, when
24 you see your -- your mom going through something like that,
25 you know, quick to call, you know, call the ambulance.

1 Q And how old were you in 2008 when this started going
2 on?

3 A Twenty-six.

4 Q And how old was Micah?

5 A Twenty.

6 Q After your mom would have a seizure, explain like
7 the recovery period after a seizure.

8 A She would come out of a seizure, and she would be --
9 right after a seizure, she would come out and like her eyes
10 would come to focus, and you would get like a chance to like
11 reposition her, because during a seizure, her body just kind
12 of like goes wherever it wants. And, you know, you kind of
13 make her comfortable, pull the -- you know, the best you can.

14 And he would -- right afterwards, she would come
15 to, and then like give you a look like she was that agony and
16 then pass right back out. And then after six to eight hours
17 of sleep, she would come back to, and then be able to like
18 stutter -- like her speech was first thing out and her
19 strength and everything. She would like stutter and lightly
20 speak. She wouldn't be able to really talk like in complete
21 sentences.

22 She couldn't just get up and like go to the
23 bathroom. She could barely like push herself up to sit up on
24 a pillow, you know. She would have like -- she would always
25 complain about like her -- right afterwards she would be

1 like, my head's cold, my head's cold, it hurts, it hurts so
2 bad. So, you know, we would like bring a beanie in and put a
3 beanie on her and like cover her up like, you know, with the
4 blankets and everything. And so she was just out of it and,
5 you know, weak, you know.

6 Q In regards to, you know, the period where you're
7 talking where she's having difficulty speaking and she's
8 either stuttering or speaking, you know, very quietly, how
9 long would that period usually last where she was weak in
10 that state?

11 A It differentiated on -- on how bad the seizures
12 were. So, if she had a bad seizure, it could take 24 hours
13 for her to -- to get like a full -- to be able to like speak
14 to you regular. And then when I would say regular, I mean
15 like a complete sentence. I'm talking about her voice wasn't
16 regular. She wasn't able to just like laugh and giggle. It
17 would be very like (indicating). You know, like weak and
18 like raspy. And, yeah, it just depended on the -- how bad
19 the seizure was.

20 If it was a horrible seizure, it could be 24 hours,
21 you know, for her to like be able to say something to you
22 without stuttering, and, you know, to where you could
23 understand right off the get go.

24 Q Okay. And along with the speaking issue, with the
25 stuttering, and I think you already discussed her being weak,

1 but could she move around? Like, could she get up and walk?
2 How was that situation after a seizure?

3 A No. No, she wasn't really just up and at um, no,
4 no. She would be just weak. She could like -- like I said,
5 she could barely like push herself up to like sit up on --
6 you know, to back up on the pillow or to pull up the
7 blankets. You know, that's about -- that was about the
8 extent of it.

9 Q When your mom was in the state where she couldn't
10 speak and she was doing the stuttering, did she know what was
11 going on around her?

12 A Yeah.

13 Q Okay. And how do you know that?

14 A We would have conversations afterwards, you know,
15 days afterwards, or however much time, because she would --
16 you know, she would be in the hospital and she'd be like,
17 where did you guys go, you know. I woke up and you guys
18 weren't there. You know, things to -- just questions, you
19 know, like of when we weren't there and things to that
20 nature --

21 Q Okay.

22 A -- you know.

23 Q So after she would come out of that state, she would
24 be able to talk to you about things that she witnessed and
25 saw going on?

1 A Yeah. Yeah, yeah, yeah, definitely, definitely.
2 Like, she would tell me -- like sometimes they would have
3 trouble putting the IV in her, you know, so she would be like
4 they stuck me so many times, you know --

5 Q Okay.

6 A -- things like that, you know.

7 Q But during that time period, she wouldn't be able
8 to converse with the nurse or the doctor?

9 A Right. Or if she was, it was such a stutter that
10 they wouldn't -- you know, some people don't take their time
11 to -- to stop, you know, because, you know, they're --
12 they're at their job so they're just go, go, go. So
13 sometimes, you know, people just don't stop to try to listen,
14 I guess --

15 Q Okay.

16 A -- you know.

17 Q So when your mom would be recovering at home from
18 one of these seizures, was it always either you or Micah
19 taking care of her?

20 A Yeah, yeah.

21 Q Okay. And how would she let you know she needed
22 help?

23 A We had a bell on the side -- you know, on her
24 nightstand around the side nightstand --

25 Q Okay.

1 A -- that she would ring for numerous, numerous
2 things.

3 Q So after she would come out of the state, would she
4 be able to grab a bell and --

5 A Yeah. That was about -- yeah, you know, she -- she
6 would be able to grab the bell, ding it, and then you'd come
7 in and wait it out basically for her to be able to give you a
8 piece of -- it's like figuring out a puzzle to try to figure
9 out what she's telling you, you know. So you would like oh,
10 you're hungry or, you know, and she would stutter it out, and
11 then, you know, do whatever, you know, try to help however
12 you could.

13 Q You took care of your mom for a period of how many
14 years?

15 A Well, since '08 to current.

16 Q Okay. So about five, six years? Okay.

17 A Yeah.

18 Q Whenever you were taking care of your mom, did she
19 ever mess herself or did you ever have to help her, you know,
20 with changing sheets or anything like that?

21 A No.

22 Q Okay.

23 A No.

24 Q How would she tell you she needed to go to the
25 bathroom?

1 A She'd ring the bell. She would ring the bell, come
2 in, and she'd either stutter out like pee with, you know,
3 that's an easy one, or potty, you know. One or the other.

4 Q Okay.

5 A And then I would help her into the restroom and help
6 her out, you know.

7 Q When you say you'd help her, did you have to carry
8 her?

9 A Yeah, yeah.

10 Q What would happen if you weren't home and it was
11 just Micah and she?

12 A She would usually hold it, because Micah -- Micah
13 couldn't just lift her up like I could, because it was mostly
14 -- it's like dead -- it's like dead body weight. So he would
15 have issues. So he -- he would tell me she's been having to
16 go -- he would call me even, and hey, she's got to go to the
17 bathroom, where are you? Are you home soon because, you
18 know, I can't get her in there by myself and, you know. So
19 it was just a constant evolution of trying to help, you know.

20 Q Okay. So any of those times that you got home, you
21 know, when Micah had called you, had she ever messed herself
22 any of those times?

23 A No. No, but she would be -- she would be ready.
24 She would be ringing the bell ready.

25 Q Okay.

1 A Or Micah would be like come on, you know, and first
2 step in the door, straight to, you know, to the bed to get
3 her.

4 Q Okay. I'd like to turn be your attention now to May
5 13th of 2008. On that day, did you receive a phone call that
6 your mom had suffered a seizure in the Smith's parking lot?

7 A Yeah. From my brother, yeah.

8 Q And was Micah with her at Smith's?

9 A Yeah.

10 Q And so what did you do when you got that phone call?

11 A Went to Smith's. Showed up, and the ambulance was
12 already there.

13 Q And when you got there, were they loading her up and
14 taking her to --

15 A Yeah.

16 Q -- hospital?

17 A Yeah.

18 Q And what hospital was that?

19 A Centennial.

20 Q Okay. And so what do you do after that?

21 A Took all the groceries home and unloaded the
22 groceries. And then shortly after that, I went to the
23 hospital.

24 Q Okay. And your mom was at the hospital for a series
25 of days; is that correct?

1 A Yeah.

2 Q If it shows she was admitted on the 13th and
3 released on the 20th, would that sound about right?

4 A Yeah.

5 Q Okay.

6 A Yeah.

7 Q Was your mom originally taken to the emergency room
8 department?

9 A Yeah.

10 Q And from there was she checked into the hospital?

11 A Correct.

12 Q And when your mom was -- after your mom was checked
13 into the hospital, did she suffer from a seizure in the
14 hospital?

15 A Yeah, while she was in the -- yeah. Yep.

16 Q Okay. And after this seizure, did your mom go into
17 what's called Afib? Did she have some issues with her heart?

18 A Yeah, which was the extent of how long she was in
19 there or why she had to stay -- remain in there.

20 Q Okay. So after your mom has this seizure and then
21 after she has the Afib, are you able to speak to her? Do
22 they get things under control and are you able to speak to
23 her?

24 A Yeah.

25 Q Was she acting normal when you had the opportunity

1 to sit down?

2 A No.

3 Q What was she doing?

4 A She was clenching onto me and trying to tell me
5 something.

6 Q And when she was clenching on, I think you're doing
7 something with your hand, but I'm sorry, I can't see where
8 you -- she's clenching.

9 A Yeah, she was clenching onto my -- onto my hand and
10 wrist. Yeah, she was clenching onto me.

11 Q And had she done that before in any of the previous
12 days?

13 A No, not -- not like clenching onto me, no. She
14 would -- she would grab my hand and, you know -- you know, be
15 -- or feel comfort when I was there or when me and Micah were
16 there, you know, and like rest her hands on ours, but not
17 like -- not like clenching onto me, no.

18 Okay. While she was clenching, was she trying to
19 talk? What was she doing?

20 A She was -- she was stuttering out -- she was trying
21 to tell me something, yeah. She was stuttering out -- I
22 don't know, she was stuttering out.

23 Q Okay. And was Micah there, too?

24 A Yeah.

25 Q After, you know, working -- after her continuing to

1 stutter, was she able to get little words out of what she was
2 trying to say?

3 A Yeah.

4 Q And what was she saying?

5 A She -- she had told me that a white bearded Santa
6 man grabbed her boob and put his thumb in her butt.

7 Q Okay. Now, the way you're saying it to me, was it
8 clear like that or was --

9 A No.

10 Q -- she --

11 A No, it was all stutters, and just like descriptive
12 words, you know what I mean? Just like broken, descriptive
13 words.

14 Q Okay.

15 A You know.

16 Q And so what -- when you hear this, what's going
17 through your mind?

18 A I can't say what was going through my mind, but it
19 was like what the -- what? You know, what? Hold on. What?
20 You know, just blank, deer in headlights moment --

21 Q Okay.

22 A -- you know.

23 Q And so do you call the police or do you talk to
24 hospital staff?

25 A No, I went out to the nurse's, like, booth out

1 there, and, you know, inquired about it. Has there been a
2 guy with a white beard on this floor today or anything like
3 that. And they were like, no, there's no guy that works on
4 this -- no white beard guy that works on this floor or
5 something similar to that.

