

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN LANGFORD,

Appellant,

v.

STATE OF NEVADA,

Respondent.

Docket No. 70536

Electronically Filed
Nov 15 2016 09:59 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX

VOLUME III

Monique A. McNeill, Esq.
Nevada Bar No. 9862
1810 East Sahara Avenue, Ste. 1423
Las Vegas, NV 89104
(702)289-4714
Attorney for Appellant Langford

INDEX

<u>Document</u>	<u>Page Nos.</u>
Transcript of Trial March 9, 2016, continued.....	501
Transcript of Trial March 11, 2016.....	525
Transcript of Trial March 14, 2016.....	703

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 14th day of November, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT

M ONIQUE MCNEILL

STEVEN WOLFSON

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

JUSTIN LANGFORD
c/o High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070-0650

By: /S/MONIQUE MCNEILL
MONIQUE A. MCNEILL
State Bar # 9862

1 the charge or of the allegation with Detective Kira?

2 A We might have had a conversation about while I was
3 drafting the search warrant, but I don't recall exact words we
4 exchanged.

5 Q While you're applying for this telephonic search
6 warrant in the office space there is your -- is that door
7 closed, or open?

8 A The door was closed.

9 Q And the holding cell where the defendant is located
10 at that time, is that door closed or open?

11 A It was closed.

12 Q Describe the door of the holding cell.

13 Q It was just a metal door, common to see on holding
14 cells in jail facilities.

15 Q Was it solid, or was it rails?

16 A Oh. It was a solid door.

17 Q Did you at some point -- you and Detective Kira
18 speak to the defendant?

19 A We did talk to him, yes.

20 Q Was that there at the Searchlight substation or
21 Searchlight Justice Center?

22 A Yes.

23 Q Did you at that point read him his Miranda rights?

24 A Yes, I did.

25 Q Did he indicate that he understood those rights?

1 A Yes, he did.

2 Q Did he then speak with you?

3 A Yes, he did.

4 Q Do you recall what his demeanor was during your
5 interview?

6 A He appeared calm.

7 MR. BURTON: Your Honor, at this time the State
8 would ask to publish State's Proposed Exhibit 6. I believe
9 it's stipulated to be admitted.

10 MS. McNEILL: That's correct, Your Honor. No
11 objection.

12 THE COURT: Okay. Exhibit 6, excuse me, is
13 admitted.

14 (State's Exhibit 6 admitted)

15 MR. BURTON: And, Your Honor, like I said before, we
16 have transcripts of this recording. We'd ask to have those
17 passed out to the jury so that they could follow along with
18 the recording.

19 THE COURT: Okay. Officer, would you help with
20 that. Okay. Great. Officer, could you pass out the
21 transcripts.

22 MR. BURTON: Your Honor, may we approach?

23 THE COURT: Sure.

24 (Bench conference)

25 MR. BURTON: I'm sorry. I should have noticed this

1 before. It is 3:00 o'clock. This is about an hour and 20
2 minutes of a recorded statement. I don't know if you want to
3 take a break now, before we do it.

4 MS. JOBE: Or just start --

5 THE COURT: Do you mind if we at least go a half
6 hour?

7 MR. BURTON: Yeah. We can stop it in the middle.

8 THE COURT: Okay.

9 MS. JOBE: And for scheduling purposes, I had the
10 DNA individual on call to be here. I was going to text her
11 right now to show up. But it looks like we're going to be
12 close to 5:00 with this detective. And since Your Honor needs
13 to leave, I didn't want to go over 5:00 if we're even done
14 with him by 5:00.

15 THE COURT: Okay. We'll see how things go. Okay.
16 All right. Do you have a transcript for me to follow, or is
17 it going to be on the screen?

18 MR. BURTON: Do we have an extra transcript for the
19 Judge?

20 MS. JOBE: I do not.

21 MR. BURTON: I don't.

22 THE COURT: Oh. Okay. Well, I guess I'll just have
23 to listen.

24 MR. BURTON: Sorry.

25 THE COURT: All right. That's okay.

1 (End of bench conference)

2 THE COURT: Okay. By the way, ladies and gentlemen,
3 I'm told that this recording is about an hour long, but we're
4 going to break in the middle of it to take the break about
5 3:30, okay.

6 All right. Counsel.

7 MR. BURTON: Thank you, Your Honor.

8 (State's Exhibit 6 played)

9 THE COURT: Okay. Counsel, we're going to turn it
10 off. Okay.

11 All right. Ladies and gentlemen, we're going to go
12 ahead and take our break. During this period of time you are
13 admonished not to talk or converse among yourselves or with
14 anyone else on any subject related to the trial, or read,
15 watch, or listen to any report of or commentary on the trial
16 by any medium of information, including, without limitation,
17 newspapers, television, the Internet, and radio, or form or
18 express any opinion on any subject related to the trial until
19 the case is finally submitted to you.

20 We'll be back here in about 15 minutes.

21 (Jury recessed at 3:29 p.m.)

22 THE COURT: Okay. Let the record reflect that the
23 jury has left the courtroom.

24 And, sir, you may step down and enjoy your break.
25 And if you run into any jurors, just don't say anything, okay.

1 THE WITNESS: Thank you.

2 THE COURT: Okay. Counsel, is there anything that
3 we need to discuss outside the presence of the jury?

4 MS. JOBE: No, Your Honor.

5 MS. McNEILL: No, Your Honor.

6 THE COURT: Enjoy your break.

7 (Court recessed at 3:30 p.m., until 3:47 p.m.)

8 (Jury is not present)

9 THE COURT: And, officer, if you would go ahead --
10 Detective, I'm sorry.

11 THE WITNESS: It's okay. "Officer" is perfectly
12 fine.

13 THE COURT: Okay. Are we ready to proceed?

14 MS. JOBE: Yes, Your Honor.

15 THE COURT: Okay. Let's bring the jury back in
16 here.

17 (Jury reconvened at 3:49 p.m.)

18 THE COURT: Okay. Will counsel please stipulate to
19 the presence of the jury?

20 MS. JOBE: Yes, Your Honor.

21 MS. McNEILL: Yes, Your Honor.

22 THE COURT: Okay. You all may be seated.

23 And, Detective, I just want to remind you again
24 you've been sworn, okay. Go ahead and have a seat.

25 THE WITNESS: Thank you.

1 THE COURT: Okay. Let's continue.

2 (Continued playing of State's Exhibit 6)

3 THE COURT: There's a question. Counsel, we're
4 probably going to need to gather those transcripts, okay.

5 THE MARSHAL: All right, guys. Pass them that way.
6 Thank you.

7 THE COURT: Counsel, why don't you approach real
8 quick. Microphones off.

9 (Bench conference)

10 THE COURT: We've got two questions. "Just to
11 clarify, is there a hallway between the door to the holding
12 cell and the door leading to the office inside the police
13 station attached to the Searchlight Courthouse?" I don't know
14 that that has anything to do with anything.

15 But the next one is, "Was the Langford computer
16 retrieved? If so, were there evidence of child porn?"

17 MR. BURTON: He can't answer that. It would have
18 been through Detective Madsen.

19 MS. McNEILL: He can at least say that they didn't
20 -- I would -- he can say that they didn't take the computer.
21 He said that he -- because he did the search warrant, so they
22 weren't looking for a computer.

23 I apologize, Your Honor. He can say they weren't --
24 there was no computer in the search warrant because they
25 didn't have concerns about a computer.

1 THE COURT: Okay.

2 MS. JOBE: Can I just ask what juror that was? What
3 juror number?

4 THE COURT: Oh. That was Juror Number 3, and this
5 is Juror Number 5. Do you have a problem with me asking any
6 of these questions? Do you guys have any questions -- any
7 problems with me asking these questions? Do you have a
8 problem with me asking these questions of the officer? Of the
9 detective. I'm sorry.

10 MS. JOBE: There's like one more thing we need to
11 get him to say today, and then we're going to talk about the
12 whole scheduling thing for tomorrow morning, because he has
13 childcare issues tomorrow morning. But we can still start at
14 8:30.

15 THE COURT: Okay. Yeah. We can start at 8:30?
16 Yeah. I hope so. Okay.

17 Well, do you want to ask the -- it's still your
18 direct.

19 MR. BURTON: I can ask him, or if you want to ask
20 him. It's up to you, Your Honor.

21 THE COURT: Or you could just -- or you could ask
22 questions about was there concern about a computer, okay.

23 MR. BURTON: I will.

24 THE COURT: Okay. You want to do that? That'll
25 probably be easier.

1 MR. BURTON: And then the hallway.

2 THE COURT: Okay. Do you want me to ask that?

3 Well, here. Why don't you just take these, give them back,
4 and ask him. Okay. All right.

5 (End of bench conference)

6 THE COURT: Okay, Counsel.

7 MR. BURTON: Thank you, Your Honor.

8 Is my microphone working? All right.

9 BY MR. BURTON:

10 Q Now, just to clarify, is there a hallway between
11 where you were talking with Detective Kira and the defendant
12 was where he was in the holding cell?

13 A As far as I can remember, there's a hallway, as I
14 said before, maybe 5, 10 feet long before we turned left into
15 the office.

16 Q When you -- did you apply for a search warrant on
17 390 Hill Street?

18 A Yes.

19 Q In that search warrant did you request to take
20 computers or any computer equipment found in the home?

21 A No, I did not.

22 Q Did you receive any information related to computers
23 prior to applying for your search warrant?

24 A No, I did not.

25 Q Did you after this interview do a buccal swab on the

1 defendant?

