

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 _____

3 STEVEN DALE FARMER,) No. 65935

4 Appellant,)

5 v.)

6)

7 THE STATE OF NEVADA,)

8 Respondent.)

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10 **APPELLANT'S APPENDIX VOLUME XIV PAGES 2638-2819**

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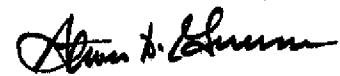
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 13

FRIDAY, FEBRUARY 21, 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

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1 LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 21, 2014, 1:06 P.M.

2 (Outside the presence of the jury)

3 THE COURT: All right. We are back on the record.
4 This is the continuation of the case of State of Nevada versus
5 Steven Dale Farmer, Case No. C245739. Defendant is present
6 with his counsel, the Deputies District Attorney are present,
7 as are all officers of the court, and we are outside the
8 presence of the jury. Will counsel so stipulate?

9 MS. BLUTH: Yes, Your Honor.

10 MR. MANINGO: Yes, Your Honor.

11 THE COURT: Thank you. And this is the time for us
12 to place the settlement of the jury instructions on the
13 record. Are counsel familiar with the instructions, Court's
14 Instructions No. 1 through 28?

15 MR. BASHOR: Yes, Your Honor.

16 MS. BLUTH: Yes, Your Honor.

17 THE COURT: And does the State object to the giving
18 of these instructions?

19 MS. BLUTH: I did make one objection, Your Honor,
20 and that was regard to the inverse flight instruction, and
21 that was based on two arguments. Number one, I don't believe
22 factually it meets the -- what that instruction is saying, and
23 I spoke about that during, you know, when we were going
24 through these. And number two, I also think that the -- the
25 case that the defense will cite to in a moment just uses dicta

1 in speaking about that, so I don't think that the Supreme
2 Court has been clear in regards to that this can be given.

3 THE COURT: Okay.

4 MS. BLUTH: So I'll submit it with that.

5 THE COURT: I think, though, that in order to really
6 preserve your objection you need to say why you think that
7 this instruction, which I'll just read into the record, the
8 fact that a defendant does not flee after he is accused of a
9 crime is not sufficient in itself to establish that he is not
10 guilty, but is a fact which, if believed, may be considered by
11 you in light of all other proved facts in deciding the
12 question of whether he is guilty or not guilty.

13 MS. BLUTH: Okay.

14 THE COURT: And so in what way, in what respect do
15 you think it does not --

16 MS. BLUTH: Sure.

17 THE COURT: -- comport with the facts?

18 MS. BLUTH: In regards to this, we're specifically
19 talking about the incident regarding Roxanne Cagnina and so
20 this crime was committed at the hospital. When the police get
21 there, he is not there. They make clear to multiple hospital
22 staff, personnel, hey, Steven Farmer, we need to get a hold of
23 him, do you know where he is, do you know where we can find
24 him. And no one, you know, is willing to give any of that
25 information.

1 Multiple hours later, I mean, eight to ten hours
2 later, they find the defendant at his home. And I recognize
3 that's a pretty good argument for non-flight if people knew
4 where he lived. I think that Lorraine Wescott testified that
5 they didn't have any of that information. They didn't know
6 where he lived. American Nursing Services didn't know where
7 he lived. So they had to ping his phone, you know, in order
8 to get to him.

9 And when they did get to him, there was a card from,
10 you know, Metro with Sergeant Pence's number on it stating
11 that they were looking for him. So I don't think it's your
12 normal situation where if someone is at their home, you know,
13 and they have Nevada Power and all of those things registered
14 to them where you know where they're going to live. So I
15 don't think factually it supports that instruction.

16 THE COURT: Okay. And the defense.

17 MR. BASHOR: Yes, Your Honor. I mean, I think that
18 while the State has reasonable inferences or potentially
19 reasonable inferences to make about a factual argument in this
20 regard, I think, nonetheless, the fact that he was found
21 relatively soon after the allegations came to light in his own
22 residence, in his own room in his bed is indicative of the
23 fact that he was not attempting to flee, not the jurisdiction,
24 not even the town.

25 I would submit that while the -- the case I did cite

1 is an unpublished order, the case of Gwin v. State, the
2 Supreme Court acknowledges the fact that there are potentially
3 circumstances where an inverse flight instruction is
4 appropriate. They said in Gwin that it was quite not
5 appropriate in that particular case because the gentleman in
6 that case, if I recall the facts correctly, is doing a
7 commercial burglary, passes points of sale, and then is
8 tackled. So there was an attempted flight in that particular
9 case.

10 Nonetheless, I think that given the circumstances
11 factually, and the fact that there are potential circumstances
12 where an inverse flight instruction is appropriate, I would
13 submit that this is one of the cases where it is appropriate
14 and ask that that instruction be given.

15 THE COURT: Well, it's the Court's feeling that
16 since the Supreme Court has not said that the inverse flight
17 instruction is inappropriate at this point in time and that
18 actually it would seem just as legitimate to give such an
19 instruction if, in fact, the facts supported it.

20 And my recollection of the facts were that by the
21 time Ms. Cagnina did report the allegation to the hospital, to
22 anyone, that it would have been the end of or after the end of
23 the defendant's shift at the hospital and that, in fact,
24 because he was found in his bed at home sleeping or that they
25 had to awaken him perhaps, that that seems to be factually in

1 line with this proposed instruction. And as well it's just
2 giving the jury the same consideration that is given in a
3 flight instruction, that is it's just a fact that you can
4 consider in light of everything else. You can consider of,
5 you know, the facts and proved facts in deciding whether a
6 person is guilty or not guilty.

7 Also, we've reworded the original proposed
8 instruction was specific to this defendant. We've made it a
9 general instruction and that, I think, makes it even more
10 appropriate, that it's not reflecting that this Court is
11 making a finding factually. So I have marked this and will --
12 as the State objects to the giving of this instruction and
13 indicate that it has -- is being given and sign that. And we
14 can have that marked. Okay.

15 So does the State have any additional instructions
16 to propose?

17 MS. BLUTH: No, Your Honor.

18 THE COURT: Does the defendant object to giving of
19 any of the instructions that are 1 through 28?

20 MR. BASHOR: Yes, Your Honor. And first of all I
21 apologize I just noticed this right now. On the third page --
22 first of all, I guess, the State is going to need to file a
23 second amended information based on discussions in chambers,
24 that being for two reasons. The first is that the State, Mr.
25 Kochevar, I believe, noticed that Counts 3 and 15, indecent

1 exposure counts wording were not accurate statements of the
2 statutes themselves. Those changes were made.

3 However, and I apologize, Judge, again, on page 3 of
4 Instruction No. 3, line number 21, the State was in their
5 second amended information going to strike "and/or buttocks"
6 based on the Castaneda case stating that mere exposure of the
7 buttocks is insufficient.

8 MS. BLUTH: Which -- I'm sorry, which count Ryan?

9 MR. BASHOR: Count 15, the third page of Instruction
10 No. 3, line 21. I just -- I just think it just didn't get to
11 the computer. The State agreed that they would not charge
12 buttocks.

13 MS. BLUTH: Right. And then we --

14 THE COURT: All right. So we need to change this
15 because we -- I think it was actually not on the copy that we
16 sent for revision and it just didn't get typed.

17 MS. BLUTH: Right.

18 THE COURT: So let's go off the record for a moment
19 and we'll fix that and I'll get it retyped.

20 MR. BASHOR: Thank you, Your Honor.

21 (Court recessed at 1:14 p.m., until 1:22 p.m.)

22 (Outside the presence of the jury)

23 THE COURT: All right. We're back on the record.
24 We're still outside the presence of the jury. We've corrected
25 a couple of the typo errors that we found. And so we're back

1 to the question of whether the defense objects to the giving
2 of any of the instructions numbered 1 through 28.

3 MR. BASHOR: Yes, Your Honor. We would object to
4 Instruction No. 5, particularly the definition of the term
5 lewdness is defined as any act of a sexual nature which the
6 actor knows is likely to be observed by the victim who would
7 be affronted by the act. I submitted an alternate instruction
8 for the definition of the term lewdness. It's taken from
9 Berry v. State, 125 Nev. 265, specifically on pages 281 to
10 282. It's a 2009 Nevada Supreme Court case in which a
11 definition of lewdness is given.

12 It states that the term lewdness applies to the
13 crime of open and gross lewdness means obscene, indecent,
14 tending to moral impurity or wantonness, preoccupied with sex
15 and sexual desire or lustful. I believe it was citations to
16 both Black's Law Dictionary Eighth Edition and the Webster --
17 Miriam Webster's Collegiate Dictionary.

18 Judge, I believe it to be an accurate statement and
19 definition of the term lewdness. It's language taken directly
20 from the Nevada Supreme Court case and had asked that this
21 definition be used as opposed to the one as listed in
22 Instruction No. 5.

23 THE COURT: Okay. And we will mark the instruction
24 that you're proposing separately and we'll address that when I
25 ask you if you have some to propose, any additional to

1 propose. And I understand it dovetails with your objection to
2 No. 5, but could you articulate why specifically you object to
3 this -- this instruction as opposed to -- I mean, do you
4 object to this one because you wanted your instruction in lieu
5 of No. 5, or you wanted your instruction in addition to No. 5?
6 It's not clear to me.

7 MR. BASHOR: Only in lieu to lines 7 and 8 of
8 Instruction No. 5.

9 THE COURT: Okay. So you have objected to
10 Instruction No. 5 because starting at line 7 where it says the
11 term lewdness is defined as any act of a sexual nature which
12 the actor knows is likely to be observed by the victim who
13 would be affronted by the act, you don't feel it's a complete
14 enough --

15 MR. BASHOR: Yes, Your Honor.

16 THE COURT: -- definition?

17 MR. BASHOR: All right. And the State's position?

18 MS. BLUTH: Sorry, Your Honor. We -- yeah, in
19 regards to the Berry case, the instruction in that is in --
20 that we're using is the instruction that was used in Berry.
21 The language that Mr. Bashor is citing to is from Berry, but
22 the instruction that was upheld is very clearly within that
23 case, and that is the one that we have used.

24 THE COURT: And the reason the Court had decided to
25 go with this instruction is for that reason, that in the Berry

1 case, although they do talk about common law understanding of
2 what the term lewdness means and they -- they cite to Black's
3 Law Dictionary, I think it was the Fourth Edition, and give
4 that definition in the case, they're not -- the case doesn't
5 really stand for the proposition that that -- that's required
6 to instruct. Rather it seems that the Berry case is saying
7 that people of normal and reasonable intelligence understand
8 what lewdness is and so that's the reason I'm going to go
9 ahead and give Instruction No. 5 over your objection.

10 MR. BASHOR: I understand.

11 THE COURT: Were there any others that you objected
12 to?

13 MR. BASHOR: Yes, Your Honor. Instruction No. 9.

14 THE COURT: Okay. Instruction No. 9, and that is
15 the well settled and generally known significance of the
16 phrase indecent and obscene exposure of the person is the
17 exhibition of the genitals or anus.

18 MR. BASHOR: And, yes, Your Honor. As discussed in
19 chambers, my concern with the indecent exposure allegations
20 involving breasts is, as I mentioned on the record yesterday,
21 in State v. Castaneda, it would appear that although in what I
22 would probably agree is a dicta portion of the opinion, which,
23 again, is 126 Nev. Adv. Op. 45, 245 P.3d 550.

24 I think that it's fairly clear that the Nevada
25 Supreme Court is headed in the direction and perhaps,

1 hopefully not unfortunate for my client, this particular facts
2 and circumstances of this case would get a holding, as it
3 were, in regards to the fact that breasts are not genitals.
4 There's a footnote in the case that would seem to indicate
5 that that's where they're going.

6 My objection to the instruction itself would be that
7 an additional sentence would be required stating that breasts
8 are not genitals. However, I guess my objection is that
9 Instruction No. 9 is an accurate statement of the law, but not
10 a complete statement of the law and would have asked that that
11 additional sentence be added based on the Castaneda case.

12 THE COURT: And the State's position?

13 MS. BLUTH: I disagree. I just don't think that
14 Castaneda is where Mr. Bashor would like it to be. I think
15 that the ruling is vague and nowhere in there in their ruling
16 do they say, you know, breasts are not genitalia or breasts
17 are not part of the statute. And they do in a different part
18 of the opinion talk about there are several states that want
19 to explicitly define what they mean and others leave it open.

20 And so without them, you know, explicitly saying we
21 find that breasts, you know, are not genitalia or are not
22 covered under the statute, I don't think that we get to make
23 that jump yet. And so I think that the instruction that we've
24 given still goes along with the Castaneda case.

25 THE COURT: All right.

1 MR. BASHOR: Before you do that. I apologize, Your
2 Honor.

3 THE COURT: That's fine.

4 MR. BASHOR: I would ask that you formally deny my
5 motion to dismiss -- my oral motion to dismiss Count No. 3 and
6 to strike the breast language from Count No. 15. As Your
7 Honor explained, procedurally the motion in its form at its
8 current time under Nevada law is not right or appropriate.
9 Should, again, unfortunate for my client, if things do not go
10 his way, we have a remedy in the first seven days after a
11 conviction, which we will pursue should that happen, but I
12 would ask for the record that that motion be formally denied.

13 THE COURT: And so you're correct that procedurally
14 it appears for Nevada statutes that there is not what would be
15 equivalent in civil law a Rule 50 motion where you can move at
16 the end of the case to dismiss a count for failure to -- for
17 the State to meet its burden. Rather, there are two options
18 you can make at the close of the case, a motion for an
19 advisory verdict, which is not binding upon the jury, or after
20 the verdict if there is a judgment of conviction, then you
21 can, within seven days, move if there is -- for -- for an
22 acquittal, a judgment of acquittal on the grounds that there
23 was insufficient evidence. So and I -- I understand how this
24 relates.

25 Of course, your Instruction No. 9, the Castaneda

1 case does make a passing reference in one part of the case to
2 breasts not being considered genitals, and that was kind of in
3 their discussion about when the defense was arguing that
4 somehow this related to, or in Castaneda's case they were
5 arguing that the statute was vague and maybe unconstitutional
6 and they were bringing in to compare it to the breastfeeding
7 statutes that specifically were saying it's okay to breastfeed
8 in public and it will not amount to indecent exposure, which
9 seems to carve out an exception for indecent exposure.

10 So it's still unclear as to whether the Court is
11 making a finding as a matter of law that breasts are not
12 included in indecent exposure or that the breastfeeding
13 statutes merely carve out an exception. It didn't have to be
14 reached in the Castaneda case because Mr. Castaneda did
15 apparently expose his genitals, as well as his buttocks, and
16 that was the focus there was buttocks rather than breasts in
17 that case because he was a male.

18 But because the case still seems to leave the law
19 unsettled, and the whole discussion about breasts was in the
20 context of the breastfeeding statute which seems to carve out
21 an exception from indecent exposure, I've decided to go ahead
22 and give this instruction. You are -- you are free to argue
23 that breasts aren't genitals, and -- but it's unclear to me
24 what the state of Nevada law is at this time.

25 All right. So was there another one that you

1 objected to?

2 MR. BASHOR: Yes, Your Honor. If you don't mind
3 I'll address objections to Instructions No. 13 and 14
4 together.

5 THE COURT: All right.

6 MR. BASHOR: Because the argument, I would submit,
7 is identical. This is not a case where the defense at any
8 time has purported that there was consent. That these two
9 instructions go to that issue. We would submit that the
10 evidence in this case does not support the use of these two
11 instructions and that while it is true that these instructions
12 may be used in more appropriate circumstances involving young
13 children or minors, these particular -- you know, there's no
14 -- in our case there are five adult alleged victims. The
15 consent issue, I would assume that these two basically go to
16 the sexual assault counts, which is two of the victims. I
17 would submit that they're not applicable and not appropriate
18 to be charged.

19 THE COURT: State.

20 MS. BLUTH: In the cross-examination of Roxanne
21 Cagnina, Mr. Maningo asked several times, well, did you hit
22 the call button? Did you call the nurse? Did you yell for
23 help? Did you -- and that's what this statement is saying.
24 You know, she verbalized, no, I was scared, I thought he was
25 going to kill me, da da da da da. And so that's why it's

1 important for a jury to know that witnesses or victims aren't
2 required to do those things and they have to consider that.

3 So I think that both of these, not only, you know,
4 are they obviously good law, but they apply to the facts of
5 this case when you consider that neither of the sexual assault
6 victims ever yelled out for help, never pressed a call button,
7 etcetera, and that's going to be argued and that's not
8 something that we have to prove.

9 THE COURT: Well, the Court agrees that in the most
10 common situations where these instructions are given that, in
11 fact, it's an issue of consent as a defense. However, I don't
12 think that these instructions as they are written are limited
13 only to the fact pattern, particularly as the State has argued
14 where clearly on cross-examination, vigorous cross-examination
15 of the victims, there is a question as to their credibility
16 because they did not call out during the sexual assault.

17 Now, with Ms. Peterson, of course, there was her
18 testimony in the videotape deposition that she -- she
19 couldn't. But Ms. Cagnina was crossed on the issue of did you
20 -- did you call out, did you make any -- you know, did you
21 tell him to get out of here, things like that. So I think
22 because of that and given all of the other facts that we know
23 regarding -- which was brought out by the defense as well as
24 the State about the medications, etcetera, and the surrounding
25 -- so the surrounding facts and attending circumstances that

1 make it reasonable for him or her to manifest an opposition is
2 applicable here.

3 And so the same -- the same is -- I know that you're
4 going to be arguing that these things never happened, so as to
5 Instruction No. 14 you're not arguing consent, but I think
6 it's relevant as to the lack of protest by her, by Ms. Cagnina
7 that you are arguing means because she didn't tell anybody she
8 didn't make any protest to try and alert the people that
9 you've argued were in the hallways, that it's relevant for
10 that reason. Of course, you're still free to argue your
11 theory of the case even with these instructions having been
12 given.

13 All right. And --

14 MR. BASHOR: And the next, Your Honor, objection
15 would be to Instruction No. 20.

16 THE COURT: 20.

17 MR. BASHOR: Similar to a prior instruction, I
18 proffered two alternative -- actually, one alternative and one
19 additional credibility instruction. If you want me to wait
20 until you request what additional instructions I proffered, I
21 can, or I can address it now in the context of Instruction No.
22 20.

23 THE COURT: You can -- why don't you tell me what
24 your objection to 20 is, and then if you have specific
25 objections to this one, and then we'll address --

1 MR. BASHOR: My only objection --

2 THE COURT: -- proffered instructions separately.

3 MR. BASHOR: Fair enough.

4 THE COURT: Okay.

5 MR. BASHOR: Your Honor, briefly, I mean, I
6 understand that this is a credibility instruction that's been
7 given in multiple cases in our jurisdiction. I just would
8 submit and our objection would be that it -- it's not as
9 thorough as it could be and should be, and that, you know,
10 most cases, and especially this case, I would submit
11 credibility is a huge, huge issue. And I would submit while
12 an accurate statement and something that this jurisdiction has
13 used, it's just not as thorough as it ought to be.

14 THE COURT: Thank you.

15 State?

16 MS. BLUTH: I think that -- first of all, the one
17 that we have marked as Instruction No. 20 is given in, I
18 believe, almost every single case that we try. It's been
19 upheld multiple times. The one that Mr. Bashor offered to the
20 Court was, I think, from like the California Criminal Code.
21 It's not Nevada law. It's nothing that's ever been used
22 before, so I don't really think there is any legal basis to
23 use it in this case. And I think -- just -- and just so we're
24 all on the same page, I think that the one that the State
25 offers covers credibility to the extent that the other one

1 does. Frankly, I find the California Criminal Code very
2 confusing.

3 THE COURT: All right. So Instruction No. 20, the
4 Court wants to give Instruction No. 20 because I believe it's
5 a clear statement of the law. It's been used in, well,
6 probably every single case this Court has ever presided over.
7 And so it's never been struck down as being improper or not
8 thorough enough. And so that's why I'm giving 20.

9 There were not others that are being given that
10 you've objected to?

11 MR. BASHOR: Correct.

12 THE COURT: But you have some that --

13 MR. BASHOR: I have four --

14 THE COURT: -- you'd like to give?

15 MR. BASHOR: -- four that I have proffered, I
16 believe, Your Honor. The first would be -- it reads the term
17 lewdness as it applies to the crime of open or gross lewdness
18 means obscene, indecent, tending to moral impurity or
19 wantonness, preoccupied with sex and sexual desire, or lustful
20 as I stated. This is how I would replace line 7 and 8 to
21 Instruction No. 5. I understand that Your Honor's ruling, I
22 think it's been -- our record has been made in this regard. I
23 would just ask that it be marked as a defense proffered but
24 not given.

25 THE COURT: All right. And I'm going to -- actually

1 I'm going to mark all four of the instructions that you
2 proffered and will not be given. I'll allow you, of course,
3 to make a complete record, but I'm going to mark them
4 together, stapled them together. I've written on them
5 instructions proposed by defendant but not given, and signed
6 that. So that was the first one.

7 MR. BASHOR: The second one, Your Honor, reads that
8 credibility or believability of a witness should be determined
9 by anything that reasonably tends to prove or disprove the
10 truth or accuracy of that testimony. I'm not going to read
11 that entire instruction. It's going to be made part of the
12 record.

13 As Ms. Bluth stated, it is a Cal Crim Instruction
14 No. 105. I believe this to be a more thorough, accurate, and
15 complete list of what your average juror should be using when
16 considering the credibility or believability of a witness. I
17 don't think that it's necessarily an inaccurate statement of
18 the law. I think it's just a more complete one. That's why I
19 would submit that particular instruction.

20 THE COURT: Okay. And I believe the State has
21 already made its record that you just feel that the
22 instruction is too lengthy and confusing. Is that what --

23 MS. BLUTH: Well, yeah, and it's --

24 THE COURT: -- your objection was?

25 MS. BLUTH: -- never been used. I mean, I haven't

1 ever seen it used in Nevada, and I don't think that Mr. Bashor
2 provided a case in Nevada where it has been used. So the one
3 that we use in every case and that's been upheld I feel is the
4 appropriate instruction to use in this case.

5 THE COURT: And the Court's position on it is just
6 that I'm willing to go with what has been used as the stock
7 and standard instruction on credibility in this state for the
8 last 30 plus years rather than the Cal Crim 105 pattern jury
9 instruction.

10 MR. BASHOR: Next, Your Honor, is an instruction
11 that begins in determining the credibility of a witness you
12 are not to consider any purported changes in their behavior in
13 the weeks, months, and years after the alleged incident.

14 Judge, this was an instruction that I fashioned.
15 We've made on this particular issue, I believe, at least two
16 motions for mistrial which we've obviously respected Your
17 Honor's ruling in that regard where Mr. Maningo at the
18 conclusion of the second motion for a mistrial indicated that
19 we would be proposing an instruction. We do not believe that
20 as the -- this particular instruction delineates examples of
21 the post allegation suicide attempts, depression, or turns to
22 alcoholism are relevant.

23 The citation at Footnote No. 6 on this particular
24 proposed instruction indicates a reference to two of the
25 relevant statutes here in our state. We do not believe that

1 those things should be used in determining the credibility.
2 This would not be an alternative to Instruction No. 20, but in
3 addition to Instruction No. 20 based on the facts and
4 circumstances of this case, and that's why it was submitted.

5 THE COURT: And my -- my understanding of your
6 argument is that you felt that the testimony in that regard
7 was not relevant in the case. The State had, at the time the
8 testimony was elicited -- of course, the Court restricted it
9 greatly to the time immediately after the incident. But the
10 State's argument at that time was that it went to credibility
11 of the victims. Is that correct?

12 MS. BLUTH: Correct.

13 THE COURT: Am I remembering that correctly? And so
14 -- so I believe that this instruction in telling them that
15 they may not consider changes in behavior, well, and it says
16 in the weeks, months, and years after the alleged incident.
17 Well, we didn't have any testimony about the years after the
18 alleged incident because I restricted that, but I think that
19 -- so I don't think this would be a correct statement and I
20 don't think it's just a correct statement of the law in
21 general. So that's why I -- I didn't want to give that
22 instruction.

23 MR. BASHOR: And fourth and finally, Your Honor, the
24 instruction that begins if evidence is susceptible to two
25 constructions or interpretations. Judge this is an

1 instruction that was given in Crane v. State, 88 Nev. 684,
2 1972. It is in that case it was Instruction No. 14. It was
3 an instruction used in this jurisdiction.

4 It is an accurate statement of the law. We believe
5 that it's an appropriate statement. We believe that it goes
6 beyond the reasonable doubt instruction to explain that when
7 there are two different interpretations that this is how they
8 -- if they're faced with this situation, how they are to deal
9 with it under the law. So we would ask that it be used and
10 instructed to the jury.

11 THE COURT: And the State?

12 MS. BLUTH: I think it invades the instruction on
13 reasonable doubt. It think the reasonable doubt instruction,
14 I think -- I think both sides have to be very careful in
15 respecting that instruction because the Supreme Court has
16 said, no, we're not allowed any more commentary. And I
17 understand that he's saying it was used in Crane, but I still
18 think it makes -- I still think it's confusing, number one.
19 And number two, there's also a second -- complete second
20 paragraph in Crane that further discusses that instruction.
21 But I think that that can all be remedied by just the
22 reasonable doubt instruction that is given in every case that
23 has been upheld over and over and over again. So I think it
24 makes it confusing.

25 THE COURT: And the reason the Court decided not to

1 give this instruction is because exactly for that reason that
2 it's for the commentary about the reasonable doubt instruction
3 which the legislature is -- has instructed it's to be the only
4 instruction and the Supreme Court has upheld that -- that
5 legislation repeatedly that that is to be the only instruction
6 concerning reasonable doubt. We've given a reasonable doubt
7 instruction, and so clearly counsel is free to argue that case
8 hasn't been proven beyond a reasonable doubt, but that this
9 goes too far beyond a reasonable doubt instruction. So once
10 again, I'm going to staple these all together and -- and that
11 will be part of the record.

12 Are there any other matters outside the presence of
13 the jury?

14 MS. BLUTH: No, Your Honor, not on behalf of the
15 State.

16 MR. MANINGO: No, Your Honor.

17 THE COURT: Do counsel -- both counsel request that
18 the Court instruct the jury before the closing arguments?

19 MS. BLUTH: Yes, please.

20 MR. MANINGO: Yes, Your Honor.

21 THE COURT: All right. We have all of our jurors.
22 Let's bring them in.

23 (Inside the presence of the jury)

24 THE COURT: Thank you. Please be seated. Good
25 afternoon, ladies and gentlemen. How are you? This is the

1 continuation of State of Nevada versus Steven Farmer. The
2 record will reflect the defendant is present with his counsel.
3 The Deputies District Attorney prosecuting the case are
4 present, as are all officers of the court, all 12 members of
5 the jury, and the four alternates.

6 Will counsel so stipulate?

7 MS. BLUTH: Yes, Your Honor.

8 MR. MANINGO: Yes, Your Honor.

9 THE COURT: Thank you. And, ladies and gentlemen of
10 the jury, what I'm about to do now is instruct you on the law
11 as it applies in this case. Now, of course, I'd like to just
12 instruct you orally without reading to you because that's
13 always more pleasant. However, these instructions are
14 extremely important. Each one has such importance and
15 significance that almost every word has some significance, so
16 it's necessary for me to read these instructions to you that
17 have been carefully prepared and written down.