6 Q Okay. Now, I should have asked you about the
7 timing. Now, your mom has a seizure, and there's a period in
8 which she recovers and then her heart goes into Afib; is that
9 correct?

10 A Yeah.

11 Q Okay.

12 A The initial seizure that got her there, and then I
13 think it was like the recovery of that, and then another
14 seizure hit, and then after that seizure, the -- during the
15 recovery, the Afib hit.

16 Q Okay. Did you feel like it was easy for her to talk
17 to you about this?

18 A No, not at all.

19 Q Why do you say not at all?

20 A I mean, it's nothing a mom really wants to tell her
21 child, you know, but she told me.

22 Q Okay. And so because of the heart and Afib issue,
23 did she have to stay a couple more days in the hospital?

24 A Yeah. Yeah, they take that serious, you know.
25 Anything to do with the heart, you know, they're -- they're

1 not just going to wheel you right out --

2 Q Okay.

3 A -- you know.

4 Q And so, you know, you knew your mom was going to be
5 staying a couple of more days, and so why didn't you tell
6 anybody in the hospital, this is what my mom's saying?

7 A I was worried about her health, to tell you the
8 truth. Just being new to all these seizures and a heart
9 issue now, you know, it's just a -- a lot to digest, and you
10 start thinking, you know, you start thinking the worst, you
11 know. You start thinking, like, what's going to happen next
12 type deal. So you tend to focus on those issues that have to
13 pertain to life, you know.

14 Q And after your mom had the Afib issue, she was moved
15 into the intensive care unit; is that right?

16 A Yeah.

17 Q After she's checked out of the hospital on the 20th,
18 what is her health like in the coming weeks after that?

19 A Torturous. She just continued to have seizures
20 every day, every other day, numerous amounts of times. And
21 then it was a struggle to like, she would tell me, you know,
22 if I have a seizure, just don't call the ambulance anymore,
23 you know, things like that to where it was like a struggle to
24 -- it was like -- kind of like trapping us in, you know.

25 Q She didn't want to be taken to the hospitals

1 anymore?

2 A Yeah.

3 Q Did she have any issues with male doctors or male
4 nurses when she did have to go?

5 A Yeah, she -- yeah, she requested no more male
6 anything, nurses, doctors, anything.

7 Q Before her stay from the 13th to the 20th, did she
8 ever have any problems with male physicians or nurses
9 treating her at all?

10 A No.

11 Q Now, after this happened to her, did she actually
12 have to go back to Centennial Hills on two different
13 occasions?

14 A Yeah, I believe so.

15 Q And on both those occasions, was she taken by
16 ambulance?

17 A Yeah.

18 Q Did you make a request to the ambulance drivers?

19 A Yeah.

20 Q And what did you ask?

21 A To take her to a different hospital, Mountain View,
22 which is off like Cheyenne, instead of Centennial.

23 Q And why did you ask that?

24 A Her request, you know.

25 Q And did they listen?

1 A No, no. They take her to the closest hospital,
2 period.

3 Q When that happened, would you follow along?

4 A Yep.

5 Q Did you ever make a request to ride along --

6 A Yep.

7 Q -- or Micah?

8 A Yep.

9 Q Okay.

10 A And some -- they would tell me there is going to be
11 -- we got too much going on here. Just follow us down, you
12 know. And when you got ambulance people in your house, it's
13 -- priority is, you know, her life, you know, her well-being.
14 So it was just like, you just kind of follow -- you follow
15 rules, you know. You just go with everything.

16 Q But did you accompany her to appointments and such
17 so that --

18 A Yeah, I --

19 Q -- to make her feel for comfortable?

20 A -- took her -- yeah, I -- yep, accompanied her
21 everywhere. All doctor appointments, all social service
22 appointments, everything, everything.

23 Q Did there come a point in time when you saw
24 something on the news about a male nurse at Centennial Hills
25 Hospital?

1 A Yes.

2 Q And when you saw that, did you tell your mom what
3 you had seen?

4 A Yes.

5 Q And what was her reaction?

6 A Like a shock, and then she went to her room, and,
7 you know, closed her door and went -- and stayed in her room
8 for a while, and then came out later. It was just like still
9 in shock, you know. Still in shock.

10 Q When she came out of the room, could you tell
11 whether or not she had been crying or she was upset?

12 A Yeah, she -- yeah. Yeah, she was fist full of
13 Kleenex and, you know, red eyes and puffy eyes.

14 Q Okay. And did you guys have conversation regards
15 what she should do?

16 A Yeah.

17 Q And what did you say?

18 A I told her to at least file a report, you know. To
19 do something about it, you know.

20 Q Did she agree to do that?

21 A Yeah. She called right then.

22 Q And did the police officer come out --

23 A Yep.

24 Q -- to your home?

25 A Yeah.

1 Q After she made the reports to the police, did she
2 have to go to court a couple different times?

3 A Yeah.

4 Q Did you accompany her to those court proceedings?

5 A Yeah.

6 Q And after the first court proceeding, what was her
7 health after that?

8 A Well, she had a seizure.

9 Q While still at the courthouse?

10 A Yeah. Right -- I think she got off the stand, and
11 they wheeled her back and before she hit outside to the tile
12 floor, she had a seizure.

13 Q Okay. And did the ambulance come to the courthouse
14 and take her --

15 A Yeah.

16 Q -- out? And even after that, did she still have to
17 come back and testify one more time?

18 A Yeah, I believe so. Yeah.

19 Q Now, are you -- you're aware that your mom filed a
20 civil lawsuit in, I think it was like September of 2009 or
21 somewhere around that time --

22 A Yeah.

23 Q -- period? And in regards to some personal
24 questions on your behalf, I apologize that I have to ask
25 these, right now are you currently on probation?

1 A Yes.

2 Q Okay. And was that for a felony conviction?

3 A Yes.

4 Q And what felony is that?

5 A Marijuana. I pled to distribution of marijuana.

6 Q Okay. And you're on probation. And if you
7 successfully complete probation, what happens to that?

8 A It gets dropped from a felony to a gross
9 misdemeanor.

10 Q Okay. And when should that probation period be
11 over?

12 A The next couple months.

13 Q Okay. As you have stated here today a couple times,
14 your mom ultimately passed away?

15 A Yeah.

16 Q And on what day was it that she passed away?

17 A July 10th, last year, 2013.

18 Q Okay. And was that a suicide?

19 A Yeah.

20 Q And are you the person that found her?

21 A Yes.

22 Q Okay.

23 MS. BLUTH: I have nothing else. Thank you.

24 THE COURT: Cross.

25 CROSS-EXAMINATION

1 BY MR. MANINGO:

2 Q Mr. Petersen, would you like to take a moment?
3 Would you like to take a break or --

4 A No, I'm fine.

5 Q Okay. I'll apologize up front for having to ask you
6 some sensitive questions. You understand, though, that I
7 have to do my job?

8 A Yes, I do.

9 Q Okay. You are -- at this point, you are a convicted
10 felon?

11 A Yes.

12 Q Okay. And you're on probation now?

13 A Yes.

14 Q Okay. And you were prosecuted here in Clark County?

15 A Yeah.

16 Q Okay. Your mom's health issues came from a head
17 injury?

18 A Yeah.

19 Q Okay. And that head injury obviously, came before
20 any of these allegations in May of '08, correct?

21 A Yeah.

22 Q Okay. So in other words, when she went to stay at
23 Centennial Hills Hospital, during the incident that we're
24 talking about now, she had already started having the
25 seizures because of her head injury?

1 A Yeah. Shortly before, yeah.

2 Q Okay. And because of the seizures, she was unable
3 to work, correct?

4 A Correct.

5 Q Okay. And the seizures, you said, her body would
6 sometimes go wherever it wanted to go?

7 A Yeah.

8 Q And sometimes it would -- her body would clench up
9 real tight?

10 A Correct.

11 Q Okay. Your mom had to take different medications
12 for her seizures?

13 A Correct.

14 Q Okay. And you and your brother took care of your
15 mom, right?

16 A Yes.

17 Q So you would help with the medications and that kind
18 of thing?

19 A Yes.

20 Q Okay. And would it be fair to say that your mom
21 would become depressed or sad at times because of her --

22 A Medications?

23 Q -- her health? No, because of her -- well, her
24 medications or her health just from having the seizures
25 all --

1 A I would say a little bit of both, yes.

2 Q Okay. Now, I want to talk about the dates that Ms.
3 Bluth was speaking to you about, approximately May 13th
4 through the 20th, 2008.

5 A Okay.

6 Q Okay. Now, you said your mom grabbed you at one
7 point, correct?

8 A Correct.

9 Q And that was after the Afib, the heart incident?

10 A Correct.

11 Q Okay. And you said she grabbed you in a way that
12 sort of indicated to you fear, or something like that?

13 A Correct.

14 Q Okay. And she eventually got out or communicated to
15 you that someone had sexually assaulted her?

16 A Yes.

17 Q Okay. Now, she stayed in that hospital for a few
18 days after that, correct?

19 A Yes.

20 Q Okay. You didn't ask for a nursing change, correct?

21 A No.

22 Q Okay. You didn't inform her doctor what had
23 happened, correct?

24 A No.

25 Q Okay. You didn't call the police or 911?

1 A No.

2 Q Okay. Now, you did testify earlier that when your
3 mom would have a seizure, I think you said, you see mom like
4 that, and you're quick to call an ambulance, right?

5 A Correct.

6 Q Okay. But your mom had just told you that she was
7 sexually assaulted, you didn't call the cops or anything like
8 that?

9 A Correct.

10 Q Okay. Your brother was there with you?

11 A Yes.

12 Q Okay. And he didn't go and tell the doctor --

13 A No.

14 Q -- as far as you know? As far as you know, he
15 didn't call 911, correct?

16 A Correct.

17 Q Okay. He didn't report this to hospital security?

18 A Correct.

19 Q Okay. And neither did you?

20 A Correct.

21 Q Okay. Now, your mom had had hospital stays before,
22 correct?

23 A Yes.

24 Q And she had stayed at Centennial Hills before,
25 right?

1 A I believe so, yeah.

2 Q Okay. Now, you know that she had -- at a previous
3 time when she stayed at Centennial Hills, she had reported
4 some missing property, correct?