2 A We obtained a buccal swab from the defendant, yes.

3 Q Did you impound that? Or, I'm sorry. That was
4 somebody else. I apologize.

5 Did you get a buccal swab from Heather Haney?

6 A Yes, I did.

7 Q Okay. Do you recall when that was?

8 A It was sometime later. I don't remember exact the
9 date when I obtained a swab.

10 MR. BURTON: Permission to approach?

11 THE COURT: Sure.

12 MR. BURTON: Can we get some gloves?

13 BY MR. BURTON:

14 Q Detective, showing you what's been marked a State's
15 Proposed Exhibit 4, do you recognize it?

16 A Yes.

17 Q How do you recognize it?

18 A It's a standard LVMPD buccal swab kit, and I filled
19 out the front portion of it.

20 Q Is there any --

21 THE COURT: Hold on. Can you hear okay? Okay.

22 I just wanted to make sure, because you're talking
23 over here, and the microphone's over here.

24 THE WITNESS: I'm sorry. I'll get closer to the
25 microphone.

1 THE COURT: That's okay.

2 BY MR. BURTON:

3 Q Here's what we'll do. We'll scoot it a little bit

4 closer to you.

5 A Perfect.

6 Q Is there any unique identifying information

7 correlating it with a certain event number?

8 A Yes. There is information that is written, there's

9 a date, there's event number, subject's name, date of birth

10 and ID number, and then the person that actually booked the

11 buccal swab into evidence has to sign.

12 Q And is there -- did you sign this?

13 A Yes.

14 Q Okay. And did you put your P number on it?

15 A Yes, I did.

16 Q Is that a P number that's unique to you?

17 A Yes.

18 Q And the event number, is that unique to this

19 investigation?

20 A Yes, it is.

21 Q Who was the subject of the buccal swab?

22 A Heather Haney.

23 Q Did you impound that buccal swab?

24 A Yes. I put it into impound.

25 Q Describe how you impounded it.

1 A Our office is relatively close to actual LVMPD
2 evidence vault, and usually the way we did this stuff is when
3 we got a certain amount of evidence to be impounded one of us
4 would -- one of the detectives would actually drive over to
5 the evidence vault and just drop everything off.

6 Q Did you seal the envelope when you collected the
7 buccal swab?

8 A Yes, I did.

9 Q Is that a red seal that we see on the envelope?

10 A Yes.

11 Q And does that have your P number on it, as well?

12 A Yes, it does.

13 Q And your initials?

14 A Initials and date.

15 Q Is there another seal on that envelope?

16 A Yes, there is.

17 Q And is there log-in or log-out information that
18 happened after you impounded it?

19 A Yes. There's portion of where it says "Chain of
20 Custody" was filled out.

21 Q Other than the additional seal and that additional
22 log-out information, does the envelope appear to be in the
23 same or substantially the same condition as when you impounded
24 it?

25 A Yes, it does.

1 Q Based on the information on the outside what would
2 you expect to find if we opened the envelope?

3 A The actual buccal swab. The actual swabs.

4 Q Okay. For Heather Haney?

5 A Yes.

6 MR. BURTON: Your Honor, at this time the State
7 would move to admit State's Proposed Exhibit 4 and contents.

8 MS. McNEILL: No objection.

9 THE COURT: It's admitted.

10 (State's Exhibit 4 admitted)

11 BY MR. BURTON:

12 Q If I could have you put some gloves and if we could
13 get a pair of scissors. Is there a smaller box that you put
14 the Q-Tip in?

15 A Yes.

16 Q Is that what's going to be in this envelope, is a
17 box containing the Q-Tip?

18 A Yes.

19 Q Go ahead.

20 As we see, it's the box that you expected to find in
21 it?

22 A Yes.

23 Q Go ahead and put that back in.

24 Q Did you submit a request -- actually, I'll take that
25 back.

1 Did you submit a request for any DNA testing in this
2 case?

3 A I did.

4 Q How do you go about doing that?

5 A At the time I believe we were still doing the paper
6 requests where there was a specific form that needed to be
7 filled out and then that form was either faxed or mailed over
8 to the lab.

9 Q Did you receive any information or any reply back
10 from the DNA lab concerning your request?

11 A Initially, or at a later time?

12 Q Initially.

13 A Initially I believe I did. I believe I requested
14 way too many items to be tested.

15 Q Are you familiar with a lab protocol concerning the
16 number of items that can be tested in a sexual assault
17 investigation?

18 A Yes, we did. There's a limit as to the number of
19 items that can be submitted initially for analysis.

20 Q Is that based on a policy in the DNA lab?

21 A I believe it's their policy, yes.

22 Q Based on the response that you received did you then
23 submit another request limiting the number of items that you
24 requested to be tested?

25 A Yes.

1 Q During that interview we heard you at the very
2 beginning. Was there another detective present during the
3 interview?

4 A Yes. Detective Kira.

5 Q We heard him asking the defendant some questions, as
6 well; correct?

7 A That's correct.

8 Q Were both you and Detective Kira there the entire
9 time?

10 A Yes.

11 Q So even when you're asking questions Detective
12 Kira's still there?

13 A Yes.

14 Q And vice versa, when Detective Kira's asking
15 questions you're present?

16 A Yes.

17 Q Have you received any training on varying
18 interrogation techniques?

19 A Yes.

20 Q Do those -- can you describe some of those trainings
21 or interrogation techniques to the jury.

22 A I've taken numerous training classes related to
23 interrogation, and most of those classes for in excess of
24 30 hours. During those classes we learn different techniques
25 we use to elicit truthful information from the subject being

1 interviewed.

2 Q Do those interrogation techniques include saying
3 things that you don't necessarily believe to be true?

4 A Absolutely.

5 Q Do those interrogation techniques sometimes include
6 suggesting that a sex assault victim initiated the sexual
7 contact?

8 A Yes.

9 Q Did we -- did you or Detective Kira use that
10 interrogation technique in your interview with the defendant?

11 A Yes.

12 Q Did you also indicate -- well, does that also
13 include suggesting the permanency or substantial nature of
14 injuries to the victim's life?

15 A Yes.

16 Q Okay. For example, did you say that there's
17 potential for permanent damage to the victim's anal region in
18 this case?

19 A Yes, I did say that.

20 Q Is that an interrogation technique?

21 A Yes, it is.

22 Q Do you recall asking the defendant early on in your
23 interrogation or interview about his relationship generally
24 with Heather?

25 A Yes, I did.'

1 Q Do you recall what his response was?

2 A To the effect that they had normal relations, but

3 they had some disagreements.

4 Q Do you recall him specifically mentioning her

5 getting into his drawers?

6 A Yes.

7 Q And that was very early on in the interview;

8 correct?

9 A That was at the very beginning of the interview.

10 Q Had you given him any details about the

11 investigation at that point?

12 A No, I did not.

13 Q Had you given him any details --

14 MS. McNEILL: And, Your Honor, we've heard the tape.

15 I think it speaks for itself. I don't know that he needs

16 to --

17 THE COURT: Well, I don't do speaking objections.

18 So what's your objection?

19 MS. McNEILL: My objection is that audio speaks for

20 itself. That's the best evidence of the --

21 THE COURT: I understand. I'm going to overrule it,

22 though.

23 Go ahead.

24 MR. BURTON: Thank you, Your Honor.

25 //

1 BY MR. BURTON:

2 Q And I'm not going to go line by line. I just want
3 to talk about just a few parts, okay.

4 A Okay.

5 Q Do you at some point tell the defendant that you're
6 going to get a search warrant for the house?

7 A Yes.

8 Q What does the defendant mention at that point, as
9 soon as you bring up search warrant?

10 A He mentioned the towel, to my best recollection.

11 Q Do you recall where he said you would find that
12 towel?

13 A He said it's going to be either second or third
14 drawer to the left, if I remember right.

15 Q Do you recall him saying how often he washed that
16 towel?

17 A I don't remember exact words he used, but he did
18 mention through the interview that he washed it I believe at
19 least once.

20 Q Do you recall him saying he washed it every so
21 often?

22 A I don't remember that.

23 MS. McNEILL: Objection. Leading.

24 BY MR. BURTON:

25 Q Would it refresh your recollection --

1 THE COURT: Sustained. And, Counsel, I have to
2 agree. We -- I mean, they just spent about two hours
3 listening to this tape.

4 MR. BURTON: Fair enough, Your Honor.

5 BY MR. BURTON:

6 Q Do you recall asking the defendant if there was any
7 reason that Heather's DNA would be on that towel?

8 A Yes, I did ask him.

9 Q Do you recall his response?

10 A He responded something to the effect it shouldn't be
11 unless she messed with it.

12 Q Do you recall that actually when you asked him if
13 there's any reason Heather's DNA would be on that towel --

14 MS. McNEILL: Objection. Leading.

15 BY MR. BURTON:

16 Q -- he said there shouldn't be?

17 THE COURT: Okay. I'm going to have -- rephrase
18 that, Counsel. I'm sustaining it.

19 MR. BURTON: I understand, Your Honor. I would just
20 ask that I be able to finish my question before an objection
21 is noted.

22 THE COURT: Well, I understand. She -- but it is
23 leading.

24 BY MR. BURTON:

25 Q Would it refresh your recollection to look at the

1 transcript?

2 A Yes.

3 MS. McNEILL: I'm going to lodge an objection at
4 this time that this all cumulative at this point, because we
5 have just heard the audio.

6 THE COURT: Okay. And I understand.

7 MR. BURTON: Page 26, 27, Counsel.

8 BY MR. BURTON:

9 Q Start here, 26, and through 27.

10 THE COURT: Now, the question is does it refresh
11 your recollection.

12 MR. BURTON: Correct.

13 THE COURT: Okay.

14 BY MR. BURTON:

15 Q Read it to yourself.

16 Does that refresh your recollection about what he
17 said when you first asked him whether there was any reason
18 that Heather's DNA was going to be on that towel?

19 A Yes, sir.

20 Q What did he say?

21 A It shouldn't.

22 Q Then you asked him whether there was any reason that
23 his DNA would be on Heather; correct?

24 A Yes.

25 Q And his response was, if she messed with that towel?

1 A Yes.

2 Q Did the defendant indicate multiple times that the
3 things that he was telling you about, the inappropriate
4 contact that he had with Heather Haney was never discussed
5 with her mother, Shayleen Coon?

6 A That's correct.

7 MR. BURTON: Brief indulgence, Your Honor.

8 Pass the witness, Your Honor.

9 THE COURT: Okay. And, Ms. McNeill, I assume you
10 can't get done in one minute.

11 MS. MCNEILL: No, Your Honor.

12 THE COURT: Okay. All right. Ladies and gentlemen,
13 we're going to go ahead and end for the day, and we're going
14 to resume at 8:30 tomorrow morning.