18 Now, the instructions, we have 28 of them, and so
19 they're a bit lengthy and some are complicated. But you're
20 not to worry that if they're not especially clear as I read
21 them to you that you won't have them to read when you're in
22 the jury room because you will. You will have these
23 instructions to consult in the jury room. Therefore, when I'm
24 reading them to you, don't worry about having to take notes
25 about, you know, what I'm telling you because you're going to

1 have these. Really it's better for you to just listen to the
2 instructions and take them in as I read them.

3 (Jury instructions read; not transcribed)

4 THE COURT: Is the State prepared to give it's
5 opening -- opening close.

6 MR. KOCHVAR: Yes, Judge. Thank you.

7 THE COURT: Thank you.

8 STATE'S CLOSING ARGUMENT

9 MR. KOCHVAR: Good afternoon, ladies and gentlemen.
10 Let me just start by thanking you for your time and your
11 service as jurors. It's an important part of this process
12 that couldn't happen without your willingness to serve.

13 As you've seen throughout this case, back in April
14 and May of 2008, five separate women went to Centennial Hills
15 Hospital to receive medical care for their various medical
16 ailments that they were suffering from. These five women all
17 put their trust in Centennial Hills Hospital and the medical
18 personnel at that hospital that they would be properly taken
19 care of and that they would -- and that their care would not
20 endanger them or put them at risk.

21 Unfortunately for these five women, the defendant
22 was involved in the medical care for each one of these five
23 women and he violated that trust that they placed in the
24 hospital, and in particular the medical personnel at that
25 hospital. In every criminal case the criminal charges have

1 elements. They're like a recipe for each charge that a
2 defendant is charged with.

3 So what we're going to do at this time is we're
4 going to go through each one of the charges that the defendant
5 is -- has been charged with and we're going to talk about what
6 are the elements, what is the recipe of that particular
7 charge, and how the evidence in this case has proven beyond a
8 reasonable doubt that the defendant is guilty of each and --
9 each and every one of those charges.

10 Let's start with Ledahlia Spurlock. You remember
11 that Ledahlia went to Centennial Hills Hospital to be treated.
12 And the defendant, as the evidence has shown, committed the
13 crime of open and gross lewdness against her. As I told you,
14 each crime has elements. The elements of open and gross
15 lewdness are listed there on the bottom.

16 It has to be a willful act. What does a willful act
17 mean? And intentional act. It wasn't a mistake. It wasn't
18 an accident. It was a willful and intentional act. The act
19 has to either be an act that is open or gross. And open,
20 either as common language would be, it was out in the open, or
21 it can be in private but in an open manner, not done in a
22 secret manner. The gross, it either has to be indecent,
23 obscene, or vulgar. And finally the lewdness, it's an act of
24 a sexual nature likely to be observed by the victim who would
25 be affronted by that act.

1 And those are the definitions that the Court just
2 read to you. You'll have them in the instructions. I know
3 it's a lot to take in right now. But let's talk about the
4 evidence that you heard about the defendant's actions that he
5 committed against Ledahlia.

6 As I said, she went to Centennial Hills Hospital on
7 April 26th for an attempted suicide. The following day her
8 aunts came to visit her in the emergency department. As they
9 were all three in the room together, the defendant entered the
10 room and stood at the foot of the bed. All three of them
11 testified that the defendant then began to rub or push his
12 groin in a circular motion against Ledahlia's feet as she was
13 laying in the bed.

14 Ledahlia told you that she tried to pull her feet
15 away. She tried to move them away because of the defendant's
16 actions. After he had committed these acts he then left the
17 room. And all three of them testified that they then were so
18 concerned about his actions that they all three felt the need
19 to talk about it, talk about what -- what they all had just
20 observed, what was these -- what were these actions that the
21 defendant just had done to Ledahlia's feet.

22 Ledahlia was so concerned about it that she asked
23 her aunts to stay in the room because she knew she was going
24 to shortly be transferred to another facility and she didn't
25 want the defendant -- she didn't want to be alone in that room

1 if the defendant came back in to provide any sort of treatment
2 for her.

3 You also heard the testimony of one of -- of both of
4 the aunts, first, Ada Dotson. She told you she visited
5 Ledahlia on the 27th. She saw the defendant standing at the
6 foot of the bed. She told the detective when she spoke to him
7 that she saw the defendant pulling her feet towards his groin.
8 She said that after he left the room that they all three
9 talked to each other about the defendant's actions again, and
10 that Ledahlia had asked her and Ernestine to stay in the room
11 because she was so concerned about the defendant's actions.

12 You also heard the testimony of Ernestine, her other
13 aunt. Again, that she went and visited her with Ada, she saw
14 the defendant standing at the foot of the bed. She saw him
15 grab Ledahlia's feet and saw the defendant place his groin
16 against her feet and move her feet around his groin in a
17 circular motion. And, again, finally that Ledahlia asked her
18 aunts to stay because she was so concerned about the
19 defendant's actions.

20 The testimony of all three, Ledahlia, Ernestine, and
21 Ada, were consistent in the essential elements of this charge
22 that the defendant committed this act of open and gross
23 lewdness against her by grinding his groin or penis against
24 Ledahlia's feet as she was laying in that hospital bed at
25 Centennial Hills Hospital on April 27th.

1 Let's talk about Heather Shank. The first count in
2 regard to Heather Shank is another count of open and gross
3 lewdness. It's the same elements that we talked about before
4 in regards to the charge on Ledahlia. On this particular one
5 it's for the exposing or touching her breasts while she was in
6 the elevator.

7 You will recall that Heather told you that she went
8 to Centennial Hills Hospital for a seizure. She was
9 transported there by ambulance. The defendant was assigned to
10 be her certified nurse assistant in the emergency department
11 at Centennial Hills Hospital. Heather told you she doesn't
12 remember much about the time in the emergency room to begin
13 with because she was still suffering the effects of the
14 seizure that she had suffered at home before being transferred
15 to the emergency department.

16 She does recall, however, that when she was being
17 admitted to the hospital and being transported to her room in
18 the hospital that the defendant was the one that was
19 transporting her. Once they got into the elevator that was
20 going to take them up to the floor where she was going to be
21 -- where her room was, the defendant, without any caution,
22 without any explanation to her other than to say we need to
23 get those leads off you right now because they longer they
24 stay on you the harder and more painful they're going to be to
25 remove.

1 So in the elevator, rather than in the emergency
2 room or rather than wait until they get to her room, the
3 defendant grabs her gown, he's standing at the head of the
4 bed, he reaches over and opens up her gown, fully exposing
5 both of her breasts. The EKG leads or patches have been
6 placed there by the ambulance drivers and in the emergency
7 room.

8 The defendant then starts reaching and checking the
9 leads and in the process, as Heather told you, he brushed over
10 one of her breasts with his forearm. You recall Heather told
11 you she was so uncomfortable, because she also told you she
12 has had EKGs before, before and after this incident, and never
13 had she ever been exposed and touched the way that the
14 defendant exposed her and touched her on that day.

15 The second charge in regards to Heather Shank was an
16 indecent exposure for exposing her breasts in the emergency
17 department. The elements of an indecent exposure is that you
18 have to be indecent or obscene exposure has to be exhibition
19 of the genitals of that person. And, again, it's to willfully
20 make that act. It's not an accident. It has to be an
21 intention act. You'll recall that this evidence came from the
22 testimony of Tim Lehan, Heather's boyfriend at the time and
23 now her husband.

24 During the time that this incident happened, you'll
25 recall Heather was not cognizant or did not remember what had

1 happened because she was still under the effects of the
2 seizure that had brought her to the hospital that day. Tim
3 told you that the defendant was assigned to her to treat
4 Heather in the emergency department. When Tim was in the room
5 assisting Heather to the restroom and the first thing he
6 realizes as the defendant comes in, as Tim is trying to get
7 Heather back into the bed, and he -- the defendant insists
8 that's my job, let me do it.

9 So Tim allows the defendant to help Heather back in
10 the bed. And he says the EKG leads or the wires and stuff
11 have become tangled and that he needs to untangle them. And
12 so the method that he chooses to do that is he, again, opens
13 up her gown, fully exposing both of her breasts. Tim told you
14 that he was experienced with EKGs because of his job. He
15 works at Steinberg Diagnostics. He's been involved multiple
16 times in the past on doing EKGs as a medical technician, and
17 that never has he ever had to expose both a female's breasts
18 in order to place or check or fix those leads.

19 In fact, he explained to you that the more
20 appropriate manner would have been to go to where the leads
21 are plugged into the box, unplug them there, untangle them,
22 and then plug them back in. He also told you that the steps
23 that he would take as a medically trained person to protect
24 the privacy of a female individual that had EKG leads on her
25 chest to be able to keep her covered to protect her privacy

1 and to protect her decency.

2 Tim told you that he was -- he became uncomfortable
3 as the defendant had Heather's gown open and both of her
4 breasts exposed, and so he eventually stood up and interjected
5 and said let me -- you know, that's not what we need to do,
6 that's not how we do this, and he started taking over. And he
7 told you that the defendant at that point became nervous and
8 left the room when he recognized that Tim knew what he was
9 doing and that he had some experience with EKGs.

10 As a result of the testimony of Heather Shank and
11 the testimony of Timothy Lehan, the evidence has proven that
12 the defendant is guilty of the charges of open and gross
13 lewdness and indecent exposure against the victim Heather
14 Shank.

15 Denise Hanna. Denise told you that she was -- she
16 has -- is an asthma sufferer and that she was experiencing
17 chest pain because of an asthma attack. She originally went
18 to an urgent care to be treated, and as a result they put some
19 EKG leads or patches on her at that point. But as a result of
20 the results that they saw, they elected to transport her by
21 ambulance to Centennial Hills Hospital.

22 At Centennial Hills Hospital, again, much like the
23 other two, she was being treated by the defendant and he
24 committed an act of open and gross lewdness against her. Same
25 elements as we talked about before in regard to Ledahlia

1 Spurlock and Heather Shank. It's a willful act, not an
2 accident. It was an intentional act, it was an open or a
3 gross act, and it was an act of lewdness.

4 So what was the evidence that you heard? You heard
5 the testimony of Denise Hanna. She told you she went there
6 for the asthma and chest pain. She had the EKG leads placed
7 to monitor her heart. She had some of those leads placed by
8 the ambulance people, had more leads placed at Centennial
9 Hills Hospital.

10 She was being treated by Margaret Wolfe, the nurse
11 in the emergency department, and we'll get to her testimony in
12 a minute, and that everything was well. She had been hooked
13 up, they were monitoring her heart, they were treating her
14 symptoms, and nothing was wrong as far as she was aware at the
15 time when the defendant entered the room. All he says to her
16 is that he needs to check things out. He then opens up her
17 gown down to her waist as she testified, exposing both of her
18 breasts, and then began to check the leads around her breasts.

19 As Denise told you, she touched -- the defendant
20 touched one of her breasts with his hand. And she told you
21 that there had -- that Nurse Margaret Wolfe had been in the
22 room just moments before, had checked her out. Again, nothing
23 that she was aware of was wrong with her at that time and
24 there was nothing on the machines that were monitoring her
25 heart that gave Denise Hanna any reason to believe that there

1 was something wrong that the defendant needed to check out.

2 You also heard the testimony of Margaret Wolfe. She
3 was the emergency department nurse that was assigned to take
4 care of Denise Hanna when she arrived. She told you she
5 followed the protocol for chest pain, which includes the
6 placement of the EKG leads or patches. She said that she had
7 been in the room just shortly before and that nothing --
8 everything was fine with Denise, and that while she was
9 standing at the nurse's station she saw the defendant who had
10 not been part of Denise's care up until this point walk into
11 her room.

12 Margaret said she knew there were no problems with
13 Denise at that time. She had just checked her moments before,
14 and she saw the defendant from her vantage point open up her
15 gown and she could tell that he was placing his hands on
16 Denise, but from her vantage point could not see exactly where
17 her hands were being placed other than they were in the area
18 of her chest. She could tell from Denise's face that Denise
19 looked confused. She couldn't understand what was going on
20 because Margaret had just been in there checking her.

21 After the defendant left the room she -- Margaret
22 then went in the room to check on her, and she said that there
23 was a noticeable change in Denise's demeanor when she went in
24 the room. She was more reserved, she was quiet, she wasn't as
25 talkative as she had been in the past interactions with her.

1 Based upon the testimony of Denise Hanna and Margaret Wolfe,
2 it has been proven beyond a reasonable doubt that the
3 defendant is guilty of the crime of open and gross lewdness
4 against Denise Hanna.

5 Roxanne Cagnina. I've been going through them and
6 talking about the victims as they're listed in the
7 information, which is the charging document. Roxanne is the
8 next victim that's listed. The way they're listed, the
9 charges are listed in regards to Roxanne on the information
10 don't flow chronologically, but I want to talk about them
11 chronologically. So we're going to kind of jump back and
12 forth within the charges against Roxanne, but I think it will
13 just be easier to talk about and explain if we talk about
14 chronologically how things happened to Roxanne.

15 Chronologically, the first count is an open and
16 gross lewdness for touching or rubbing her thighs. The same
17 elements that we've talked about before, a willful act, not an
18 accidental act. It was an intentional act. It was an open or
19 a gross act, and it was an act of lewdness.

20 You recall from the testimony of Roxanne, as well as
21 her husband Scott and some of the treating nurses that Roxanne
22 came to Centennial Hills Hospital on May 16th after having
23 suffered a seizure at home. She was transported to the
24 hospital by ambulance. She was taken to the emergency
25 department where the defendant, along with Nurse Goodhart were

1 assigned to take care of her in the emergency department.

2 Roxanne told you that the defendant was very
3 attentive. He was very kind. He was always there at every
4 moment to get her a drink, to get her a warm blanket, to do
5 anything he could to try to earn her trust. Such that Roxanne
6 wanted to be able to convey that they had been providing such
7 good care, and the defendant willingly provided her cell phone
8 number to her, which will become relevant as we talk some
9 more.

10 Ultimately, Roxanne is -- a decision is made by the
11 doctors that Roxanne needs to be admitted to the hospital
12 because of her seizures and her headaches and she is assigned
13 to be transported to the seventh floor. The defendant is the
14 one that transports Roxanne to the seventh floor. As you
15 recall in her testimony she says that when they get into the
16 elevator the defendant's demeanor changed dramatically from
17 what it had been in the emergency department.

18 In the emergency department he had been friendly, he
19 had been kind, he had been helpful. When they got into the
20 elevator and they were alone in the elevator, his demeanor
21 changed significantly. He then tells her that he needs to
22 adjust her blankets, that her blankets need adjusting, and he
23 starts reaching around trying to adjust her blankets and
24 reaches underneath the blankets and underneath her gown and
25 starts rubbing on the inside of her thighs.

1 Roxanne told you that she immediately became
2 uncomfortable. She did not know what was going on. It was a
3 shock to her because he had been so attentive. He had been so
4 kind to her down in the emergency department and she
5 immediately started to try to tuck in the blankets so that he
6 wouldn't be able to get access to her any longer.

7 The next count chronologically is a sexual assault
8 count, the digital penetration. Let's talk about the elements
9 of a sexual assault. Again, it has to be a willful act. It
10 has to be an intentional act. It can't be accidental. It has
11 to involve sexual penetration. What does sexual penetration
12 mean? The Judge has instructed you. It'll be in the
13 instructions that you'll have in the jury room. It includes
14 cunnilingus which placing a person's mouth on a female's
15 genitalia, it includes fellatio which is placing the mouth on
16 a male genitalia, it also includes sexual intercourse and any
17 intrusion of the genitals or the anus of an individual by any
18 means, either digitally or with other devices.

19 And it has to be against the will of the person.
20 What does it mean to be against the will? You were instructed
21 that it just has to be -- it doesn't have to be forced. They
22 don't have to resist. They don't have to fight it. It just
23 has to be something that they do not want to participate in.

24 So what evidence did we hear about the digital
25 penetration of Roxanne by the defendant? Roxanne told you

1 that after she arrived up in her room 725 on the seventh floor
2 the defendant immediately started adjusting her blankets again
3 and rubbing her thighs again. He then inserts his fingers
4 into her vagina.

5 And he begins to tell her that she just -- this is
6 going to help her relax. She needs to go to sleep. She needs
7 to be asleep. Because of the medication he keeps telling her
8 repeatedly, you should be asleep, you should be asleep, and
9 tells her this is all part of her procedure. This is all a
10 procedure. This is going to help you relax as he repeatedly
11 jams his fingers into her vagina. And during this process at
12 several points pulls out his fingers and tells Roxanne look at
13 my fat fingers, these fingers are going to make you come.

14 Recall the testimony of the sexual assault nurse
15 examiner Linda Ebbert. She told you that she did a sexual
16 assault examination on Roxanne shortly after Roxanne reported
17 and the police were called, and she told you that the injuries
18 that she found to Roxanne's vagina were crescent shaped
19 injuries which are consistent with digital penetration. It
20 comes from the crescent shape of your fingernails. She also
21 told you that the location of those injuries, between 5:00 and
22 7:00 on Roxanne's vagina are consistent with digital
23 penetration while someone is lying on their back, which is
24 exactly what Roxanne testified to as the manner in which she
25 was assaulted by the defendant while she was lying on her

1 back.

2 Recall, you saw the pictures that were taken by
3 Nurse Ebbert of Roxanne's vagina and the crescent shaped
4 injuries that she found after she had applied -- Nurse Ebbert
5 told you that she, in her experience of having done over 4,000
6 of these examinations was able to see these injuries with her
7 naked eye. But in order to help those of us that aren't
8 trained in performing these sexual assault examinations she
9 uses a blue dye to be able to enhance those injuries so that
10 people that aren't trained like you and I can see them when
11 they are being photographed.

12 She told you not only about the crescent shape and
13 the location of those injuries, but she also said that they
14 were recent injuries. How did she know that? Because of the
15 presence of red blood cells. This blue dye that they use only
16 adheres to red blood cells. So the injuries were recent
17 enough that they were still fresh. There were still red blood
18 cells there from essentially bleeding, being open wounds, and
19 that's why the blue dye adhered to them.

20 She also told you that the blue dye has an alcohol
21 component. And if you have, like I'm sure many of us have
22 experienced, if you put alcohol on cut that's open, it stings.
23 And that was Roxanne's response, as Nurse Ebbert told you,
24 that when she applied the blue dye, Roxanne reacted and said
25 that it stinged [sic], it hurt because of the recency of those

1 injuries.

2 She also talked to you about Roxanne's emotional
3 state. She said she was weeping, she was crying, she was very
4 distraught, which in Nurse Ebbert's opinion, having done 4,000
5 of these examinations, indicated to her that she was a victim
6 of a sexual assault.

7 Chronologically, the next charge is another count of
8 open and gross lewdness. This is for touching or rubbing
9 Roxanne's breasts. The same elements that we've talked about
10 before in regards to the open or gross lewdness counts.

11 Roxanne, you'll recall, testified that after the
12 defendant started digitally penetrating her in her vagina, he
13 at one point stops and comes up and starts rubbing and
14 squeezing and touching her breasts, and also touching her face
15 and telling Roxanne how beautiful she was. You will recall
16 also that the DNA -- Emily Jeskie, the DNA expert from Salt
17 Lake City testified that there was DNA on Roxanne's face that
18 was consistent with the defendant's DNA.

19 The next count, Count 6 in the information, another
20 count of sexual assault. It's another count of digital
21 penetration. You'll recall that Roxanne told -- told us that
22 after the defendant had finished rubbing her face and
23 squeezing or touching her breasts, he again went down and
24 started digitally penetrating her again with his fingers.

25 Count 7, sexual assault, cunnilingus. You remember

1 as I explained to you in the definition of sexual penetration
2 it includes cunnilingus which is the technical term for an
3 individual placing their mouth or tongue on the vagina or
4 vaginal opening of a female. By law cunnilingus is a sexual
5 penetration of another person.

6 You recall Roxanne told you that after the defendant
7 had been touching and squeezing her breast and rubbing her
8 face, he then started digitally penetrating her again, and at
9 one point she recognized that he had placed his mouth or
10 tongue on her vagina. All of that evidence, the DNA, the
11 sexual assault examination, the testimony of Roxanne all
12 proves beyond a reasonable doubt the defendant is guilty of
13 multiple counts of sexual assault, open and gross lewdness
14 against Roxanne Cagnina.

15 The final victim, Marcia Petersen. Again, kind of
16 chronologically the way things happened, Counts 13 and 14 are
17 two counts of open or gross lewdness for touching, rubbing, or
18 pinching the breasts or nipples of Marcia Petersen. The same
19 elements that we've talked about previously.

20 You'll recall from the deposition testimony of
21 Marcia Petersen that she was -- on May 12th she was taken to
22 Centennial Hills Hospital emergency department after suffering
23 one of many of the seizures that she had suffered in her life.
24 She told you that after suffering those seizures she can't
25 move or can't talk for a period of time, up to 24 to 48 hours,

1 but that even though she can't move and she can't react, she's
2 still aware of her surroundings. She knows what's going on.

3 You heard her son Marshal testify that there's times
4 that later on when she could talk and she could interact she
5 would tell him things that had happened during some of these
6 incidents that they thought she was completely unaware of, but
7 that she was aware of what was going on during these time
8 periods of after suffering a seizure. And that during these
9 time periods, although she could not move and speak, she could
10 still feel pain and discomfort.

11 Marcia testified that the defendant came into her
12 room in the night and says to her I'll be taking care of you.
13 She told you that she woke up on two different occasions
14 because she would fade in and out of going to sleep, but she
15 testified -- and as Marshal testified that after she suffers
16 one of these seizures the way that she recovers and gets over
17 it is she just needs to sleep for a period of time. She told
18 you that while in that hospital room she woke up on two
19 separate occasions to find the defendant rubbing both of her
20 breasts and pinching both of her nipples. The defendant told
21 her on both of those occasions he was just checking her EKG
22 leads.

23 Marcia's testimony was to her knowledge there was
24 nothing wrong with the leads. She told you she had -- she had
25 had leads, EKGs performed on her on multiple occasion and she

1 knew that she would hear monitors if something was going on
2 with her heart or if something was wrong with the leads she
3 would hear monitors going off to indicate that there was
4 something wrong. She didn't hear any of those monitors and
5 she didn't notice any indications that there was something
6 wrong prior to the defendant entering the room.

7 The next count, sexual assault, the digital
8 penetration of Marcia's anal opening. Again, the same
9 elements. It's a willful act. It's a sexual penetration. As
10 I told you when we were talking about sexual assault to begin
11 with, a sexual penetration can be of either the genitals or
12 the anus of another person either against the person's will or
13 a person who mentally or physically is incapable of resisting.

14 Marcia Petersen testified to you that she was
15 incapable of responding while she was aware of what was going
16 on in her surroundings and aware of the assault that the
17 defendant was committing against her. She was unable to
18 respond, unable to resist, unable to speak. After one of
19 these incidents of touching and pinching Marcia's nipples, the
20 defendant then tells her he needs to clean up some feces
21 that's under her.

22 Marcia told you she thought that was odd because she
23 knew she had not gone to the bathroom. She had not defecated.
24 And you heard the testimony of Marshal, her son, that as part
25 of these seizures, going to the bathroom uncontrollably was

1 never one of the conditions, one of the symptoms. That
2 Marshal said she was able to hold it. He told you about how
3 the process that they used at home with the little bell so she
4 could get assistance. Marcia knew and was aware if she would
5 have had a bowel movement. She could feel herself have a
6 bowel movement.

7 In addition, she noticed that the defendant didn't
8 bring anything with him. He didn't have any wipes, he didn't
9 have any towels, he didn't have anything to clean up
10 somebody's mess if they had defecated in their bed. She also
11 noticed that he never wiped her. He never wiped her clean as
12 though he was cleaning something up. And he never changed a
13 gown, a pad, or the sheet on the bed. Which common sense says
14 if somebody defecates in their bed, you're going to need to
15 change things. You're going to need to change sheets and
16 pads.

17 What does the defendant do that Marcia is aware of?
18 She told you that he lifts up her leg, and then she feels an
19 uncomfortable feeling down around her anus. And she tells you
20 that she knows that the defendant placed his thumb inside of
21 her anus.

22 Chronologically, the next count of open or gross
23 lewdness for touching or rubbing Marcia's genital opening.
24 She told you that at some point after the anal penetration the
25 defendant says he needs to check her catheter. Marcia had a

1 catheter in place that had been in place since she had gotten
2 to the hospital and the defendant says he needs to check her
3 catheter. He then, as in the process of checking her
4 catheter, touches or rubs on the outside of her genital area
5 with his hands or fingers before inserting his fingers into
6 her vagina.

7 And that gets us to Count 12 which is another sexual
8 assault for the digital penetration of her genital opening or
9 her vagina. Marcia testified that while the defendant was
10 still holding her leg up in the air and saying that he needed
11 to check her catheter, he inserted his fingers into her
12 vagina. And she even testified it was all the way up to the
13 second knuckle. She testified she knew that this was
14 happening because she felt pressure inside her vagina and that
15 it was painful. She was aware. She could feel pain and
16 discomfort. She was aware of what was going on. She just had
17 the inability to respond and just had to lay there and take
18 it.

19 Finally, the count of indecent exposure. Marcia
20 testified that the defendant lowered the bed sheet, lifted up
21 her gown on multiple occasions exposing her naked body. She
22 testified that she had been in the hospital many times and she
23 had never had any of these things happen to her before. You
24 saw her. You saw her condition. You heard from her son about
25 her condition, about the repeated time she had to go to the

1 hospital. This was a lady because of her medical condition
2 that was in hospitals, in and out of hospitals repeatedly and
3 all the time. Never had she experienced anything like the
4 defendant did to her at that time.

5 Let's talk a little bit about the defendant's
6 reactions when he finds out about these allegations. There
7 were two different times that you heard about when the
8 defendant was essentially confronted with the allegations
9 against him. The first one you heard testimony from Michelle
10 Simmons. She was the director, the clinical director at
11 American Nursing Services, which was the nursing agency that
12 the defendant was employed by that would assign nurses and
13 certified nursing assistants to the local hospitals who were
14 in need of additional people.

15 When Michelle learns about these allegations from
16 the hospital, she contacts the defendant and says there's been
17 a serious sexual assault allegation made against you by a
18 patient at the hospital. What's the defendant's reaction?
19 I'm sorry. I'm sorry.

20 Additionally, after the defendant was arrested and
21 he was confronted by Detective Lora Cody who told him that
22 they -- the detectives had obtained a search warrant to be
23 able to take his DNA as a sample from a buccal swap, in
24 additional take some DNA swabs off of his hands and fingernail
25 scrapings. She shows him the search warrant, but lists the

1 things that they're going to be seeking from him. And what's
2 his first reaction? He immediately starts scraping his
3 fingernails and licking his fingers. Neither of these
4 reactions are the reactions of an innocent man.

5 These five women all placed their trust in the
6 defendant's hands when they went to Centennial Hills Hospital
7 back in April and May 2008. The defendant violated that
8 trust. And by so doing, he committed each and every one of
9 the crimes that he's been charged with. And as a result, he
10 should be found guilty. Thank you.

11 THE COURT: Thank you.

12 Ladies and gentlemen, we're going to take a 20
13 minute recess at this time for you to use the facilities, as
14 well the jury commissioner has asked that you go across the
15 hall and get your vouchers for the week, and that way you
16 won't have to worry about it as we finish our closing
17 arguments.