5 A I don't know.

6 Q Oh, okay. Yeah, if you -- no, if you don't know,
7 that's okay. Now, despite your mom telling you that she had
8 been sexually assaulted, you and your brother hadn't told
9 anyone, and your mom remained in the hospital -- in the same
10 hospital, correct?

11 A Correct.

12 Q Okay. And then when she was released, you and your
13 brother took her home?

14 A Yep.

15 Q Okay. Once you got home and you were away from the
16 hospital, at that time, you still didn't report it to the
17 police?

18 A No.

19 Q And your brother didn't either?

20 A No.

21 Q And your mom didn't?

22 A No.

23 Q Okay. And you didn't report it to the hospital?
24 Call into the hospital and report it to them?

25 A No. Not a formal level, no.

1 Q No. Okay. And neither did your brother or your
2 mom?

3 A Correct.

4 Q Okay. The police weren't called until you actually
5 saw a story on the news --

6 A Correct.

7 Q -- a television story?

8 A Correct.

9 Q Okay. And do you remember a woman and her lawyer
10 being on that news story?

11 A No, I don't.

12 Q Okay.

13 A No.

14 Q Okay. But it wasn't until you had seen all this on
15 the news that then your mom called the police, correct?

16 A Correct.

17 Q Okay. Now, you haven't testified in this case
18 before today?

19 A No.

20 Q Okay. And you never did a tape recorded police
21 statement at any time?

22 A No.

23 Q So you had never shared what you told us today any
24 time in the last six years with police or lawyers or anything
25 like that?

1 A No, I haven't had to.

2 Q Now, after seeing the story on the television and
3 your mom calling the police, at some point after that, she
4 also hired her own attorney, correct?

5 A Yes.

6 Q Okay. And you know that she filed a civil lawsuit?

7 A Yes, I'm aware.

8 Q Okay. And you're aware that that civil lawsuit is
9 still pending now?

10 A Yes.

11 Q Okay. And I'm assuming you're one of her
12 beneficiaries of her estate?

13 A Yes.

14 Q You had stated that even after this stay in the
15 hospital, and after your mother had told you that she was
16 sexually assaulted, she actually went back to that same
17 hospital on two different occasions, correct?

18 A Yeah. She was brought there, yeah.

19 Q Okay. And you didn't tell the ambulance driver,
20 hey, my -- you know, my mom was assaulted at that hospital?

21 A No, I didn't tell the ambulance driver she was
22 sexually assaulted. No.

23 Q Okay. No one mentioned anything about the assault
24 at either time during those two visits to Centennial Hills?

25 A No.

1 Q Okay. So she went back to that hospital, and I
2 imagine while she's at the hospital on those two separate
3 visits after the allegations, she's being attended to by
4 doctors, correct?

5 A Correct.

6 Q Nurses?

7 A Correct.

8 Q Okay. And as far as you know, she doesn't say
9 anything to any of them about what had happened to her before
10 at that same hospital?

11 A She wasn't saying much of anything. She was having
12 seizures.

13 Q Okay. You didn't say anything to any of those
14 people --

15 A No.

16 Q -- about what had happened at the hospital before?

17 A No.

18 Q As far as you know, your brother didn't say
19 anything?

20 A No.

21 Q Thank you, Mr. Petersen.

22 THE COURT: Redirect.

23 REDIRECT EXAMINATION

24 BY MS. BLUTH:

25 Q From the time period of your mom's stay on the 13th

1 through the 20th of May in 2008, until the time you tell the
2 -- until the time your mom tells the police what happened to
3 her, during that time period, is this -- is that during the
4 time period that the seizures are so out of control?

5 A Yeah. This was -- yeah. I mean, yeah, she had a --
6 when she had the seizure at the store, you know, at Smith's,
7 it was middle of the day, you know, out of nowhere. And
8 then, yeah, she was -- this was when they were a lot, and
9 numerous amounts of times and then the Afib. Yeah, it was a
10 very just crazy time, yeah.

11 Q And at that time period as a 26-year-old kid -- I
12 don't know, man -- a lot going on?

13 A Yeah. Yeah, yeah, yeah.

14 Q Worried about --

15 A I was still --

16 Q -- your mom?

17 A -- wet behind the ears, yeah. And yeah, of course,
18 it was my mom, you know. I never seen my mom like that, you
19 know.

20 Q Thank you.

21 MS. BLUTH: Nothing further.

22 THE COURT: Redirect (sic).

23 MR. MANINGO: No, Your Honor. Thank you.

24 THE COURT: Thank you. May this witness be
25 excused?

1 MS. BLUTH: Yes, Your Honor.

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

3 THE WITNESS: Thank you.

4 MS. BLUTH: May we approach on the --

5 THE COURT: Yes.

6 MS. BLUTH: -- scheduling issue?

7 THE COURT: Yes.

8 (Bench conference begins)

9 MS. BLUTH: Jacqueline Bluth. The video is on
10 next. It's one hour and 39 minutes, so it's like literally
11 to the T. So I just need like two minutes to set it up and
12 make sure the system's working.

13 THE COURT: Okay.

14 MS. BLUTH: So --

15 THE COURT: We'll need to give the jury a break
16 anyway.

17 MS. BLUTH: Okay.

18 THE COURT: Restroom break, so --

19 MS. BLUTH: Perfect.

20 THE COURT: -- we'll do that.

21 MS. BLUTH: Thank you.

22 (Bench conference concludes)

23 THE COURT: All right, ladies and gentlemen, I'm
24 sure you're ready for a restroom break, and so we're going to
25 take ten minutes, because the next witness will be via

1 videotape, and that will take us through to the end of the
2 day.

3 Ladies and gentlemen, we're going to take a
4 ten-minute recess. During this recess, it is your duty not
5 to converse among yourselves or with anyone else on any
6 subject connected with the trial or to read, watch or listen
7 to any report of or commentary on the trial by any person
8 connected with the trial or by any medium of information,
9 including without limitation, newspaper, television, radio or
10 Internet, and you are not to discuss this case or form or
11 express an opinion on any subject connected with the case
12 until it is finally submitted to you. We'll be in recess for
13 ten minutes.

14 THE MARSHAL: Rise for the jury, please.

15 (Outside the presence of the jury)

16 THE COURT: All right, the record will reflect
17 we're outside the presence of the jury. Are there any
18 matters outside the presence before we recess for ten
19 minutes?

20 MS. BLUTH: No, Your Honor.

21 THE COURT: All right.

22 MR. MANINGO: No, Your Honor.

23 THE COURT: Thank you. We'll be in recess.

24 (Court recessed at 3:21 p.m. until 3:35 p.m.)

25 (Outside the presence of the jury)

1 THE COURT: All right. We're back on the record in
2 State of Nevada vs. Steven Farmer, and the Defendant's
3 present with his counsel. Deputies District Attorney are
4 present as are all officers of the court, and we're outside
5 the presence of the jury and the four alternates.

6 We're at the point where we're going to be playing
7 the -- what was recorded in open court as basically, in an
8 evidentiary format recorded deposition, essentially, of
9 Marcia Petersen; is that correct? Who is now deceased. And
10 previously had a motion to admit her testimony since she's no
11 longer available, as she has passed away.

12 Our problem with the actual JAVS recording that was
13 made is that, while the lawyers and the court are very
14 audible, because the microphone system didn't pick up very
15 well with Ms. Petersen, because her voice was very soft
16 during the hearing, which I do recall it being quite soft,
17 but the court recorder was hearing everything through her
18 earphones and could, in fact, they were able to transcribe
19 and make a certified copy of the transcript of the hearing.

20 So what we're doing is we're -- we've got the
21 certified copy of the transcript so that the jury can read
22 along and see what Ms. Petersen's response is to the
23 questions on both direct and cross-examination are, since
24 otherwise, it doesn't look like they would be able to hear
25 most of her testimony.

1 So we're going to distribute one copy for each of
2 the jurors and the four alternates. The Court will have a
3 copy. We're going to be marking a copy as an exhibit. And
4 you have you that?

5 THE CLERK: I already did that.

6 THE COURT: Okay.

7 MR. KOCHEVAR: I've got it right now, Judge.

8 THE CLERK: Did you take it back from me?

9 MR. KOCHEVAR: It will be -- at this time, the
10 State's moving to admit State's Proposed Exhibit 25, which is
11 actually the video, the DVD, as well as State's Proposed 27,
12 which is the transcript of the hearing. So we'd move to
13 admit those at this time.

14 THE COURT: Any objection?

15 MR. MANINGO: No objection.

16 THE COURT: Those will be admitted.

17 (State's Exhibits 25 and 27 admitted)

18 THE COURT: And we'll just hope that the jury keeps
19 up in reading along. They'll have their copy -- thank you --
20 to take with them, the clean copy. And I will admonish them
21 that they're not going to be able to take the copies they
22 have with them to the jury room, so that if they need to take
23 notes, they have to do that on their notepads, not on these
24 transcripts that they'll be given to follow along with.

25 MS. BLUTH: Okay.

1 THE COURT: All right.

2 (Pause in the proceedings)

3 THE COURT: Anything else outside the presence?

4 MR. KOCHVAR: Court's indulgence one moment.

5 (Pause in the proceedings)

6 MS. BLUTH: And then, Your Honor, State's Proposed

7 26 is a picture of Marcia Petersen. I forgot to ask her son

8 about it, but I spoke to Mr. Maningo. They don't have any

9 objection to 26 coming in, which is the picture of her.

10 THE COURT: All right. It will be admitted.

11 (State's Exhibit 26 admitted)

12 THE COURT: Is that correct, no objection,

13 Mr. Maningo?

14 MR. MANINGO: No objection.

15 THE COURT: Thank you.

16 MS. BLUTH: Does Your Honor want a copy?

17 THE COURT: Of the transcript? I have it.

18 MS. BLUTH: All right.

19 THE COURT: All right. May we bring the jury back

20 in?

21 MS. BLUTH: Yes, Your Honor.

22 THE COURT: All right. Let's do it.

23 THE MARSHAL: Rise for the jury, please.

24 (In the presence of the jury)

25 THE COURT: Thank you. Please be seated. The

1 record will reflect we're back within the presence of all 12
2 members of the jury as well as the 4 alternates. Will
3 counsel so stipulate?