15 So during this period of time you are all admonished
16 not to talk or converse among yourselves or with anyone else
17 on any subject related to the trial, or read, watch, or listen
18 to any report of or commentary on the trial by any medium of
19 information, including, without limitation, newspapers,
20 television, the Internet, and radio, or form or express any
21 opinion on any subject related to the trial until the case is
22 finally submitted to you.

23 Have a good evening. We'll see you back here at
24 8:30.

25 (Jury recessed at 4:58 p.m.)

1 THE COURT: Okay. Let the record reflect that the
2 jury has left the courtroom.

3 And, sir, you may leave now, and we need you back
4 here at 8:30.

5 MS. JOBE: Well, Your Honor, I wanted to talk to you
6 about that. He has a scheduling issue due to circumstances
7 beyond his control with dropping his child off at school
8 tomorrow, and so the State, because we're kind of at a clean
9 break in Dicaro's testimony, may I bring the DNA witness in at
10 8:30 so he has some time to get his child to school?

11 THE COURT: Any problem?

12 MS. McNEILL: I kind of do, Your Honor. I think
13 that it's -- it's fine. I'll submit it to the Court. I
14 understand childcare issues. I don't want to be the person
15 that does that [inaudible].

16 THE COURT: Okay. Well, we'll go ahead and --
17 When can you get here, sir?

18 THE WITNESS: I have to drop him off at 9:00, and I
19 can be here probably by 9:30.

20 THE COURT: Okay.

21 THE WITNESS: They're usually with my mother. She
22 got to be [inaudible] the last couple of days and she just got
23 out of the hospital, so she can't help me out.

24 THE COURT: Do we have witnesses that would last
25 until 9:30?

1 MS. JOBE: I believe the DNA witness will take
2 approximately that long, if not a little longer.

3 THE COURT: Okay. All right. I appreciate the
4 accommodation. Are we -- are we going to --

5 Sir, you may go ahead and step down. Just be here
6 as soon as you can, okay.

7 THE WITNESS: Yes, ma'am. Thank you.

8 THE COURT: Okay. Now, with that said, I heard
9 childcare issues, but you guys are so soft spoken I thought it
10 was yours.

11 MS. JOBE: No, no. They're -- it's his.

12 THE COURT: Okay. Are you going to be -- the audio
13 has been admitted into evidence. Are we going to also be
14 adding the transcript, or no?

15 MR. BURTON: No, Your Honor.

16 MS. JOBE: No, Your Honor.

17 THE COURT: Okay. That's all I need to know.

18 All right. I guess I'll see you at 8:30 tomorrow.

19 MS. JOBE: Okay. Thank you, Your Honor.

20 (Court recessed at 5:01 p.m., until the following day,

21 Friday, March 11, 2016, at 8:30 a.m.)

22 * * * * *

23

24

25

INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
-------------	---------------	--------------	-----------------	----------------

STATE'S WITNESSES

Meagan Jessen	3			
Nicholas Madsen	15	29	34	35
Jessie Sams	42	71	74	
Igor Dicaro	75			

* * *

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
--------------------	-----------------

STATE'S EXHIBIT NO.

1	66
2	61
3	62
4	94
5	70
6	84
45	64

* * *

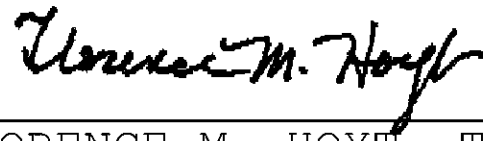
CERTIFICATION

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.

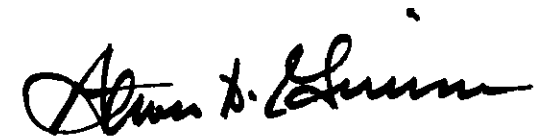
FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

8/2/16

DATE



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA

Plaintiff

vs.

JUSTIN O. LANGFORD

Defendant

.

.
. .
. .
. .
. .
. .
. .
. .
. .

CASE NO. C-296556

DEPT. NO. XXII

**Transcript of
Proceedings**

BEFORE THE HONORABLE SUSAN JOHNSON, DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

FRIDAY, MARCH 11, 2016

APPEARANCES:

FOR THE STATE:

CHRISTOPHER BURTON
MICHELLE JOBE
Deputy District Attorneys

FOR THE DEFENDANT:

MONIQUE McNEILL, ESQ.

COURT RECORDER:

NORMA RAMIREZ
District Court

TRANSCRIPTION BY:

LIZ GARCIA
Henderson, Nevada 89002

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

1 LAS VEGAS, NEVADA, FRIDAY, MARCH 11, 2016, 8:33 A.M.

2 (Court was called to order)

3 (Jury is not present)

4 THE COURT: Good morning, counsel. Please be seated.

5 And, Ms. Jobe, I understand that the witness that we
6 had on the stand was having some childcare issues this morning
7 so you were going to be putting on a different witness.

8 MS. JOBE: Yes, Your Honor.

9 THE COURT: Okay. All right, why don't we -- are
10 we ready to bring the jury in?

11 MS. JOBE: Yes, Your Honor.

12 THE COURT: I'll explain that to them.

13 MS. JOBE: And, Your Honor, it was because of a
14 family -- a medical emergency in his family that he has the
15 childcare issues.

16 THE COURT: Okay. I'm just going to tell them it
17 was a childcare issue.

18 MS. JOBE: We'll need gloves with this witness.

19 THE COURT: Pardon me?

20 MS. JOBE: We'll need gloves with this witness.

21 THE COURT: Okay.

22 (Colloquy between the clerk and counsel)

23 (Jury is present)

24 THE COURT: Will counsel please stipulate to the
25 presence of the jury?

1 MS. JOBE: Yes, Your Honor.

2 MS. McNEILL: Yes, Your Honor.

3 THE COURT: Okay. Good morning, ladies and
4 gentlemen. We've got a full day today. As I had indicated,
5 we are going to be 8:30 and then of course all day. There
6 will be a couple of breaks, probably about 10:15 or so this
7 morning and then in the afternoon. First of all, I'd like to
8 introduce the court clerk, Louisa Garcia. Louisa is taking
9 Melissa's place. You know, as you guys can appreciate, we may
10 be here eight hours a day, but the court clerks, they have to
11 get minutes done and things of that nature, so they have flex
12 days on every other Friday. So this is Melissa's flex day,
13 so Louisa is helping us out here.

14 Also, the witness that was on the stand yesterday
15 had like a medical childcare issue this morning. He will be
16 here at about 9:30; is that about right?

17 MS. JOBE: Yes, Your Honor.

18 THE COURT: Okay. But in the interim we're going
19 to be -- the State is going to be putting on another witness.
20 And thank you, Ms. McNeill for allowing that accommodation.

21 MS. McNEILL: Yes, Your Honor.

22 THE COURT: So they're going to be putting on
23 another witness in that interim, so we're going to be using
24 that time.

25 Okay. Counsel.

1 MS. JOBE: Your Honor, the State calls Tiffany
2 Adams.

3 TIFFANY ADAMS, STATE'S WITNESS, SWORN

4 THE CLERK: Can you please state and spell your
5 full name?

6 THE WITNESS: Tiffany Adams. First name T-I-F-F--

7 THE COURT: Could I get you by a microphone? Why
8 don't you go ahead and have a seat. Okay, go ahead.

9 THE WITNESS: Tiffany Adams. First name T-I-F-F--
10 A-N-Y. Last name A-D-A-M-S.

11 THE COURT: Okay.

12 MS. JOBE: And, Your Honor, as a preliminary matter,
13 I believe Ms. Adams has her report that she's prepared for
14 this case. I'd ask permission to have her have the report
15 out, flip it over. In case she needs to refer to it, we can
16 make a record.

17 MS. McNEILL: I don't have a problem with that,
18 Your Honor.

19 THE COURT: Okay. Go ahead.

20 MS. JOBE: Thank you.

21 DIRECT EXAMINATION

22 BY MS. JOBE:

23 Q Good morning, Ms. Adams. How are you employed?

24 A I am a forensic scientist specializing in DNA, which
25 is often referred to as a DNA Analyst.

1 Q And where do you work?

2 A I'm currently employed by the Las Vegas Metropolitan
3 Police Department Forensic Laboratory.

4 Q And how long have you been employed there?

5 A Since 2007.

6 Q Is that lab nationally accredited?

7 A Yes.

8 Q And is there a quality assurance standard with DNA
9 testing for the lab?

10 A Yes.

11 Q Does the DNA detail within the Metro lab have a
12 case review process?

13 A Yes.

14 Q And what is that process?

15 A Do you mean after the testing or for submission of
16 a request for examination?

17 Q After the testing. I'm sorry.

18 A After we complete our testing we submit the case for
19 review. Two additional scientists independently review the
20 documentation in the case file to insure that everyone agrees
21 that the documentation supports the conclusions that are
22 reported.

23 Q All right. And there's also an administrative
24 review, is that correct?

25 A Out of the two reviews one is considered technical

1 and one is administrative.

2 Q All right. Were you employed in the DNA field
3 prior to working for the Las Vegas Metropolitan Police
4 Department?

5 A Yes.

6 Q And where were you employed?

7 A I previously was employed from 2003 to 2007 at one
8 of the world's largest private forensic DNA testing labs.
9 We did the outsource testing for dozens of local, state and
10 federal law enforcement agencies, as well as mass disaster and
11 humanitarian identification, including the World Trade Center
12 terrorist attacks, as well as post-conviction DNA testing for
13 the National Innocence Project.

14 Q And that was DNA testing that you did at that lab?

15 A That is correct.

16 Q All right. What does a DNA Analyst do?

17 A We examine items of evidence for the presence of
18 biological material and then take samples of that biological
19 material. Sometimes we perform additional tests that determine
20 whether that material could be blood or semen. We develop
21 profiles from those samples, make comparisons when possible,
22 and write reports based upon our findings. We also review
23 each other's casework, again to insure that the documentation
24 supports the resulted -- excuse me, the reported results and
25 the comparison conclusions.