18 So, ladies and gentlemen, during this 20 minute
19 recess it is your duty not to converse among yourselves or
20 with anyone else on any subject connected with the trial, or
21 read, watch, or listen to any report of or commentary on the
22 trial by any person connected with the trial or by any medium
23 of information, including, without limitation, newspaper,
24 television, radio, or Internet, which includes your smart
25 phones. And you are not to form or express an opinion on any

1 subject connected with this case until it is finally submitted
2 to you.

3 I've got ten minutes to 3:00, and we'll be in recess
4 until ten after 3:00.

5 (Jury recessed at 2:50 p.m.)

6 THE COURT: The record will reflect that the jury
7 had departed the courtroom. Are there any matters outside the
8 presence?

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

10 MR. MANINGO: No, Your Honor.

11 THE COURT: Thank you. We'll be in recess until ten
12 minutes after 3:00.

13 MS. BLUTH: Thank you.

14 (Court recessed at 2:51 p.m., until 3:07 p.m.)

15 THE COURT: All the equipment ready that you need,
16 Mr. Maningo?

17 MR. MANINGO: I think so. Let me flip it over. It
18 should be on. It's good. Thank you.

19 (Jury reconvened at 3:08 p.m.)

20 THE COURT: Thank you. Please be seated. The
21 record will reflect we're back in the presence -- no, we're
22 missing one. There she is.

23 The record will now reflect we're back in the
24 presence of all 12 members of the jury, as well as the four
25 alternates. The defendant is present with his counsel, the

1 Deputies District Attorney prosecuting the case are present,
2 as are all officers of the court. Will counsel so stipulate?

3 MS. BLUTH: Yes, Your Honor.

4 MR. MANINGO: Yes, Your Honor.

5 THE COURT: Mr. Maningo, your closing argument.

6 MR. MANINGO: Thank you, Your Honor.

7 DEFENDANT'S CLOSING ARGUMENT

8 MR. MANINGO: Accusations against innocent people
9 happen with terrible regularity, and the danger of false
10 conviction is immense. A smart quote by a smart man. And
11 that's why you're all here and why you've all been selected.
12 And it's what we've talked about from the very beginning in
13 jury selection about how important this process is. That's
14 why I'm begging for your attention right now as we finish this
15 up and talk about an innocent man being falsely accused.

16 Now, at the beginning of this case we asked you to
17 look for some things. We asked you to look for where money is
18 involved, the media, and making sense. And you saw those
19 things and heard those things. You heard about the two
20 different civil lawsuits. You heard about the financial
21 troubles of Roxanne Cagnina and her husband Scott. You heard
22 about the fact that they went out and got an attorney right
23 away for the civil suit.

24 With the media, you know when you have those phone
25 records in your possession when you go back to deliberate, you

1 know that Roxanne Cagnina started making phone calls to the
2 media while she was still in her hospital bed. In fact, eight
3 phone calls to the media before she even left the hospital.
4 The woman who hates media attention, who wanted nothing to do
5 with the media. And after that you also know she went on
6 television with her lawyer.

7 And then we're talking about making sense. And
8 we're going to talk about that a lot. But you have to figure
9 out if some of these things mesh, if some of them cause you
10 pause and -- and -- and make you sort of scratch your head as
11 you think about it. But that's what we ask you to look for.
12 Now it's time for you as jurors to evaluate what you've heard
13 and what you've seen, to take it in and sort of analyze it and
14 make sense of it. And as you do that, we're asking you to
15 look at a few different things.

16 Number one, and we've talked about this from the
17 very first day three weeks ago, credibility. Who's
18 believable, to what degree are they believable, why should
19 they be believed or not be believed? This is a big one.
20 Related to this is consistency. I asked many of you who are
21 sitting here right now on this jury, what's one of the things
22 when you look at credibility? What's one of the things that
23 you look at when you're trying to decide if someone is telling
24 the truth or not? And many of you said, your very first
25 answer, consistency. Do they tell the same story? Does it

1 remain the same or does it change?

2 And as you evaluate the witnesses and think back on
3 what their testimony was, and we're going to do that, you're
4 going to see that the State's case not only doesn't have
5 consistency within a single witness -- I mean, we know an easy
6 example, Roxanne Cagnina, her story within itself changes
7 every time she tells it, from her police statement to her
8 preliminary hearing, to her deposition, until her trial
9 testimony it changes. The times, the places, big details
10 change.

11 But it's not just that. It's the witnesses within
12 the entire prosecution's case aren't even consistent with one
13 another. Their own witnesses like Nurse Goodhart gets up and
14 talks about, well, Roxanne is not shy. She was actually in
15 the emergency room pulling her gown around, pulling it up so
16 that it forced one of the male nurses to leave and not come
17 back. There's no consistency within their own witnesses
18 overall.

19 Now, that's when we come back, just like with making
20 sense, we're talking about common sense. We're asking you as
21 jurors to apply your common sense to the evidence when you
22 come in here. Now, what really happened? We know that we
23 have a woman who is depressed. At first she said, well, no, I
24 have never suffered depression before, but then, again, she
25 changes her story and we remind her of what she's already told

1 us in the past. And she says, okay, yeah, I had seen a
2 psychiatrist for postpartum depression.

3 She's depressed and she most likely has good reason
4 to be. She's in a whole lot of financial problems and she has
5 a very serious medical condition. No one is contesting or
6 doubting throughout this entire trial that Roxanne Cagnina
7 suffered from seizures. We know that. We know that that was
8 not easy for her or for Marcia Petersen, or for anyone else.
9 We also know that she was confused. She's -- she's highly
10 medicated.

11 Now, is she motivated by greed? Well, greed might
12 not be the right word for it. Maybe financial desperation.
13 It's not that she's greedy and wants more. The problem is
14 that before she ever goes to Centennial Hills Hospital, she
15 and her husband had filed bankruptcy. Not once, but twice.

16 They just foreclosed on a property and had to walk
17 away from it. Roxanne lost her job, was unemployed, and
18 receiving unemployment benefits. Those are big problems.
19 Those are big problems. And when I asked Roxanne on the
20 stand, she said, well, that's not really financial distress.
21 You all know better.

22 Did she have a need for attention? Well, this is
23 something you have to think about as far as her husband is
24 concerned. And we don't know the ins and outs of their
25 marriage before they eventually got divorced. But Roxanne

1 goes to the ER in an ambulance. An ambulance ride is not a
2 common occurrence for most of us. In fact, I think the whole
3 idea of ambulance is to sort of shout out, hey, emergency,
4 okay.

5 She goes in an ambulance, calls her husband. Scott
6 doesn't show up. She calls him several times during the night
7 while she's in the ER. Scott doesn't show up. She calls him
8 into the next morning early on. Scott doesn't show up. She
9 makes the allegation of being inappropriately touched. Scott
10 shows up.

11 Now, you'll see it on the phone records how many
12 times she tried to call her husband. You heard his testimony
13 that he was actually asleep at one point. His wife was taken
14 by ambulance to the hospital, is in the emergency room for
15 seizures. And when he talked to her he said, well, she
16 sounded fine. Everything sounded fine. She said she was
17 getting really good service, being taken care of, so I thought
18 it would be okay if I stayed where I was.

19 She didn't get any attention from Scott until the
20 accusations. And they are false accusations. If her
21 motivation was greed or -- or desperation for money, well, she
22 got money. If her motivation was she needs attention or
23 sympathy from her husband, from Scott Cagnina, she finally got
24 it. She finally got him to show up to the hospital.

25 And after these results, the media gets involved.

1 As we already mentioned, several calls to Channel 8 news. And
2 keep in mind, they didn't reach out to Ms. Cagnina. They
3 wouldn't know anything about what was going on. And even if
4 they had heard something was going on at Centennial Hills
5 Hospital, they would know that because it's a hospital setting
6 there's a lot of privacy laws involved. They would never get
7 Roxanne Cagnina's phone number. That's why when you look on
8 the phone records that are in evidence and you see how many
9 phone calls there are to the media, you'll see that they are
10 outgoing calls from her telephone. She calls and calls and
11 calls while she's in her hospital bed and when she gets out.

12 Once the media does get involved, once she shows up
13 on television, voila, four new accusers who had never said
14 anything, never made any reports, never talked to the police,
15 never talked to the media, never talked to hospital
16 administration, nothing was ever said for weeks or months
17 until Roxanne and her attorney show up on the news. That's
18 what we just talked about. They don't say anything.

19 So it is like a forest fire. This is a very common
20 analogy for a trial or a situation like this. It takes just
21 one spark, one spark. And what's the worst thing that you can
22 do with that one spark? Add wind to it. And once you add
23 wind, well, you end up in a fire storm. Roxanne is our one
24 spark. Our wind, the media and her lawyer because they go on
25 the TV. And you heard Roxanne say, oh, well, I really -- I

1 hated the media attention, I didn't want anything to do with
2 it, so I called my attorney and he advised me to go on
3 television and do an interview with the media.

4 Go back a few slides to where we were talking about
5 common sense. Is that what you would do? If you say I'm a
6 vegetarian so you go to dinner and you go, well, I'm a
7 vegetarian so I'm going to order the biggest steak you've got.
8 Does that even make sense? Of course not. The fire storm is
9 Steve Farmer. He's the one who is going to get burned. He's
10 the one at risk right now.

11 Roxanne Cagnina, we've been talking about her. We
12 talked about her motives. No doubt she has seizures. No
13 doubt that she was having serious financial problems, the
14 bankruptcies, foreclosures, etcetera. No doubt lots of
15 medications. Lots of medications. In fact, throughout her
16 stay you continually heard about her requests for the
17 morphine, for the Dilaudid. She was already on the
18 phenobarbital which is a barbiturate.

19 We also know that her Xanax issue -- well, she had
20 that prescription way, way before, years before she ever went
21 to Centennial Hills Hospital. She already had that
22 prescription for Xanax. She gets in there and it all gets
23 mixed together. Now, was she not in pain? No. No one is
24 saying that. She was certainly in a lot of pain from her
25 seizures causing the headaches. Everybody gets that.

1 But you had to think about how it affects her state
2 of mind, whether it was then or whether it was when she took
3 the stand or whether it's when she gave any number of
4 different stories. And there's no doubt she was acting
5 strangely. Now, we're talking about that night in the
6 emergency room. Think about how she's acting.

7 Now, keep in mind that we get this testimony not
8 from us, the defense. These are the State's witnesses. These
9 are the government's witnesses that they put up, their offer
10 of proof beyond a reasonable doubt. And what do they tell
11 you, people like Nurse Goodhart and Nurse Murray? They tell
12 you that Roxanne was not shy, as Ms. Goodhart put it, that she
13 was messing with her gown and trying to take it off so much to
14 the point that Nurse Ray Sumera, a male nurse, felt
15 uncomfortable and left and he wouldn't come back.

16 And so what does -- what does Ms. Cagnina do? She
17 starts crying, starts saying am I being a bad patient, why
18 won't Nurse Ray come back? Ms. Goodhart is trying to calm her
19 down, look, I'm your nurse from this point out, I'm your
20 nurse. Ray was uncomfortable. He knew better than to come
21 back. Ray knew better than to come back. Good for Ray.
22 Otherwise, maybe Ray is sitting over at that table for the
23 last three weeks. The State's burden to do all the proving.
24 Did you hear from Ray? Can you imagine why?

25 Now, her behavior besides that episode continues to

1 be strange. Think about it. We have not just Nurse Goodhart
2 talking about it. We have three nurses on staff that night,
3 Goodhart, Murray, and Brown, who all testify to red flags, to
4 going in and Ms. Cagnina, once she's up on the seventh floor
5 saying just us girls here, starts taking her clothes off. The
6 nurses have to stop her, say don't do that. You heard Ms.
7 Brown say Chris Murray and I looked at each other like what is
8 going on here? And we weren't going to be in that room alone
9 with her.

10 Now, why weren't they going to be in that room
11 alone? You all know the answer. You already heard about
12 false accusations. Maybe it's Chris Murray or Carine Brown
13 sitting at this table for three weeks. But good for them that
14 they knew not to go in there by themselves to have backup.
15 But two female nurses know that they have to have backup for a
16 female patient? Does that strike you as odd?

17 More of the strange behaviors from Roxanne comes
18 from that same night and the same episode before she actually
19 gets to the seventh floor because what does she do? She says,
20 well, the -- the service and the attendance was so great from
21 the ER nurses, okay, they paid such good attention that I
22 wanted to write letters of recommendation about them. I
23 wanted to write letters of recommendation, so I asked for
24 their -- their personal information.

25 Now, first of all, we've heard throughout this.

1 entire trial that the prosecution wants to put sort of an
2 insidious spin on giving good service as an ER nurse. Oh,
3 well, she -- he provided blankets and drinks. In fact, he was
4 always around. You know what? He was doing his job. There's
5 nothing scary about the fact that he provided blankets, that
6 he was getting drinks for them or their family members, that
7 he was attentive. That is not a negative. But because he's
8 doing this, Roxanne wants to write letters of recommendation
9 and gets his phone number, writes it down in her checkbook.
10 It's in her checkbook.

11 Another common sense alert. If Mr. Farmer or anyone
12 else for that matter, they were going to assault somebody, do
13 they give them their -- their name and phone number, and then
14 after they assault that person do they -- do they just leave
15 that in the person's property or try and retrieve it? But
16 this phone number is important. This phone number is
17 important because Roxanne also told police and testified
18 previously that she had also -- you know, it wasn't just Steve
19 Farmer that she got the information from. It was also Nurse
20 Goodhart because they were both doing a good job. Well, in
21 six years she never produces any sign, any evidence that she
22 also took down Goodhart's name, okay.

23 Now, why is the phone call important? Because the
24 State wants to interpret a minute long phone call from six
25 years ago from Michele Simmons as some sort of admission. I

1 think the slide earlier said not the actions of an innocent
2 man, okay. Well, this phone call from six years ago that
3 Michele Simmons testifies about, she says you gave your
4 personal information to a patient, and he says, yes, I did,
5 I'm sorry, I'm sorry. Okay. That's it.

6 Michele Simmons didn't have details of what actually
7 was alleged by Roxanne Cagnina, and she didn't convey any
8 details to Steven Farmer. What she did say is you gave your
9 personal information to a patient. That was the wrong part.
10 And he admits to that. That's what that phone call was.

11 Remember that quote? Took enough pain meds to kill
12 a horse, but she kept sucking them down like candy. That's
13 your proof beyond a reasonable doubt? That's your
14 credibility, your consistency, your common sense? The
15 prosecution's own witness, Goodhart, is the one who said that,
16 and said that about the prosecution's other witness, Roxanne.

17 After the ER it's the elevator incident. There's
18 another witness or individual on that elevator at the time.
19 Would it make sense to assault someone right in front of, you
20 know, this other person? No. It's a credibility issue. How
21 about the fact that she says at one time to the police, well,
22 that other person stayed on the elevator the entire ride, but
23 then she changes her story later and says, no, they got off a
24 floor or two before us, giving herself a window where maybe
25 something could have happened. Well, that's to consistency.

1 If we assume that the other person did not ride the
2 elevator the entire way and got off, well, you heard Ms.
3 Cagnina say so then the entire ride would have been two to
4 four seconds. Two to four seconds. Two to four seconds where
5 there was -- and I believe Mr. Kochevar said there was
6 adjusting of blankets and then reaching under the blankets,
7 and then the rubbing of the thigh twice, and then moving, and
8 then her tucking blankets in. All of this going on in the two
9 to four seconds it takes the elevator to go one to two floors.
10 Common sense.

11 And then this is what we talked about in the
12 beginning and what still holds true. The truth stays the
13 same. The truth does not change. The truth does not change,
14 but the stories have a lot throughout this entire case. So
15 let's lay it out. This is it. As far as Roxanne is
16 concerned, this is it. And this isn't guessing. You don't
17 have to take anybody's word for this because all of the
18 medical records, both sides agreed they're it. You have all
19 of these papers, all of these reports. You can look at the
20 times yourself.

21 Ms. Cagnina asserts originally that she thinks the
22 assault takes place between 3:00 to 3:15 a.m. That's what she
23 said in her police statement. 15 minutes uninterrupted in a
24 busy hospital with the door open, lights on, no one comes by,
25 no one peeks in. We know now after the fact that Nurse Murray

1 was actually just two doors down the hallway. But she states
2 3:00 to 3:15 a.m.

3 Well, we know that she's not even right about that.
4 We know that she's given phenobarbital at 3:00 a.m. At 3:15
5 we have the reports to show that her vitals are taken by Nurse
6 Goodhart. And, of course, there's no disclosure or anything
7 going on because she's still in the ER. She hasn't even made
8 it to the seventh floor yet.

9 So let's assume that she's off on her time. That's
10 okay. But now we're at 3:15, vitals are taken, and there's no
11 assault that's taken place. 3:25, given more Dilaudid, the
12 pain med, the narcotic. Still says nothing -- nothing has
13 happened at this point. 3:43, labs taken. 3:45, another
14 check by Goodhart. Still in the ER, still nothing said. So
15 now we're at 3:45. And that's fine. We don't have to hold
16 Roxanne to the 3:00 to 3:15. I mean, she said it, it goes
17 towards the consistency which goes towards credibility. But
18 you didn't want to hold her to the 3:00 to 3:15, that's fine.

19 Now, let's -- let's find out where something
20 happened. So we went from 3:45 to 4:45, okay. Now, this is
21 important. This is the key to Roxanne Cagnina because at 4:45
22 she's now on the seventh floor. We know this because
23 Christine Murray and Carine Brown are brought to her. Steve
24 Farmer goes up to the seventh floor, drops her off, goes and
25 tells these women, hey, your patient is here, she's in that

1 room, and they go in to find Ms. Cagnina.

2 Now, according to Nurse Murray, she's already out of
3 bed. She's not frozen in fear. She's not paralyzed by fear.
4 She's actually in the bathroom. Now, Ms. Brown remembers it
5 as she hasn't gone to the bathroom yet. Steve dropped her off
6 and she has to go to the bathroom and they helped her. Either
7 way, it doesn't matter. What matters is when they walked in
8 at 4:45 she's fine. She's either going to the bathroom or
9 trying to go to the bathroom.

10 She's calm, she's not in distress. She says nothing
11 about any assault taking place to either Ms. Murray or Ms.
12 Brown. She makes some offhanded comment about taking off her
13 gown and getting undressed. The nurses are more worried about
14 her and how she's acting, but no disclosure about being
15 sexually assaulted. No hysteria. No tears. Only complaint
16 is of a headache, the same headache. That's the only thing
17 she says at 4:45.

18 Now, here's the big question. If nothing happened
19 before 4:45, if it had she would have mentioned it to
20 Christine Murray or Carine Brown, okay. And nothing happened
21 after 4:45 which we know because Murray and Brown are
22 constantly checking in on her, taking vitals, giving her
23 medication and all the way throughout. When did anything
24 happen? You have the records.

25 No complaint of assault, not frozen in fear,

1 hysterical. Christine Murray takes over. Steve leaves.
2 According to Ms. Brown, Steve had already left. So he's off
3 the floor now. He's done. He's gone by 4:45. Roxanne tells
4 you in her testimony she claims that during the assault, even
5 though frozen she was able to use her cell phone and take
6 photos. She couldn't yell for help or struggle, but she was
7 able to somehow get her cell phone and take photos during the
8 assault.

9 Well, as it turns out, the police checked her cell
10 phone. 4:47 a.m., a couple of minutes after Christine Murray
11 did their check, and 4:50 a.m. So even if you want to say
12 that Ms. Murray and Ms. Brown were off by five minutes, ten
13 minutes, it still doesn't make any sense. 4:45 is when Murray
14 and Brown met with Cagnina. She takes the photos after those
15 nurses are there.

16 Let's say it did, something did happen. Well, she
17 claims that she called 911 during the assault. That while
18 frozen with fear and taking photos with her phone, she also
19 dialed 911. Well, on this one she's not even close. Oh, yes,
20 trying to muzzle the phone. She talks about -- that's why we
21 know she's so certain in her own mind that she was calling 911
22 during the assault because she said she had to muzzle it so
23 that Mr. Farmer couldn't hear the 911 operator. She had to
24 muzzle it. She was worried he was going to hear and that's
25 why she didn't actually talk to the 911 operator. It was just

1 a hang up call. 7:54 a.m. She was off by, I don't know, a
2 whole lot.

3 7:54 a.m. her husband is almost at the hospital.
4 Scott arrives in about six minutes. And this is her panicked
5 hang up to 911 made during the assault. Everyone knows darn
6 well the assault didn't take place at 7:54 a.m., and it didn't
7 take place at 3:00 in the morning. It didn't take place
8 before 4:45 or after 4:45. 5:30 a.m., checked on again by
9 Nurse Murray. No signs of distress. Not frozen, no complaint
10 of assault, nothing said. 5:40, another pain assessment by
11 Murray. 5:47, vitals. 6:00 a.m., a pain assessment. Still
12 not frozen, still no complaint of assault.

13 A lot of inconsistencies with Ms. Cagnina. She
14 talks about a call button, well, it was out of reach, I
15 couldn't -- I couldn't get to it, there was landline in the
16 hospital room. At one of her depositions she says that she
17 used a land line to call her husband, but yet she's not able
18 to use the landline to call 911 or call for help or call for
19 the nurse's desk or anything else.

20 She changes her story on whether the landline is
21 within reach of her bed or not within reach. At one point she
22 says, well, her cell phone was dead. Then she says, well, the
23 cell phone was just on low battery. Then she says, well, just
24 bad reception is what was going on. A lot of different
25 stories regarding that.

1 More inconsistencies from Ms. Cagnina is, of course,
2 we already talked about the witness on the elevator. At one
3 point she says the door to her room was closed, and then she
4 says that it was open, and then she says that it was -- that
5 she could see the hallway, and then she says that she could
6 not see the hallway.

7 You were all here and saw. Ms. Bluth and I just
8 went back and forth reading what Roxanne had said before. You
9 said at one point you couldn't see the hallway; right? Yeah.
10 You said at another point you could see the hallway; right?
11 Yeah.

12 She tells, I believe, it's Nurse Wescott that the
13 assault takes place at 7:00, tells the police it happened at
14 3:00 a.m., and we know from all of the nurse's visits and the
15 medical reports and the logs that neither one of those is
16 correct. And, in fact, there was no time slot where anything
17 happened where she disclosed hysterically until 8:00 or around
18 8:00 that morning.

19 The photos and the 911 call during the assault, that
20 doesn't make any sense. We discussed that. Whether it
21 happened in the elevator or in the room or a little bit of
22 both, that changes a number of times. She tells one of the
23 nurses, I believe it's Ms. Wescott, that everything happened
24 in the elevator. That's what Wescott testified to. But she
25 has told a different story to the police and also while on the

1 stand here.

2 More -- and I realize you may think this is tedious.
3 Why are we going on with this over and over about her
4 inconsistencies? Well, you know what, that's sort of the
5 thought of while she's testifying. Why? Why is this
6 happening? Why -- why all the different stories? She says no
7 financial distress. She says she hates the media, so she
8 calls the media and goes on TV.

9 She says that there was an aggressive assault and
10 then Nurse James gets up on the stand and tells you that the
11 nurse who took care of her afterwards the entire time, did she
12 ever complain of any vaginal pain or discomfort? No. She
13 complained of a headache. So she was capable of communicating
14 pain and discomfort, and yet she didn't. She just talked
15 about her headache. Asked for more morphine, asked for more
16 Dilaudid. And at one point said, hey, can I just have the
17 morphine and the Dilaudid together? It seemed to work better
18 that way.

19 No mention of ramming. No mention of this licking
20 the fingers business that she testifies to now. And I'm
21 talking about when she first reports this to the police
22 officers and gives her first recorded interview and statement,
23 she never once mentions anything about Mr. Farmer licking his
24 fingers or asking her to lick his fingers. She never says it.
25 That whole detail is created after some time, later on.

1 In fact, if you remember the testimony when asked
2 about that, I said, well, look, review your entire statement.
3 Tell me if you can find it. And the Court had to take a break
4 and a recess so she could review her entire statement. We
5 came back just for her to tell us, yeah, no, I just left that
6 out. All new information.

7 Scott Cagnina, we already talked about these
8 problems with their family all leading to the financial
9 distress. We know that Scott is part of the lawsuit. We also
10 know that the Cagnina's took out an \$80,000 loan against a
11 future settlement after this happened and they filed a
12 lawsuit. What does that mean? That means they gambled. They
13 took out 80 grand in hopes of getting money for this lawsuit.
14 They took it out ahead of time. They took an advance.

15 No distress call from Roxanne until the morning
16 hours of the following day. Because as Roxanne tells you, she
17 was frozen from fear. She was hysterical that there was a
18 brutal assault that took place, and then she fell asleep. You
19 just fall asleep? You don't call for help, hit the call
20 button, use one of the two phones that are in the room? So
21 she falls asleep and that's why she doesn't talk to Scott
22 until 6:00 in the morning.

23 We know that Scott and Roxanne had what they
24 described as a healthy sex life, that they had sex on a
25 regular occasion before her stay at Centennial Hills Hospital.

1 That has obvious impact on the findings in the SANE exam. And
2 he doesn't appear until after the assault accusation. That's
3 when the attention comes around.

4 Nurse Goodhart, we've talked a lot about her
5 already, as well. She said Ms. Cagnina was a bit off. This
6 was before seventh floor. This is in the emergency room.
7 This is early on. Not shy, kill a horse, already talked about
8 that. And she's the one who told us about the incident with
9 Ray Sumera and why things -- how things got weird in the
10 emergency room with Ms. Cagnina.

11 Nurse Murray, this is the one to really keep in mind
12 when you're talking about that timeline and trying to figure
13 that out. If anything happened before 4:45 a.m. she would
14 have told Nurse Murray. If anything happened after 4:45 a.m.,
15 Ms. Murray would have seen it or heard the allegations
16 afterwards during her checks.

17 Steve notifies Ms. Murray that he's got their
18 patient. Now, for whatever reason, maybe Nurse Murray felt
19 like she had to try a little bit harder being on the stand,
20 but she said, oh, yeah, well, it was really weird that Steve
21 Farmer would come and tell me that my patient has arrived on
22 the floor. That was -- that was odd. But we know that from
23 her prior testimony at her deposition she actually said that
24 she thought it was a really nice thing to do.

25 We know that Murray talks about Roxanne's headaches,

1 watched her the entire shift, and the whole time no
2 allegations were made. There's no hysteria, there's no
3 crying, she's not upset. There just wasn't a time for this to
4 happen. There's no place to fit into the timeline.

5 CNA Brown, I've been referring to her as Nurse
6 Brown, but she said that Roxanne gave -- you know, put up red
7 flags with her behavior, the way she was acting, so much so
8 that they had to watch each other's back. Two female nurses
9 worried about the awkward strange behavior of a female
10 patient. She confirms the timeline. She's there with Ms.
11 Murray throughout that shift. They worked together that
12 entire shift. You will see both Brown and Murray's name in
13 those medical records.

14 If you want to go through and check the timeline
15 that we've been discussing and the entire time that she's
16 working, no accusations, no allegations, no cry for help, no
17 requests for the police or a phone or her husband, nothing out
18 of the ordinary. And she works until 6:00 or 6:30 in the
19 morning until the end of her shift. The only inappropriate
20 behavior that she witnessed was Roxanne's, and she told you
21 that on the stand.