4 MS. BLUTH: Yes, Your Honor.

5 MR. MANINGO: Yes, Your Honor.

6 THE COURT: All right. State, you may proceed.

7 MS. BLUTH: Thank you, Your Honor. Your Honor, at
8 this time, State's 25, we're going to move to admit that into
9 evidence, which is the video deposition taken of Marcia
10 Petersen on January 20th of 2012, in Your Honor's courtroom.

11 THE COURT: That's correct. And that has been
12 admitted. And ladies and gentlemen, we're going to be
13 playing this video. The audio of the person testifying, Ms.
14 Petersen, is extremely poor, However, we've provided each of
15 you with a transcript, which is a certified transcript by the
16 court recorder who transcribed it, so that you can follow
17 along because the microphone system did not pick up very
18 well.

19 You will not be able to take the copies of the
20 transcript that you have to follow along with, with you to
21 the jury room. You will be given a clean copy of the
22 transcript, and it's been marked and admitted as an exhibit.
23 That will be part of the evidence you will get in the jury
24 room. But if you want to make any notes, then you need to
25 make that on your notepad, not on this that you have with you

1 because it will be taken from you when the testimony is over.

2 MS. BLUTH: And with that, Your Honor, I just ask
3 for permission to publish.

4 THE COURT: You may so publish.

5 (State's Exhibit 25, videotaped testimony of Marcia
6 Petersen was played, but not transcribed herein)

7 THE COURT: All right, ladies and gentlemen, it's
8 past 5:00, but I didn't want to stop in the middle of that
9 recording. So we're going to take our evening recess. We're
10 going to resume at 9:00 a.m. tomorrow, Thursday. Counsel is
11 that -- no? Okay. 1:00?

12 MR. MANINGO: Yes, please, Your Honor.

13 THE COURT: Okay. All right, so 1:00 o'clock
14 tomorrow. I guess, we'll have witnesses ready at 1:00.

15 So during this recess, it is your duty not to
16 converse among yourselves or with anyone else on any subject
17 connected with the trial or to read, watch or listen to any
18 report of or commentary on the trial by any person connected
19 with the trial or by any medium of information, including
20 without limitation, newspaper, television, radio or Internet,
21 and you are not to form or express an opinion on any subject
22 connected with the case until it is finally submitted to you.

23 We'll be in recess until 1:00 o'clock tomorrow,
24 this courtroom. See you tomorrow.

25 THE MARSHAL: Rise for the jury.

1 THE COURT: Just leave the transcripts on your
2 chairs.

3 (Outside the presence of the jury)

4 THE COURT: All right, the record will reflect the
5 jury has departed the courtroom. Are there any matters
6 outside the presence before we recess?

7 MS. BLUTH: No, Your Honor.

8 MR. MANINGO: No, Your Honor. Thank you.

9 THE COURT: Thank you. I'll see you tomorrow at
10 1:00.

11 THE CLERK: Can I have (indiscernible). You're
12 reading my mind.

13 (Court recessed at 5:23 p.m., until Thursday,
14 February 20, 2014, at 1:02 p.m.)

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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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JULIE LORD, TRANSCRIBER

8-22-14
DATE


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.	:	
	:	TRANSCRIPT OF
STEVEN DALE FARMER,	:	PROCEEDINGS
	:	
Defendant.	:	
.....	:	

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 12

THURSDAY, FEBRUARY 20, 2014

APPEARANCES:

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

COURT RECORDER:

LARA CORCORAN
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

INDEXWITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
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DEFENDANT'S WITNESS:

Carine Brown	23	33	41		
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* * * * *

EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
---------------------	-----------------

(No exhibits admitted)

1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 20, 2014, 1:02 P.M.

2 (Outside the presence of the jury)

3 THE COURT: All right, this is Case No. C-245739,
4 State of Nevada vs. Steven Farmer. We're on the record. The
5 record will reflect we're outside the presence of the jury.
6 The Defendant's present with his counsel. The Deputies
7 District Attorney prosecuting the case are present as are all
8 officers of the court. Will counsel so stipulate?

9 MS. BLUTH: Yes, Your Honor.

10 THE COURT: Thank you.

11 MR. MANINGO: Yes, Your Honor.

12 THE COURT: All right, so now, I understand there's
13 some matters outside the presence.

14 MS. BLUTH: Go ahead, Mr. Bashor.

15 MR. BASHOR: Oh, okay. Yes, Your Honor. I believe
16 this is the appropriate time. I anticipate the State, in
17 speaking with them this afternoon, that the next thing that
18 they're going to do in this case is rest.

19 At this time, I have an oral Motion to Dismiss
20 Count 3, and ask for a modification in language of Count 15.
21 Your Honor, Count 3 is an indecent exposure, to wit, in this
22 case, it's the brushing against and/or touching the breasts
23 of Heather Shank. In preparing jury instructions in this
24 matter, and looking into the indecent exposure statute, the

1 Nevada Supreme Court, in State vs. Castaneda, and that's 126
2 Nevada Advanced Opinion 45. It's 245 P.3d 550. There was a
3 challenge as to the overbreadth and vagueness to the indecent
4 exposure statute, because the statute itself reads that it is
5 a person who -- and this is NRS 201.220.

6 "A person who makes any open and indecent or
7 obscene exposure of his or her person or the person of
8 another is guilty of indecent exposure." So the whole debate
9 is, what is the definition of the person? Well, at common
10 law, the person was a euphemism for penis. The Supreme Court
11 then went on to explain, well, it's not just the penis in
12 Castaneda, it's the genitalia.

13 And then in the debate about whether or not this
14 was overbroad or vague, the back and forth between the two
15 sides, it comes in a footnote in this particular case, and
16 that would be footnote number 3, that the breasts are not
17 genitals and, therefore, indecent exposure would not apply to
18 the breasts. So --

19 THE COURT: Is that what the case held, or?

20 MR. BASHOR: Yes. Your Honor, it says, in footnote
21 3 in reference to -- I guess, if I could explain a little bit
22 further.

23 THE COURT: Sure.

24 MR. BASHOR: In 1995, the legislature added that
25 breastfeeding in public was perfectly acceptable. The

1 defense in the case said, well, that doesn't make any sense
2 because you've just said that the person is the penis which
3 is euphemism for genitalia. And to clarify what they meant,
4 the Supreme Court, in the footnote 3 said, this is makes
5 sense because the common law teaches that breasts are not
6 genitals.

7 So, Count 3 being just about breasts and indecent
8 exposure, I would state that under the law it -- the jury
9 could not find him guilty of indecent exposure of the
10 breasts. And the reason I mentioned Count 15, is because the
11 case also goes on to discuss, as oftentimes the State uses
12 "and/or" language. So, for instance, in Count 15, it's to
13 look at her genital opening and/or anal opening, both of
14 which I would state under the law makes sense as being part
15 of the genitalia, and I think that this particular case
16 stands for that proposition. But it goes on to say, and/or
17 buttocks and/or breasts. And Castaneda specifically states
18 that buttocks, because of the "and/or" language, could not
19 stand for comprising of the genitalia and the breasts, would
20 not stand for comprising of the genitalia. So I'd ask for
21 those last four words to be stricken.

22 THE COURT: Okay. And Count 15 is --

23 MR. BASHOR: Indecent exposure of Marcia Petersen's
24 breasts.

25 THE COURT: Okay. Well, oh, wait, there's that

1 one, but there's the one that you said --

2 MR. BASHOR: Count 3 is just Ms. Shank, and it's
3 just the breasts.

4 THE COURT: I don't have the pleading in front of
5 me, that's why --

6 MR. BASHOR: No, I understand. I'm sorry, Judge.
7 Count 3 is Heather Shank, and it's just the breasts.

8 THE COURT: Okay.

9 MR. BASHOR: And the reason I bring this up is --
10 and we can discuss it later in the context of jury
11 instructions if Your Honor prefers. It's just (a) I think
12 it's appropriate at the close of the State's case, but (b) my
13 belief, based on the reading of Castaneda, is that one of the
14 proposed jury instructions that the State intends to proffer,
15 in my opinion, based on reading of the case, would be an
16 inaccurate statement of the law when it comes to indecent
17 exposure, and so that's what got me curious, I guess, you
18 would say --

19 THE COURT: Um-h'm.

20 MR. BASHOR: -- and brought me to this point.

21 THE COURT: So I wonder, then, there -- just out of
22 curiosity, so a woman could walk down the Strip topless, and
23 that would be okay?

24 MR. BASHOR: Under the indecent exposure statute,
25 yes.

1 THE COURT: I wonder if there's a -- I wonder if
2 there's some kind of --

3 MR. BASHOR: There's a county ordinance that we use
4 all the time called, lewd and lascivious conduct. My -- I
5 would have a feeling that a police officer might use that in
6 catching a woman on the Strip, depending --

7 THE COURT: Okay.

8 MR. BASHOR: Might.

9 THE COURT: Just curious. All right. And what's
10 State's position?

11 MS. BLUTH: Judge, I actually was just given this
12 five minutes ago, so I'm going to need to go back, and I'm
13 going to have to look at it, or have my -- I can e-mail my
14 paralegal and have her look at it, but I'm not prepared at
15 all to argue this. And I told Mr. Bashor that, because he
16 just gave this to me right before we got to court. Because I
17 think he just came across it as he was doing jury
18 instructions. So I would just ask after we get done with
19 court today, I'll go back and I'll look at it.

20 MR. BASHOR: And I think, Your Honor, it's not a
21 situation -- and I don't mean to speak for the State, but I
22 don't think it's a situation where the State would be able to
23 go back and call different witnesses to correct some kind of
24 factual error in their case. My argument is strictly legal.

25 THE COURT: Correct.

1 MR. BASHOR: And so I don't think it would be
2 inappropriate for the State to take some time to do some
3 research on their own. We can discuss this in the context of
4 jury instructions.

5 THE COURT: Right. I think, I mean, you could
6 bring this even as a motion -- if it went to the jury, they
7 convicted, you could bring it as a motion --

8 MR. BASHOR: Correct.

9 THE COURT: -- after. So all right, so we'll give
10 you some time to respond. And are you planning on resting?
11 And if so, then should I admonish the Defendant at this time?
12 Have you talked to him about whether he wants to testify?