1 Q What is your training and education to be a DNA
2 Analyst?

3 A I have a Bachelor of Science degree in Genetic
4 Engineering, which includes course work in biochemistry,
5 genetics, molecular biology and statistics as required to
6 work in an accredited laboratory by the FBI Quality Assurance
7 Standards. For both my current and my previous employer I
8 completed extensive documented training programs encompassing
9 hundreds of samples that mimic those that we typically
10 encounter on a day-to-day basis.

11 At the completion of these programs I demonstrated
12 my knowledge, skill and ability to perform the testing with
13 competency exams and then I performed work under the
14 supervision of a more senior analyst before graduating to a
15 status level in which I could work independently. And I also
16 attend training every year to make sure I stay up to date,
17 and I've presented my own work at the annual meetings at the
18 American Chemical Society, the American Academy of Forensic
19 Sciences, as well as the International Symposium for Human
20 Identification.

21 Q As far as your background is concerned, you've heard
22 of competency testing; is that accurate?

23 A We have a competency test at the completion of our
24 training programs or whenever a new technology comes on line
25 before we are able to perform that in case work.

1 Q And are there any tests that you have to take on
2 any regular basis to demonstrate that you have maintained
3 your skill and ability to test DNA?

4 A We also take external proficiency tests at least
5 twice a year in order to insure not only the performance of
6 our analysts but also our procedures and our resources within
7 the laboratory.

8 Q During the course of your getting into the DNA field
9 up until now, have you ever failed a competency test?

10 A No.

11 Q Ever failed a proficiency test?

12 A No.

13 Q In your career, including both from 2003 until now,
14 approximately how many DNA analyses or comparisons have you
15 performed?

16 A I've worked almost two thousand requests and I've
17 processed tens of thousands of samples.

18 Q Have you previously testified about your work as a
19 DNA Analyst, including the processing or developing of a DNA
20 profile, the comparisons and the results of your work?

21 A Yes.

22 Q Approximately how many times?

23 A Ten.

24 Q In what jurisdiction?

25 A I've testified in Nevada and in Florida.

1 Q What is DNA?

2 A Our bodies are composed of millions of tiny
3 microscopic cells that operate like factories. They
4 manufacture raw materials and then assemble all of these
5 materials into the different structures and organs that make
6 up our bodies. DNA is the chemical blueprint that contains
7 all of the instructions for building and operating each of
8 these tiny cellular factories. It's the biological plan that
9 allows all the different specialized parts of our bodies to
10 work together as one complete system.

11 Q Is DNA unique to individuals?

12 A It is unique to an individual, with the exception
13 of identical siblings such as identical twins, identical
14 triplets, etcetera.

15 Q And why is DNA useful for identification?

16 A There's three characteristics that make it useful.
17 We already discussed that it's unique within an individual
18 with the exception of identical siblings. In other words,
19 nobody has the same DNA as me because I don't have any
20 identical siblings. Second, DNA is found inside nearly all
21 of the cells of your body, which means there's many different
22 ways or opportunities that you can transfer your DNA to an
23 object or leave it behind at a location that you visited. And
24 third, even though our bodies are composed of many different
25 types of specialized cells, the DNA that's inside them is the

1 same regardless of their particular duty or function. This
2 means that the DNA that comes from my hair, my skin, my sweat,
3 my saliva, my blood, my tears, all of the biological material
4 that originates from my body has the same DNA regardless of
5 the particular cell type.

6 Q You referred to some I guess places or features that
7 would contain DNA. Would semen also contain DNA?

8 A Yes.

9 Q And if I were to -- you've seen I've been touching
10 these papers and touching this table, would I be leaving DNA
11 behind?

12 A You can.

13 Q And would that necessarily be detectable from
14 touching things?

15 A It depends. Some people shed more DNA than other
16 people. What you're referring to is commonly called touch
17 DNA. Sometimes in addition to the contact of your skin,
18 people have gross habits like scratching their skin, wiping
19 sweat away, picking their noses. All of those things are
20 going to deposit more DNA on their hands so that when they
21 touch things they might leave more DNA than another person
22 would simply from the skin contact itself.

23 Q All right. And based on -- you were talking about
24 the uniqueness of a DNA, how does that allow you to develop
25 DNA profiles for your work as a DNA Analyst?

1 A Because there's many opportunities or ways to
2 transfer your DNA and the DNA is the same regardless of the
3 cell type, we're able to develop profiles from biological
4 evidence that's left behind at the crime scene and then
5 compare that to reference samples that we obtain by swabbing
6 inside someone's cheek. It allows us to help answer the
7 questions who and where, and if we also performed some
8 identification of blood or semen, sometimes we can answer
9 what. But it's also important to keep in mind that DNA can't
10 answer when, why or how by itself.

11 Q What type of DNA testing do you perform?

12 A The type of testing performed in our lab is the most
13 common type of forensic identity testing. It's based upon a
14 discovery within humans. There are very short sequences of
15 DNA that are repeated multiple times right next to each other
16 at very specific locations in the entire blueprint. And the
17 number of repeats that are found at each of these locations
18 is a different combination from person to person, sort of like
19 a barcode. These are known as short tandem repeats and it's
20 abbreviated as STRs. An STR DNA profile is simply the summary
21 of the number of repeats that we observe when we test across
22 these locations.

23 Q And how do you develop this barcode for individuals
24 or the STR, short tandem repeats as you said for the DNA
25 profile?

1 A There's five basic steps in the processing. First
2 we have to collect the sample. Then we use chemicals in
3 the lab in order to break open the cells that are in the
4 biological sample to extract the DNA and separate it from the
5 other materials that are in the sample. We then determine
6 how much DNA we extracted and some basic assessments of the
7 quality of that extract so we know how to best proceed to get
8 as much identification detail as possible from that sample.
9 We then use a chemical xeroxing process which makes millions
10 of copies of the DNA, but only at those very specific
11 locations in the blueprint that we're testing. As it's doing
12 this, it incorporates a florescent tag into each of the copies
13 that it produces. We then use specialized instruments and
14 software that can sort and count and organize these copies
15 using their florescent tags, producing a picture that shows us
16 what the repeats look like at each of these locations. We
17 interpret that picture, decide which locations are suitable
18 for comparison, and then we perform the comparisons.

19 Q You talked about specific locations. Are there
20 a certain number of locations that you're looking at or a
21 limitation of number of locations you can look at when you're
22 doing a DNA profile?

23 A The kit that we are using currently looks at 15 of
24 these different STR locations simultaneously, as well as a
25 16th location which determines whether the profile is

1 considered to be genetically male or female.

2 Q Now, are you always able to develop DNA profiles
3 from evidence in the case?

4 A No. It's not unusual or uncommon to be unable to
5 develop a profile or to develop a profile that's incomplete
6 or too complex for interpretation.

7 Q And why would that be? Or actually the better
8 question is probably what types of things affect if DNA is
9 left behind or the quality of DNA you can extract?

10 A There's three major factors that can affect our
11 ability to process DNA, and those are quantity, quality and
12 the number of contributors to the sample.

13 Q And as far as where the sample originates, it sounds
14 like when you do your testing -- is that a controlled
15 environment where you test?

16 A Once the DNA has been collected from the crime
17 scene, it is protected and preserved. But unfortunately until
18 it is collected we are at the mercy of whatever conditions
19 it's withstanding from the time that it was deposited until it
20 is collected from the scene.

21 Q So, for instance, if you were testing a piece of
22 fabric, would the ability to preserve or have DNA on a fabric
23 be affected by whether it was washed or not washed or how long
24 it had remained unwashed?

25 A Yes.

1 Q So are profiles useless or useful if they're not
2 perfect?

3 A Even though we aren't always able to develop a
4 complete profile, sometimes we can still perform meaningful
5 comparisons with the information that we were able to obtain.
6 Forensic DNA analysts are accustomed to encountering
7 challenging samples every day, so when we are interpreting the
8 profile we first determine which locations we are confident
9 are reproducible results, and then we only use those for the
10 comparisons. It's not to say that the additional information
11 isn't accurate, but if we did use that for a comparison there
12 is the chance that the conclusions would change if the test
13 were repeated. So we only focus on the locations that are
14 reproducible so that if the test were repeated we are
15 confident that we would reach the same comparison conclusion.

16 Q So does there have to be a quality or quantity of
17 DNA in order for you to make that comparison?

18 A We need to obtain at least 3 out of those 16
19 locations in order to perform a comparison.

20 Q And that's based on the STR kit you were talking
21 about, correct?

22 A Yes.

23 Q And as far as -- does it take a certain amount of
24 DNA to even be able to make a test or to realize there is
25 enough DNA to even try to make a profile?

1 A The testing that we perform is very sensitive thanks
2 to that chemical xeroxing process, but there are still
3 limitations to what we can do. So we do require a minimum
4 amount of DNA in order to perform any comparisons.

5 Q Okay. And then what are the -- what makes a
6 forensic DNA profile incomplete or complex?

7 A Quality, quantity and the number of contributors.

8 Q What does it mean when a profile is -- well, there's
9 a difference between a full profile and a partial; is that
10 fair?

11 A That's correct.

12 Q And what's the difference?

13 A A full profile means we obtain DNA at every location
14 that we've tested and all of it is above that threshold in
15 which we're confident that it's reproducible.

16 Q So even if you have -- you know, you're looking for
17 the 16 markers, correct?

18 A Correct.

19 Q And if you have -- is there -- you referred to a
20 threshold, so when you have a marker does it have to be above
21 a certain threshold in order to I guess count as far as your
22 DNA comparison is concerned?

23 A Yes. It has to be above our confidence threshold of
24 being reproducible. Once the data is above that level at --
25 it's done on a location by location basis, that's the data

1 that we use for a comparison. So as long as we have 3
2 locations out of the 16 total that are reproducible, we have
3 enough information to perform the comparison. Obviously the
4 more locations that you obtain, the more informative that
5 profile is and the more powerful the comparison will be.