22 Neal Hyman. Well, we told you to look for money and
23 media. He covered both when he took the stand. He talked
24 about the fact that he was contacted early on by Ms. Cagnina,
25 contacted for the purpose of the civil suit. And what benefit

1 would any of this serve Neal Hyman? I mean, he gets a call
2 from a client and the client says, oh, Neal, I -- this media,
3 I hate it, I hate all this media attention. He doesn't even
4 know about the phone calls made from the hospital. But so he
5 says, well, let's go on the news, then. Let's get a camera in
6 our face and do it that way.

7 And they do it from his office. And Neal Hyman gets
8 some free advertisement. He's on that interview talking about
9 he's the attorney and putting the hospital on notice and
10 they're suing the hospital and we're looking for other people
11 to come forward. We've all seen the commercials on TV,
12 whatever the issue may be, had injuries or -- or some other
13 kind of side effect from the medication. Hey, call this law
14 firm, we're doing a big -- we're in a big civil suit, come
15 join us. That's what Neal does.

16 And he's not done with his advertising because he
17 likes to post on Facebook a lot. And he likes to post things
18 on Facebook that are probably not what you would consider
19 professional. He likes -- he likes to announce that he's
20 going to testify and bring it on and tell me the time and
21 place. Now, on the stand when I asked him about it before I
22 actually grabbed the Facebook post, his response was, oh, if I
23 posted anything it was only that I was subpoenaed and that I
24 will appear in court because that's the law.

25 Then we get a post from Mr. Hyman that's a lot

1 closer to being like a teenage girl, all right, gossipy and
2 aggressive. But, hey, he needs attention, so much so that on
3 his own web page he has a link to all of the publicity in this
4 case, any publicity that's been going on from the beginning on
5 his own --

6 MS. BLUTH: Your Honor, I'm going to object to
7 assumes facts not in evidence.

8 MR. MANINGO: This is in evidence.

9 MS. BLUTH: I don't think the link.

10 THE COURT: Mr. Maningo, address the Court.

11 MR. MANINGO: I'm sorry. The testimony from Mr.
12 Hyman was that he has a web page and there is a tab on that
13 and the tab on it that it takes to the interviews that he's
14 done on the news, and he said I think I've done two interviews
15 on the news, he also said there's another story that's covered
16 unrelated to this.

17 MS. BLUTH: That's not all the media related to this
18 case.

19 THE COURT: All right. So --

20 MS. BLUTH: They are two separate cases.

21 THE COURT: Okay. So the jury can rely on what
22 their memory of the testimony was because, as the jury
23 instructions you, what the lawyers say during objections and
24 in argument isn't evidence. What is in evidence is what you
25 remember. And so rely on your own memories in that regard.

1 You may proceed.

2 MR. MANINGO: Thank you, Your Honor.

3 However it works out with -- with Neal, we know that
4 he certainly has a financial interest and a motivation, all
5 right. He's got a big investment. The case goes on for six
6 years. He testified that he's conducted over 40 depositions
7 in this case, that he's had to travel out of state at least
8 three different times to go do these depositions. These are
9 all expenses that need to be paid by Neal Hyman. So he not
10 only takes this case, but he gets 40 percent. That is a
11 healthy chunk.

12 Nurse James testified she was the one who took care
13 of Ms. Cagnina after her allegations were made. This is where
14 we talked about already. She continually asked for -- for
15 more medication. She said the morphine and Dilaudid worked
16 well together.

17 She also says at some point, she just makes this --
18 this spontaneous statement, and you can see in the report,
19 this is also in evidence, and Nurse James puts it in quotes
20 that Ms. Cagnina says I'm not abusing these meds. Lots of
21 headache complaints, but zero complaints of any other kind of
22 discomfort or no pain.

23 The detectives. If many of you were raised
24 thinking, you know, having the belief that -- that all police
25 officers are honest and on the level, then I'm afraid that you

1 were probably disappointed when -- when these detectives came
2 on the stand. And there are a lot of good cops who work
3 really, really hard, but the two that we had in this case, it
4 was somewhat shocking. We had Detective Cody and Detective
5 Saunders.

6 First Detective Cody goes into this whole thing
7 about, well, we had to do a cell phone triangulation and get a
8 satellite pinpoint and a warrant signed by a judge and we had
9 to go through this whole process. You know, setting up this
10 scenario of some kind of renegade man who is fleeing the law.
11 Where did they find him? In his house in his bed. They went
12 through this whole, you know, sophisticated effort to find him
13 in his own bed.

14 And then they talk about some business card, a
15 business card of Detective Saunders that was passed around at
16 the hospital or something else, okay. Detective Cody felt
17 that this was important evidence to talk about, that this was
18 -- this was something to testify to and something that the
19 detective can make some sort of inference about. Did they
20 take that business card into evidence? No. Did they take a
21 photograph of that business card sitting on the end table?
22 No. Did they document in any report over the last six years
23 anything about this business card? No.

24 So last week they just decide to get on the stand
25 and magically, after six years, we have some business card

1 they're testifying about. But it doesn't stop there,
2 unfortunately. It gets much, much worse with what Detectives
3 Cody and Saunders start testifying about. Remember that they
4 confirmed the fact that they are trained to write reports.
5 Police officers write reports.

6 Why do they write reports? Because if a case goes
7 on for six years and they have thousands of cases in between
8 now and then, they need to be able to remember what happened
9 They also need to be able to inform the prosecution about what
10 happened and inform the defense about what is alleged. Are
11 they only allowed to write one report? Of course not. That's
12 silly. They can write as many reports as they want.

13 They can write the supplemental reports, the
14 additional reports, as many reports as they need, the incident
15 reports, the arrest reports. And they did that in this case.
16 And if after year one, you can always go back and add
17 something that's new that you discovered or that maybe you
18 forgot about. And after year two, and three, and four, and
19 five you can still do any of that.

20 Well, neither one of them ever talk about anything
21 that happened in the monitoring room. This story of how Mr.
22 Farmer was being held in the monitoring room and he starts
23 licking his fingers and scraping his fingernails in some
24 effort to destroy evidence -- first of all, where are we
25 talking about this happening? A monitoring room. What do you

1 do in a monitoring room? You monitor things. They have video
2 recorders, video cameras.

3 Did you see a video of that event happening, of Mr.
4 Farmer trying to get rid of evidence? Of course not.
5 Nothing. Do we have anywhere in the six years of report
6 construction any mention of this episode where they're
7 alleging that he was trying to destroy evidence, of this
8 behavior? Prosecution gets to get up after me and have the
9 final say because it's their burden of proof. Ask Ms. Bluth,
10 where is it written down? It doesn't appear anywhere. This
11 entire story is created at trial. Six years, and no mention
12 of this?

13 And the DNA gets sent in to be examined. Wouldn't
14 it be important to tell the DNA techs and the people who were
15 testing this evidence, wouldn't it be important to say, hey,
16 well, you know, he did do this, by the way? He did try and
17 clean his fingernails and -- and lick his fingers. Of course
18 it would. If it happened it would have been documented. If
19 it happened it would have been recorded, videotaped,
20 something. Six years.

21 SANE exam, only physical evidence presented in this
22 case inconclusive. Inconclusive because she states that it is
23 consistent with -- and I'm talking about Nurse Ebbert. She
24 says it is consistent with digital penetration, but it's also
25 consistent with consensual sex, it's also consistent with --

1 if they were accidentally self-inflicted. She says it's
2 consistent with if someone -- if it were within 72 hours,
3 which is what Roxanne Cagnina, by the way, testified to when
4 asked how long had it been since you had sex with your
5 husband, Scott. She said, well, 72 hours, I think, well,
6 yeah, 72. That's what she testified to on the stand.

7 Roxanne talked about a normal sex life, possible
8 source as being consensual. And then, and this is the part
9 where Nurse Ebbert got a little carried away and tried to go a
10 little bit over the top which affects her credibility because
11 then this woman wants to define for everybody else what normal
12 sex is. That's -- that's a tough thing to do. And she
13 certainly doesn't know anything about Roxanne and Scott
14 Cagnina personally or anything about the Cagnina's bedroom
15 behavior.

16 She did mention that, you know, there's a difference
17 with arousal levels with the female body. And then when I
18 started to mention to her would it make a difference as to
19 age, the fact that Ms. Cagnina had a hysterectomy, those types
20 of things, well, she -- she did have to concede that those
21 would make a difference, also, okay.

22 So what we have, and it's, you know, it's entirely
23 what the State is relying on, is these pictures of the SANE
24 exam. And what we know is we've got a couple of photos that
25 are in evidence and you will be able to look at here

1 yourselves. We're given two pictures.

2 (Pause in the proceedings)

3 You're given two photos of the SANE exam. Now, the
4 first one you've seen a number of times, and it's this one.
5 It has the dye on it, it has the arrows pointing to it, that
6 kind of thing. And that's done so that it's visible. Now,
7 Nurse Ebbert decided -- she also says, well, you know, even
8 though she's done 4,000 exams, and this case is six years old,
9 that she remembers specifically this exam that she could see
10 things with the naked eye. So this is her naked eye photo.
11 Pretty clear? See that with your naked eye? It might as well
12 be that side.

13 Strange how the one photo that would show what these
14 injuries would look like without arrows and dye and everything
15 else so we could see if maybe they're from days before or
16 hours or a week, that's what you're given. You'll have it in
17 evidence. You can look yourself. So when we asked about that
18 photo and said, hey, why can't we see anything? Well, she
19 said, don't worry, I can see it, I remember.

20 DNA, the only thing we've got here is some touch or
21 contact DNA to the face. We're not even sure exactly where.
22 And that's the only match at all that matches to Farmer, okay.
23 Keep in mind that it's also a mixture of another unidentified
24 male. So the only match found of DNA is somewhere on
25 Roxanne's face and it's a mixture of Steven Farmer and maybe

1 one of the male doctors, maybe one of the male nurses, maybe
2 Scott Cagnina himself. That's it. That's it. No other match
3 found.

4 Now, is that because nothing else was tested? No.
5 We know that it was. Where would you expect to find the DNA?
6 Where would you expect? Well, the allegations are that Mr.
7 Farmer, with his hands, not wearing any gloves or anything
8 like that, both touched and penetrated Ms. Cagnina's vagina,
9 and touched the inside of her thighs, pushing her thighs away,
10 and placed his face in her genital area and performed oral sex
11 on her against her will, okay.

12 Now, it's not to be crude, but what would you expect
13 to find? If you can get a match just showing just a touch, a
14 touch of DNA on the face, would you not expect to at least
15 find touch DNA on the thighs, and more specifically in her
16 genital area would you not expect to find saliva as well as
17 skin and touch DNA? And you've seen the pictures of Mr.
18 Farmer from six years ago. He had a beard like he does now.
19 A full bright white beard, and they don't find a single hair
20 or any debris.

21 They comb Roxanne Cagnina's pubic area. They don't
22 find a single hair, they don't find any saliva, not even any
23 touch DNA, nothing where you would expect it. Nothing that
24 would show that there was a sexual assault. Do you know what
25 their DNA expert came in and proved to you beyond a reasonable

1 doubt? That at some point Steven Farmer probably touched
2 Roxanne Cagnina's face when he was moving her to a new
3 location, pulling a blanket up, fixing oxygen, anything, and
4 that it was with another male in the -- in the hospital.
5 That's the only thing they proved.

6 We already talked about her behavior. We know that
7 she was upset and the calls and we know about the loan. And
8 it's still about these three basics when you evaluate the
9 whole thing. Now, we'll move quickly through the rest.

10 Marcia Petersen, they all stem from Roxanne, but
11 Marcia Petersen says nothing until she is on the news. She
12 also calls Neal Hyman after seeing him on the news. She also
13 files a civil lawsuit. Here's a woman who says she's in the
14 hospital and she is sexually assaulted, but she says nothing
15 about it. She tells her sons, apparently, but even that
16 doesn't make sense. There's issues with that, but she says
17 nothing for sexual assault.

18 But she testifies that she's at the hospital on the
19 earlier occasion and she's missing property from her purse.
20 And so what does she do? She's outraged. She calls right
21 away. She calls Centennial Hills administration and says,
22 hey, I'm going to report a crime. Someone stole something out
23 of my purse. But she gets sexually assaulted and says
24 nothing, calls no one. This is where your common sense comes
25 in.

1 As Mr. Bashor stated in opening, the intimate care
2 of the CNA is -- is a tough job. And what happened with Ms.
3 Petersen is that she had defecated on herself. She had
4 limited sensations in her body. She also had a catheter
5 placed in her. And as she states, when she has seizures and
6 she was having ongoing seizures over and over, in her own
7 words she would be out of it. But even though, she doesn't
8 tell anyone other than her sons, she says, but no authorities,
9 no police or anything. She doesn't say any of this, but she
10 claims that she is sexually assaulted.

11 And so -- but it's strange because she returns to
12 the same exact hospital for two more visits after that. Let
13 me say that again. She gets sexually assaulted and then goes
14 back to that same hospital and never says anything on the
15 first time she goes back, and then goes home and continues to
16 live her life, and then has to go back to the hospital a
17 second time and she still says nothing like, hey, you know,
18 when I was here before one of your nurses assaulted me or
19 touched me inappropriately. Nothing to any doctors, any of
20 the nurses, no one.

21 You heard from her son Marshal. She -- she said she
22 told her sons, both of them. We didn't hear from Micah
23 Petersen. The government didn't call him as a witness to
24 confirm anything that what -- you know, what Marshall
25 testified about. No doubt Marshall -- Marshall is not a bad

1 kid. I mean, people make mistakes. He's a convicted felon.

2 But he had a really difficult job and a really
3 difficult life for a number of years trying to take care of
4 his mom, and his mom knew it, how difficult it was. Because
5 she was really sick. She had a lot of seizures all the time.
6 No doubt. But think about whether it makes sense. They say
7 nothing. She tells both of her sons, hey, I was sexually
8 assaulted. And so what do they do? They leave her in the
9 hospital.

10 They don't tell the doctors, they don't tell the
11 nurses, they don't call 911, no police, no hospital admin,
12 which is weird because Marshall testified first when it comes
13 to seizures he'd say I see mom like that and I'm quick to call
14 the ambulance. She starts getting sick and he's quick to
15 call. She gets raped and he doesn't call anyone? He leaves
16 her in the hospital and lets her return two more times after
17 that to the same place? No SANE exam, no DNA, nothing
18 physical for Marcia Petersen or for anyone after Roxanne
19 Cagnina.

20 Sympathy, it's an issue because it's a sad situation
21 for a lot of -- of these -- these women because of their
22 health issues. But you have to keep in mind that these issues
23 were preexisting before they ever went to the hospital.
24 Marcia and Roxanne both had seizures beforehand, and they had
25 ongoing issues. There was depression as testified to by

1 Roxanne.

2 We know that Ledahlia Spurlock was actually there
3 because of a suicide attempt. So she was obviously going
4 through depression. And you can probably assume safely that
5 Marcia Petersen had issues in that regard because of the
6 difficulty of her life. These were things that existed before
7 any allegations were made. We know that there were financial
8 issues that existed. There is no evidence regarding those, so
9 the focus became about their lives.

10 But when they talk about, you know, well, Heather
11 Shank, she started drinking more after this whole event and,
12 therefore, it must have happened. Well, remember that her
13 records show when she came to the ER she had alcohol in her
14 system. She had drinks before any of this happened.

15 We know that Roxanne Cagnina had the Xanax before
16 any of this happened. We know that Ms. Petersen had all kinds
17 of issues regarding her sons, regarding her health way before
18 any of this happened. And you've already been instructed and
19 you have an instruction that says you are not to decide this
20 case based on sympathy.

21 So now, using your head, what makes sense? What
22 happens with Ms. Hanna and Ms. Spurlock and -- and Ms. Shank
23 is -- is really revisionist history, sort of thinking back and
24 seeing things differently than they actually happened. And
25 it's called -- it's a very common human trait. And you've

1 probably never heard it called what it is, which is
2 confirmation bias, but you've all experienced it. It's when
3 you've made up your mind about something, you have an opinion
4 about something, and so you only hear evidence that confirms
5 what you already believe. And anything to the contrary, you
6 sort of ignore it.

7 So, for example, you know that a certain politician
8 is bad and you read the newspaper every morning. You see a
9 hundred stories of this politician doing good things, but you
10 don't really notice those. You kind of skim over those.
11 Maybe you just flip the page entirely. But the one time the
12 politician does something bad, that's when you sort of peer
13 over the newspaper at your spouse and say, yep, told you, this
14 guy is a bum, I knew it all along.

15 That's confirmation bias and that's what happens
16 with the three individuals following. But before I do, I tell
17 you about those three women, really the better example of
18 confirmation bias is -- is a very short folk tale, a Chinese
19 folk tale, and it's about a farmer. He has his favorite
20 digging tool and he uses it every day. It's crafted specially
21 for him and he's worked really hard to get it. And he's out
22 there working and he notices he doesn't have his tool that
23 day. And so he sees across the way the only other person who
24 is out there is the neighbor boy.

25 As he watches the neighbor boy he says, you know, he

1 walks like a thief. When he listens in on the kid later that
2 day he says, you know, he talks like a thief. And he notices
3 all day long from watching him he acts like a thief. So he
4 goes home and tells his wife this kid stole my favorite tool.
5 How do you know? Well, because he walks like a thief, talks
6 like a thief, acts like a thief.

7 The next morning he gets ready for work, goes in his
8 shed, and lo and behold, there's his tool. He misplaced it.
9 He put it in the wrong spot and he finds it. And he goes back
10 to the field that day and he sees that neighbor kid and he
11 realizes that he walks like a normal kid, talks like a normal
12 kid, acts like a normal kid.

13 These women, Marcia Petersen and Heather Shank and
14 Denise Hanna and Ledahlia Spurlock, when they went to the
15 hospital they may have been uncomfortable, they may -- they
16 may have felt like, you know, they lose some privacy because
17 any time you go to the hospital you're taking off your
18 clothes, you feel exposed, you feel vulnerable, but their
19 visits were normal visits. And after their visits they went
20 back to their normal life and they stayed continued on with
21 their normal routine day after day.

22 And it wasn't until they see this news story and
23 someone who is easily identifiable, someone with a white
24 beard, white hair, it's not until then that all of the sudden
25 it clicks and they're, oh, I guess it wasn't normal because

1 that was my nurse, that's the same nurse, that's the same
2 hospital. Now all of the sudden in their head their visit is
3 completely different. Either that or you have to choose to
4 believe that they just decided to not say anything to anyone,
5 which is also true, which is also how it worked out.

6 It goes back to the credibility and the consistency
7 and the common sense issue. Denise Hanna, her entire
8 allegation is a forearm glanced along the side of her breast.
9 Well, first of all, that is not a crime. Mr. Farmer was doing
10 his job. He was adjusting leads. He was trained to do that,
11 he was asked to do that on a number of different occasions.
12 Ms. Hanna never says anything or complains about it.

13 And if we use our common sense, the State even asked
14 in jury selection do you think sexual assaults and those kinds
15 of things happen in -- in the open? Well, of course not. Of
16 course not, it would be behind closed doors. Well, guess
17 what? He is adjusting Ms. Hanna's leads in a clear line of
18 sight from the nurse's station, the door is open, and there's
19 even a curtain.

20 And what does Mr. Farmer do? He goes over and he
21 opens the curtain and he does his job. And he leaves the
22 curtain open. I mean, if you wanted to do something wicked at
23 that point, all you can do is you close that curtain behind
24 you and no one can see. But instead, door open, line of sight
25 right where Margaret Wolfe can see whatever it is that -- that

1 she thinks, and Ms. Hanna never reports anything.

2 Nurse Wolfe claims to tell her supervisor. Well,
3 what are we missing? No reporting incident by Margaret Wolfe.
4 And, of course, we're missing a supervisor, Ray Sumera. Nurse
5 Ray never testifies so we don't know what Ms. Wolfe said. You
6 are not provided any photos showing line of sight or anything
7 like that by the State. You are not given any physical
8 evidence.

9 Heather Shank, also does not report until the
10 television just like Ms. Petersen. This is the confirmation
11 bias because think about how this story comes together. Her
12 boyfriend is in the room, Tim Lehan. And he's in the room
13 when --when -- when whatever they think happens happens and
14 Ms. Shank is exposed, her breasts are exposed. And they
15 describe it as -- he describes it as appalling. It was
16 appalling. What does that mean? Horrific, terrible,
17 disgusting.

18 In fact, it was so appalling that he goes home and
19 goes to bed, leaves Heather there. That's how appalling it
20 was. He goes home to get some rest. Doesn't ask for a
21 nursing change, doesn't report it to the doctor. And this is
22 a guy who was very proud of all his training and all his
23 medical background and his experience and he leaves his
24 girlfriend there and he says nothing.

25 And then we come across Ms. Spurlock. She's in the

1 hospital for an attempted suicide. If you've had any
2 questions about common sense at all throughout the trial, you
3 know, wow, this is a -- this is a big one because she's in the
4 room with her two aunts standing on each side of the bed. So
5 he's at the foot of the bed, Ledahlia is in the bed, and then
6 you have those two aunts that testified, one on each side of
7 him.

8 And as she says, 20 to 30 seconds of some sort of
9 hip thrusting or gyration or sexual movement against her feet,
10 okay. 20 to 30 seconds. Well, let's -- let's see how long --
11 let's give her the benefit of the doubt. Let's say 20
12 seconds. Let's say 20 seconds. And I'm not going to imitate
13 anything. I will -- how about just a much more basic simple
14 gesture. See if -- see if you notice me just waving. Let's
15 see how long 20 seconds takes. Starting.

16 19.9. We're on the low end, 19.9. That's how long
17 that took. During that 19.9 seconds, do you think that any of
18 the three adult women who were standing there watching this
19 could have said a single word, such as stop? Just one word.
20 They don't. None of them. Three adult women, two of them
21 aunts just watching this go on for 20 to 30 seconds.

22 Ledahlia doesn't even remember her feet being held,
23 and yet she can't pull her knees up away from him. Aunts
24 can't help, can't step in, can't say something. She can't
25 twist her legs away. Then the two aunts come in and give

1 conflicting stories. One aunt says, oh, yes, I saw this, this
2 was going on, this is what happened. And then I believe it
3 was Aunt Ada who came in first and said I didn't see anything.
4 I didn't see anything. I don't remember that happening.

5 No one reports anything to anyone until they see it
6 on the news. That's what we've been talking about. You will
7 receive a credibility instruction and it's already been read
8 to you. It looks like that. You don't need to read through
9 it now. You'll have it when you go back. But it talks about
10 things you can consider, things like motive, interest, or
11 feelings, ability, strength or weakness of recollections.
12 Those are things you need to apply to all of these witnesses
13 that we've been talking about. And if you think that someone
14 is lying, you may disregard their entire testimony or whatever
15 part of their testimony that you feel is appropriate.

16 The no corroboration instruction, just saying
17 something doesn't make it true. It doesn't. If you're say
18 it, you better back it up. I can tell you all day long I'm
19 the President of the United States. I can say it a hundred
20 times. It's not going to make me the president of the United
21 States. If you're going to say something, especially an
22 accusation, back it up. The State will rely on this
23 instruction.

24 Can you believe these stories beyond a reasonable
25 doubt without anything else? That's the question. That will

1 be the question. Can you believe these stories by themselves?
2 Roxanne's story by itself? Marcia's by itself beyond a
3 reasonable doubt? Would you just take a stranger's word for
4 something, or you want them to back it up?

5 What's that? Well, that's The Constitution of the
6 United States. You know what it looks like? It looks just
7 like a piece of paper with a whole bunch of writing signed by
8 a bunch of dead guys, okay. That's what it looks like. It
9 looks like a whole bunch of ink, a whole bunch of print. You
10 want to know what The Constitution really looks like? Go home
11 and look in the mirror. That's the face of The Constitution.
12 You want to know what else The Constitution looks like? It
13 looks like this man.

14 Stand up, Steve.

15 That's what The Constitution looks like.

16 You can sit down.

17 It's the same rights that protect every single one
18 of us, not just the guy sitting at my table. Every one of us.
19 It's the foundation of our system, it governs our cases, and
20 it is a structure for the most demanding system of justice in
21 the world. And it's what makes it the best system of justice
22 in the world. And the reason it's the best is because it
23 protects those who are not guilty.

24 Our system demands that everyone, you, me, Mr.
25 Farmer, be presumed innocent unless the State can prove

1 otherwise beyond a reasonable doubt. We demand that the State
2 do the proving since they're doing the accusing. You can't
3 prove something didn't happen. You can't prove the negative.
4 That's why it's on them. That's why it's their job to prove
5 it up.

6 And we demand proof beyond a reasonable doubt.
7 You've been given the definition. Beyond a reasonable doubt
8 it is the highest standard in our system of justice. There is
9 no case in any courtroom anywhere in this country that
10 requires a higher standard of proof than right now, today,
11 this case.

12 We talked about why we demand so much in our system.
13 We talked about in jury selection we don't want those
14 convictions where the innocent people are released decades
15 afterwards from prison. We talked about that in jury
16 selection, all of us. And that's why we have that kind of
17 system that we do, and if we follow this system, we avoid
18 those situations.

19 This is your reasonable doubt instruction. It talks
20 about the presumption of innocence. It talks about having an
21 abiding conviction. An abiding conviction, one that you can
22 feel good about today and still feel good about it the next
23 day and a year later and ten years later. It talks about
24 things that -- a doubt that would govern or control a person
25 in the weighty affairs of life.

1 This is about as weighty as it gets. Another human
2 being's fate in your hands sometime this evening. That's a
3 weighty affair. Read these instructions. If you find a
4 reasonable doubt, that the State has not proven the case
5 beyond a reasonable doubt, it is your obligation, it is your
6 duty, it is your job to come back with a verdict of not
7 guilty. That is part of the instruction at the bottom.

8 Demand more. We talked about our system is
9 demanding. It demands a lot from us, and now you must decide
10 if there's been proof beyond a reasonable doubt. The motives
11 of money, the media, the civil lawyers, changing story, demand
12 more than that. No reporting, six years and brand new
13 information from our detectives, a forearm touch while
14 working, witnesses loaded up on narcotics. Proof beyond a
15 reasonable doubt? Demand more than that.

16 One of our witnesses testifies on morphine, Marcia
17 Petersen. The SANE exam where the only naked eye photo is --
18 is ruined. You can't even see it. State's own nurses afraid
19 to be alone with Roxanne. Acts committed in front of others,
20 which defies any kind of common sense. And there isn't a
21 single closed door in this entire case. Demand more. Demand
22 more than that.

23 My mother used to tell me excuses don't pay the
24 bills. Well, you will be given excuses, excuses that don't
25 pay the bills and they're not proof beyond a reasonable doubt.

1 When the State gets up to finish, can they explain the
2 timeline, or Nurse Goodhart and her observations, or Nurse
3 Murray and Brown and their observations of Roxanne, the
4 outrageous stories of the 20 seconds of gyrating with the
5 aunts sitting -- or standing right next to him, how no one
6 reports that there's no DNA where it should be, there's no
7 physical evidence other than the SANE exam? Can they explain
8 that, prove it, or just offer excuses?

9 As the State presented their case it was very
10 similar to -- they -- they would give you evidence, they'd
11 give you witnesses, and it's like blowing air into a balloon.
12 This is the high tech part of the presentation. It's like
13 putting air into the balloon, okay. And it starts to take
14 shape once they do.

15 Now, what happens if you have a reasonable doubt?
16 What happens? Well, in this case we have, of course, the
17 timeline, we have 4:45, the nurses show up, but the photos
18 show up at 4:47 and 4:50. We have the 911 call hang up which
19 appears at 8:00 in the morning. We have no DNA match other
20 than something on the -- on the face, some mixture.