13 MR. MANINGO: If I could have just a moment. We
14 have talked about it several times.

15 MS. BLUTH: And while they're dealing with that,
16 Your Honor, Mr. Bashor and I have one more issue. In regards
17 to the expert that's going to be testifying this afternoon,
18 Ms. Higelin -- I believe, Ms. Higelin, I'm not sure I'm
19 pronouncing it correctly.

20 MR. BASHOR: Ms. Higelin. Just --

21 MS. BLUTH: Higelin.

22 MR. BASHOR: Thank you.

23 MS. BLUTH: Thank you. In regards to her reviewing
24 of documents, one of the things that she reviews and relies
25 on to form her opinion is the grand jury testimony of Marcia

1 Petersen.

2 She mentions the testimony throughout her opinion
3 and her report, multiple times, discusses inconsistencies in
4 it, discusses its facts compared to the facts in the medical
5 reports, goes on and on and on. The grand jury testimony of
6 Marcia Petersen is not involved in this case at all. Even in
7 her video deposition, nothing from her grand jury statements
8 or testimony came in at all.

9 So I would ask that she not be able to refer to her
10 grand -- you know, Marcia Petersen's grand jury testimony
11 being inconsistent with this or that because that obviously,
12 assumes facts not in evidence, and can't be referenced in any
13 way, shape or form.

14 MR. BASHOR: Two things, Your Honor. First and
15 foremost, I -- and I let Ms. Bluth know this this afternoon
16 as well -- I pretrialed Ms. Higelin last night after court.
17 A couple background. First of all, the report that she
18 generated was actually at the behest of civil attorneys in
19 this case involved in the Marcia Petersen civil litigation.

20 I'm of the belief that a lot of her, quote,
21 "opinions" in that particular report probably would not be
22 admissible in front of a jury anyway, because it goes to the
23 ultimate fact in issue. She's not a fact witness that could
24 have made any observations, she reviewed some records outside
25 of court. I don't intend in soliciting from Ms. Higelin

1 anything specific about any review of records, testimony.

2 With that being said, I mean, I guess, if I did see
3 that need, my argument would be, you know, an expert's not
4 limited in reviewing what is necessarily in front of a jury.
5 They've -- oftentimes are used and consulted to review a
6 whole plethora of things. But again, I don't intend to go
7 into that.

8 THE COURT: Well, what is she going to opine?

9 MR. BASHOR: Well, I mean, that's the point, Your
10 Honor. I mean, I don't think she or any expert or any lay
11 witness could come in and say, well, I read the grand jury
12 transcript and I read the police report and I read this and I
13 find them to be inconsistent, therefore, I don't believe the
14 person. That's --

15 THE COURT: Well, that --

16 MR. BASHOR: -- ridiculous.

17 THE COURT: No, there's case law right on point,
18 criminal case --

19 MR. BASHOR: Right.

20 THE COURT: -- you -- they can't testify or -- as
21 to an opinion on the credibility of a witness.

22 MR. BASHOR: Absolutely. And I have zero, zero
23 desire, and instructed her in our discussions that -- in
24 pretrial that I'm looking for -- she has got 25, 30 years of
25 experience as a registered nurse, master's in nursing. We're

1 talking about protocols and standards of procedure in a
2 hospital, what CNAs, what they don't do.

3 THE COURT: I see.

4 MR. BASHOR: That's the purpose for the Defense
5 calling this witness. We have no intention of soliciting any
6 opinion as to what she finds credible and incredible as to
7 one particular alleged victim in this case.

8 MS. BLUTH: Well, but on cross, I would like to get
9 into her report and the facts -- and the statements that she
10 makes in that report, and that has nothing to do with grand
11 jury testimony. But this is on -- I understand Mr. Bashor
12 might not want to go into that, and I understand the reasons
13 why he wouldn't want to go into that. But the fact of the
14 matter is, she was hired by a civil defense firm, and she
15 prepared a six to seven-page report, where she states -- says
16 things, such as, "It is my opinion that there is no evidence
17 in the medical records that Mr. Steven Farmer, a certified
18 nursing assistant, deviated from the standard of care when
19 providing care to Jane Doe."

20 So I'm going to ask her what her basis is on those
21 opinions and what she looked at in preparing -- in making
22 those opinions because those are things that she has done in
23 this case and they --

24 THE COURT: Well, gosh, I would think, yeah, she'd
25 say that he didn't put in there that he, you know, sexually

1 assaulted the --

2 MS. BLUTH: Right.

3 THE COURT: Well, that's kind of --

4 MS. BLUTH: But it goes to her credibility. I
5 mean, it goes to her motive and bias of wanting to come in
6 here on the behalf of a civil defense firm because, as
7 Mr. Maningo said to Ms. Petersen yesterday, at the end of the
8 video depo, you know, this could have an affect on the way
9 those things go down in the civil world.

10 And so her credibility, as an expert witness both
11 in the civil case and here, come into question when she makes
12 opinions like that, based on nothing, based on looking at
13 medical records that Mr. Farmer never notated anything in
14 there. So how can she base an opinion on that?

15 MR. BASHOR: My retort, I guess, Your Honor, would
16 be two-fold. I mean, first of all, if that were the opinion,
17 a motion to strike may have been appropriate. I still don't
18 think you get there. Like I stated, experts oftentimes
19 review things and look at things that are never admitted in
20 front of a jury in forming an opinion.

21 I think if the State was choosing to go down that
22 particular road, in our proffer for her to be an expert, it
23 was for the standards of procedure protocol in the general of
24 senses. Her report was provided because I -- we felt that
25 under the rules of discovery, since a report was generated,

1 it ought to be turned over to the State.

2 But the fact of the matter is, she's saying she
3 reviewed the grand jury transcript is one of many things she
4 reviewed in forming an opinion. And I, therefore, think --

5 THE COURT: Well, the opinion that she'll be
6 allowed to give in this case is substantially different than
7 the opinion that she would be offering in the civil case,
8 because in that case, that's a malpractice case and -- which
9 is why she's addressing the standard of care issue.

10 MS. BLUTH: Right. But the basis of her forming
11 that opinion, she has no basis for forming that opinion.

12 THE COURT: But I'm not going to allow her to
13 testify as to an opinion as to the standard of care of the
14 hospital or of the --

15 MS. BLUTH: So --

16 THE COURT: Because the standard of care isn't
17 relevant in a criminal case.

18 MS. BLUTH: I understand that. But what is
19 relevant in the criminal case is her bias and her motive and
20 her credibility to come in here. And so when she has a
21 report -- and I would like to note for the record that the
22 civil defense bar is passing notes to the public defender,
23 which has happened the entire trial.

24 But the witness, who is going to be testifying, was
25 hired by them, and so that's my entire point. That's my

1 entire point with this process is because there are different
2 motives and biases for her to say these things and she
3 base --

4 THE COURT: Well, you can -- I mean, you can
5 cross-examine her about biases that she's -- you know, she
6 was hired by the hospital, as an expert witness to defend the
7 civil case and, you know, and try and like -- both sides
8 always are allowed to explore bias of any witness.

9 MS. BLUTH: Okay.

10 THE COURT: And so you're allowed to do that, but,
11 I guess, I'm --

12 MS. BLUTH: My point is --

13 THE COURT: Uh-huh.

14 MS. BLUTH: -- in the civil case --

15 THE COURT: Yes.

16 MS. BLUTH: -- she was given Marcia Petersen's
17 grand jury testimony, and she was given the medical records.
18 And based on those two things, not speaking to the Defendant,
19 not speaking to doctors, not speaking to nurses, her opinion
20 was that his -- he did not deviate from the standard of care
21 that he provided Jane Doe, which is Marcia Petersen, okay?

22 So I want to know from her, when she opines that,
23 how can you make an opinion -- how can you form that opinion
24 when there is nothing about his care in the medical records?
25 You can't.

1 MR. BASHOR: And Your Honor, we're not asking her
2 for that opinion.

3 MS. BLUTH: But that doesn't matter whether they're
4 asking or not. She's already given it. And by the way, I
5 didn't receive this report from the defense. I actually
6 received it from the civil attorneys. So --

7 MR. BASHOR: It should have been -- okay.

8 THE COURT: All right, so it's their witness.
9 They're going to ask her on direct -- apparently, they'll lay
10 a foundation to qualify her to opine on something as an
11 expert witness, that it will aid the trier of fact under the
12 statute. And then she'll say what her opinion is, and if the
13 opinion is something narrower than what's in that, then your
14 going into her opinion that was expressed in that report, it
15 goes beyond --

16 MS. BLUTH: What is her opinion then?

17 THE COURT: -- the scope -- I don't know because I
18 haven't heard it.

19 MR. BASHOR: Your Honor, it's no different than
20 every single RN and doctor that was called by the State,
21 which is, what methods do you typically use? Well, we use
22 discrete methods. We grab -- instead of hand-to-hand contact
23 on the breasts, we use the gown. Or is it typical that the
24 gown is open, exposing both breasts? It's no different than
25 that. We just have somebody who has 25, 30 years experience

1 in the field who's going to come in and give an opinion as to
2 whether or not it's common or practice to open a gown all the
3 way, or to have a CNA adjust the leads, or the exact things
4 that the State's had every single one of their --

5 THE COURT: Okay.

6 MR. BASHOR: -- medical witnesses testify --

7 THE COURT: All right.

8 MR. BASHOR: -- to.

9 THE COURT: And so what I'm saying is, if that's,
10 in fact, what her testimony is, similar to what your
11 witness's testimony was, then for you to go into a report
12 about the standard of care is beyond the scope of direct
13 examination.

14 MS. BLUTH: But just like yesterday on
15 cross-examination you are entitled to go in to further than
16 their direct to show bias and motive.

17 THE COURT: Well, yes, and you can do that, but I
18 don't know how you're doing that by saying --

19 MS. BLUTH: It's important to show --

20 THE COURT: -- you --

21 MS. BLUTH: -- Judge, that she was willing to have
22 an opinion that said he didn't deviate from the standard of
23 care without ever speaking to anyone --

24 THE COURT: Well, you --

25 MS. BLUTH: -- with just consulting the medical

1 records.