6 Q Let's talk about quantity necessary to do a DNA
7 comparison or DNA testing. What affects quantity?

8 A Depending on the scenario, there might not be very
9 much biological material that is transferred. And we also
10 need to be able to find that material which might be
11 invisible, washed away, diluted out over a large area, or it
12 might be partially obstructed so that we can't access it to
13 collect it. Interpreting a DNA profile that has low levels of
14 DNA is similar to listening to a telephone conversation at low
15 volume. Depending how low the volume is, you might be able
16 to pick out pieces of that conversation or even understand
17 the entire conversation, but if it's too quiet you would lose
18 pieces of the conversation and you wouldn't be able to
19 understand the conversation at all.

20 Q Now, you referred to quality of DNA. What affects
21 the quality of the DNA?

22 A After the DNA leaves your body it breaks down over
23 time. This is known as degradation. There are factors that
24 can speed up this process like exposure to UV rays, bacteria,
25 moisture, excessive heat, things like that. In addition,

1 there are also substances or factors that can interfere with
2 our testing process, blocking us from being able to extract
3 the DNA, interfering with our chemical xeroxing process, or
4 sometimes even interfering with the instrumentation that
5 detects these copies, and that's referred to as inhibition.
6 When you're trying to interpret a profile that's suffering
7 from inhibition and/or degradation, it's kind of like
8 listening to a telephone conversation where the signal is
9 cutting in and out. Depending how many times that signal
10 cuts out or when it cuts out, you may or may not be able
11 to understand the conversation or even pieces of the
12 conversation.

13 Q As a DNA Analyst, you've talked about evaluating
14 evidence, and when you receive evidence is there something
15 called a mixture that affects how many individuals may have
16 contributed to that DNA mixture?

17 A Yes.

18 Q Tell me about that.

19 A When we interact with objects and transfer our DNA,
20 there are many opportunities for us to do that depending on
21 how we interact with them. Certain objects might have more
22 than one contributor to them like door handles. If there are
23 too many contributors to the profile it's too complex for us
24 to interpret. If the contributors aren't providing DNA in
25 proportions that allow us to detect them from each other,

1 that also may make it difficult for us to interpret who is a
2 contributor to the mixture.

3 Q Okay. You referred to if multiple people are
4 contributing to the mixture DNA in proportions. Can you
5 explain that further?

6 A Yes. If you have a bucket of black paint and you
7 add a drop of yellow paint to that, yes, there is in fact
8 yellow paint in that bucket, but when you look you can't see
9 it. The black paint simply overwhelms the fact that there
10 is a drop of yellow paint in there. Only when you add enough
11 yellow paint into the bucket to change the color can you
12 realize that there's something other than black paint in
13 there. It's very similar with DNA. You can have a contributor
14 mask the contribution of other people if they contributed a
15 lot more DNA than the other people.

16 Q And correct me if I'm wrong, but it sounds like
17 if you have a mixture profile, if you have multiple people
18 contributing there has to be some quantity contributed by both
19 if you're going to be able to detect both -- two, three or
20 four individuals in that mixture?

21 A Yes. The proportions matter.

22 Q In your experience would simple touch DNA alone be
23 enough in that DNA proportion for a mixture to draw out
24 multiple profiles?

25 A Trace DNA by itself is already difficult to obtain

1 enough information from the locations that we're testing in
2 the presence of another contributor who is contributing a
3 significant -- significantly larger amount of DNA. It's not
4 usually possible to detect a trace contributor.

5 Q And what is a trace contributor or trace DNA?

6 A We consider trace when we are looking at the
7 profile and they're not at a level that we're confident is
8 reproducible.

9 Q Does the Las Vegas Metropolitan Police Department
10 Lab conduct trace DNA examination?

11 A We test -- all the samples that we collect during
12 our screening process and extract DNA, we move them all
13 forward to profiles. We just don't always obtain profiles
14 from those samples that are interpretable. Some labs choose
15 to stop testing at one of the earlier phases if they don't see
16 that they have enough DNA, whereas we keep going.

17 Q Now, you've talked about profiles and developing
18 profiles and I believe you said as a DNA Analyst you compare
19 profiles. Do you have a known profile that you're comparing
20 evidence to?

21 A Yes.

22 Q Okay. How do you get a known profile?

23 A We -- someone collects a swab inside an individual's
24 mouth. We use the same testing procedures to develop a
25 profile from that sample as we would on the evidence sample.

1 Those two profiles that have been interpreted can then be
2 compared to each other. We also compare evidence profiles
3 to each other. All of the profiles get compared.

4 Q All right. And you talked about a swab. Is that
5 a buccal swab in someone's mouth?

6 A Yes.

7 Q All right. The procedure for the swab, fair to say
8 is it to make sure there isn't a mixture profile, to make sure
9 it's just one specific individual?

10 A Yes. It's collected under controlled conditions.

11 Q All right. And when you say or make a conclusion
12 that profiles are consistent with each other in your
13 comparison process, what does that mean?

14 A We are looking to see if the profiles overlap each
15 other in their barcodes. If the barcodes overlap, they could
16 have originated from the same biological source. If the
17 profiles do not overlap each other, then they could not have
18 originated from the same source.

19 Q And when you say -- so there's the overlapping, so
20 consistent -- would that be comparing a known profile with an
21 unknown to see if they match or how does that work?

22 A We compare all of the profiles to each other. So
23 we don't report specifically that we compared the evidence
24 profiles to each other, but what you're familiar with seeing
25 is when we compare the evidence or unknown profiles to the

1 reference samples or known profiles.

2 Q All right. And when you do this comparison, if they
3 are consistent then does that mean they come from the same
4 person or the same individual?

5 A If they overlap each other, then they could have
6 originated from the same biological material or the same
7 person.

8 Q And is that what is meant when the finding is that
9 they are consistent with each other?

10 A We use a statistical calculation in order to provide
11 support or significance of that consistency, but there has
12 to be a certain level that is reached in the statistical
13 calculation before we assume the identity of the sample's
14 origination.

15 Q All right. What is a -- when you develop a profile,
16 what is a full profile?

17 A Full profile means we have complete information at
18 all of the locations above our confidence threshold.

19 Q And that's the 15 plus the 16th for gender?

20 A That's correct.

21 Q All right. What is a partial profile?

22 A A partial profile is incomplete at one or more of
23 these locations.

24 Q And we talked about mixtures. When you do a mixture
25 comparison is there a major or a minor contributor and what

1 does that mean?

2 A We already talked about the proportion of DNA
3 contribution and how that affects our ability to interpret the
4 profile. Going back to the telephone conversation analogy,
5 when you're listening to a group conversation on speaker
6 phone, sometimes there is one speaker that dominates the
7 conversation and the other speakers participate very little.
8 You understand the conversation, but only from the point of
9 view of that one leader speaker, and that would be a major
10 profile in the mixture. Sometimes each person takes their
11 turn speaking in the conversation, so you not only understand
12 the conversation, you can actually isolate each person's
13 contribution to that conversation separately from one another.
14 In that instance that's a mixture that we're able to pull out
15 the individual profiles of each contributor to that mixture.
16 There's also group conversations where everyone speaks over
17 the top of each other at the same time. In that case we are
18 unable to identify the contribution of the individual speakers
19 and sometimes we can't even understand the conversation at
20 all.

21 Q So, correct me if I'm wrong. If you have a full
22 profile then you have all 16, correct?

23 A Correct.

24 Q And a partial profile has, fair to say, less than
25 16 that you can see?

1 A Correct.

2 Q And is it possible to still make conclusions about
3 that partial profile, even though you don't have all 16?

4 A Yes. We can perform comparisons as long as we have
5 at least three locations, but the more locations that you have
6 the more powerful that comparison will be because the profile
7 is more informative.

8 Q And fair to say in DNA comparison and conclusions
9 there are different terms that are used to describe the
10 strength of the findings?

11 A Yes.

12 Q And what's the difference between -- what does
13 consistent with mean if that's like a mixture profile?

14 A I don't believe that we have a situation very often
15 where we say a mixture is consistent with. Usually a mixture,
16 we can either include or exclude potential references as being
17 contributors or sometimes we're able to interpret that
18 mixture, identify the source profiles and compare those to the
19 individuals. In that case that would be a major or a minor
20 profile being compared rather than the mixture as a whole
21 looking for potential contributors.

22 Q And you said people or profiles can sometimes be
23 included or excluded. Is there also something in-between,
24 like someone cannot be excluded?

25 A Cannot be excluded means that using the information

1 that I see above the confidence threshold, all of the
2 information that I'm comparing is found in the mixture, so I
3 cannot exclude them as being a potential source of that DNA.

4 Q What does identity assumed mean?

5 A For the sake of simplicity, some labs use a
6 threshold in which their statistical calculation reaches, at
7 which point they conclude that the overlapping profiles have
8 resulted from originating from the same biological donor or
9 person.

10 Q All right. And is there generally -- what is that
11 threshold?

12 A At the time that this report was written for our
13 laboratory, that statistic was any time it was rarer than one
14 in seven hundred billion.

15 Q Seven hundred billion seems like a large number.
16 Do you have -- how do you quantify that or put it in layman's
17 terms?

18 A A probability, which is the statistic that we're
19 calculating, is simply a fraction. And when we learned
20 fractions in elementary school, they often use the analogy of
21 a pizza that's cut into slices. This would be a pizza that's
22 cut into seven hundred billion slices, which is still really
23 difficult for us to envision. So I usually try to use the
24 concept of time. A probability that's rarer than one in seven
25 hundred billion is the time equivalency of one second in more

1 than twenty thousand years.

2 Q Turning your attention to August 11th, 2015, did
3 you generate a report pertaining to a comparison of evidence
4 with known DNA samples with evidence that had been collected
5 under Las Vegas Metropolitan Police Department Event Number
6 140121-1194?

7 A Yes.

8 Q Who requested the analysis?

9 A I believe it was Detective Dicaro.

10 Q And when you get the request, how do you access the
11 evidence you're going to be testing?

12 A All of the evidence is secured in an off-site
13 facility. We use a database and computer program in order to
14 request that that evidence be brought to the lab for analysis.
15 And that's what I did to have the evidence delivered to the
16 lab.