21 We know that From Ms. Brown and Ms. Murray that they
22 say Steven Farmer leave the floor and he was gone, out of the
23 picture, and at that time there was no disclosure whatsoever
24 of any kind of sexual assault. We know common sense would
25 tell you that you wouldn't just do these things in the open.

1 We have the civil lawsuits, and no one reports until it ends
2 up on the television. And that's what happens. That's what
3 happens with all of these reasonable doubts that we've talked
4 about.

5 You have a hard job. We all know that. A big
6 decision. A weighty affair of life. Doing the right thing is
7 rarely the same as doing the easy thing, and we're asking you
8 to do the right thing. And the right thing to do is to find
9 Mr. Farmer not guilty of all of these charges. And the reason
10 that's the right thing is because Steven Farmer is not guilty.

11 THE COURT: Thank you, Mr. Maningo.
12 Counsel approach.

13 (Bench conference)

14 THE COURT: Okay. So it's ten until 5:00, so we
15 can't doing the close, the closing close. I mean, I still --

16 MR. MANINGO: We have ten minutes.

17 THE COURT: Are you going to go more than ten
18 minutes?

19 MS. BLUTH: I think I have -- mine is 12.

20 MR. MANINGO: Huh?

21 MS. BLUTH: Mine is 12 minutes. [Inaudible].

22 THE CLERK: She can't hear you guys.

23 MS. BLUTH: Oh, I'm sorry. I forgot that we had --

24 THE COURT: All right. Well, I'm not -- I'm not --
25 yeah, I'm not going to go past 5:00 today, and it's already

1 ten until 5:00. And I -- there's no way she's going to --

2 MS. BLUTH: Well, we have to come back Monday
3 anyway, so, whatever, that's fine.

4 MR. MANINGO: Right.

5 THE COURT: Yeah. I mean, even -- even if she could
6 really wrap it -- even if she could wrap it up in ten minutes,
7 which I don't think is going to happen, I mean, we -- we
8 wouldn't have time to even let them pick a foreperson. So I'm
9 just going to let them go.

10 MS. BLUTH: Do you have criminal on Monday?

11 THE COURT: What?

12 MS. BLUTH: Do you have criminal calendar on Monday?

13 THE COURT: Yes, of course.

14 MS. BLUTH: Because I have three appearances on
15 Monday.

16 MR. MANINGO: Yeah, so do I. I have a lot on
17 Monday.

18 THE COURT: Yeah, Monday is always heavy.

19 MS. BLUTH: 1:00?

20 THE COURT: 1:00.

21 MR. MANINGO: Okay.

22 (End of bench conference)

23 THE COURT: All right. Ladies and gentlemen, the
24 State still has to make a rebuttal closing, but it is now less
25 than ten minutes until 5:00. That's what the clock is saying

1 here, 4:50. So we're going to have to bring you back on
2 Monday to hear the final closing. I'm sure you're tired
3 anyway since we've gone at a pretty brisk pace all afternoon.
4 And so at 1:00 on Monday because I have a criminal calendar,
5 the lawyers have other appearances in other cases also in the
6 morning in other courtrooms. So we will be back here at 1:00
7 on Monday to finish the arguments, and then you will get the
8 case to deliberate and you'll take whatever time you need to
9 look at everything and decide the case.

10 So, ladies and gentlemen, we're going to take a
11 recess until Monday at 1:00. During this recess it is your
12 duty not to converse among yourselves or with anyone else on
13 any subject connected with the trial, or to read, watch, or
14 listen to any report of or commentary on the trial by any
15 person connected with the trial or by any medium of
16 information, including, without limitation, newspaper,
17 television, radio, or Internet, and that includes smart
18 phones. And you are not to form or express an opinion on any
19 subject connected with this case until it is finally submitted
20 to you.

21 And I cannot emphasize enough that over this weekend
22 it's very important for you to avoid looking at any media. So
23 don't watch the news, don't read the newspapers, or read the
24 newspapers online. Thank you very much and I'll see you at
25 1:00 on Monday.

1 (Jury recessed at 4:52 p.m.)

2 THE COURT: The record will reflect the jury has
3 departed the courtroom. Are there any matters outside of the
4 presence?

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

6 MR. MANINGO: No, Your Honor.

7 MR. BASHOR: Just one thing, Your Honor. Mr.

8 Maningo printed a copy of his PowerPoint presentation if you
9 want that made part of the record.

10 THE COURT: Thank you. And we -- do we have also --

11 MR. KOICHEVAR: I don't have one, but I'll bring it
12 on Monday.

13 THE COURT: All right. Let's go ahead and we'll get
14 that and mark it as a Court exhibit so there's a complete
15 record. Thank you very much --

16 MR. BASHOR: No problem.

17 THE COURT: -- for bringing that. And I'll see you
18 at 1:00 on Monday.

19 (Court recessed at 4:53 p.m., until Monday,

20 February 24, 2014, at 1:07 p.m.)

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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

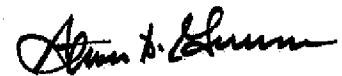
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8-22-14
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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

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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 14

MONDAY, FEBRUARY 24, 2014

APPEARANCES:

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1 LAS VEGAS, NEVADA, MONDAY, FEBRUARY 24, 2014, 1:07 P.M.

2 THE MARSHAL: Rise for the jury, please.

3 (In the presence of the jury)

4 THE COURT: Thank you. Please be seated. This is
5 the continuation of State of Nevada vs. Steven Farmer. The
6 record will reflect the presence of Mr. Farmer with his
7 counsel, the Deputies District Attorney prosecuting the case,
8 all officers of the court, all 12 members of the jury and the
9 4 alternates. Will counsel so stipulate?

10 MS. BLUTH: Yes, Your Honor.

11 MR. MANINGO: Yes, Your Honor.

12 THE COURT: This is the time for the rebuttal
13 closing argument of the State.

14 MS. BLUTH: Thank you, Your Honor.

15 STATE'S REBUTTAL CLOSING ARGUMENT

16 MS. BLUTH: I'm sure that you're all very familiar
17 with the saying, fool me once, shame on you. Fool me twice,
18 shame on me. Five times, and Steven Farmer isn't fooling
19 anyone. This was the perfect job for this man. Certified
20 Nursing Assistant. It provided him multiple opportunities to
21 be around multiple women in vulnerable positions, and he got
22 to operate under this guise as he was doing his job.

23 All I'm doing is my job. And he got away with it
24 for a period of time, until he took it too far, he got

1 greedy, and he got caught. And if you look at each female on
2 their own, and then compare them to one another, you'll see
3 the similarities in his conduct. And when you look at
4 Heather Shank, I just want to point a few things out in
5 regards to Heather. Number one, these are two incidents.
6 Heather Shank had this happen to her not once, but twice.

7 You have the incident that Heather herself
8 experienced, and you also have the incident that Tim observed
9 what the Defendant did to her. So in order for them to -- in
10 order for you to not to believe them, it would have to be
11 that they were both mistaken in what they saw the Defendant
12 do.

13 And I'd like you to ask yourself a couple of
14 questions. Number one, why is the Defendant so attentive?
15 And Mr. Maningo told you on Friday, well, he was doing his
16 job. And this is where common sense can come into the
17 picture, because how many of you have been to hospitals, and
18 how many of you have been into emergency rooms, and gotten
19 not only a blanket, but then a warm blanket? And when your
20 warm blanket ran out of its warmth, you got a new warm
21 blanket, or a new cup of a coffee or a new pot of coffee. He
22 was doing more than his job. He was gaining continuous
23 access to his victims.

24 Second question, why wait until the elevator --
25 until he gets Heather Shank in the elevator to start pulling

1 off those leads? Plenty of opportunities to do it, but as
2 soon as they get into the elevator, he tells Heather, we need
3 to take these off because the longer they stay on you, the
4 more they're going to hurt to get off. Now, keep in mind,
5 the last time she was at the hospital, those stickies were
6 still on her two days later. No one thought it was such an
7 emergency at that hospital stay. But as soon as the
8 Defendant gets here in the elevator, this is what they have
9 to do right then and there.

10 Where was the emergency? Why do those stickies
11 have to be taken off right then and there in a public
12 elevator? She had her gown from the bottom of her chin to
13 her belly button, both breasts completely exposed, in a
14 public elevator. There is no reason why that couldn't have
15 been done in the emergency room. But Steven Farmer didn't
16 want to do it in the emergency room. Why? Because in the
17 emergency room people would have seen what he was doing.

18 He was doing it in the elevator, think about when
19 you're in an elevator. You know when the elevator's going to
20 stop. You can feel it, and the doors wait a second and then
21 they open. So he could have very easily just covered it up.
22 He could have waited to when she got to her hospital room and
23 she was comfortable in a bed and taken them off. But he
24 didn't do that. He got his opportunity in that elevator, and
25 he took full advantage of it.

1 Then regards to Tim, Heather's boyfriend then, now
2 husband. There's no reason for him to dislike the Defendant
3 or have any motive to dislike him, because he thought that he
4 was attentive. And Tim spoke to you about the precautions
5 that he takes when he's dealing with a patient, and told you
6 that there was absolutely no other nurse present when this
7 happened. So he the Defendant didn't go and get another
8 nurse to watch he was doing, and he didn't use the discrete
9 methods that we've heard time and time again.

10 And in regards to medical personnel, we have had
11 all these individuals, Karen, Lorraine, Christine, Jeanine,
12 Margaret, all nurses from Centennial Hills Hospital. Even
13 the Defense's own witness, Carine Brown, another Certified
14 Nursing Assistant, Dr. Slaughter, Tim Lehan, and every single
15 one of those people told you that this shouldn't happen.

16 And they talked about the discrete methods that
17 they used. One of the things that they do, all of them
18 talked about is, talking to the patient. Walking them
19 through what you're going to do. Telling them about the
20 process that you're going to take them through. Expose as
21 little skin as possible. Either use the gown to cover the
22 private area, don't expose the entire thing or when you're
23 doing skin-to-skin contact, use the gown in order to not
24 touch the individual's breasts or whatever area you need to
25 touch.

1 And the reason for that is, you know, CYA, you
2 cover -- you know what CYA means. But you get the point.
3 The reason why they do that is to take these safety
4 precautions, both for the patient and themselves.

5 And we asked every single medical personnel that
6 took that stand the question; is there ever any reason to
7 fully expose a woman's breasts during either lead placement
8 or lead removal, and every single one of those people,
9 including Carine Brown, the Defense witness, answered that
10 question with a, no. And they didn't just stop at no.

11 Lorraine Wescott said, never in 30 years has she
12 ever had to open a gown like that for EKG patches. Christine
13 Murray stated that she felt it was completely inappropriate,
14 and Dr. Slaughter stated, if I saw that, I would rip them a
15 new one.

16 The reason why their feelings so are strong about
17 this and the answer is to readily a "no" is that it shouldn't
18 happen. It just flat out shouldn't happen. A woman's gown
19 should never open from their chin to their naval, exposing
20 both their breasts.

21 Yet, it happened with Steven Farmer five times on
22 three different women; twice to Marcia Petersen, once -- or
23 excuse me, twice to Heather Shank, and once to Denise Hanna.
24 Never in 30 years has that happened to Lorraine Wescott, and
25 that's how many times it happened to Steven Farmer.

1 The Defense has gone on and on a lot about these
2 victims not reporting, and if you look at the situation
3 between Heather and Tim, neither of them knew what the other
4 had experienced. Tim didn't know what Heather had gone
5 through, and Heather didn't know what Tim had witnessed.

6 Heather had just recently began having those
7 seizures. That was only her second seizure, and so they were
8 still dealing with her health at that time. And if you think
9 about the Defendant's conduct, his MO is a good one, because
10 he does these things to patients, and he tells them and acts
11 as though this is his job. And like Heather Shank said, she
12 was confused. She wasn't confused about, like a confused
13 state of mind of her medications. She was confused because
14 she said, I didn't want to believe, like, that things like
15 this happened in a hospital.

16 The Defense's entire mantra of this for these four
17 weeks have been, it's about the media, it's about money, and
18 it's about making sense. So let's apply that to Heather and
19 Tim.

20 In regards to the media, they were never contacted
21 by any media, they never sat down and did any interviews with
22 the media, and they didn't see it on the news. They were
23 contacted by other people. So this big idea that they see
24 this thing on the news and they're affected, it doesn't even
25 apply to them.

1 In regards to Heather, her grandmother contacted
2 her via phone and told her what she had listened to. So then
3 Heather tells Tim, and Tim calls his brother. And he says,
4 hey, can you Google this for me, you know, what's it saying
5 on the news? And Tim told you that he only had to listen to
6 the first two statements in that news article, and he knew
7 immediately that it was the same guy, except one thing was
8 different. The Defendant had given him the name of David and
9 not Steven.

10 Money. None of -- or neither of Heather or Tim
11 ever filed a civil lawsuit. They were contacted at a minimum
12 by four different civil attorneys. Either by letters,
13 telephone calls. Contacted four times. Yet, they never
14 filed suit and haven't received a dime. So the money does
15 not apply to them at all.

16 So ask yourself, does it make sense? Does it make
17 sense for them to come in here and tell you that these things
18 happened? What motive do they have to do that? Even after
19 Heather heard about it, she still needed to think -- she
20 still needed time to think about whether or not she wanted to
21 report this. And she told you, she had to think about it
22 because she didn't know if she wanted to go through this
23 process. It can be a long process. A lot of things can get
24 brought up about your personal life.

25 Six years later, she's still walking through that

1 door and taking that stand and tell you what he did to her.
2 She still made that decision. And she told you, she reported
3 it because she knew if it happened to somebody else, she
4 needed to come forward and she needed to help them.

5 She had to come in and here and talk about some
6 pretty personal issues with all of you. It got brought up
7 about her alcohol issues afterwards, and the Defense is oh,
8 well, she drank before. The testimony was she had a glass or
9 two of wine with dinner before she had her seizure. There's
10 absolutely no evidence that she was alcoholic. Yet,
11 afterwards, she started turning to alcohol, and her and Tim
12 sat down and they figured it out, and they said you're not
13 going to do that anymore, and they worked through it as a
14 couple.

15 And what about her behave at Summerlin Hospital
16 when she goes after this, she goes to Summerlin Hospital due
17 to another seizure, and they won't allow Tim in the back
18 right away. And so Tim, from the waiting room, can hear
19 Heather screaming bloody murder, and he keeps telling them, I
20 need to get back there, I need to get back there, but they
21 won't let him back. And finally, he goes back there, and he
22 finds Heather being treated by three males and being put in
23 physical restraints.

24 If this didn't happen to Heather Shank, then why is
25 she behaving like that? Because she's scared. Because she's

1 scared to be in another hospital being treated by males,
2 because this happened to her. That's why she's acting like
3 that.

4 So, so far, if you are listening to the Defense's
5 theory, you can't trust -- or you -- Heather Shank is
6 mistaken and so is Tim Lehan.

7 And then you go to Roxanne Cagnina. According to
8 the Defense, this is the master mind. What you see right
9 here is the master mind of the demise of Steven Farmer, the
10 spark that started the entire fire. You saw Roxanne. You
11 listened to her testimony, and you'll have to judge whether
12 or not you think she's this master mind that the Defense has
13 made her out to be.

14 And what they told you is that she was under
15 financial distress, and the whole reason she did this was
16 because of these financial worries that she and Scott were
17 going through. But you heard testimony from both she and
18 Scott, and what did they tell you? Their major issue was
19 their house was upside down. They bought at the wrong time,
20 which a lot of people did in Las Vegas.

21 All of their other creditors, Scott told you, were
22 paid off in cash. So it's not like this, they don't know
23 where they're going to eat tomorrow. It's that their house
24 was upside down. Roxanne lost her job after this incident,
25 with Adam's Pool, not before. So that wasn't a contributing

1 factor. And Scott was still employed full-time.

2 So then what did the Defense tell you? For the
3 very first time in four weeks, Mr. Maningo stood up here in
4 his argument and told you well, if you're not going to bite
5 off on financial distress, well, then she did it for her
6 husband's attention.

7 Never have heard about needing that for her
8 husband's attention before. And the reason why they said
9 that is because Scott Cagnina didn't go to the hospital? He
10 doesn't go to the hospital and all of a sudden she's going to
11 make up somebody raped her? Well, why didn't Scott go to the
12 hospital? He has two small children. And his wife had been
13 having seizures since 2000. Roxanne Cagnina had been having
14 seizures for eight years. And I don't think Scott Cagnina
15 can go to the hospital every time Roxanne has a seizure.

16 And let's talk about their relationship after the
17 assault. Scott told you they didn't have sex anymore because
18 she didn't want to, and he was too scared to try because of
19 what had happened. She turned to pills and alcohol, and she
20 became detached from her husband and her children. So if her
21 plan was to do this so she could get this attention, that
22 plan isn't working out too well for Roxanne Cagnina,
23 considering that Scott told you that it was one of the
24 contributing factors to their divorce.

25 There's this saying in criminal trials that we

1 often hear, and it's victims are victims for a reason. And
2 what I mean by that is Roxanne Cagnina was his perfect
3 victim. There he was providing that great care again, got
4 her a blanket. Every time that blanket got cold, she got a
5 new fresh one. He was always around. Roxanne told you that
6 she was being treated by a female nurse, which is Karen
7 Goodhart, and Steven Farmer, but she saw Steven Farmer 90
8 percent of the time. She was an easy target.

9 He knew that she was having seizures. He knew that
10 she was on heavy medications, and he spoke to her about it.
11 Think about what he's saying to her as she's getting on the
12 elevator. You're tired, you should be sleeping. These
13 medications, they should be making you sleepy. The fact of
14 the matter is, is Steven Farmer probably didn't think that
15 Roxanne would remember. He knew what she was on.

16 And if she did remember, who's going to believe
17 Roxanne Cagnina? Steven Farmer is not stupid. He knows what
18 he's doing, and he knows who he's doing it to. He goes as
19 far with a victim as their medical condition will allow. If
20 you look at Heather, Heather's really not on a whole lot of
21 medications. She was when Tim was in the room. But
22 afterwards, so he only goes to opening the gown because he
23 knows can't get away with it.

24 But with people like Roxanne Cagnina and Marcia
25 Petersen, who are on these medications, who have seizures, he

1 takes it a lot further. And then there's this timeline. And
2 if you remember on Friday, Mr. Maningo told you, the State
3 can't get around that timeline. The timeline is what it is.
4 It's in the medical records, and both sides stipulated to
5 those coming into evidence.

6 So let's look at the timeline that Mr. Maningo gave
7 you. The decision to admit her is at 2:30 in the morning.
8 She receives care up until her departure from Goodhart.
9 Karen Goodhart's last entry is at 3:45 in the morning, and
10 then Christine Murray is notified by the Defendant at about
11 4:40 a.m. that Roxanne has come to the floor. And then
12 Christine and Carine Brown treat Roxanne after that.

13 The only problem with this timeline, ladies and
14 gentlemen, is there's one thing missing, and if you just take
15 one thing from this entire argument that I have right now,
16 take down these three numbers, because three numbers were
17 conveniently left out of Mr. Maningo's timeline, and I'll
18 tell you why they're important.

19 Because this is the timeline you'll find in the
20 medical records. The decision to admit her to the hospital
21 is correct, that happened at 2:30 in the morning. The
22 hospital room is actually physically assigned at 2:35. Karen
23 Goodhart's last entry is at 3:45 a.m., and then Roxanne is
24 sent up to the seventh floor.

25 There is an individual that sits on the seventh

1 floor. It's either a charge nurse or a clerk, and they
2 physically document when patients come to a floor. The
3 medical records will show you that either the charge nurse or
4 the clerk on the seventh floor documents Roxanne coming onto
5 the seventh floor at 3:51 in the morning. The problem with
6 that is that Christine Murray isn't notified by the Defendant
7 until 4:40 that Roxanne has come to the floor, 49 minutes
8 later.

9 And you don't have to take my word for it, because
10 the medical records -- those medical records that Mr. Maningo
11 told you that the State can't get around, well, neither can
12 the Defense. And what those medical records say is at 2:42
13 -- Christine Murray talked to you about these medical
14 records, and at 2:42 in the morning is when she receives
15 first notification that Roxanne's coming to the floor. And
16 so what she does is she gets that information and then she
17 creates, you know, a profile that the patient is coming.

18 She then, at 4:50, starts her assessment on
19 Roxanne, and she states, patient arrived onto the floor at
20 4:45, because that's what she thinks, because that's what the
21 Defendant told her. She thinks that Roxanne Cagnina has only
22 been on that floor for five minutes, because what she doesn't
23 know is that he got to the floor at 3:51 with Roxanne.

24 What you're looking at here is an admit log,
25 State's 21. This right here, this portion, time to floor, is

1 where a clerk on the seventh floor, when you get wheeled onto
2 that floor, they write down in this little spot right here,
3 time to floor, 0351; 3:51 in the morning. And I talked to
4 Christine Murray about that, and she stated, and she agreed
5 and pointed out on those medical records, that Roxanne
6 Cagnina got to that floor at 3:51 in the morning.

7 So let's go back to that timeline. So if Roxanne
8 gets to the floor at 3:51 in the morning, and then that's
9 when -- excuse me, the Defendant alerts Christine at 4:40,
10 and she remembered that. And Carine remembers it, too,
11 because they remember him coming in, and both of them
12 remember, you know, it somewhat being awkward, hey, there's a
13 patient, she's on a lot of drugs, she's drowsy, you don't
14 have to go see her. And they both thought that that was
15 weird, and they both in here and talked to you about it. So
16 they left within five minutes. And that's exactly what the
17 records show.

18 They start -- she starts filling out the paper and
19 doing the assessment at 4:50 in the morning. So what does
20 that mean? From 3:51 to 4:40 in the morning, Roxanne and
21 Steven Farmer are completely unaccounted for, 49 minutes.

22 He went and told Christine Murray at 4:40, oh, just
23 got on the floor, just arrived here, you don't have to get to
24 her. He had been on that floor -- Roxanne Cagnina had been
25 there for 49 minutes, which makes sense, because Karen

1 Goodhart stated she thought he was missing for about 30 to 40
2 minutes.

3 He was missing so long that when he went back down,
4 she asked him, like, where have you been? Because an average
5 transport to the seventh floor during that time period was 5
6 to 15 minutes. So what was Steven Farmer doing for 49
7 minutes? What was he doing? And why did he act like Roxanne
8 had just gotten onto the floor?

9 What he was doing was sexually assaulting Roxanne
10 Cagnina. He cannot explain those 49 minutes, which is why
11 they didn't talk about 3:51 in their timeline. But I'm
12 talking about it, and you'll see it in those medical records.

13 Nobody's going to look for a patient they don't
14 know is there. The Defense is, oh, hospitals are, they're
15 busy places, there are people going in and out. Well,
16 nobody's going to be going to a patient's room that they
17 don't know is even on the floor. If he doesn't notify
18 Christine Murray, how is -- or how is Christine going to know
19 that Roxanne has arrived?

20 There's been a lot of discussion about, you know,
21 the medications that Roxanne was on. And sure, she was on
22 medications, which is why she is his perfect victim. I mean,
23 this is somebody who came in here and told you what happened.
24 She's not going to be perfect. It's not going to be
25 perfectly in line on every single sentence. There's all

1 these issues about the 911 call. And one thing that I'd like
2 you to consider in the 911 call is State's Exhibit 18, which
3 is something that Metro generated. It's called a call log or
4 a call report. And State's Exhibit 18 shows Roxanne having
5 the phone call at 7 -- excuse me, calling 911 at 7:55 in the
6 morning.

7 However, if you go to the subscriber information,
8 the cell records, from AT&T, and you go through those
9 records, you won't find it. Cell records aren't perfect.
10 911 has her making that phone call, yet, her AT&T records do
11 not have that 911 call. Cell records aren't perfect.

12 The Defense made this issue about the photos on the
13 phone that she believes that she took. She was on meds.
14 She's not perfect. Those could be explained by a number of
15 ways. Number one, her phone could not -- may have not been
16 calibrated. You don't know -- just like a digital camera.
17 Sometimes you take the photo, and it's not like the time is
18 exact on the digital camera. Or perhaps in the state that
19 she was in, she woke up and she starts taking photos thinking
20 that this is what she's still going through. That's why
21 Steven Farmer picks people like her and Marcia, because
22 they're not going to be perfect.

23 They either (a) won't remember. And if they do
24 remember, they'll be so doped up, no one's going to believe
25 them. It's his crime of opportunity. This is a hospital.

1 Is it so crazy that someone would need medications? And
2 let's consider Roxanne Cagnina's state. This is somebody who
3 not only had had one, two, but three seizures at the
4 hospital.

5 It would be one thing if there was nothing that the
6 doctors were saying. She had three seizures, and one of
7 those landed her -- she fell on her head, and the doctor
8 noted that she not only had a contusion in the back of her
9 head, but that she had an abrasion to her tongue. This was
10 someone that was in pain. This was someone that was having a
11 serious medical issue.

12 And let's look at Karen Goodhart. This is somebody
13 who is still employed by Centennial Hills Hospital when she
14 came in here and testified. And she was interviewed on May
15 30th, you know, a couple weeks after this incident. She says
16 absolutely nothing, not one word, about concerns regarding
17 Roxanne's medicine intake. She even says to the detective
18 that Roxanne would have been sleepy, but that her motor
19 skills would have been fine. That's what she said to the
20 detective on 5/30.

21 Yet, in a civil deposition taken two or three years
22 later, while still employed by Centennial Hills Hospital, her
23 boss, who's getting sued, she says, oh, that woman, she took
24 enough meds to kill a horse. She was just sucking it up like
25 candy. We were having all these issues with her, on and on

1 and on. Yet, at the end of her interview with the police on
2 5/30, Detective Saunders says, is there anything else that
3 you think is important that I should know? Anything else
4 that you can think of? Nope, nothing that I can think of.
5 That was Karen Goodhart's testimony.

6 DNA. You've heard from Emily Jeskie from Sorenson
7 Forensics, and one thing that she talked to you about is the
8 fact that certain forms of DNA are stronger than others. And
9 those are, you know, bodily fluids, if it's -- whether it be
10 blood, semen, saliva, vaginal fluids, those carry much
11 stronger DNA than what's simply called touch DNA, when you
12 and I touch something.

13 And it can be very difficult to find touch DNA in
14 someone's -- inside someone's vagina. And I used the example
15 with her, you know, if I stick my finger inside my mouth, the
16 amount of DNA in my mouth is so much stronger, it could be
17 very hard to find, you know, whoever it was who stuck their
18 finger in my mouth. It would be very hard to find that
19 individual's DNA.

20 That, coupled with the fact that if someone is
21 urinating and then wiping, that can also destroy any
22 potential DNA that was left in the first place. But in
23 regard to Roxanne's vaginal swabs, there was male DNA
24 detected. It was at such a low amount that no DNA profile
25 could be made. But ask yourself this, if Roxanne Cagnina had

1 not had sex with her husband in over five days, then who's
2 DNA would that be in her? That's five days of bathing,
3 urinating, wiping. And she was clear, she told Linda Ebbert
4 it had -- Linda Ebbert has a little box on the SANE test, and
5 it says, you know, have you had sexual intercourse
6 consensually within the last five days, and she said, no.

7 In regard to the labial swabs, same thing, male DNA
8 detected, a partial profile was recovered, but it wasn't
9 enough to test for identification purposes. So again, if she
10 hadn't had sex for five days with her husband, then why is
11 there male DNA on her vaginal lips?