2 THE COURT: All right. You can -- I mean, you can
3 ask that. I'm --

4 MS. BLUTH: Okay.

5 THE COURT: You're just worried about her getting
6 into the grand jury testimony leads, right? I mean, that's
7 how this argument started this morning that you were --

8 MS. BLUTH: Well, I mean, yeah. It's gone into a
9 different area, but my initial was the grand jury testimony.

10 THE COURT: Okay.

11 MS. BLUTH: I didn't want her referencing that, and
12 Mr. Bashor said that that's not going to happen. And then we
13 got into discussions of what was relevant, and so to me this
14 is relevant. It is relevant to show her bias and her motive
15 and her credibility.

16 THE COURT: Okay. Well, you know, we'll take it as
17 it comes. Until I really hear the testimony, I mean, you
18 need to make appropriate objections if you think that there
19 is something that should be objected to. But I -- yes, I
20 agree that you can explore that she has a bias in the case
21 because of how she came to be here or what have you.

22 MS. BLUTH: Okay.

23 MR. BASHOR: And, I mean, I think -- just for the
24 record, I think the State's well aware of the danger of going
25 down that road. As I prefaced my argument to begin with, I

1 believe a lot of -- I agree, that a lot of what is said in
2 this particular report, it would be inadmissible here, but.

3 THE COURT: Well, yeah, I don't -- if you open the
4 door, you open the door, and --

5 MS. BLUTH: Oh, I know.

6 THE COURT: -- until I see -- hear your cross, I
7 won't know if you've done it.

8 MS. BLUTH: Okay.

9 THE COURT: Okay.

10 MR. BASHOR: Other than that, is that everything
11 outside the presence?

12 MS. BLUTH: That's everything.

13 THE COURT: Is this a good time to admonish the
14 Defendant about his rights?

15 MR. MANINGO: Yes, Your Honor.

16 THE COURT: All right. Mr. Farmer, under the
17 United States Constitution and the Constitution of the State
18 of Nevada, you cannot be compelled to testify in this case.
19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: You may, at your own request, give up
22 this right and take the witness stand and testify. If you do
23 so, you would be subject to cross-examination by the district
24 attorney, and anything you may say, be it on direct or
25 cross-examination, would be the subject of fair comment when

1 the district attorney speaks to the jury in their final
2 arguments, and do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: If you choose not to testify, the Court
5 will not permit the district attorney to make any comments to
6 the jury because you have not testified. Do you also
7 understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: And if you elect not to testify, the
10 Court will instruct the jury of your -- that you could not be
11 compelled to testify and that no presumption or inference can
12 be drawn by a jury. It wouldn't be permissible for them to
13 do so, in regards to the failure of a defendant to testify.
14 But I would only so instruct if your lawyer requested that.
15 So do you understand that as well?

16 THE DEFENDANT: Yes.

17 THE COURT: And knowing all that, have you had the
18 opportunity to discuss this with your lawyer?

19 THE DEFENDANT: Yes.

20 THE COURT: And do you wish to testify?

21 THE DEFENDANT: No.

22 THE COURT: All right. So you're going to be
23 invoking your right to not testify. And will you be
24 requesting, Mr. Maningo, a jury instruction?

25 MR. MANINGO: We will be, Your Honor. Thank you.

1 THE COURT: All right. Thank you. Anything else
2 before we bring the jury in?

3 MS. BLUTH: Court's indulgence, Your Honor, about
4 one issue.

5 (Pause in the proceedings)

6 MR. BASHOR: Your Honor, if I could approach. This
7 is a stipulation that will be read after the State rests,
8 that the parties have agreed to.

9 THE COURT: All right.

10 MR. MANINGO: You guys have seen the stip, right?

11 MS. BLUTH: Right. He sent it to me.

12 MR. MANINGO: Oh.

13 MS. BLUTH: About the phone numbers?

14 MR. BASHOR: Yeah,

15 MS. BLUTH: Yeah.

16 (Pause in the proceedings)

17 MR. BASHOR: Thank you.

18 THE COURT: Thank you.

19 (Pause in the proceedings)

20 THE COURT: Do you want the Court to read the
21 stipulation or do you want --

22 MS. BLUTH: I've read it. Oh --

23 THE COURT: -- one of you to read it?

24 MS. BLUTH: -- sorry. Do you mean when we talk to
25 the jury?

1 THE COURT: Well, you need -- the stipulation needs
2 to be entered into the record. Do you want it to be the
3 written stipulation or do you want -- it's not signed or
4 anything. So --

5 MR. BASHOR: Right. It can just be read, Your
6 Honor.

7 THE COURT: -- it can be on the record.

8 MR. BASHOR: Yes.

9 THE COURT: But you -- you'll have to, both of you,
10 stipulate on the record. Do you want to do that yourselves
11 on the record? Do you want me to do it?

12 MR. BASHOR: We'll just have Your Honor --

13 THE COURT: And then -- okay.

14 MR. BASHOR: -- do it. It's fine.

15 THE COURT: There's a number of ways you can do
16 it --

17 MR. BASHOR: Right.

18 THE COURT: -- so.

19 MR. BASHOR: Thank you.

20 THE COURT: Okay.

21 (Pause in the proceedings)

22 THE COURT: We've got all our jurors? Okay, are we
23 ready to bring them in?

24 (Pause in the proceedings)

25 MR. MANINGO: Yes, Your Honor.

1 THE COURT: Okay. Great.

2 (Pause in the proceedings)

3 THE MARSHAL: Rise for the jury, please.

4 (In the presence of the jury)

5 THE COURT: Thank you. Please be seated. The
6 record will reflect that we're back within the presence of
7 all 12 members of the jury, as well as the 4 alternates, in
8 the continuation of State of Nevada vs. Steven Dale Farmer.
9 Will counsel so stipulate?

10 MS. BLUTH: Yes, Your Honor.

11 MR. MANINGO: Yes, Your Honor.

12 THE COURT: Thank you. Good afternoon.

13 THE JURY: Good afternoon.

14 THE COURT: All right. State, do you have another
15 witness?

16 MS. BLUTH: No, Your Honor. The State has
17 completed calling their witnesses. There may be another
18 document that the parties still to work out, but outside of
19 that document, the State would rest.

20 THE COURT: State has rested. And Defense?

21 MR. MANINGO: Your Honor, we would call as our
22 first witness Carine Brown, please.

23 THE CLERK: Remain standing, raise your right hand.

24 CARINE BROWN, DEFENDANT'S WITNESS, SWORN

25 THE CLERK: You may be seated. Could you please

1 state your name and spell it for the record want.

2 THE WITNESS: Carine, C-a-r-i-n-e, Antoinette
3 Brown.

4 THE COURT: You may proceed.

5 MR. MANINGO: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. MANINGO:

8 Q Hello, Ms. Brown.

9 THE CLERK: Is Brown, B-r-o-w-n?

10 THE WITNESS: Correct.

11 THE CLERK: Okay.

12 BY MR. MANINGO:

13 Q Okay. Ms. Brown, could you please tell the jury how
14 you are employed now?

15 THE CLERK: She needs to spell Antoinette, too,
16 Judge.

17 THE COURT: Oh, I'm sorry, you need to spell your
18 middle name.

19 THE WITNESS: Antoinette, A-n-t-o-i-n-e-t-t-e.

20 THE COURT: Thank you.

21 BY MR. MANINGO:

22 Q All right, let's try again. How are you employed
23 currently?

24 A I am -- I work in steel processing, so the surgery
25 unit at Summerlin Hospital.

1 Q Okay. And for most of these questions, I would like
2 to direct your attention to May 16th, around that time --

3 A Okay.

4 Q -- of 2008, okay?

5 A Okay.

6 Q Okay. And how were you employed at that time?

7 A I was a CNA at Centennial Hills Hospital.

8 Q Okay. And were you working on that day that I just
9 mentioned, May 16th of '08?

10 A Yes.

11 Q Okay. And do you remember what floor you were
12 working on?

13 A I believe, it was the seventh floor. If it wasn't
14 the seventh floor, it was the sixth floor. We were switching
15 units, making one floor from a med surge floor to an ortho
16 floor.

17 Q Okay. And while you were working at Centennial
18 Hills during that time frame, were you, individually, very
19 busy at that time?

20 A Yes.

21 Q Okay. And were the other nurses in the hospital, in
22 general, busy?

23 A Yes.

24 Q Okay. Could you explain to us a little bit, just
25 briefly, about what a CNA does.

1 A A CNA is someone who comes in, greets a patient.
2 When they get admitted to the hospital, you go into the room,
3 you introduce yourself, you let them know what you're going
4 to do, which is, take your vital signs and give them off to
5 the nurse, and the nurse will come in and do the same thing.

6 Q Okay. Now, one of the duties that a CNA can do is
7 checking heart monitors, correct?

8 A Correct.

9 Q Okay. And the heart monitors are different from EKG
10 monitors?

11 A They are.

12 Q Okay. Could you explain why on your body the --
13 well, let me ask you first, do CNAs also -- or some CNAs,
14 with the proper training, do they also have anything to do
15 with EKG monitors?

16 A No, that's only for EKG techs.

17 Q Okay. Now, with the leads on themselves, the CNAs
18 or nurses can check the leads, correct?

19 A Correct. On telemetry, yes.

20 Q Yes, okay. Now, on your body, where do the EKG
21 leads go?

22 A The EKG leads go under your breasts. So an along
23 your rib line.

24 Q Okay.

25 MR. MANINGO: And let the record reflect the

1 witness moved her hand underneath her -- her left hand
2 underneath the left side of her chest towards her ribs.

3 THE COURT: All right, it will so reflect.

4 MR. MANINGO: Thank you.

5 BY MR. MANINGO:

6 Q Now, you've seen nurses, doctors, CNAs, right -- I
7 guess, I should ask you, have you seen nurses, doctors, CNAs
8 adjust the telemetry or the leads for EKGs?

9 A A doctor, no, but a nurse, CNA, yes.

10 Q Okay. When they do, is it necessary at times to
11 expose the breasts of the patient?

12 A Not for tele, no.

13 Q Okay. For the EKG leads?

14 A For the EKG leads, yes.

15 Q Okay. And those are the ones that go all the way
16 down towards the ribs?

17 A Correct.

18 Q Okay. And so it is -- it wouldn't be out of the
19 ordinary if they had to expose the chest area to get to
20 those --

21 A Right.

22 Q -- leads?

23 A That's not out of the ordinary.

24 Q Okay. Now, on that specific night, May 16th of '08,
25 were you working with one of the RNs?

1 A I was.

2 Q Do you remember what her name is?

3 A Christine Murray.

4 Q Okay, Christine Murray. Did you -- were you
5 involved with the care of a patient by the name of Roxanne
6 Cagnina?

7 A I was.

8 Q Okay. Could you tell us how that care began?

9 A Do you want me to start from when he came up to me
10 and Chris, or do you want me to start from when me and Chris
11 went into the room?