17 Q And is there protocol and procedures to make sure
18 that evidence is secure from the time it leaves the vault
19 until it gets to the lab and that it's secure while it's in
20 the lab?

21 A I'm not familiar with the exact procedures that's
22 followed from the lab -- excuse me, from the vault to the lab.
23 But once I take custody of it, I have to put my password into
24 the software program, as well as the person releasing it to me
25 has to put their password. When I take the evidence I move it

1 to the DNA lab, which requires a number code to get inside the
2 door. Within there there is a DNA vault which requires an
3 electronic access that you have to swipe to get inside. And
4 then inside the DNA vault in the DNA Lab there are lockers and
5 I have the key for my evidence locker. So while the evidence
6 is in my custody, it is locked in my locker inside the DNA
7 vault inside the DNA lab.

8 Q And when you're doing the work on this specific
9 case, fair to say you tested a number of items, correct?

10 A Yes.

11 Q And do you have all the items out in the open at
12 the same time or what's the process?

13 A No. When I am ready to start examining an item,
14 there's only one package that is opened at a time and only
15 one item is handled at a time. Before opening the package
16 I document with either notes or with photos what the package
17 looks like, how it's labeled, and the condition of the seals
18 that are on the package. The seals must be intact or I will
19 not open the package for analysis.

20 Q In a case where you're requested to do the DNA
21 analysis -- well, specifically in this case did you have known
22 samples?

23 A I did have known samples.

24 Q And how many known samples did you have?

25 A Two.

1 Q And do you recall who the known samples were for?
2 A Justin Langford and Heather Haney.
3 Q Where did you obtain these known samples?
4 A They were stored at the off-site evidence vault,
5 so I obtained them the same way that I obtained the evidence.
6 Q And were those buccal swabs?
7 A Yes.
8 MS. JOBE: May I approach, Your Honor --
9 THE COURT: Sure.
10 MS. JOBE: -- to retrieve 4 and 5?
11 BY MS. JOBE:
12 Q All right. Showing you what's been admitted as
13 State's Exhibit 5, do you recognize that?
14 A Yes.
15 Q And what do you recognize that to be?
16 A It is the buccal swab or the reference standard that
17 is collected from Justin Langford.
18 Q And how do you know what it is?
19 A It's marked on the package who it was collected
20 from. It also has my notations that I made during the
21 examination of the item and my signature and P number is on
22 the chain of custody, as well as my initials and date on the
23 seal that I placed on it after completing my analysis.
24 Q Okay. And it looks like there are two seals on
25 there, a red one and a blue one. Fair?

1 A Yes.

2 Q Okay. Who would have put the red one on?

3 A The red is sealed by the person that collected the
4 buccal swab.

5 Q All right. And then you seal the blue one. Is that
6 after you work with the evidence and are ready to return it?

7 A Yes.

8 Q All right. And then can you look inside the
9 envelope just to confirm what's in there?

10 A Inside there is a swab box that also contains my
11 markings from my examination.

12 Q And when you do your analysis, do you retrieve the
13 swab? I'm not asking you to pull out the swab, but do you
14 retrieve the swab from that box?

15 A Yes.

16 Q And you use that in your -- I guess the process of
17 preparing the DNA profile?

18 A Yes.

19 Q Do you develop the known profile first?

20 A No.

21 MS. JOBE: Would you please turn on the ELMO? Thank
22 you.

23 BY MS. JOBE:

24 Q All right. And you referred to seeing your
25 notations. Are those the ones in the top corner right there?

1 A Yes.

2 Q All right. And it looks like you have your own
3 lab numbers and item numbers associated with this buccal swab,
4 is that correct?

5 A Yes.

6 Q And then you also indicated that you put your seal.
7 Is that your seal?

8 A Yes.

9 Q And how do you know that's your seal?

10 A It has my initials and P number, which is T10072A,
11 and it's written across that blue seal.

12 Q All right. And it looks like there's also a date
13 on there?

14 A Yes.

15 Q And what's the date for?

16 A That is the date that I sealed it.

17 Q Other than being open on the side, which we did in
18 court yesterday, does this look to be in substantially the
19 same condition as when you sealed it up and returned it to the
20 vault?

21 A Yes.

22 Q Okay. Now showing you State's 4. Do you recognize
23 that?

24 A Yes.

25 Q What do you recognize that to be?

1 A It is the reference standard or the buccal swab
2 from Heather Haney.

3 Q And other than being cut open, does that look
4 substantially similar or in the same condition as when you
5 sealed it and returned it to the evidence vault?

6 A Yes.

7 Q Okay. And is that based on -- well, what do you
8 see that indicates that, too?

9 A There are no broken seals, other than this one that
10 you asked me to not include. So other than that, the package
11 is intact and my seal with the blue tape is also intact and
12 my P number and initials are written across the seal.

13 Q And inside that envelope is there an item of
14 evidence you used in your DNA analysis?

15 A Yes.

16 Q Okay. And what would that be?

17 A It is a swab box.

18 Q Okay. And does that have your markings from when
19 you did the testing as well?

20 A Yes.

21 Q Now, you indicated you don't develop the known
22 profiles first, is that correct?

23 A That's correct.

24 Q So what is the process by which you examine
25 evidence?

1 A Part of our quality assurance plan is that we test
2 evidence and references in separate time and/or space. My
3 preference is that I first develop the profiles from the
4 evidence before I develop the profiles of the reference
5 standards.

6 Q And what does that -- does it -- what does it do
7 as far as the comparison is concerned?

8 A It's not any different for the comparison because
9 you decide -- you interpret the evidence profile first and
10 decide which information is reproducible before you do the
11 comparison, but this is just extra assurance that in my
12 processing I am not working with these profiles
13 simultaneously.

14 Q So would that potentially be extra insurance you
15 don't cross-contaminate the profiles you're working with?

16 A Yes.

17 Q All right. And based on the evidence with the
18 buccal from Justin Langford, were you able to develop a full
19 profile with all 16 points you've discussed?

20 A Yes.

21 Q And would that be sufficient or suitable for
22 comparison to unknown profiles?

23 A Yes.

24 Q Did you do the same with Heather Haney?

25 A Yes.

1 Q And did you in this case compare the known profiles
2 of both Justin Langford and Heather Haney against items of
3 evidence impounded against -- under Event 140121-1194?

4 A Yes.

5 Q All right. Sorry, I should not have taken off
6 this glove. All right. And there were a number of items you
7 actually tested, correct?

8 A Yes.

9 Q Would it be fair to say that you didn't test each
10 and every item, though, that had been impounded that had been
11 under the Event Number?

12 A That's correct.

13 Q And is there a reason why you wouldn't test each
14 and every item impounded?

15 A I'm only a small part of the investigation. I only
16 work with the DNA. So not all of the items are requested for
17 DNA. The investigator decides which items need to be tested.

18 Q And is there a limit on the number of items an
19 investigator can request or some policy within the lab where
20 essentially you can't test each and every single thing that's
21 been collected from a crime scene?

22 A In order to process the number of requests that the
23 lab receives, we do enforce a sample limitation policy so that
24 we can test those requests using the resources that we have
25 available.

1 Q I'm going to show you what's been admitted as
2 State's Exhibit 2. Do you recognize that? For the record,
3 it was cut open yesterday.

4 A Yes.

5 Q What do you recognize that to be?

6 A It is a bag containing a towel that I examined
7 for DNA.

8 Q And when you did the examination of the towel, did
9 you make any changes to the towel after it was impounded?

10 A Yes.

11 Q Okay. If you would please take the contents of the
12 bag out.

13 A May I please have fresh gloves?

14 Q Sure. Do you use fresh gloves for each item that
15 you touch and test?

16 A Yes. Sorry, yes.

17 Q Okay, go ahead and get some gloves. Do there appear
18 to be three items in that bag?

19 A There are three interior packages.

20 Q All right. And when you first obtained what's been
21 admitted as State's 2, were there three interior packages?

22 A No, there were not.

23 Q Okay. And did you generate the other two packages
24 that are contained in State's 2?

25 A Yes.

1 Q Okay. If you could take the item out of what's
2 been marked as 2A as the contents of 2? Can you take that
3 out, please? When you first -- Well, do you recognize that?

4 A Yes.

5 Q What do you recognize that to be?

6 A It is the towel that I examined.

7 Q And when you did your examination of the towel,
8 did you make any changes to the towel that you received?

9 A Yes.

10 Q And what changes did you make?

11 A When I was screening for biological materials, there
12 are markings that I added to this towel, and I also added a
13 tag labeling the towel so that I would be able to identify
14 it.

15 Q Okay. And there also appears to be some writing
16 on the towel?

17 A The writing is the markings that were made by me
18 and there are also markings from another analyst as well.

19 Q Okay, and we'll get to those details later, but you
20 can put that back in. And you said you added the -- what has
21 been marked as 2B and 2C, is that correct?

22 A Yes.

23 Q And what is 2B?

24 A 2B is an envelope that contains remainders of the
25 hairs that I used for DNA testing.

1 Q Okay. So when you examined the towel and did your
2 testing, did you remove any debris from the towel that was on
3 it when you opened it?

4 A Yes, I did.

5 Q Okay. And is that part -- at least in part what's
6 in 2B?

7 A I removed the debris and put it into Exhibit 2C and
8 then I examined the items in 2C and picked six hairs for DNA
9 processing and these are the remainders in 2B of those six
10 hairs that I chose.

11 Q All right. And does 2B and 2C look substantially
12 similar or in the same condition as when you finished up your
13 analysis and secured the items of evidence?

14 A Yes.

15 Q You can put all that back in the box -- or the bag,
16 please. Now, you indicated when you received the towel you
17 did some testing. What were the steps of your testing of that
18 towel?

19 A I examine the towel first visually. Do I see any
20 stains? Then I use an alternate light source which can
21 illuminate stains that are invisible under normal visible --
22 excuse me, normal visible light. It makes them glow. I also
23 performed a screening which can identify the presence of
24 semen.