12 Breasts, male DNA found. Thighs, two male profiles
13 found. So let's just assume one of those is her husband.
14 Who's the other male on her breasts? Face swabs, major
15 profile consistent with Steven Farmer or his paternal
16 relatives. Why would Steven Farmer's DNA be on her face?
17 Roxanne talked to you about the constant petting that he was
18 doing on her face. You're so beautiful, just relax. That's
19 why his DNA is on her face.

20 And Mr. Maningo said, it could have been during the
21 care. Maybe when she took off the -- when he worked on the
22 oxygen mask. You have her medical records. She wasn't on
23 oxygen. It will tell you time and time again in those
24 records that she was on room air. There's no reason Steven
25 Farmer's DNA should be on her face. Think about the times

1 you've been at the hospital. When have nurses been rubbing
2 your face or touching your face?

3 She told you -- Roxanne told you that the Defendant
4 inserted his fingers into her vagina. They found male DNA
5 inside of her vagina and on her vaginal lips. She told you
6 that the Defendant rubbed both of her breasts. They found
7 male DNA on both of her breasts. She told you that the
8 Defendant rubbed her inner thighs. They found male DNA on
9 her inner thighs. And she told you that he rubbed the face,
10 and they found his DNA or his paternal relative's DNA on her
11 face.

12 Every single place she said that man touched her,
13 they found male DNA. And while we're on the subject of
14 Defendant's -- or excuse me, of DNA, let's talk a little bit
15 about the testimony of Detective Lora Cody. And what she
16 told you is that after they had taken him into custody and
17 brought him into one of those rooms, she put in front of him
18 State's Exhibit 24, and she told him, sir, we're about to
19 execute a search warrant on your person, and she stuck this
20 in front of him.

21 And this says, buccal swabs -- this is what they're
22 going to be searching for -- buccal swabs, which you know
23 what that is, we discussed that; finger swabs; and fingernail
24 clippings. And what did she tell you that she witnessed him
25 do immediately right in her presence, immediately start

1 ringing his hands together, starts ringing his hands
2 together. She walks away to go back into the observation
3 room, and she looks at him on the live feed, and she sees him
4 picking under each fingernail, then biting them, then
5 sticking -- I mean, really think about this -- sticking his
6 entire finger down to the first knuckle and sucking it off.
7 Why would Steven Farmer be doing that? Why would Steven
8 Farmer be sucking whatever it is on his fingers off and
9 making sure nothing is there?

10 She had to put him, physically put him back into
11 handcuffs to prevent from doing that. And so the Defense is
12 saying, basically, that Lora Cody made that up. She made
13 that up on the stand. This is an individual who has been a
14 detective with the Las Vegas Metropolitan Police Department
15 for 12 years. Right now she's on Internet crimes against
16 children. She's not even on sexual assault anymore. This
17 wasn't even her case. She was helping Detective Saunders.
18 Her job was to pass out business cards at the hospital and do
19 a ping on Steven Farmer's phone, and she's going to come in
20 here and lie and risk everything, risk her job, her career,
21 her livelihood for who? Who is Steven Farmer to Lora Cody,
22 that she would be able to risk -- she would be willing to
23 risk all that for him?

24 She told you, because it happened, and she saw it
25 happen.

1 Civil lawsuit. Defense has made this huge issue
2 about Roxanne Cagnina suing the hospital. And I'd like to
3 ask you, you know, the question. We talked about this a lot
4 in -- when we were selecting a jury, and we talked about,
5 should seeking justice in one court, a criminal court,
6 prevent you from seeking justice in another. And one of the
7 constant references that we kept speaking about is, hit and
8 runs. You know, if you are hit and the person takes off, but
9 later they get caught. And you come in here and testify and
10 say this is what I saw, this is what happened, and yet, you
11 have a civil lawsuit going at the same time for the damages
12 either to your car to yourself if you were injured, so you
13 can't be trusted because you tried to seek justice in another
14 court?

15 People can seek justice in both courts and still be
16 credible witnesses. And consider the hospital's conduct in
17 how they dealt with this situation. A patient is hysterical,
18 crying, stating that she's raped during the night by a male
19 Certified Nursing Assistant. This patient gives you a
20 description, as well as the individual's number, and who do
21 you call? No one. That works both ways.

22 But that not true. Wait, who did she call? No,
23 she called Steven Farmer. God forbid call 911. No, she
24 called the person and told them, yeah, don't come back. And
25 that's what the Cagninas told you. She doesn't call 911.

1 She doesn't give Roxanne Cagnina any type of care for her
2 vaginal area. She calls the Defendant, and then she calls
3 her supervisor, and she was busy that day. That was her
4 answer. She was busy that day. She was worried about
5 staffing.

6 Then she tells Roxanne, you need to focus on your
7 health. If you want to pursue this later, you can, but you
8 really need to focus on your health. And look at her conduct
9 after the police arrive. When the police get there, she
10 refuses to give them any information about Steven Farmer.
11 She refuses to be helpful at all, to answer any questions.
12 Detective Saunders characterized it as being resistant to
13 questions. And she had to be warned by Detective Saunders
14 that she would be facing arrest for obstructing a police
15 officer if she didn't knock it off.

16 But the hospital's conduct doesn't end with
17 Lorraine Wescott. It keeps going. The detectives and the
18 sergeant pass out their business cards to several people in
19 HR, other nurses, and they tell everybody, hey, you know, we
20 need to get in contact with Mr. Farmer, we need to know where
21 he's at immediately, and he tells -- they tell these people
22 this when they're passing out these cards.

23 Yet, when Steven Farmer is arrested, what is
24 sitting right next to Steven Farmer? Misty Pence, Sergeant
25 Misty Pence's business card. How did Steven Farmer get that

1 business card? That means one of two things. Either he went
2 back to the hospital and had contact with someone and got
3 that card, and the hospital didn't let anybody know that he
4 was there, or someone came to him and knew where he was,
5 handed him that business card, yet, still didn't alert
6 anybody from law enforcement that they knew where he was.

7 And then they took it a step further. Detective
8 Saunders goes to the director of security and to HR, and he
9 says, I need this video. I need this video of the seventh
10 floor, there's cameras on the floor, and I need it. And he
11 is assured that he'll get the video. He goes back, and he
12 checks up on it two or three more times. Nope, sorry -- each
13 time he goes, nope, it's not ready yet. It's not ready yet.
14 And then he goes back the fourth time, and what did they say?
15 Oh, sorry, sorry about that, it's been erased. Your employee
16 is being accused of sexually assaulting a patient, and you
17 don't think it's important to get that video or to keep that
18 video?

19 And then be there's Michele Simmons, who's not an
20 employee of Centennial Hills Hospital. She's an employee of
21 the American Nursing Services agency, which was another one
22 of the entities involved in the lawsuit. And consider her
23 phone call. She talks to Mr. Farmer, and she talks to him
24 about the allegation of exchanging -- or giving his number to
25 a patient. And she said there's been an allegation of very

1 serious sexual abuse. And she tells you -- and this is the
2 order that she told you it happened in. The Defendant was
3 quiet for several seconds, and then, yes, he admits to the
4 exchange of the number. He doesn't apologize then.

5 Then there's a break in their conversation because
6 Metro's on the other line. Yet, Michele Simmons, even though
7 she has Steven Farmer on the line, physically at that same
8 time, she still refuses to let Metro know what's going on or
9 give them any of Steven Farmer's contact information. She
10 gets off the phone with them, gets back on the line with
11 Steven Farmer, and they have more conversation.

12 And it's at the end of that conversation that he
13 says, I'm sorry, I'm just sorry. I assume I'm suspended.
14 This is where that common sense has to kick in. Someone
15 calls you at your home and says, hey, you've been accused of
16 raping someone, and you say I'm sorry? Someone calls you at
17 your home, what are you going to say? I didn't rape anybody.

18 MR. MANINGO: Objection. That assumes facts not in
19 evidence. That's not what the phone call was -- what was
20 discussed on the phone call. I believe that's a
21 misstatement.

22 THE COURT: Well, the objection's overruled. The
23 jury has been cautioned several times during the trial, and
24 I'll admonish you again to rely on your own recollection of
25 what the testimony was at -- when you heard it on the witness

1 stand, and you'll rely on that.

2 MS. BLUTH: The point is, is he didn't say anything
3 about that's preposterous, I didn't do that, that's
4 ridiculous. He didn't say any of those things. He said, I'm
5 sorry, I assume I'm suspended. You take all of that, losing,
6 losing or erasing the video, not calling 911, getting --
7 somehow Steven Farmer getting business cards from the police,
8 not helping in an investigation at all, and we're supposed to
9 be surprised that the Cagnina's sued the hospital?

10 Their conduct is offensive. It was offensive how
11 they treated her after what he had done to her.

12 Phone records. One thing about the phone records
13 is if you look at the activity in the early morning hours
14 before the sexual assault, you'll see that the last call to
15 Scott Cagnina is at 2:53 in the morning and then the next
16 phone call -- there's nothing in between -- is at 6:16 in the
17 morning, which goes along with what Roxanne is telling you
18 happened. You know, she -- this happened to her, she fell
19 asleep. As soon as she wakes up, 6:16 in the morning, that's
20 when she calls Scott.

21 And then there's the phone calls to the media, you
22 know, and there's this big deal that the Cagninas, whether it
23 be Roxanne or Scott, they called the media right after.
24 Think about how they were treated. No one's listening to
25 them. The hospital's not doing anything. Yeah, and one of

1 them called the media. They were angry, they were hurt.
2 They were being mistreated. They were being brushed aside.
3 And so they contacted the media.

4 Several news stations started contacting them or
5 coming to their home, attorneys started contacting them, and
6 so they contacted Neal Hyman, who they had known before. And
7 Neal Hyman came in here and talked to you that they -- and
8 told you that they were contacted for a consultation or
9 several issues. Number one, they had bit off more than they
10 could chew with the media and it had become an issue. And so
11 they talked to him about that.

12 They talked to them about the other attorneys. But
13 more importantly, Roxanne was very upset about what happened
14 to her and about how she had been treated. And I asked him,
15 what -- did she come to you and say, I want money, I want the
16 hospital to pay? And he said it wasn't about that. It
17 wasn't about that to Roxanne. It was about how she had been
18 treated and how they had mistreated her.

19 And Mr. Maningo talked to you about this
20 confirmation bias. Defense's theory is that, you know, it
21 hits the news, and then other people see it, and then they
22 think oh, if he did that to her, I've got to think back at
23 what he did to me, and that -- and I have to think about
24 those things, and then I, poof, oh, you're right, Steven
25 Farmer did that to me. But that doesn't apply in this case

1 because if you look at the media release, which was released
2 to the public on May 16th, the only information they gave was
3 the name of the Defendant, the -- his physical description
4 and a picture.

5 MR. MANINGO: Objection, Your Honor. None of this
6 is in evidence.

7 MS. BLUTH: I went through it with Detective
8 Saunders. I asked him exactly what was --

9 THE COURT: All right, again, the jury will rely on
10 your memory of the evidence. Again, argument of counsel and
11 objections of counsel isn't evidence, so you rely on your own
12 memory and notes. If you need a read-back, you'll get that,
13 too.

14 MS. BLUTH: And you'll remember when I was speaking
15 to Detective Saunders and I asked him questions about the
16 media release, he stated that the information they released
17 to the public was the name of the Defendant, the description
18 of the Defendant, that he had sexually assaulted someone, but
19 they didn't give a time reference to when these things
20 happened.

21 And then Neal Hyman, the Defense wants you to think
22 that Neal Hyman went on the news, either by himself or with
23 Roxanne, and that's when all of these people came forward.
24 Actually, that's not how that happened. And I went through
25 that with Neal Hyman, and he told you that they did the

1 interview with the news after the preliminary hearing in this
2 case, after charges had been filed, after victims had come
3 forward.

4 So this whole idea that other victims came forward
5 after this hit the news, the interview that Neal Hyman did
6 was after this case had already begun. So the confirmation
7 bias thing can't even apply to the people in this case.

8 Roxanne obviously sued the hospital, and she said
9 the hospital settled with her for an undisclosed amount. So
10 what motive does she have in here -- to come in here today
11 and go through what she went through? She's already been
12 paid. That money is already in Roxanne's pocket. So why
13 come in here and have to go through this process if the only
14 reason she did all of this was for the money?

15 She had to come in here, tell you -- tell -- you
16 know, you saw the cameras in here and the news reporters talk
17 to everybody what happened. She had pictures -- and I don't
18 mean to be crude about this, about you she had pictures of
19 her own vagina splashed across a screen. That's got to be
20 humiliating to a certain extent.

21 She had a credibility challenge. She admitted that
22 she fell apart, she was a bad wife, she was a bad mom. Admit
23 to she became an addict. She turned to pills, she turned to
24 alcohol. Admits that she has to go to see a therapist.
25 These are all the things that she had to comment in here and

1 take that stand and tell you about herself. If she was doing
2 this all for money, and she's already been paid, then why
3 have to go through this process?

4 So the Defense's position is that she lied to get
5 this money. She made this entire thing up to get this money.
6 And I'm not going to read to you the common sense instruction
7 because you've already had it read to you, but follow through
8 with this logic. Number one, if this entire thing were
9 planned by this master manipulator, this master mind, Roxanne
10 Cagnina, number one, she'd have to perfectly time when she
11 was going to have a seizure. Okay, that would be her first
12 step.

13 She would then have to injure her own vagina or
14 have her husband injure her vagina, and not only would she
15 have to injure it, she would have to know specifically that
16 if you're going to claim someone digitally penetrated you and
17 it was forceful or against your will, you would know that you
18 would have to cause these crescent shaped lacerations. So
19 she'd have to know that and put that in her plan.

20 Then she'd have to know that if you're digitally
21 penetrated while laying down, it would be found in a specific
22 position of your vagina, between 5:00 and 7:00 o'clock. And
23 you'd also have to know that they'd have to be very recent,
24 otherwise, the blue toluidine dye wouldn't adhere.

25 Then she'd have to bank on the fact that during her

1 stay, she would be treated by a male nurse or a male doctor,
2 and that she would be admitted to the hospital so that she
3 could claim that someone had this access to her. I mean,
4 that would have to be her plan.

5 How does Roxanne Cagnina know if someone digitally
6 penetrates you that it causes crescent shaped lacerations and
7 that you find it in 5:00 and 7:00? She doesn't know those
8 things.

9 They cannot get around those findings. They cannot
10 get around what those pictures show. What was done to her
11 vagina. And the Defense has made this big deal about Linda
12 Ebbert talking about these photos, and how the one photo, she
13 says, doesn't come across -- or that she says that she can
14 see with her bare eye didn't come out. And so the idea is
15 that she's making that up.

16 Well, if you look at all the other photos, and
17 you'll have them all in evidence, it's clear that this photo
18 before the data came on, that the flash is too much. Linda
19 Ebbert, this is someone who has been a -- or has been a
20 registered nurse for 50 years, 50 years. She's done over
21 4,000 sexual assault nurse examinations. She wrote the
22 manual on how to do them. She made the computer software
23 program.

24 And now she's going to come in here and she's going
25 to tell you -- she's going to make these things up? For

1 what? For what? Why would Linda Ebbert come in here and
2 make that up?

3 Mr. Maningo talked about Ms. Ebbert taking it a
4 step too far during her -- my questions of her saying that,
5 you know, whatever, rough sex, and that doesn't -- that was
6 my question. I was the one who asked her, you know, in a
7 situation where people don't have rough sex, S & M, if that's
8 not used, would you find these types of injuries, and she
9 said, no. Not only that, but the injuries that you see on
10 Roxanne's vagina are not consistent with a penis. A penis
11 makes more linear, according to Ms. Ebbert, a penis makes
12 more linear lacerations. It doesn't have the type of
13 crescent that you see.

14 And she said, you know, when Roxanne gave her the
15 history of the assault and told her what it was that
16 happened, she expected to see crescent shaped lacerations,
17 she actually saw. She expected them to be in the 5:00 to
18 7:00 o'clock position, exactly where she saw them. And she
19 expected to be recent in nature. Every part of that history
20 that Roxanne gave, matches up with what Linda thought she
21 would see. And again, she was very clear that she hadn't had
22 sex in the past five days, and that's documented in those
23 records.

24 The effect on Roxanne. Like I've already said, she
25 turned to pills and alcohol. Scott told you about very --

1 you know, immediately after, she started sleeping a lot. She
2 became disconnected from her husband and daughter. She
3 stopped having sex with her husband. She started seeing a
4 therapist. And she talked about always being on the phone
5 with Jean from Rape Crisis Center. You'll have the phone
6 records in front of you, and you'll look -- and if you look
7 for numbers starting with 366 and 385, those are numbers from
8 the Rape Crisis Center.

9 Why is Roxanne Cagnina calling the Rape Crisis
10 Center if she hasn't been raped? There's 20 calls-- and you
11 can count them yourself -- there's 20 calls to Rape Crisis
12 Center up to September. Why are you calling the Rape Crisis
13 Center 20 times in a couple of months if you haven't been
14 raped?

15 So, so far Heather is mistaken, Tim's mistaken,
16 Roxanne's just flat out lying, Detective Cody, Saunders and
17 Linda Ebbert are lying, so far. And then we get to Ledahlia.
18 She's at the hospital because she commits suicide (sic). So
19 she's a good victim for Steven Farmer, because who's going to
20 be believe someone who just attempted to take their life?
21 And not only that, she's on her way to the mental
22 institution.

23 So who's going to believe Ledahlia Spurlock, who
24 just tried to kill herself, and who's on the way to a mental
25 institution? Again, a perfect opportunity for Steven Farmer,

1 and he took advantage of it. His conduct only went as far as
2 she would allow it. She wasn't on heavy medications, and so
3 he didn't do as much as he did with Roxanne and Marcia.

4 All three people, Ledahlia, Ernestine and Ada all
5 thought something of his conduct, because they had
6 conversations about it as soon as he left the room, and they
7 made sure that they all stayed together until Ledahlia left.
8 Can all three people be wrong about the same incident? And
9 there are minor inconsistencies. There's 16 of you before me
10 right now. If you all closed your eyes right now, and I
11 said, you know, in ten seconds open up, how many of you
12 during that second period could have said, you know, what
13 color my suit was, my shirt, was my hair curled, was it
14 straight, what color are my eyes are, am I wearing nylons, am
15 I in flats or am I in heels? People aren't perfect, okay?
16 They're in the perfect.

17 You're not going to -- all 16 of you aren't going
18 to agree on all of those things. But the inconsistencies
19 between these three women are very minor. If you look at
20 what Ledahlia said, she said that the Defendant grabbed the
21 rails of the bed, and he pushed his groin against her feet
22 and then he moved very slowly. It's not like Mr. Maningo
23 saying with the hand. No, she said it was very slowly a
24 circular motion and moving side to side and that she was
25 scared to react. She was scared if she kicked or if she

1 moved, people were going to judge her because of why she was
2 there.

3 Ernestine said she watched him grab Ledahlia's feet
4 and then rub them against the groin area. And then Ada,
5 while she came in here and testified that she knows that she
6 grabbed the feet, but she didn't see anything else. You
7 remember me talking to Detective Saunders, and I asked what
8 she said initially, and she said to Detective Saunders, yeah,
9 that she saw the Defendant grab Ledahlia's feet and pull them
10 towards the groin area. All three of them are talking about
11 Ledahlia's feet and the Defendant's groin.

12 Ledahlia didn't report right away. And, I mean,
13 it's obvious that she had a lot bigger issues going on in her
14 life. She told you she couldn't believe that this happened
15 to her in the hospital, and she said, you know what, it added
16 insult to injury. And she didn't know if people would
17 believe her because of the reason why she was there, and so
18 she didn't report it.

19 She was contacted by her family, and she still had
20 to think about whether or not she wanted to go through this
21 process, but she knew that she had to report it, and she told
22 you because she felt like it could help other people.

23 Money. There's no civil suit on behalf of
24 Ledahlia. She's never contacted an attorney. She has not
25 received a dime. So the whole media, money, does not apply

1 to Ledahlia. Like I said, she was told this by her mother.
2 Her mother saw it -- or excuse me, her mother saw it on the
3 news and her mother gave her the number. So the whole
4 confirmation bias issue that the Defense keeps saying
5 happened, it didn't happen. She didn't see it on the news.

6 So why go through this for Ledahlia? She had to
7 come in here and tell people that six years ago she tried to
8 take her life, she tried to kill herself. She had to admit
9 and tell everybody that she had to go to a mental
10 institution. She had to go to court before to preliminary
11 hearing and tell all the people that. She had to testify in
12 a public trial, but yet, she's still here six years later
13 willing to come in and do these things because they happened
14 to her, and because she wants people to know about it.

15 So, so far we have the people I've listed before,
16 but now we need to add to the list Ledahlia, Ernestine and
17 Ada. So, so far we're at nine people.

18 Denise. This is somebody who's had EKGs done 12 or
19 more times; a couple beforehand and a lot afterwards.
20 There's no known issues with her leads during the stay. She
21 didn't notice anything wrong with them, Margaret didn't
22 notice anything wrong with them.

23 Why are there so many issues with leads while the
24 Defendant is treating people? I mean, how many issues can
25 there be during his shift with leads? And we don't see any

1 of the other nurses or doctors coming in here and talking
2 about, God, there are -- there's something wrong with these
3 leads. I mean, are leads at Centennial Hills just faulty?

4 I am surprised that more people don't die every
5 single day at Centennial Hills Hospital because their leads
6 have fallen off and doctors don't know that anything's
7 happening because one of their leads is gone. I mean, it's
8 shocking how many people could have that many problems and
9 only Steven Farmer has this issue. And it's always the leads
10 around the breast area.

11 We heard there were leads on the inside of the arm,
12 there's leads on the upper chest, there's leads in the
13 sternum, there's leads on the ankle, and it's always the
14 leads on the breasts. So now that we don't -- we have
15 problems with leads, and it's only breasts leads that we have
16 issues with. And then just like Heather, the Defendant
17 touches and grazes over her breasts. This is what he does.
18 This is why this job is good and easy for him. It's because
19 it provides him this opportunity, oh, sorry, didn't mean to
20 do that. Just part of the job.

21 But if you don't want to take Denise's word for it,
22 what about Margaret Wolfe? She has no issues with Steven
23 Farmer. It's not like she has this personal vendetta and she
24 wants to cause him any issues in his life. She knew that the
25 conduct was inappropriate. And it was inappropriate enough

1 that she needed to go talk to her supervisor about it and
2 warn the other nurse coming onto the shift.

3 She independently contacts the detective. Think
4 about when she independently contacts the detective, that's
5 risk of getting in a lot of trouble. She passes on a
6 patient's information to a detective; yet, she still did it
7 because she was so concerned over the behavior that she saw.
8 And she wasn't the only one who talked about concern.

9 Christine Murray also had concerns. In the
10 original statement she gives to police, she says, I found him
11 to be overly helpful with female patients, especially in the
12 area of lead placement. That's something that she said in
13 her original police statement. And then Margaret Wolfe also
14 told you, I found -- it was very obvious to her that the
15 Defendant was more willing and more eager to assist with
16 female patients over males.

17 In regards to this Defense idea of media, money and
18 making sense, in regards to the media, she didn't even see
19 anything on the media at all, and neither had Margaret, so
20 they can't have been effected by something that she never
21 saw. The first she ever hears of it is when the detective
22 comes to her.

23 Number two, money. She's never contacted a civil
24 attorney, never seen anybody about this, and she's never
25 received any money. So obviously, no money.

1 So why? Why would Denise Hanna come here and make
2 this up? She has no motive. The detective noted, or said to
3 you that when he came to her and talked to her, her face went
4 completely flush and she was embarrassed. She was
5 embarrassed when she was in here testifying. She's going
6 through this because this happened to her and she wants to
7 come in here and discuss what happened.

8 So now we have to add to the list, Denise Hanna's
9 mistaken, and now Margaret Wolfe is also mistaken. So now
10 we're up to 11 people who are all mistaken about the conduct
11 that they witnessed that the Defendant did, which leads us to
12 Marcia.

13 A couple of the background facts, you know, when
14 you think about Marcia's life at that time. In 2008, when
15 she falls, her entire life changes. I mean, her life was a
16 living hell. To go through those seizures day in and day
17 out, to have to have a complete role reversal with your
18 children. You know, you go -- you take care -- or excuse me,
19 you have a, you know, a positive interaction lifestyle with
20 your children, and then your children have to end up carrying
21 you to the bathroom to help you go to the bathroom because
22 you can't do these things anymore. Those were the types of
23 things that Marcia was going through.

24 And he picks his victims well, and what I mean that
25 with Marcia is, you know, her medical status really dictated

1 how far he went. And he went further with her than he did
2 with anybody else, and it's because he could. Because not
3 only was she having the seizures and the medicine that
4 Roxanne was having, but she was also in that vulnerable state
5 where she couldn't talk. She couldn't move when these things
6 are happening. So she's as good as a victim as he's going to
7 get that's still breathing.

8 It's those leads again. Those darn leads at
9 Centennial Hills Hospital. Except with Marcia, it wasn't --
10 you know, it wasn't, oh, let me fix this for you. She wakes
11 up on two different occasions to him pinching her nipples and
12 rubbing her breasts. The feces, Mr. Kochevar talked about
13 it. Never in six years did Marshal ever have to clean up
14 after his mom, but yet, when the Defendant is taking care of
15 her, she has a bowel movement and his thumb accidentally gets
16 placed in her anus.

17 And then the catheter. I recognize not everybody
18 on the jury has the same parts, but, you know, if you're a
19 female, you know that there's a pretty big difference between
20 where that catheter goes and where the vaginal opening goes.
21 So there's no reason when someone's fixing your catheter that
22 their finger should go inside of your vagina.

23 And look at the effect it had on Marcia and how she
24 didn't want the medical care that she needed. She would
25 fight her children in order -- in going to hospitals. She

1 didn't want to go to the hospitals anymore. She wanted to
2 stay at home after seizures. She refused to be cared for by
3 male nurses or doctors anymore. She would physically make
4 her children wait with her until a female could treat her.

5 She told her sons not to let ambulances take her to
6 Centennial Hills, and the ambulance isn't going to listen to
7 you. They're going to take you to the hospital that's
8 nearest you because you need care. And Marshal couldn't
9 leave her. He really needed to stay by her side and
10 accompany her to all these appointments until she felt okay.
11 And she didn't report.

12 And Marshal talked to you a little bit about her
13 health. She had seizures on an almost daily basis. In the
14 beginning during this time period, she is in and out of the
15 hospital continuously. By the time the detective is able to
16 get in contact with her, she had physically just left a
17 hospital. Her health was like this, up and down during this
18 time period.

19 Marcia didn't see it on the news, so you can't have
20 this idea that she saw something and it affected her.
21 Marshal today her. What did she do? She went upstairs to
22 her bedroom, and she was up there for a long time. And when
23 she got down -- came back downstairs, she had been crying.
24 Her eyes were red, and she was upset.

25 And Marshal told her, you've got to do something

1 about this. You have to tell someone. So the whole
2 confirmation bias thing doesn't apply to Marcia because she
3 never saw it on the media.

4 And what did Marshal see on the media? Because
5 Mr. Maningo tried to say to Marshal, oh, so you saw that lady
6 with her attorney on the news? And what did Marshal say?
7 Like, I didn't -- no, I saw a news clip. There wasn't any
8 attorney. I didn't see any lady.