12 Q Let's start with, your first contact with either
13 Mr. Farmer or Ms. Cagnina.

14 A Okay. Me and Christine, we were sitting in the
15 back, and he came up, and he told us, oh, your patient is
16 here from the ER.

17 Q And who is "he"?

18 A Mr. Farmer.

19 Q Okay.

20 A Came up to me and Chris, told us that we didn't have
21 to worry about our patients, but she was here from the ER.
22 She was a little drugged. So me and Chris looked at each
23 other and we just went to the room because no one says that.

24 Q Um-h'm.

25 A We went in there, we checked on her. We introduced

1 ourselves to her. She asked us, was it just girls in the
2 room, and we looked at each other and we said, yeah. And she
3 said she had to go to the bathroom. So we helped her up.
4 She started pulling off her clothes, and we told her no,
5 don't do that, and we walked her to the bathroom.

6 Q Okay. Now, when you went in and first made contact
7 with Ms. Cagnina, Mr. Farmer wasn't in the room?

8 A No, because after he told us that, he left the
9 floor.

10 Q Okay. So he was gone?

11 A Yes.

12 Q Okay. Was Ms. Cagnina crying at that time?

13 A No.

14 Q Was she hysterical in any way?

15 A No.

16 Q Okay. Did she appear to be frozen or paralyzed with
17 fear?

18 A No.

19 Q Okay. And you had said that Ms. Cagnina asked, is
20 it just us girls in here?

21 A Yes.

22 Q Okay. And then after she asked that, what did she
23 start doing?

24 A Taking off her clothes. She was getting up out of
25 the bed. We were going to help her up, but she started

1 taking off her gown.

2 Q And what did you do at that time?

3 A We told her, don't do that. You need to put your
4 clothes back on.

5 Q Okay. Did that cause you any concern when she
6 started doing that?

7 A Yes, it did, because it put a red flag up for me and
8 Chris, like, we're not going to be -- we're not going to
9 leave each other in the room with her by ourselves. We need
10 to both -- if one goes to the room, we always need to bring
11 somebody else to the room.

12 Q Okay, why?

13 A Because no patient does that.

14 Q Okay.

15 A You don't just get up out of the bed and start
16 pulling off your clothes, asking, is it just us girls in
17 here. Patients don't do that.

18 Q Okay. And so is it fair to say that you were
19 concerned about her behavior?

20 A Correct.

21 Q Okay. And based on her behavior, you and Ms. Murray
22 decided to --

23 A Stay together.

24 Q -- watch each other's back?

25 A Correct.

1 Q Okay. And then you helped Ms. Cagnina --

2 A No the bathroom.

3 Q -- to the restroom?

4 A Yes.

5 Q Okay. After you helped her to the restroom, did you
6 then help her back into the bed?

7 A I did.

8 Q Okay. At any time did she start crying or become
9 hysterical?

10 A No.

11 Q At any time did she become frozen with fear or
12 something like that?

13 A No.

14 Q Okay. Did she at any time disclose to you that she
15 had been inappropriately touched?

16 A No.

17 Q Did she ever express to you that she was actually
18 sexually assaulted?

19 A No.

20 Q Okay. That was not your last contact with Ms.
21 Cagnina, was it?

22 A No, I actually went in and checked on her before I
23 left the shift when I passed off my report to the next
24 person.

25 Q Okay. Now, it would also be normal for you to take

1 her vital signs, correct?

2 A Correct.

3 Q And did you actually take her vitals that evening?

4 A I did take her vitals.

5 Q Okay.

6 A I did.

7 Q Okay. So you appeared in her room on different
8 occasions throughout your shift?

9 A Yeah, just peeking my head in the room just to ask
10 her, are you okay, you doing okay, yes.

11 Q She would respond to you?

12 A She would respond. She said, yes, and I shut the
13 door back, and I'd go into my next room.

14 Q Okay. And at no time did you see Mr. Farmer again?

15 A No.

16 Q Okay. And at no time during your entire shift did
17 Ms. Cagnina ever say anything to you about being touched
18 inappropriately?

19 A No.

20 Q And did she ever, during your entire shift, ever say
21 anything to you about being sexually assaulted?

22 A No.

23 Q During your shift -- well, let me ask you this
24 first. How long did your shift go to?

25 A Twelve hours. We were working 6:00 to 6:30 then.

1 Q Okay. Okay. So when -- up until 6:30 in the
2 morning, you didn't hear anything about any kind of
3 inappropriate conduct?

4 A No.

5 Q Okay. How long was it until you heard anything
6 about --

7 A Two days later when I came back to work.

8 Q Along with what I had already asked about, how Ms.
9 Cagnina never once said anything about being touched or being
10 assaulted, did she ever ask you to call the police?

11 A No.

12 Q Did she ever ask you at any time to call 911?

13 A No.

14 Q Okay. After the incident when you first went in the
15 room and Ms. Cagnina set off red flags, I think you said?

16 A Uh-huh.

17 Q Okay. Throughout the rest of your shift, did you
18 and Ms. Murray -- were you careful about your contact with --

19 A Yes.

20 Q -- Ms. Cagnina? Okay. And she remained one of your
21 patients until --

22 A 6:30 that morning.

23 Q Until 6:30 that morning?

24 A Yes.

25 Q And you never saw anything out of the ordinary

1 happen --

2 A No, I didn't.

3 Q -- other than the way Ms. Cagnina herself acted?

4 A Correct.

5 Q Thank you, Ms. Brown.

6 A You're welcome.

7 THE COURT: Cross.

8 MR. KOICHEVAR: Thank you, Judge.

9 CROSS-EXAMINATION

10 BY MR. KOICHEVAR:

11 Q Good afternoon, Ms. Brown. My name is Brian
12 Koichevar. I just have a few questions for you, okay?

13 A Okay.

14 Q You've testified that when you go into perform some
15 sort of assessment on a patient, that you let them know what
16 you're going to be doing?

17 A Correct.

18 Q Why is that?

19 A Because you want them to feel comfortable. You
20 know, you don't want to just go up somebody and grab their
21 arm. You want to let them know, this is what I'm doing step
22 by step.

23 Q Okay. Let's say you were going to go in to check an
24 EKG lead or a heart monitor lead --

25 A Um-h'm.

1 Q -- would you tell the patient that that's what you
2 were going to do before just diving right in and --

3 A Yes, I would.

4 Q -- doing the procedure?

5 A I would.

6 Q Describe for me -- you talked about -- I was a
7 little confused because with the heart monitor and the EKG
8 leads and you talked about only an EKG tech would do the EKG
9 leads.

10 A Um-h'm.

11 THE COURT: Is that a, yes? I --

12 THE WITNESS: Yes, I'm sorry.

13 THE COURT: You have to answer yes or no.

14 THE WITNESS: Okay. Yes.

15 THE COURT: Okay?

16 BY MR. KOCHVAR:

17 Q Everything that we're saying is being recorded, so
18 if we just nod our heads or say um-h'm, it's hard to write
19 that out, so, thank you. So the EKG leads, who places those,
20 who removes those?

21 A The EKG leads, normally if they need a telemetry
22 box, they would get that in the ER. They would come to the
23 floor with it on, or if they don't have it and they've left
24 the box downstairs in the ER, we would go to the tele floor,
25 and we would get it. And then we would come back upstairs,

1 and we place those leads on their chest so that they can
2 start being read on scripts.

3 Q When you say "we", who are we talking about?
4 Who's --

5 A The CNAs or the nurses.

6 Q Okay. So in your experience in placing and/or
7 removing these leads or patches, do you take steps at all, if
8 it's a female patient, do you take any sort of steps to
9 protect their privacy, to not have to expose their breasts,
10 if at all possible?

11 A The gowns unsnap at the top, so you don't have to
12 pull it down so far, because the EKG leads it's either here,
13 here. Not even either. It is here, here, right on your rib
14 and then one in the middle. That's EKG. I mean, that's not
15 EKG. That's telemetry.

16 Q That's the heart monitor?

17 A That's the heart monitor.

18 Q Are there steps that you take, or that a CNA can
19 take to protect the privacy of a female patient if you need
20 to check one of those leads other than just fully exposing
21 the patient's breasts?

22 A Yes, you don't have to expose the patient's breasts.
23 You just have to unsnap and lift down because it's right
24 here.

25 Q Okay. What about if you needed to check the ones

1 that are underneath the breasts?

2 A They're really not underneath the breasts. They're
3 actually on top of your ribs.

4 Q Okay. You said that the first -- on May 16th in
5 regards to the beginning of your care of Roxanne Cagnina, the
6 first contact you had with either Roxanne or Mr. Farmer, is
7 Mr. Farmer approaching you and Christine and making that
8 statement, your patient's in Room 725, you don't need to
9 check on her, she's medicated?

10 A Correct.

11 Q And you said that was very unusual to say. So
12 unusual that you and Christine got up and immediately went to
13 the room?

14 A Correct.

15 Q What about that statement caused you concern that --

16 A Nobody says that. You always check on your patient,
17 because anything can happen from the time they leave that ER
18 to the time they get to the room. It just depends on what
19 they're there in the hospital for.

20 Q Okay. And remind me again, where did that first
21 conversation between you and Mr. Farmer take place?

22 A At the back nurse's station.

23 Q Okay. Would it surprise you if I told you that
24 Christine Murray came in and testified in this case --

25 A Um-h'm.

1 Q -- that that conversation took place in a patient's
2 room in front of another patient?

3 A Yeah, that would really surprise me.

4 Q Okay. You also testified that when you and
5 Christine went into Roxanne's room, nobody else was in the
6 room; is that correct?