25 Q When you did the light source, did that reach any

1 conclusions or direct your next steps?

2 A Yes. With the light source I did observe lots of
3 glowing areas on the towel, which indicates the presence of
4 biological fluids but there are other things that will
5 fluoresce other than biological fluids.

6 Q And is that why you do multiple steps to figure out
7 what you're looking at specifically?

8 A Yes.

9 Q Okay. So after you did the light you said you did
10 the next step to determine if it was -- I believe you said
11 indicative of semen?

12 A There is a color test that we can perform in which
13 it reacts with semen and it turns a purple color. So I was
14 looking for the presence of semen, and then based on areas
15 that reacted with that test and also that reacted with the
16 alternate light source, I chose three stains for further
17 testing.

18 Q And did you prepare a PowerPoint in this matter?

19 A Yes.

20 Q And did you provide that to the State?

21 A Yes.

22 Q I'm going to show you a printout of it before we
23 put it up.

24 MS. JOBE: And, Your Honor, for the record this was
25 previously provided to defense counsel.

1 BY MS. JOBE:

2 Q Can you look through those, please? Do you

3 recognize that?

4 A Yes.

5 Q Does that appear to be a printout of the PowerPoint

6 you prepared in this case?

7 A Yes.

8 Q And in reviewing the printout, does that fairly and

9 accurately depict the PowerPoint you created?

10 A Yes.

11 Q No additions outside of what you did, correct?

12 A Not that I can tell.

13 MS. JOBE: All right. And I'd move for the admission

14 of the printed version and permission to publish.

15 MS. McNEILL: No objection, Your Honor.

16 THE COURT: It's admitted.

17 THE CLERK: What exhibit was that?

18 MS. JOBE: I'm sorry?

19 THE COURT: What exhibit number?

20 MS. JOBE: I apologize. We didn't previously present

21 this. I believe it would be 50.

22 THE COURT: Okay, and it's admitted.

23 (State's Exhibit 50 admitted)

24 THE COURT: Okay, go ahead.

25 MS. JOBE: Permission to publish on the PowerPoint

1 on the laptop?

2 THE COURT: Okay, as long as we understand that it
3 is identical. It is just a complete, identical copy, right?

4 MS. JOBE: Yes, Your Honor.

5 THE COURT: Okay, great.

6 BY MS. JOBE:

7 Q And you said you took pictures during your
8 processing of the evidence to document what you were doing,
9 is that correct?

10 A Yes.

11 Q All right. And you started with the towel in your
12 PowerPoint, is that fair?

13 A Yes.

14 Q The towel we were just looking at, correct?

15 A Yes.

16 Q Okay.

17 MS. JOBE: Mr. Burton is much smarter with technology
18 than I am.

19 BY MS. JOBE:

20 Q All right. And is this the picture of the towel?

21 A Yes.

22 Q Okay. And what are those circles, what does that
23 indicate?

24 A Electronically I've circled the areas from which
25 I took cuttings or samples for DNA testing.

1 Q And how did you specifically determine what areas
2 to take cuttings or what samples to test?

3 A I was asked to examine the towel for secretions and
4 also for any hairs that might be present. So I did collect
5 any debris. That is marked 1.1 at the bottom left corner.
6 And then additionally I picked out these three particular
7 stains because of the way that they reacted in the color semen
8 test and also the way that they looked under the alternate
9 light source.

10 Q Okay. Can you please touch the screen and show us
11 where you pulled the debris from? The judge has a pen.

12 THE COURT: Okay. Here, hold on a second, we'll
13 get that. Have you used this before?

14 THE WITNESS: A long time ago.

15 THE COURT: Okay. Well, as you know, you can seize
16 the screen. You can use this to mark and have all sorts of
17 fun with it, okay?

18 THE WITNESS: Okay.

19 THE COURT: All right, there you go.

20 THE WITNESS: The hairs I did not mark where they
21 came because they can move around inside the packaging, so
22 the hairs and debris is from all over the towel, both sides.

23 BY MS. JOBE:

24 Q All right. And there appears to be some -- other
25 than the circles, there appears to be some -- it looks black

1 to me -- markings on the towel. What is that?

2 A I would have to verify in my notes, but I believe
3 that the black marking was there prior to me examining it.

4 Q Okay. So your testing focused on the debris you
5 removed and then the three areas you've circled, is that
6 correct?

7 A Yes.

8 Q Okay. Let's talk about the debris. You said you
9 removed hairs, correct?

10 A It's debris. I'm not qualified to say what kind
11 of debris that it is. So I removed things that appeared
12 consistent with hairs and then I did a microscopic examination
13 to find the ones that are suitable for DNA.

14 Q And when you removed those, did you put them on
15 slides?

16 A Those are the six hairs that appeared suitable for
17 DNA testing.

18 Q Did you in fact pursue DNA testing on these once you
19 put them on the slides?

20 A Yes.

21 Q All right. Did you reach -- And then it looks like
22 you numbered each and every possible hair. Is that fair?

23 A During the microscopic examination, yes.

24 Q Okay. And when you tested these six slides or these
25 six potential hairs, did you reach any conclusions as far as

1 DNA profiles or comparisons?

2 A Yes. There are six separate results.

3 Q Okay. And as far as Item 1.1.1, can you show us
4 which one that is?

5 A 1.1.1 is all of the debris that I did not move
6 forward for the testing.

7 Q And why didn't you move that debris forward for
8 testing?

9 A They did not appear to be ideally suited for DNA.
10 I picked six of the best looking ones.

11 Q Okay. And so 1.1.2, can you indicate where that is?

12 A (Indicates on screen)

13 Q And were you able to develop a DNA profile?

14 A May I please refresh my memory from the report?

15 Q If that would assist you, yes.

16 A No, I was not.

17 Q And what makes one able to develop a DNA profile
18 from a hair root or not?

19 A When performing STR DNA testing, we need at least
20 100 cells in order to develop an ideal quality profile. We're
21 looking for hairs that have a skin tag attached to the outside
22 at the root or that have an actively growing root. Not all
23 hairs have that. It appears that this hair, even though it
24 was one of the best candidates out of the Petri dish, it did
25 not have enough material for me to develop a DNA profile.

1 Q Okay. And on 1.1.2, are you able to develop a
2 profile?

3 A No.

4 Q Okay. On 1.1.3, were you able to develop a profile?

5 A Yes.

6 Q And what was that profile?

7 A It was a mixture.

8 Q What does a mixture mean with respect to hair?

9 A Typically when you process hairs individually you
10 expect only to see DNA from one person because you're only
11 processing one hair. However, I removed these hairs from a
12 towel that tested positive for the presence of semen. Semen
13 or sperm, the cells that are in semen isn't visible during
14 microscopic examination until we stain it. Even though I
15 washed these hairs, it's possible that I did have biological
16 material transferring from the towel onto the hairs, so I
17 might be getting a DNA profile not only from who the hair
18 came from, but also other DNA that was present on the towel.

19 Q So if I understand you correctly, you wash -- you
20 isolate the hair and then you wash the hair, correct?

21 A We do a rinsing step. I do two rinses.

22 Q All right. And fair to say typically when you're
23 testing hair you only expect to receive a profile for one
24 individual?

25 A We usually only see one individual from a single

1 hair. One of the chemicals that I am using to extract DNA
2 from hair is a very specific chemical that we also use for
3 sperm. Fortunately, if sperm were present on that hair this
4 chemical would release the sperm DNA as well as the hair's
5 DNA.

6 Q All right. And were you able to make a conclusion
7 about the major -- or were you able to develop a profile from
8 this? And are you referring to your report to refresh your
9 memory?

10 A Yes.

11 Q Okay.

12 A The mixture was consistent with originating from
13 at least two contributors, including a male. I was able to
14 isolate a partial major profile. When I compared that profile
15 it was consistent with the reference profile from Justin
16 Langford. I was not able to make any conclusions about
17 additional contributors to the mixture because the minor
18 component of that mixture did not rise above our confidence
19 level. So no additional comparisons were performed other than
20 the major -- partial major profile.

21 Q Okay. And the partial major, like you've testified
22 before, you're looking at the 16, so it was some of the 16
23 points, correct?

24 A That's correct.

25 Q And it met the threshold to be able to draw

1 conclusions from your comparison, correct?

2 A Correct.

3 Q And you said he was the -- the partial major DNA
4 profile was Justin Langford; right?

5 A It was consistent with his reference profile, yes.

6 Q Okay. And then you do calculations, correct?

7 A Yes.

8 Q And what was the calculation?

9 A I performed a statistical calculation known as the
10 Random Match Probability. What it represents is the
11 probability that a person selected at random would match that
12 profile that I produced from the evidence. It's similar to
13 going outside, what is the probability that the next random
14 car driving by is a red car, versus a red Toyota, versus a
15 red Toyota Camry, versus a red Toyota Camry from 2002 with
16 a Nevada license plate ending in XYZ. You can see the more
17 pieces of information the more detail we have and the more
18 powerful the comparison is. Even though I didn't have a
19 complete major profile, I still had enough locations to reach
20 the identity threshold in which we assume the profile matched
21 the reference sample because they both originated from the
22 same source.

23 Q All right. And on Item 1.1.5 in your report, did
24 you -- it was an inconclusive mixture; is that fair?

25 A That's correct.

1 Q All right. And going to 1.1.6, can you indicate for
2 the members of the jury where that is on this PowerPoint?

3 A (Indicates on screen)

4 Q All right. Were you able to extract any DNA
5 profiles from 1.1.6?

6 A Yes.

7 Q Okay. What type of a profile did you extract?

8 A I obtained a mixture profile.

9 Q And were you able to identify or make a comparison
10 to identify one or more of the contributors?

11 A Yes.

12 Q And who did you identify as being in that mixture?

13 A The mixture was consistent with two contributors,
14 with one of them being a male. I was able to isolate a full
15 major profile. That profile was consistent with the reference
16 obtained from Justin Langford. We did reach the identity
17 assumed statistical threshold. I also was able to perform a
18 comparison to the mixture at some of the locations. Heather
19 Haney could not be excluded as a possible contributor to the
20 mixture at those locations.