9 She did file the lawsuit, and we know that, because
10 Marshal told you about it. But six years later, and they
11 still have not seen a dime. And if this was all for money,
12 then why would Marcia Petersen take her own life before she
13 ever saw a penny of the money from this lawsuit? It doesn't
14 make sense for Marcia Petersen to want to go through this.

15 Think of her life on a daily basis. Does she
16 really need the stress of a lawsuit? The stress of a
17 criminal trial? Does she want to go through that? Consider
18 the fact that Marshal told you when she left the grand jury,
19 she had a seizure. She didn't even leave this building
20 without having a seizure. The ambulance had to come and get
21 her. Is that something that this woman wants to do? Yet,
22 she still came back for that video deposition and testified.

23 You've heard the instruction on credibility, and
24 I'd ask you when you go back to look at it and read it and
25 consider the credibility of Marcia Petersen, what this woman

1 had gone through. And she says it better than anybody could
2 ever say it, and what she said, "I felt pain. I felt a
3 multitude of feelings. One feeling being that there was
4 absolutely nothing I could do. I couldn't ring a bell, I
5 couldn't scream, I couldn't move, I couldn't. I just had to
6 lay there. I was humiliated, I was embarrassed, I was
7 shocked that in a hospital, being taken care of, and I'm
8 having things like this done to me, and at that point in
9 time, I can't tell anybody."

10 This is what he did. And now that you've looked at
11 each of them, on their on, if you take a second and you just
12 look at the similarities between them, and you just look at
13 Heather, Denise and Marcia, three people who don't know each
14 other, who have never spoken to one another, they all had
15 issues with their leads. None of them know that they're
16 having issues. They can't see anything wrong. They can't
17 feel anything wrong. None of the other personnel, the
18 medical personnel working with them can tell that they're
19 having issues. Just Steven Farmer. He's the only person who
20 knows. And it's always the leads around their breasts. And
21 he always has to touch their breasts in order to repair the
22 situation.

23 This is what he does. This is what he does. This
24 is what his MO is. But he did it one too many times, and he
25 got caught because he got greedy. And look at between Marcia

1 and Roxanne, both of them come in for seizures, both have
2 seizures while in the hospital. They're on the same
3 medications. They have much more serious health concerns
4 than the other victims, which allows him to go further, which
5 he does. He isolates them, he penetrates them, and then he
6 comes back to see if they remember in the morning.

7 These are two women who don't know each other, and
8 both of them told you, he came back the following morning
9 just to check up on them. Why didn't Steven Farmer do that?
10 Did he go in there to see if they remember, to scare them, to
11 intimidate them? I don't know, but he did that to both of
12 them.

13 So, so far, now we're down to 11. Nope, now we're
14 at 12. Heather, Tim, Roxanne, Detective Cody, Detective
15 Saunders, Linda Ebbert, Ledahlia Spurlock, Ernestine Smith,
16 Ada, Denise, Margaret, Marcia Petersen. All of them, they
17 all walked through that door and told you what he did to
18 them. How many people have to walk back in through that
19 door, how many more, and tell you, this is what he did? This
20 is what he does.

21 They're all telling you the exact same thing. When
22 everybody's telling you, you're dead, it's time to lie down.

23 What today comes down is accountability. We all
24 have to live in this society where we all have to be
25 responsible for the decisions we make and the actions that we

1 take, and from April 27th to May 16th of 2008, Steven Farmer
2 made a lot of decisions, and he took actions on those
3 decisions. And for those, there are consequences.

4 And you are the only 12 people, you're the only 12
5 people who can tell him that what he did is wrong. What he
6 did to Ledahlia, what he did to Heather, what he did to
7 Denise, what he did to Roxanne, what he did to Marcia
8 Petersen, was wrong. Not only was it wrong, it was offensive
9 and it was criminal. And so we're asking you to go back
10 there, and look at the evidence, to deliberate, and come back
11 here and tell him that you find him guilty of the crimes that
12 he's charged with.

13 Thank you, Judge.

14 THE COURT: Thank you. The clerk will now swear
15 the officers to take charge of the jury.

16 COURT OFFICERS SWORN RE: JURORS

17 THE COURT: And if you'll swear them to take the
18 alternates as well.

19 COURT OFFICERS SWORN RE: ALTERNATE JURORS

20 THE COURT: Ladies and gentlemen, you'll go with
21 the officers who have been sworn to take charge of you, and
22 the evidence will be brought to you in the jury room. All
23 rise.

24 THE MARSHAL: Rise for the jury, please.

25 (Jury retires to deliberate at 2:14 p.m.)

1 (Outside the presence of the jury)

2 THE COURT: The record will reflect that the jury
3 has departed the courtroom. Ms. Bluth, make sure you return
4 any exhibits you used in your close --

5 MS. BLUTH: I did.

6 THE COURT: -- to the clerk. Are there any matters
7 outside the presence?

8 MR. KOICHEVAR: Just briefly, Judge. Before we
9 started today, we filed a Second Amended Information just
10 reflecting the changes to the indecent exposure charges that
11 we talked about on Friday. It doesn't change anything on the
12 verdict form. Initially, I gave the clerk a copy of my Power
13 Point as a court's exhibit. Ms. Bluth made some minor
14 changes at the last minute on hers, so she's going to print
15 off a new copy and we'll bring it when we come back.

16 THE COURT: Thank you. Anything from the Defense?

17 MR. BASHOR: No, Your Honor.

18 THE COURT: If you'll leave your phone numbers with
19 the clerk, please.

20 (Court recessed at 2:15 p.m., until Thursday,
21 February 27, 2014, at 4:28 p.m.)

22 * * * * *

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

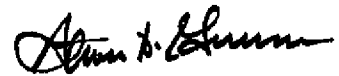
AFFIRMATION

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

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 15

THURSDAY, FEBRUARY 27, 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:

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

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

1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 27, 2014, 4:28 P.M.

2 (Outside the presence of the jury)

3 THE COURT: All right. This is Case No. C-24579
4 (sic), State of Nevada vs. Steven Dale Farmer. We're within
5 the presence of the Defendant, who's present with his
6 counsel, and the Deputies District Attorney are present as
7 are all officers of court, but we're not within the presence
8 of the jury. They've sent a note out.

9 And the note, which I have in my hand, says, "Count
10 No. 1, what is the definition of, willful intent, when it
11 comes to the law as it is written? We need clarification."
12 So --

13 MS. BLUTH: Do you have a copy of the Information
14 with you?

15 THE COURT: I have a copy of the jury instructions.
16 And, of course, Instruction No. 3 has the charging document.
17 And so, Count 1 is, open and gross lewdness, right? Did then
18 and there willfully and unlawfully commit an act of open and
19 gross lewdness by Defendant rubbing and/or touching and/or
20 pushing and with the -- that one. Okay.

21 So then you look at the instructions on open and
22 gross lewdness start at 4. I was trying to figure out where
23 they got, willful and intent, in one instruction. But, of
24 course, Instruction No. -- I think it's, 7. Wait a minute.
25 Yes. Instruction No. 7 says, "Every person who willfully

1 commits any lewd or lascivious act upon the body of another
2 person in an offensive manner is guilty of the crime of open
3 and gross lewdness."

4 So, the only place where "intent" is in these
5 instructions concerning open and gross lewdness is
6 Instruction No. 4 that says, is defined as any indecent,
7 obscene or vulgar act of a sexual nature that is
8 intentionally committed in a public place.

9 MS. BLUTH: Would you mind reading the question one
10 more time?

11 THE COURT: Sure.

12 MS. BLUTH: I'm a very visual person, so it's --

13 THE COURT: I don't mind --

14 MS. BLUTH: -- for me just the audio.

15 THE COURT: -- at all, because I'm baffled by this.
16 "What is the definition of, willful intent, when it comes to
17 the law as it is written? We need clarification."

18 MS. BLUTH: In regards to Count 1?

19 THE COURT: It says at the top, Count 1. So --

20 MR. MANINGO: Our position --

21 THE COURT: -- any suggestions?

22 MR. MANINGO: Our suggestion is that the Court send
23 back a note and says the Court cannot supplement the
24 evidence, and you have been given the instructions. I don't
25 think we can tell them what page to look at and how to read

1 it or anything else. We just tell them, look, you've got the
2 instructions and if -- go through them, and you've had four
3 days to go through them, and so.

4 MS. BLUTH: We're not going to say that part.

5 MR. MANINGO: Yeah.

6 MS. BLUTH: Or if we did, it came from Mr. Maningo.

7 MR. MANINGO: Right. Right. We're going to leave
8 that part out, but.

9 MS. BLUTH: I agree with him in regards to, you
10 know, we're not going to supplement them. I disagree, I
11 think you can actually steer them to specific instructions,
12 and I've done that multiple times. The issue is, is I -- the
13 specific question as they're asking the intent, there isn't
14 going to be an answer to that in the instructions because
15 that's not something that's given.

16 I mean, I don't really know how much clearer intent
17 could be. It's meaning to do something. So --

18 THE COURT: Right.

19 MS. BLUTH: -- also not to go back to them.

20 THE COURT: Let's see, where's the instruction that
21 tells them to use their common sense?

22 MR. KOICHEVAR: It's more towards the end.

23 THE COURT: I mean, I can tell them, since they're
24 saying Count 1, we can say, the instructions you have that
25 pertain to the definition of the crime alleged in Count 1 are

1 found at 4 through 7. And in addition, you are reminded that
2 you are not to focus on any -- you know, that kind of thing.

3 MS. BLUTH: Well, and say the last part again,
4 though, you're --

5 THE COURT: You're not to focus on any particular
6 instruction. That's an instruction where -- I can't remember
7 -- see which one it is, which number it is, but wait a
8 minute.

9 MR. KOCHVAR: They're supposed to be taken as a
10 whole. The instructions should be taken as a whole, not just
11 focus on one, or give over overdue (inaudible).

12 (Pause in the proceedings)

13 THE COURT: Oh, maybe it's at the beginning,
14 actually. Yeah. Instruction No. 2. The -- you're not to
15 single out any certain sentence or any individual point or
16 instruction and ignore the others, but you are to consider
17 all the instructions as a whole. So I always tell them -- if
18 I'm going to tell them the instructions, you know, these
19 numbered instructions would appear to address your concern,
20 but remember, Instruction No. 2 that says you're not to
21 single out any certain sentence or any individual point or
22 instruction and ignore the others.

23 MS. BLUTH: Can we also add that beyond that, you
24 know, we aren't -- we cannot supplement --

25 THE COURT: Oh, yeah, right. We're going to --

1 MS. BLUTH: -- the instructions like Mr. Maningo
2 stated?

3 THE COURT: We'll agree on language --

4 MS. BLUTH: Okay.

5 THE COURT: -- on the note to go back to them.

6 MS. BLUTH: Okay.

7 THE COURT: All right? So --

8 MS. BLUTH: Your Honor, just while we're here and
9 we're on the record, obviously, in these four days
10 Mr. Maningo and Mr. Bashor and Mr. Kochevar and I have all
11 been speaking. You know, it's a little uncommon to have a
12 jury out for this amount of time, and so we had concerns that
13 we just wanted to make sure that, you know, they were in
14 constant communication. There's not one person refusing to
15 deliberate or everyone's abiding by the rules.

16 THE COURT: No one -- I mean, I can't commune with
17 them --

18 MS. BLUTH: Right, but Adrian --

19 THE COURT: -- and ask them that, and neither can
20 he. I mean, nobody's come out and said that there's somebody
21 that's -- the foreman hasn't sent a note out. If the foreman
22 had sent a note out saying there's somebody refusing to
23 deliberate, I would have immediately called you. I mean,
24 it's really been very unusual. They're just not -- I've
25 never had a jury out this long where we didn't get a request

1 for a read-back, some kind of note --

2 MS. BLUTH: Right.

3 THE COURT: -- something or --

4 MS. BLUTH: Okay.

5 THE COURT: -- or them starting to say we're hung,

6 we can't -- we're deadlocked, but there hasn't been any of

7 that. Okay?

8 MS. BLUTH: Okay.

9 THE COURT: So, I mean, you'd think they're tired,

10 but -- all right. Okay.

11 (Pause in the proceedings)

12 THE COURT: What about -- the other thing that

13 could potentially help them is if they reread Instruction No.

14 15, which says -- which talks about intent and that there

15 must exist a union or joint operation of an act and the

16 intent to do the act. We can tell them to read Instruction

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22 to give them -- or I should say to have the least amount of,

23 for lack for a better of word, yeah, guidance or

24 interference, depending on how you want to look at it.

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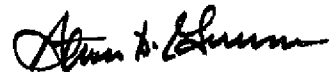
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Julie Lord
JULIE LORD, TRANSCRIBER

8-22-14
DATE



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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	.	CASE NO. C-249693
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	.	DEPT. NO. 5
v.	.	
	.	TRANSCRIPT OF
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COURT RECORDER:

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District Court

TRANSCRIPTION BY:

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10 but -- all right. Okay.

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12 THE COURT: What about -- the other thing that
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15 must exist a union or joint operation of an act and the
16 intent to do the act. We can tell them to read Instruction
17 No. 15, also.

18 MR. MANINGO: Well --

19 THE COURT: Thoughts?

20 MS. BLUTH: No, I know.

21 MR. MANINGO: Our position is to, I mean, honestly,
22 to give them -- or I should say to have the least amount of,
23 for lack for a better of word, yeah, guidance or
24 interference, depending on how you want to look at it.

25 THE COURT: Well --

1 MR. MANINGO: I think we should just say that they
2 have the instructions.

3 THE COURT: Yes, but the problem is that you also
4 agreed to instruct them on Instruction No. 27, which says,
5 "If during your deliberation you should desire to be further
6 informed on any point of law," and so when they do that -- we
7 tell them that, and then what they do it we say, sorry, we
8 can't supplement the instructions. And I'm all for saying, I
9 can't supplement the instructions, just, but you need to read
10 these instructions again, as well as Instruction No. 2 tells
11 you --

12 MS. BLUTH: The only thing I have about pushing
13 Instruction No. 2 is that they're trying to understand the
14 intent behind open and gross lewdness. I don't think it
15 necessarily -- you know, what does intent mean, or the fact
16 that you have to have the intent and the act. I believe that
17 their questions are specifically what the intent is behind
18 the count of open and gross lewdness. So I think simply by
19 directing them to open and gross lewdness, what those things
20 mean, did he intend those things when I allegedly touched
21 her?

22 And I'm not saying we can say that, but I'm saying
23 that's what the direction is towards, is the words contained
24 in the instructions for those -- that specific crime. That
25 would be my position on it. I mean, I know Mr. position is

1 to not instruct with specifics at all.

2 THE COURT: What was the other number I told you
3 that has the --

4 MR. MANINGO: Fifteen.

5 THE COURT: -- intent?

6 MR. MANINGO: Fifteen, I think you --

7 THE COURT: Fifteen. Yes. I don't think there's
8 anything wrong at also directing them to -- when their
9 question seems to be intent here, and we've got an
10 instruction that talks about intent, just tell them to read
11 that instruction.

12 MR. MANINGO: Okay.

13 (Pause in the proceedings)

14 THE COURT: Well, I'm -- all right. So, so what
15 I'm leaning on saying, because I'm trying to not to say too
16 much, "The Court is not at liberty to supplement the
17 instructions. However, as to Count 1" -- because that's
18 their question --

19 MS. BLUTH: Okay.

20 THE COURT: -- "The instructions which pertain to
21 the crime charged in that count are numbers 4 through 7. You
22 should additionally read Instruction No. 15 and No. 2."
23 Okay. Does that sound --

24 MS. BLUTH: Fine with the State, Your Honor.

25 THE COURT: -- as benign as we can make it? All

1 right.

2 MR. MANINGO: That's fine, Your Honor.

3 (Pause in the proceedings)

4 THE COURT: I'm going to have you mark -- the Clerk
5 mark note as court's exhibit next in order. And I'm going to
6 go ahead and write out the note back to them just as I read
7 it to you, and that will go back, and it will be -- when it
8 comes out again, I'll mark that as a court exhibit as well.

9 MR. MANINGO: Very good, Your Honor.

10 THE COURT: Okay.

11 (Pause in the proceedings)

12 THE COURT: Okay. Now, I'm going to read it again
13 to you. Okay, "The Court is not at liberty to supplement the
14 instructions. However, as to Count 1, the instructions which
15 pertain to the crime charged in that count are numbers 4
16 through 7. Please also read instructions number 15 and 2."

17 MS. BLUTH: That's great.

18 THE COURT: Okay. And I anticipate -- it's ten
19 minutes to 5:00. They're going to get this, and then we're
20 going to send them home and they're going to come back.

21 MS. BLUTH: What time will you bring them back in
22 the morning, 9:00?

23 THE COURT: I'm going to bring them back, yeah, at
24 9:00.

25 MS. BLUTH: Okay.

1 MR. MANINGO: And we'll assume, then, that they're
2 going home unless we hear from you again?

3 THE CLERK: They're going home.

4 THE COURT: They're going to go home, yeah, because
5 it's ten to 5:00.

6 MR. KOCHVAR: They're going home.

7 MR. MANINGO: Okay, thanks.

8 THE COURT: Thank you.

9 MR. MANINGO: See you tomorrow, maybe.

10 (Court recessed at 4:46 p.m., until Friday,
11 February 28, 2014, at 2:23 p.m.)

12 * * * * *

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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.

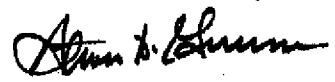
AFFIRMATION

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

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 16

FRIDAY, FEBRUARY 28, 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:

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

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

1 LAS VEGA., NEVADA, FRIDAY, FEBRUARY 28, 2014, 2:23 P.M.

2 (Outside the presence of the jury)

3 THE COURT: Please be seated. This is the
4 continuation of State of Nevada vs. Steven Farmer. The
5 record will reflect the Defendant is present with his
6 counsel, the Deputies District Attorney prosecuting the case
7 are present as are all officers of the court. We are outside
8 of the presence of the jury. The jury has returned to
9 indicate that they do have a verdict, and we will be bringing
10 them into the courtroom shortly. So, be at ease until we
11 hear from the marshal.

12 (Off the record at 2:23 p.m. until 2:26 p.m.)

13 (In the presence of the jury)

14 THE COURT: Thank you. Please be seated. The
15 record will reflect that we have now been joined by all 12
16 members of the jury, as well as two of the alternates
17 requested to be present when the verdict was read, having
18 been through the trial for three weeks. Although, they were
19 not called upon to deliberate, they were interested in
20 hearing their -- the verdict, and so they are present as
21 well, two of our alternates. Thank you for coming.

22 Ladies and gentlemen, have you elected a
23 foreperson?

24 THE JURY: Yes.

25 THE COURT: Okay. And who is our foreperson?

1 Mr. Robbins, has the jury reached a verdict?

2 JUROR NO. 3: Yes, Your Honor, we have.

3 THE COURT: If you'll hand it to the marshal,
4 please. The Clerk will read the verdict and ask the jury if
5 that is their verdict.

6 THE CLERK: District Court, Clark County, Nevada.
7 The State of Nevada, Plaintiff, vs. Steven Dale Farmer,
8 Defendant. Case No. 08-C-245739, Department No. 5.

9 Verdict. We, the jury in the above-entitled case,
10 find the Defendant, Steven Dale Farmer, as follows:

11 Count 1, open or gross lewdness, Ledahlia Spurlock;
12 guilty of open or gross lewdness.

13 Count 2, open or gross lewdness, Heather Shank;
14 guilty of open or gross lewdness.

15 Count 3, indecent exposure, Heather Shank; not
16 guilty.

17 Count 4, open or gross lewdness, Denise Hanna;
18 guilty of open or gross lewdness.

19 Count 5, sexual assault, Roxanne Cagnina, digital;
20 guilty of sexual assault.

21 Count 6, sexual assault, Roxanne Cagnina, digital;
22 guilty of sexual assault.

23 Count 7, sexual assault, Roxanne Cagnina,
24 cunnilingus; not guilty.

1 Count 8, open or gross lewdness, Roxanne Cagnina,
2 thigh; guilty of open or gross lewdness.

3 Count 9, open or gross lewdness, Roxanne Cagnina,
4 breasts; guilty of open or gross lewdness.

5 Count 10, sexual assault, Marcia Petersen, anal;
6 guilty of sexual assault.

7 Count 11, open or gross lewdness, Marcia Petersen,
8 vaginal; guilty of open or gross lewdness.

9 Count 12, sexual assault, Marcia Petersen, vaginal;
10 guilty of sexual assault.

11 Count 13, open or gross lewdness, Marcia Petersen,
12 breasts, nipple; guilty of open or gross lewdness.

13 Count 14, open or gross lewdness, Marcia Petersen,
14 breasts, nipple; guilty of open or gross lewdness.

15 Count 15, indecent exposure, Marcia Petersen;
16 guilty of indecent exposure.

17 Dated this 28th day of February, 2014. James R.
18 Robbins, foreperson. Ladies and gentlemen of the jury, are
19 these your verdicts as read?

20 THE JURY: Yes.

21 THE CLERK: So say you one, so say you all?

22 THE JURY: Yes.

23 THE COURT: Would either side like to have the jury
24 polled?

25 MS. BLUTH: The State would not, Your Honor.

1 MR. MANINGO: Yes, Your Honor.

2 THE COURT: Poll the jury. Wanda Brooks, are these
3 your verdicts as read?

4 JUROR NO. 1: Yes, it is.

5 THE CLERK: Americo Miranda, are these your
6 verdicts as read?

7 JUROR NO. 2: Yes, they are.

8 THE CLERK: James Robbins, are these your verdicts
9 as read?

10 JUROR NO. 3: Yes.

11 THE CLERK: Suzanne Lehavi, are these your verdicts
12 as read?

13 JUROR NO. 4: Yes.

14 THE CLERK: Andrea Schwartzman, are these your
15 verdicts as read?

16 JUROR NO. 5: Yes.

17 THE CLERK: Michael Freuden, are these your
18 verdicts as read?

19 JUROR NO. 6: Yes.

20 THE CLERK: Jenrikiza Platz, are these your
21 verdicts as read?

22 JUROR NO. 7: Yes.

23 THE CLERK: Beth Tripp, are these your verdicts as
24 read?

25 JUROR NO. 8: Yes.

1 THE CLERK: Alberto Munoz, are these your verdicts
2 as read?

3 JUROR NO. 9: Yes.

4 THE CLERK: Rachel Lusted, are these your verdicts
5 as read?

6 JUROR NO. 10: Yes.

7 THE CLERK: Kayla Davis, are these your verdicts as
8 read?

9 JUROR NO. 11: Yes.

10 THE CLERK: Carol Robinson, are these your verdicts
11 as read?

12 JUROR NO. 12: Yes.

13 THE COURT: Thank you. The Clerk will now record
14 the verdict in the minutes of the court.

15 Ladies and gentlemen, I want to thank you very much
16 for your service. This has been -- this was a long trial,
17 and you have worked very hard, most of a week, to come to a
18 verdict, and your deliberations have been careful, and for
19 this, the community thanks you for your service.

20 Now you will be relieved from your admonition not
21 to discuss this case, and you may speak freely whomever you
22 please. However, if you do not wish to speak to anyone, you
23 don't have to either. And so if someone -- if you tell
24 someone, no, you don't want to speak to them and they
25 persist, then you'll report that to the Court and I'll take

1 MR. MANINGO: I think we should just say that they
2 have the instructions.

3 THE COURT: Yes, but the problem is that you also
4 agreed to instruct them on Instruction No. 27, which says,
5 "If during your deliberation you should desire to be further
6 informed on any point of law," and so when they do that -- we
7 tell them that, and then what they do it we say, sorry, we
8 can't supplement the instructions. And I'm all for saying, I
9 can't supplement the instructions, just, but you need to read
10 these instructions again, as well as Instruction No. 2 tells
11 you --

12 MS. BLUTH: The only thing I have about pushing
13 Instruction No. 2 is that they're trying to understand the
14 intent behind open and gross lewdness. I don't think it
15 necessarily -- you know, what does intent mean, or the fact
16 that you have to have the intent and the act. I believe that
17 their questions are specifically what the intent is behind
18 the count of open and gross lewdness. So I think simply by
19 directing them to open and gross lewdness, what those things
20 mean, did he intend those things when I allegedly touched
21 her?

22 And I'm not saying we can say that, but I'm saying
23 that's what the direction is towards, is the words contained
24 in the instructions for those -- that specific crime. That
25 would be my position on it. I mean, I know Mr. position is

1 to not instruct with specifics at all.

2 THE COURT: What was the other number I told you
3 that has the --

4 MR. MANINGO: Fifteen.

5 THE COURT: -- intent?

6 MR. MANINGO: Fifteen, I think you --

7 THE COURT: Fifteen. Yes. I don't think there's
8 anything wrong at also directing them to -- when their
9 question seems to be intent here, and we've got an
10 instruction that talks about intent, just tell them to read
11 that instruction.

12 MR. MANINGO: Okay.

13 (Pause in the proceedings)

14 THE COURT: Well, I'm -- all right. So, so what
15 I'm leaning on saying, because I'm trying to not to say too
16 much, "The Court is not at liberty to supplement the
17 instructions. However, as to Count 1" -- because that's
18 their question --

19 MS. BLUTH: Okay.

20 THE COURT: -- "The instructions which pertain to
21 the crime charged in that count are numbers 4 through 7. You
22 should additionally read Instruction No. 15 and No. 2."
23 Okay. Does that sound --

24 MS. BLUTH: Fine with the State, Your Honor.

25 THE COURT: -- as benign as we can make it? All

1 right.

2 MR. MANINGO: That's fine, Your Honor.

3 (Pause in the proceedings)

4 THE COURT: I'm going to have you mark -- the Clerk
5 mark note as court's exhibit next in order. And I'm going to
6 go ahead and write out the note back to them just as I read
7 it to you, and that will go back, and it will be -- when it
8 comes out again, I'll mark that as a court exhibit as well.

9 MR. MANINGO: Very good, Your Honor.

10 THE COURT: Okay.

11 (Pause in the proceedings)

12 THE COURT: Okay. Now, I'm going to read it again
13 to you. Okay, "The Court is not at liberty to supplement the
14 instructions. However, as to Count 1, the instructions which
15 pertain to the crime charged in that count are numbers 4
16 through 7. Please also read instructions number 15 and 2."

17 MS. BLUTH: That's great.

18 THE COURT: Okay. And I anticipate -- it's ten
19 minutes to 5:00. They're going to get this, and then we're
20 going to send them home and they're going to come back.

21 MS. BLUTH: What time will you bring them back in
22 the morning, 9:00?

23 THE COURT: I'm going to bring them back, yeah, at
24 9:00.

25 MS. BLUTH: Okay.

1 MR. MANINGO: And we'll assume, then, that they're
2 going home unless we hear from you again?

3 THE CLERK: They're going home.

4 THE COURT: They're going to go home, yeah, because
5 it's ten to 5:00.

6 MR. KOCHER: They're going home.

7 MR. MANINGO: Okay, thanks.

8 THE COURT: Thank you.

9 MR. MANINGO: See you tomorrow, maybe.

10 (Court recessed at 4:46 p.m., until Friday,

11 February 28, 2014, at 2:23 p.m.)

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CERTIFICATION

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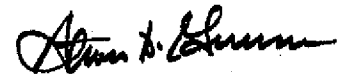
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(303) 798-0890

Julie Lord
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 16

FRIDAY, FEBRUARY 28, 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:

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Englewood, CO 80110
(303) 798-0890

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

1 LAS VEGA., NEVADA, FRIDAY, FEBRUARY 28, 2014, 2:23 P.M.

2 (Outside the presence of the jury)

3 THE COURT: Please be seated. This is the
4 continuation of State of Nevada vs. Steven Farmer. The
5 record will reflect the Defendant is present with his
6 counsel, the Deputies District Attorney prosecuting the case
7 are present as are all officers of the court. We are outside
8 of the presence of the jury. The jury has returned to
9 indicate that they do have a verdict, and we will be bringing
10 them into the courtroom shortly. So, be at ease until we
11 hear from the marshal.