7 A Nobody else was in the room.

8 Q Okay. Again, Christine Murray testified earlier,
9 and would it surprise you to know that when she testified
10 that when the two of you went into the room --

11 A Um-h'm.

12 Q -- Mr. Farmer was in the room helping Roxanne to the
13 restroom?

14 A Yeah, that would surprise me.

15 Q And I think you also testified that after Mr. Farmer
16 made that initial statement to you, about the patient being
17 in the room and you didn't need to go check on her --

18 A Um-h'm.

19 Q -- I believe you testified that he immediately left
20 the floor.

21 A He did leave the floor. He got on the elevator.

22 Q Okay. Again, would it surprise you to know that
23 Christine Murray testified that the Defendant's gurney was
24 still outside the room, and that he was inside the room when
25 you guys went in?

1 MR. MANINGO: Objection. That misstates the
2 evidence and the timeline. Ms. Murray testified that when
3 she was notified, she went and saw the gurney was still
4 outside, and Ms. Brown is now talking about after he's
5 already left and gotten on an elevator. So --

6 THE COURT: All right, well, the jury will have to
7 rely on your own memory as to what the testimony was, and
8 your notes and your own memory.

9 BY MR. KOCHVAR:

10 Q You also testified on direct that after the initial
11 -- you and Christine initially go into the room, you're
12 helping Roxanne get to the restroom --

13 A Um-h'm.

14 Q -- and that later on, throughout your shift, you
15 made regular checks on Roxanne throughout your shift; is that
16 correct?

17 A For the rest -- about the rest of the shift. I did
18 check on her one time before I left. Me and Chris went in
19 and we did her assessment together. Chris asked her the
20 questions she needed to answer, and I did her vitals and her
21 blood pressure so that Chris wouldn't be in the room with her
22 by herself.

23 Q And that was the initial assessment?

24 A That was the initial assessment when she got to the
25 floor --

1 Q So --

2 A -- after she went to the bathroom and we got her
3 back in the bed.

4 Q Okay. So after the initial assessment, you made one
5 more check on her for her vitals and stuff before the end of
6 your shift?

7 A Correct.

8 Q Okay. And your shift ended at 6:30 that morning?

9 A Yes.

10 Q As a CNA, when you go in and do any sort of
11 assessment to take vital signs or anything like that, is it
12 part of your duties and responsibilities then, to then input
13 that information into the computer system so that they will
14 be in the records of the patient's medical records?

15 A Can you just explain what you saying --

16 Q Okay.

17 A -- one more time?

18 Q So you go into -- you testified that one of your
19 responsibilities as a CNA --

20 A Okay.

21 Q -- is to do part of the initial assessment, take
22 vital signs, all that kind of stuff.

23 A Okay.

24 Q After having done that, taken vitals from a patient,
25 is it part of your responsibility to then go and input that

1 information into the computer system so that it will become
2 part of their medical record?

3 A Yes.

4 Q And on there, in the medical records, it would show
5 that you, Christine Brown, made this -- you inputted this
6 information about all the vital signs?

7 A Yes, it would have said Carine Brown, CNA.

8 Q Sorry, Carine Brown. And that's -- is that a
9 requirement of your job responsibility, to take that
10 information and put it in the computer?

11 A Yes.

12 Q And that information will be important for somebody
13 later on, a nurse or a doctor, who's doing an assessment to
14 know what the history of the person's vital signs and their
15 assessments have been?

16 A Yes.

17 MR. KOCHEVAR: Court's indulgence.

18 (Pause in the proceedings)

19 BY MR. KOCHEVAR:

20 Q Ms. Brown, when you went back in, you make the
21 initial assessment of Roxanne --

22 A Um-h'm.

23 Q -- and then you make one more assessment before the
24 end of your shift.

25 A Yes.

1 Q When you went in to make that final assessment of
2 your shift, was Roxanne awake?

3 A She was laying in the bed. She had her eyes closed,
4 so I take it she was sleeping.

5 Q Okay.

6 A Okay?

7 MR. KOCHVAR: I have no further questions.

8 THE COURT: Redirect.

9 MR. MANINGO: Very quick.

10 REDIRECT EXAMINATION

11 BY MR. MANINGO:

12 Q Ms. Brown, would it surprise you to know that when
13 Ms. Christine Murray testified, she also said that she was
14 never informed by Ms. Cagnina of any kind of sexual assault?

15 A It wouldn't surprise me at all. She didn't.

16 Q All right, thank you.

17 MR. KOCHVAR: Nothing further, Judge.

18 THE COURT: May this witness be excused?

19 MR. MANINGO: Oh, yes, ma'am.

20 THE WITNESS: Thank you.

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

22 THE WITNESS: Okay.

23 THE COURT: You may call your next witness.

24 MR. BASHOR: May I have the Court's brief
25 indulgences?

1 THE COURT: Yes.

2 (Pause in the proceedings)

3 MR. BASHOR: Can we approach, Your Honor?

4 THE COURT: Yes.

5 (Bench conference begins)

6 MR. BASHOR: Ryan Bashor. Your Honor, I know this
7 is a weird quick question, but I'm asking for like a
8 five-minute recess based on I've been reflecting on some of
9 the things that were discussed prior to bringing the jury in
10 and would like to seek the advice of co-counsel on our next
11 move. I'm not asking for an extended recess. Just a brief
12 few minutes.

13 MR. MANINGO: Jeff Maningo. The bottom line is we
14 may just rest.

15 THE COURT: (Indiscernible).

16 MR. MANINGO: We may be done. So -- but I didn't
17 pre-try this expert --

18 THE COURT: Okay.

19 MR. MANINGO: -- so I want to speak with Mr. Bashor
20 about it and get some more details, and so.

21 THE COURT: Okay. Before we do that, maybe this is
22 a good time for me to read the stipulation about the phone
23 numbers?

24 MR. MANINGO: Yes. That would be (indiscernible).

25 MR. BASHOR: I'd agree.

1 (Bench conference concluded)

2 THE COURT: All right. It is my understanding,
3 Counsel, that the parties, that the Defense and State have
4 stipulated, which means you've agreed that the following
5 phone numbers of incoming and outgoing calls, to and from
6 Roxanne Cagnina's cell phone, belong to Channel 8 News in Las
7 Vegas. The numbers being 702-792-8888, 702-792-8870,
8 702-792-8873, 702-792-8872 and 702-792-8882; is that correct?

9 MS. BLUTH: That's correct, Your Honor.

10 MR. BASHOR: Yes, Your Honor.

11 THE COURT: And so what that means, ladies and
12 gentlemen, is that the parties have agreed that this is a
13 fact that you can accept as admitted into evidence, and the
14 Court accepts the stipulation. And would you like me to also
15 mark this as a court exhibit?

16 MR. BASHOR: Sure, yes. Yes, please.

17 THE COURT: Okay. Mark it next in order. And I
18 think we're going to take a brief restroom recess. Just ten
19 minutes.

20 Ladies and gentlemen, during this recess, it is
21 your duty not to -- wait a minute. I know. During this
22 ten-minute recess, it is your duty not to converse among
23 yourselves or with anyone else on any subject connected with
24 the trial or to read, watch or listen to any report of or
25 commentary on the trial by any medium of information,

1 including without limitation, newspaper, television, radio or
2 Internet. And you are not to form or express an opinion on
3 any subject connected with the case until it is finally
4 submitted to you. It's 1:51. So -- well, 2:00 o'clock.

5 THE MARSHAL: Rise for the jury, please.

6 (Outside the presence of the jury)

7 THE COURT: The record will reflect the jury has
8 departed the courtroom. We'll be in recess for ten minutes.

9 MS. BLUTH: Okay.

10 MR. MANINGO: Thank you, Your Honor.

11 MR. BASHOR: Thank you.

12 (Court recessed at 1:52 p.m. until 2:10 p.m.)

13 THE MARSHAL: Rise for the jury, please.

14 (In the presence of the jury)

15 THE COURT: Thank you. Please be seated. The
16 record will reflect we are back within the presence of all 12
17 members of the jury as well as the 4 alternates. Defendant
18 is present with his counsel. The Deputies District Attorney
19 prosecuting the case are present, as are all officers of the
20 court. Will counsel so stipulate?

21 MS. BLUTH: Yes, Your Honor.

22 MR. MANINGO: Yes, Your Honor.

23 THE COURT: Thank you. Mr. Maningo.

24 MR. BASHOR: Actually, Your Honor, on behalf of the
25 Defense, having called our witness and the stipulation being

1 entered, at this time, the Defense would rest.

2 THE COURT: All right. So the Defense has rested.

3 Now, ladies and gentlemen, the next part of the
4 case will be my instructing you on the law in this case, and
5 then you're hearing the closing arguments of counsel.
6 However, the instructions have yet to be settled. That's
7 something that we do outside your presence. It's not
8 something that you would need to be here for, and it's -- it
9 would be very long and boring for you to await us to do that.
10 And so we would not want you to have to be waiting for us to
11 do that. So I'm going to be excusing you until 1:00 o'clock
12 tomorrow, and that's what you can expect, that you'll be
13 instructed on the law. I'll read you the written jury
14 instructions. You'll hear closing arguments of counsel, and
15 then you'll receive the case for deliberations.

16 So ladies and gentlemen, we're taking an overnight
17 recess. During this recess, it is your duty not to converse
18 among yourselves or with anyone else on any subject connected
19 with the trial or to read, watch or listen to any report of
20 or commentary on the trial by any person connected with the
21 trial or by any medium of information, including without
22 limitation, newspaper, television, radio or Internet. That
23 includes your smartphones and twitter and all of those
24 things.

25 And you are not to form or express an opinion on

1 any subject connected with this case until it is finally
2 submitted to you. I will see you tomorrow at 1:00 o'clock --

3 THE MARSHAL: Rise for the jury.

4 THE COURT: -- and we'll be back here in this
5 courtroom.

6 (Outside the presence of the jury)

7 THE COURT: The record will reflect that the jury
8 has departed the room. Are there any matters outside the
9 presence?

10 MS. BLUTH: No, Your Honor.

11 THE COURT: Thank you.

12 MR. MANINGO: No, Your Honor.

13 THE COURT: I'll see you tomorrow 10:30 in my
14 chambers to settle instructions.

15 MS. BLUTH: Yes, Your Honor.

16 THE COURT: Thank you.

17 MR. MANINGO: Thank you.

18 (Court recessed at 2:14 p.m., until Friday,
19 February 21, 2014, at 1:07 p.m.)

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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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Julie Lord

JULIE LORD, TRANSCRIBER

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)
vi.)
)
THE STATE OF NEVADA,)
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