12 (Off the record at 2:23 p.m. until 2:26 p.m.)

13 (In the presence of the jury)

14 THE COURT: Thank you. Please be seated. The
15 record will reflect that we have now been joined by all 12
16 members of the jury, as well as two of the alternates
17 requested to be present when the verdict was read, having
18 been through the trial for three weeks. Although, they were
19 not called upon to deliberate, they were interested in
20 hearing their -- the verdict, and so they are present as
21 well, two of our alternates. Thank you for coming.

22 Ladies and gentlemen, have you elected a
23 foreperson?

24 THE JURY: Yes.

25 THE COURT: Okay. And who is our foreperson?

1 Mr. Robbins, has the jury reached a verdict?

2 JUROR NO. 3: Yes, Your Honor, we have.

3 THE COURT: If you'll hand it to the marshal,
4 please. The Clerk will read the verdict and ask the jury if
5 that is their verdict.

6 THE CLERK: District Court, Clark County, Nevada.
7 The State of Nevada, Plaintiff, vs. Steven Dale Farmer,
8 Defendant. Case No. 08-C-245739, Department No. 5.

9 Verdict. We, the jury in the above-entitled case,
10 find the Defendant, Steven Dale Farmer, as follows:

11 Count 1, open or gross lewdness, Ledahlia Spurlock;
12 guilty of open or gross lewdness.

13 Count 2, open or gross lewdness, Heather Shank;
14 guilty of open or gross lewdness.

15 Count 3, indecent exposure, Heather Shank; not
16 guilty.

17 Count 4, open or gross lewdness, Denise Hanna;
18 guilty of open or gross lewdness.

19 Count 5, sexual assault, Roxanne Cagnina, digital;
20 guilty of sexual assault.

21 Count 6, sexual assault, Roxanne Cagnina, digital;
22 guilty of sexual assault.

23 Count 7, sexual assault, Roxanne Cagnina,
24 cunnilingus; not guilty.

1 Count 8, open or gross lewdness, Roxanne Cagnina,
2 thigh; guilty of open or gross lewdness.

3 Count 9, open or gross lewdness, Roxanne Cagnina,
4 breasts; guilty of open or gross lewdness.

5 Count 10, sexual assault, Marcia Petersen, anal;
6 guilty of sexual assault.

7 Count 11, open or gross lewdness, Marcia Petersen,
8 vaginal; guilty of open or gross lewdness.

9 Count 12, sexual assault, Marcia Petersen, vaginal;
10 guilty of sexual assault.

11 Count 13, open or gross lewdness, Marcia Petersen,
12 breasts, nipple; guilty of open or gross lewdness.

13 Count 14, open or gross lewdness, Marcia Petersen,
14 breasts, nipple; guilty of open or gross lewdness.

15 Count 15, indecent exposure, Marcia Petersen;
16 guilty of indecent exposure.

17 Dated this 28th day of February, 2014. James R.
18 Robbins, foreperson. Ladies and gentlemen of the jury, are
19 these your verdicts as read?

20 THE JURY: Yes.

21 THE CLERK: So say you one, so say you all?

22 THE JURY: Yes.

23 THE COURT: Would either side like to have the jury
24 polled?

25 MS. BLUTH: The State would not, Your Honor.

1 MR. MANINGO: Yes, Your Honor.

2 THE COURT: Poll the jury. Wanda Brooks, are these
3 your verdicts as read?

4 JUROR NO. 1: Yes, it is.

5 THE CLERK: Americo Miranda, are these your
6 verdicts as read?

7 JUROR NO. 2: Yes, they are.

8 THE CLERK: James Robbins, are these your verdicts
9 as read?

10 JUROR NO. 3: Yes.

11 THE CLERK: Suzanne Lehavi, are these your verdicts
12 as read?

13 JUROR NO. 4: Yes.

14 THE CLERK: Andrea Schwartzman, are these your
15 verdicts as read?

16 JUROR NO. 5: Yes.

17 THE CLERK: Michael Freuden, are these your
18 verdicts as read?

19 JUROR NO. 6: Yes.

20 THE CLERK: Jenrikiza Platz, are these your
21 verdicts as read?

22 JUROR NO. 7: Yes.

23 THE CLERK: Beth Tripp, are these your verdicts as
24 read?

25 JUROR NO. 8: Yes.

1 THE CLERK: Alberto Munoz, are these your verdicts
2 as read?

3 JUROR NO. 9: Yes.

4 THE CLERK: Rachel Lusted, are these your verdicts
5 as read?

6 JUROR NO. 10: Yes.

7 THE CLERK: Kayla Davis, are these your verdicts as
8 read?

9 JUROR NO. 11: Yes.

10 THE CLERK: Carol Robinson, are these your verdicts
11 as read?

12 JUROR NO. 12: Yes.

13 THE COURT: Thank you. The Clerk will now record
14 the verdict in the minutes of the court.

15 Ladies and gentlemen, I want to thank you very much
16 for your service. This has been -- this was a long trial,
17 and you have worked very hard, most of a week, to come to a
18 verdict, and your deliberations have been careful, and for
19 this, the community thanks you for your service.

20 Now you will be relieved from your admonition not
21 to discuss this case, and you may speak freely whomever you
22 please. However, if you do not wish to speak to anyone, you
23 don't have to either. And so if someone -- if you tell
24 someone, no, you don't want to speak to them and they
25 persist, then you'll report that to the Court and I'll take

1 care of that.

2 What I'm going to have the marshal do now is take
3 you back to the jury room so I can thank you again, and also,
4 I want to inquire whether you'd like to speak to the lawyers
5 in the case. Oftentimes, they would like to hear the
6 thoughts of the jury about their -- you know, their skills as
7 lawyers, if they can improve those skills, your thoughts on
8 this matter. You may choose to speak to them or you may
9 choose not to speak to them. It's -- each one of you have
10 that individual option, and you don't need to feel any
11 pressure to make a decision one way or the other.

12 So, if you'll go with the marshal, I'll be with you
13 momentarily.

14 THE MARSHAL: Rise for the jury, please.

15 (Jury excused at 2:33 p.m.)

16 (Outside the presence of the jury)

17 THE COURT: Thank you, please be seated. The
18 record will reflect the jury has departed the courtroom. Are
19 there any matters outside the presence before we set this
20 down for sentencing?

21 MS. BLUTH: Just, Your Honor, we'd ask that the
22 Defendant's -- he be now remanded without bail.

23 THE COURT: And he will be remanded. If there are
24 any post-trial motions to be filed in this matter, they need
25 to be, of course, filed within seven days.

1 MR. BASHOR: Yes, Your Honor.

2 MR. MANINGO: Yes, Your Honor.

3 THE COURT: All right. Anything further? I am
4 going to go inquire of the jury, and I will come back and let
5 you know if they would like to speak to you.

6 MR. BASHOR: Thank you.

7 MS. BLUTH: Thank you, Your Honor.

8 THE CLERK: Judge, do you want to set the
9 sentencing?

10 THE COURT: Yes, let's get a sentencing date.

11 THE CLERK: Does he need a psych eval?

12 THE COURT: No. Well, yes, I guess he does.

13 THE CLERK: Sentencing will be May 28th at 9:00
14 a.m.

15 THE COURT: Thank you. I'll be back.

16 (Court adjourned at 2:35 p.m.)

17 * * * * *

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CERTIFICATION

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AFFIRMATION

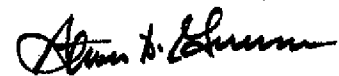
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Englewood, CO 80110
(303) 798-0890

Julie Lord
JULIE LORD, TRANSCRIBER

8-22-14
DATE

Verbatim Digital Reporting, LLC ♦ 303-798-0890



CLERK OF THE COURT

1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 STEVEN DALE FARMER,

9 Defendant.

CASE NO. C245739/C249693

DEPT. NO. V

10 BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

11
12 WEDNESDAY, MAY 28, 2014

13
14 RECORDER'S TRANSCRIPT RE:
15 SENTENCING

16
17 APPEARANCES:

18 For the Plaintiff:

JACQUELINE M. BLUTH
BRIAN J. KOCHEVAR
Chief Deputy District Attorneys

19
20 For the Defendant:

JEFFREY S. MANINGO
RYAN J. BASHOR
Deputy Public Defenders

21
22 Also Present:

ROXANNE CAGNINA
Victim Speaker

23
24
25 RECORDED BY: LARA CORCORAN, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 28, 2014, 11:04 A.M.

2 * * * * *

3 THE COURT: Case Number C245739, State of Nevada versus Steven
4 Dale Farmer. Record will reflect the presence of the defendant with his counsel.
5 And this is the time set for sentencing. Are you prepared to go forward?

6 MR. BASHOR: Yes, Your Honor. Mr. Maningo is in the hallway. He'll
7 be joining us very quickly.

8 THE COURT: All right. We'll await him.

9 MS. BLUTH: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MS. BLUTH: Jacqueline Bluth and Brian Kochevar on behalf of the
12 State.

13 MR. MANINGO: Am I the one who's late?

14 THE COURT: And we don't have any victim speakers, correct?

15 MS. BLUTH: We do, Your Honor, Ms. Cagnina's –

16 THE COURT: We do, because I didn't –

17 MS. BLUTH: – here to speak.

18 THE COURT: It wasn't on the calendar so that's why I asked. All right.

19 And this was, obviously, a verdict after trial. Defendant was found guilty
20 of all counts, save Count 3 and Count 7, where he was found not guilty. And the
21 State has, of course, the right to argue.

22 MS. BLUTH: Thank you, Your Honor. As you said, this was quite a
23 lengthy trial and so I'm not going to get into, you know, all the facts, because I don't
24 believe we need to. But there are just a few things that I would like to talk about.

25 And when you sat through that trial and you listened, one thing became

1 very clear, and the defendant is, he's a very smart individual, and all of his acts were
2 well thought out and they were very intentional and he used this position that he had
3 at the hospital to gain access to people who were in their time of need, quite frankly.
4 And because he had the opportunity to look at them and to view them in, like,
5 situations like the emergency room he could see their mental state, and he can see
6 their condition and how medicated they were.

7 You know, and if you look at an individual like Ledahlia Spurlock, who
8 was there because she had attempted to take her own life, I mean, who's going to
9 believe her? That night she was leaving to go to a hospital to deal with her mental
10 health. So it's people like that, or if you look at Roxanne, and you heard, you know,
11 nurses talking about how she was behaving in the hospital that day and how much
12 medication she was on. And then you look at Marcia Petersen, and you know she
13 was on medications but, not only that, she also, because of her post-seizure state,
14 couldn't speak.

15 And he had the opportunity to see those women in those vulnerable
16 positions and he took advantage of that and he perpetrated upon them. Those are
17 very well-thought-out, planned, designed actions that Mr. Farmer had.

18 And a lot of the times while being on Special Victims Unit I consider
19 stranger rape to be one of the most scary and the most dangerous types of rape, but
20 this can even be worse, because this is a place, a hospital, where victims are
21 supposed to go to get help and to be safe. They aren't supposed to get raped anally
22 and vaginally in a hospital, Judge. That's somewhere where people go and they
23 need help.

24 If you consider the impact that this has had on so many of these
25 victims' lives. I mean, I don't know if you remember Heather Shank, who discussed

1 having to go to, I think, it was Summerlin Hospital a couple months later because
2 she had had another seizure attack, and she was being treated by only men, and
3 her boyfriend, who is now her husband, could hear her screaming, screaming,
4 screaming, and they finally allowed him back and she was being forced down and
5 held down by three male nurses. And she couldn't deal with that, she turned to
6 alcohol and she – mentally it was too much because she didn't want to be violated
7 again.

8 And you look at Roxanne. And Roxanne has discussed, and she will
9 discuss today, how this has impacted her. You know, I admitted the phone records
10 to show how many times – I think there was over 30 calls to the Rape Crisis Center
11 just in a couple of months. She turned to alcohol. She turned to prescription pills.

12 Marcia Petersen, who obviously can't be here today, she took her own
13 life. She was scared. And this didn't only impact her, it impacted her son, who's
14 here in the courtroom today, who she never wanted to go to hospitals anymore.
15 She didn't want to be taken to that hospital. She didn't want to be taken by
16 ambulance. She didn't want to be treated by male doctors or nurses because she
17 was scared.

18 This has impacted these people. You know, one day if Mr. Farmer gets
19 out of prison he gets to walk away and forget. These people will live with this
20 forever with this fear that this could happen to them again.

21 And I think Marcia Petersen said it best when she said – during the
22 video deposition she said I felt a multitude of feelings. I felt scared, I felt
23 embarrassed and I felt ashamed. I was in a hospital, supposed to be getting care,
24 and I couldn't believe these things were happening to me. And she sat there
25 paralyzed, not able to talk, while he digitally penetrated her vagina and her anus.

1 And she could do nothing about it.

2 And today Stephen Farmer needs to answer for those things, Judge.

3 And I'm asking that you run both of the sexual assaults committed on Marcia, for the
4 vaginal penetration and the anal penetration, consecutive.

5 I'm also asking that you run the vaginal sexual assault, the digital
6 penetration, on Roxanne Cagnina – and we saw the tears to Roxanne Cagnina –
7 the bruising and multiple tears to Roxanne Cagnina's vagina. And I'm asking that
8 you run that consecutive, for a total of 30 to life in prison.

9 And I know Ms. Cagnina would like to address the Court after the
10 defense is done with their argument. And I'd submit it with that.

11 THE COURT: Thank you.

12 Mr. Farmer, by virtue of the jury's verdict in this case, Count 1, which
13 was open and gross lewdness, Count 2, open or gross lewdness, Count 4 open or
14 gross lewdness, Count 5, sexual assault, Count 6, sexual assault, Count 8, open or
15 gross lewdness, Count 9, open or gross lewdness, Count 10, sexual assault, Count
16 11, open or gross lewdness, Count 12, sexual assault, Count 13, open or gross
17 lewdness, Count 14, open or gross lewdness, and Count 15, indecent exposure, I
18 hereby adjudge you guilty of those offenses.

19 Before your lawyers argue on your behalf, would you like to address the
20 Court?

21 THE DEFENDANT: All I can say, Your Honor, is I don't believe I got a
22 lengthy defense and there's really nothing I can say today that's gonna change your
23 mind or the mind of the Court, but I still maintain my innocence.

24 THE COURT: All right.

25 Mr. Maningo.

1 MR. MANINGO: Your Honor, as Ms. Bluth has already stated, the
2 Court has already heard the testimony of this trial, five weeks of it. We're not going
3 to argue the facts.

4 I can tell you know that over the past five and a half to six years
5 through, I want to say, five or six different defense attorneys, probably about the
6 same number of prosecutors, Mr. Farmer has never once said anything other than
7 that he has maintained his innocence, which is, of course, difficult for a defense
8 attorney and from our perspective.

9 I know that there are clients of mine, and individuals in general, who are
10 not truthful. I also know that there have been juries in the past and in the future who
11 have made mistakes and who have come back with an incorrect verdict.

12 I sincerely hope that Mr. Farmer is lying to me. I don't think he is. I've
13 believed Mr. Farmer the entire time, but I hope he's lying, and I hope that the jury
14 got it right, because otherwise we have, at least for a defense attorney, our worst
15 nightmare, which is potentially an innocent man that by law you have to send to
16 prison. And I really – I hope that's not the situation.

17 And none of us, as much as Ms. Bluth wants to argue it or myself or
18 Your Honor, the three of us, we weren't there at that hospital. We can never know.
19 We have to go on what we hear from both sides. And I hope it's not an innocent
20 man that's going to prison, but I'm afraid that it is.

21 And I know that we have the best system in the world. I truly believe
22 that. And I respect jury verdicts, and I've seen them come back a lot of different
23 ways, but I just hope for all of our sake that this jury was correct, because if not then
24 there's a – there's a horrible mistake being made.

25 Things in the PSI that I would just want to highlight very briefly is that

1 Mr. Farmer did obviously have a very abusive childhood. He has served his county
2 in the United States Navy and was given an honorable discharge.

3 Whether Mr. Farmer sees the light of day again or not, nobody walks
4 away from this trial and just forgets about anything that's happened. Before Mr.
5 Farmer even got to trial he's been incarcerated for five and a half years. Even if he
6 were acquitted on that day he wouldn't walk away and forget about anything.

7 I have not seen a credit for time served in the two-thousand mark. And
8 as far as that's concerned we – our calculations show a slight difference from what
9 the PSI is; we have 2303 days as far as the credit for time served.

10 We also know that even if given just one ten-to-life and everything else
11 run concurrently that there's no way Mr. Farmer, with these types of charges and at
12 his age, will parole first time through. So a ten-to-life really isn't ten – it's ten
13 minimum, mandatory before parole eligible, before he goes before the board, but we
14 know that even if given that sentence it's going to be at least 15.

15 MR. MANINGO: Steve, how old are you now?

16 THE DEFENDANT: Sixty-two.

17 MR. MANINGO: Okay. So we're looking at probably, realistically, even
18 if given just one ten-to-life, everything else concurrent, 77 to 80 before he would
19 even parole on that. And not to mention the time he's already spent in. So we are
20 asking the Court to run all counts concurrently.

21 The one – oh, the other – one other detail that I wanted to mention is I
22 believe the State is prepared to dismiss the Frances Rose case today, which was
23 the remaining pending case.

24 MS. BLUTH: No, Judge, we're not going to be doing that today. I'm
25 sorry. I don't know if we had conversations about that, but that's not – we're not

1 going to be doing that today.

2 MR. MANINGO: When are you doing that?

3 MS. BLUTH: I don't know that we are. We'll have to talk about it.

4 MR. MANINGO: Well, we do have to talk about that, because now I'll
5 just go ahead and put on the record that it was stated after the trial Ms. Bluth told us
6 that the remaining case, the Frances Rose case, no matter what the verdict was
7 going to be, that they were going to dismiss that case at the time of sentencing.
8 Now, I'm hearing for some other reason, and I have no idea what it is, something
9 completely different. So that's surprising. We can deal with that later. And that's
10 unfortunate.

11 So I would ask –

12 THE COURT: Tell me the – you said you – you've got like about
13 another hundred days of credit for time served. Is the date that's in the PSI, are
14 those dates incorrect, or how is it you have a different –

15 MR. MANINGO: Mr. Farmer actually did the calculations. He has that
16 on his PSI. I can share that with the Court and counsel.

17 Here's how the calculation looks, including even a day for leap year.

18 Oh, Your Honor, would you like to see it?

19 Thanks.

20 THE COURT: All right. So we're going to do it – the clerk's got a
21 program. So it's not the dates that are in dispute, it's just the math.

22 THE CLERK: So is it today's date that we're going by?

23 THE COURT: Today's date.

24 THE CLERK: 2,203 days.

25 THE COURT: So I didn't check his math. Did you check his math?

1 MR. MANINGO: I received those calculations this morning.

2 THE COURT: And so the difference, what my clerk is telling me and
3 what P & P's calculation, that may account for the leap year, that they're giving him
4 an extra day, but –

5 MR. MANINGO: And, whatever –

6 THE COURT: – a hundred days.

7 MR. MANINGO: And, Your Honor, whatever calculation you have, I will
8 check the math later and if it turns out that it's different then I'll file a motion asking
9 to adjust the amount of credit.

10 THE COURT: All right.

11 MR. MANINGO: Because at this point we're talking about at minimum
12 2,200 days, with a possible difference of a hundred days.

13 THE COURT: Right.

14 MR. MANINGO: And I will – I'll double check that.

15 THE COURT: All right.

16 And we have our victim speakers?

17 MS. BLUTH: Yes, Your Honor. The State calls Roxanne Cagnina.

18 (The clerk swears in the speaker)

19 THE CLERK: Please state your name and spell it for the record.

20 MS. CAGNINA: Roxanne Cagnina, R-O-X-A-N-N-E, Cagnina, C-A-G-
21 N-I-N-A.

22 THE COURT: You may proceed, ma'am.

23 MS. CAGNINA: I'm sorry. I'm very nervous, so –

24 THE COURT: It's all right. Don't be nervous.

25 MS. CAGNINA: I wrote something. I'll just go ahead and read it.

1 Bravery is a seven-letter word that most have basic definition of. What
2 makes a person brave? Bravery is an act of selfishness [sic], big or small. Us
3 women who have fallen victims to these heinous crimes are humanitarians to the
4 people we love. It is not easy task to put a smile on our faces while the memories of
5 what we have gone through burn in our minds. A flame burning that will never go
6 out. As human beings should we ever have to fake a smile? Should anyone have
7 to hide from their feelings to extend our feelings bursting at the seams?

8 The things that we have been – the things that have been done to us
9 have affected many of us, not only me but my children, my husband. I was married
10 for 17 years. I married – happily married. And when this happened to me I couldn't
11 cope anymore. My husband tried to help me. My children tried to help me, but they
12 couldn't help me. I was in a dark place. I wanted to die. I ended up on life support
13 after this. I've lost a 17-year marriage. Today I am still trying to rebuild my life with
14 my children.

15 And I only ask the Court to give him the max sentence because women
16 have – someone has died here. I will – I have a hard time walking in a hospital. My
17 daughter had to go to the hospital because she got MRSA and I was terrified. The
18 smell makes me sick. I don't trust.

19 And I only hope that you look at him – and most people might be, you
20 know, oh, he looks fragile. Well, trust me when I see him I see a monster. I see
21 someone that I hate. I've never been one to hate, but I hate him for what he's done
22 to me and my family. I can never get that back. So I only hope that the Court gives
23 him the max sentence today. Thank you.

24 THE COURT: Thank you.

25 Does the defense have any questions of Ms. Cagnina?

1 MR. MANINGO: No, Your Honor, I think we covered all that during trial.

2 THE COURT: Thank you.

3 Ms. Bluth.

4 MS. BLUTH: That's it, Your Honor.

5 THE COURT: That's it.

6 And the Court notes, of course, that Marcia Petersen did take her life
7 before the trial. We had her in court for – to preserve her testimony, and so I did
8 hear her testimony. I just want to make it clear on the record that we don't have any
9 reason to believe that Ms. Petersen necessarily took her life as a result of this
10 particular case.

11 We know that she was extremely ill, which was, of course, why she was
12 able to be victimized in this fashion. It was indeed a very sad, sad situation for Ms.
13 Petersen to have been victimized in this manner.

14 So, Mr. Farmer, having adjudged you guilty, as I previously stated, in
15 accordance with the laws of the State of Nevada, in addition to the \$25
16 administrative assessment fee, the \$150 DNA testing fee, I hereby sentence you on
17 Count 1, open and gross – open or gross lewdness, to a maximum term of 12
18 months in the Clark County Detention Center.

19 As to Count 2, open or gross lewdness, a gross misdemeanor, I hereby
20 sentence you to 12 months in the Clark County Detention Center. That – Count 2
21 will run concurrently with Count 1.

22 As to Count 4, open or gross lewdness, I hereby sentence you to a
23 maximum term of 12 months, the Clark County Detention Center. That will run
24 concurrently with Counts 1 and 2.

25 Count 5, sexual assault, I hereby sentence you to a minimum term of

1 life with possibility of parole, with eligibility for parole beginning when a minimum of
2 ten years has been served.

3 As to Count 6, sexual assault, I hereby sentence you to life with
4 possibility of parole, with eligibility for parole beginning when a minimum of ten years
5 has been served, and Count 6 will run consecutive to Count 5. Oh, and Count 5 is
6 running concurrently with Counts 1, 2 and 4.

7 Count 8, open or gross lewdness, a gross misdemeanor, I hereby
8 sentence you to 12 months in the Clark County Detention Center. That will run
9 concurrently with Counts 1 through 6.

10 Count 9, open or gross lewdness, a gross misdemeanor, I hereby
11 sentence you to 12 months in the Clark County Detention Center. That will run
12 concurrently with Counts 1 through 8.

13 Count 10, sexual assault, I hereby sentence you to life with possibility of
14 parole, with eligibility for parole beginning when a minimum of ten years has been
15 served. Count 10 to run consecutively to Counts 1 through 9.

16 Count 11, open or gross lewdness, I hereby sentence you to a
17 minimum term of 12 months in the Clark County Detention Center. That will run
18 concurrently with Counts 1 through 10.

19 Count 12, sexual assault, I hereby sentence you to a minimum – or to
20 life with possibility of parole, with eligibility for parole beginning when a minimum of
21 ten years has been served. That count will run concurrently with Counts 1 through
22 11.

23 Count 13, open or gross lewdness, a gross misdemeanor, I hereby
24 sentence you to 12 months in the Clark County Detention Center. That will run
25 concurrently with Counts 1 through 12.

1 Count 14, open or gross lewdness, a gross misdemeanor, I hereby
2 sentence you to 12 months in the Clark County Detention Center. That will run
3 concurrently with Counts 1 through 13.

4 And Count 15, indecent exposure, I hereby sentence you to a minimum
5 – or a maximum term of 12 months in the Clark County Detention Center. And that
6 will concurrently with Counts 1 through 14.

7 Credit for time served is, I believe the – is accurate –

8 THE CLERK: What happened to Count 7?

9 THE COURT: Count 7 is not guilty.

10 THE CLERK: Oh, it only showed Count 3. Okay.

11 THE COURT: The calendar is incorrect and it doesn't show that Count
12 7 was not guilty.

13 Credit for time served is the two-thousand – 2,204 days credit for time
14 served. And if counsel finds that there is an error in the calculation – I think that
15 that's correct though – you can move the Court, as soon as possible, before the
16 JOC gets done.

17 MR. MANINGO: Yes, Your Honor.

18 THE COURT: Thank you.

19 MR. MANINGO: Thank you.

20 MS. BLUTH: Thank you.

21 MR. KOCHVAR: Thank you, Judge.

22 PROCEEDING CONCLUDED AT 11:29 A.M.

23 * * * * *

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25 ///

1 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
2 video recording of this proceeding in the above-entitled case.

3 

4 LARA CORCORAN
5 Court Recorder/Transcriber
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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 STEVEN DALE FARMER,)
)
4 Appellant,)
)
5 vi.)
)
6 THE STATE OF NEVADA,)
)
7 Respondent.)
8)
9

No. 65935

10 **APPELLANT'S APPENDIX VOLUME XIV PAGES 2638-2819**

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17 **CERTIFICATE OF SERVICE**

18 I hereby certify that this document was filed electronically with the Nevada
19 Supreme Court on the 23rd day of Feb, 2014. Electronic Service of the
20 foregoing document shall be made in accordance with the Master Service List as follows:

21 CATHERINE CORTEZ MASTO
22 STEVEN S. OWENS

HOWARD S. BROOKS
DEBORAH WESTBROOK

23 I further certify that I served a copy of this document by mailing a true and
24 correct copy thereof, postage pre-paid, addressed to:

25 STEVEN DALE FARMER
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27 c/o ELY STATE PRISON
28 P.O. Box 1989
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BY 
Employee, Clark County Public Defender's Office