21 The probability of including someone randomly from
22 the population was approximately one in 19.5 thousand. That
23 statistic is different than the Random Match Probability that
24 I previously talked about. Here we are asking what is the
25 probability that the next car that we see is red or blue,

1 a red or blue Honda or Toyota versus a red or blue Honda
2 or Toyota with a license plate from Nevada or California or
3 Arizona. You can see there's not a specific combination that
4 I'm looking for, but there are several possible specific
5 combinations that would be included. That's why that
6 statistic is much lower than the other one that I previously
7 reported for the Random Match Probability.

8 Q Okay. And based on your prior testimony of someone
9 who cannot be excluded, there's at least enough peaks or
10 enough of the 16 to say that she cannot be excluded. Fair?

11 A She could not be excluded from the locations that
12 I was confident were reproducible.

13 Q All right. And as far as Lab Item 1.1.7, were you
14 able to develop any profiles from that?

15 A Yes.

16 Q Okay. And what profile were you able to develop?

17 MS. McNEILL: Your Honor, if we could -- I think
18 she's reading from her report. If she doesn't remember,
19 can we just have her state that and have her refresh her
20 recollection?

21 MS. JOBE: Sure.

22 THE COURT: Okay. Do you remember? Can this
23 refresh your recollection or --

24 THE WITNESS: May I please refer to the report to
25 refresh my recollection?

1 THE COURT: Sure.

2 THE WITNESS: I obtained a partial DNA profile
3 consistent with a male. When I compared that partial male
4 profile to the reference from Justin Langford, they were
5 consistent with each other. I was able to calculate a
6 statistical significance for that overlap.

7 BY MS. JOBE:

8 Q And what was that statistical significance?

9 A It reached the identity threshold. It was rarer
10 than one in seven hundred billion.

11 Q All right. And that's the identity threshold,
12 correct?

13 A Yes.

14 Q Okay. Let's move on to the stains on the towel.
15 You referred to lights that you use, correct, as part of your
16 testing?

17 A Yes.

18 Q Okay. Let's go back to -- we're going to talk about
19 Item 1. --

20 MS. JOBE: Does Your Honor want to take that or
21 continue?

22 THE COURT: No, go ahead, keep questioning.

23 BY MS. JOBE:

24 Q The next item we're going to be discussing is Item
25 1.2, so can you please point to where that is on the towel?

1 A (Indicates on screen)

2 Q Okay. And you selected that item or that portion

3 based on your initial testing, correct?

4 A Correct.

5 Q And when you test it, I believe you said you cut it

6 out?

7 A Yes.

8 Q And why do you cut it out?

9 A You can either swab the area or you can cut it out.

10 My preference is to cut it to get as much material as

11 possible, as long as I don't expect any interference from

12 inhibitors in the sample.

13 Q And what does that mean?

14 A Certain fabrics contain dyes that can interfere

15 with the testing process and sometimes items that are heavily

16 coated in dirt contain things that can interfere with the

17 process. My first choice is to cut the item if I can, and if

18 it doesn't work then I can go back and try swabbing. Or if

19 the area that I want to test is very large, I can't process

20 a large cutting. In that case I will swab the large area,

21 concentrating it onto the swab and then I'll test the swab

22 instead.

23 Q Okay. And on to this item that you cut out, you did

24 the light source, correct?

25 A Yes. I examined the entire towel with that alternate

1 light source.

2 Q Okay. And is this a photograph of how it looks with
3 the alternate light source?

4 A Yes. It's not the best representation. It's very
5 difficult to take a photograph and also to print it.

6 Q Okay. And so it appears there -- What's the
7 contrast in that photograph of the alternate light source?
8 What does that mean?

9 A So, this light source is a very, very specific
10 wavelength that can cause certain things to glow or fluoresce,
11 so areas that are very bright are glowing in the dark when you
12 use this light source.

13 Q And then based on the glowing, you do the second
14 test, which I believe is to determine whether or not semen is
15 present?

16 A Yes. That area that is outlined in red like that,
17 that was reacting with that color semen test. And I chose to
18 take a cutting right there that included part of the area that
19 was reacting with the semen test but also was glowing and not
20 reacting with the semen test in case it was a mixture of
21 biological fluids, one being semen and the other being
22 something else.

23 Q All right. And once you get the positive semen
24 indicated, do you then look at this cutting under a microscope
25 to confirm whether or not semen or sperm are present?

1 A The color test is presumptive. It means that it's
2 sensitive but it's not specific to just semen. There are
3 other things that will react with it. So I follow up with
4 additional tests that are less sensitive but more specific to
5 semen. One of those tests is called P30 and it looks for a
6 protein that comes from the prostate gland, and I also did a
7 microscopic test where I stain the sample with substances that
8 will make the sperm a bright pink color so that I can look at
9 the slide and see if sperm is present.

10 Q And was sperm present in Item 1.2 from State's
11 Exhibit 2?

12 A Yes.

13 Q What do you do after you identify that sperm is
14 present?

15 A I did a special type of DNA extraction. This
16 extraction can separate sperm from non-sperm cells, and that's
17 because our cells can be broken open with some chemicals but
18 sperm have a cell wall around them that makes them harder or
19 tougher to break open, just like hair also has.

20 Q Why would you want to separate the sperm from the
21 other cells?

22 A It is easier to perform comparisons on samples that
23 are single source versus mixtures. And sometimes those
24 comparisons are more informative or more powerful if you can
25 isolate the contributors rather than just comparing to the

1 mixture as a whole.

2 Q Okay. And did you in fact do this, try to separate
3 the sperm from the rest of the non-sperm cells?

4 A I did.

5 Q Okay. And did you reach -- once you separate them,
6 that becomes two fractions?

7 A That's correct.

8 Q And why are they called fractions?

9 A It's basically if you think of the whole being one,
10 it's a fraction because it's a piece of the whole.

11 Q When you separate -- you said there's cell walls
12 around sperm, correct?

13 A Yes.

14 Q Okay. And as far as the cells, you're isolating
15 the sperm and extracting the other cells, correct?

16 A Yes.

17 Q Okay. Is there -- I'm trying to understand exactly
18 how that would -- understand that based on what you do, not
19 being an expert.

20 A If you put eggs and golf balls together into a bowl,
21 you would have a mixture of eggs and golf balls. The eggs
22 have a soft shell whereas the golf balls have a hard shell.
23 You can break the eggs, release the yolks, and then you can
24 clean off, remove those yolks and then you have that portion.
25 Then you can wash the golf balls, get rid of the yolks that

1 are on them, and then you can do a much harsher treatment in
2 order to break open the golf balls and get what's inside the
3 golf balls separately from what's inside the eggs.

4 Q Okay. So following your analogy, everything that's
5 in one bowl, the golf balls and the egg yolks, you separate
6 the egg yolks, correct?

7 A Correct.

8 Q Before you do anything further to the golf balls,
9 correct?

10 A Correct.

11 Q All right. Now, so you separate, you get two
12 fractions, and when you get the two fractions is one a sperm
13 fraction?

14 A Yes.

15 Q And then one is a non-sperm fraction?

16 A Yes.

17 Q Did you do any comparison and reach any conclusions
18 in the non-sperm fraction?

19 A Yes.

20 Q What were your results? Would it refresh your
21 memory to look at your report?

22 A May I?

23 THE COURT: Yes.

24 THE WITNESS: The non-sperm fractions profile was
25 consistent with a mixture of two people, including at least

1 one male. There was a partial major profile that I was able
2 to isolate, as well as a partial minor profile. This means
3 I could distinguish the profiles from each other that gave
4 rise to this mixture. I compared those partial major and
5 partial minor profiles to the reference profiles from Justin
6 Langford and Heather Haney. The major profile, the partial
7 major profile was consistent with Justin Langford. The
8 partial minor DNA profile was consistent with Heather Haney.
9 The statistical confidence of both of those partial major and
10 minor profiles did reach the identity threshold of one in
11 seven hundred thousand. Therefore, the identity of those
12 profiles was assumed to have come from those individuals.

13 BY MS. JOBE:

14 Q I believe earlier you said the identity threshold
15 was one in seven hundred billion?

16 A Yes.

17 Q So on this statistical analysis I believe you just
18 testified it was one in seven hundred thousand. Was it
19 thousand or billion?

20 A I apologize if I said one in seven hundred thousand.
21 I mis-spoke. One in seven hundred billion is the identity
22 threshold. There was a statistic. It wasn't a Random Match
23 Statistic, it was the inclusion statistic. That was a number
24 in a thousand.

25 Q I see. So in this specific item that you tested,

1 and correct me if I'm wrong, I just want to make sure I
2 understand your testimony, in the non-sperm fraction identity
3 was assumed for Justin Langford?

4 A Correct.

5 Q And identity was also assumed as the partial
6 contributor for Heather Haney?

7 A Yes.

8 Q And did you reach a result as far as the sperm
9 fraction is considered?

10 A May I refer to the report, please?

11 Q If it would refresh your memory, yes.

12 A I obtained a full male DNA profile and it was
13 consistent with Justin Langford. I did reach the identity
14 threshold statistic of one in seven hundred billion.

15 Q Now, when it comes to testing a sperm fraction, you
16 talked about isolating them like the golf balls from the yolk.
17 Would you -- do you take steps to try to reduce it to not be
18 a mixture profile of the sperm fraction?

19 A The sperm profile, we're trying to isolate the DNA
20 that comes from sperm. Now, if there's more than one semen
21 contributor, sometimes that can be a mixture. We also can
22 get carry-over from the non-sperm fraction into the sperm
23 fraction. That would be like when we rinsed the yolks off
24 those golf balls we didn't get all of the yolks off. And if
25 there's enough of that yolk there, the proportion that it can

1 show up in the sperm fraction, then you will see a mixture.
2 But ideally we would like to see a clean or single source
3 sperm fraction.

4 Q And that's in fact what you had in Lab Item 1.2,
5 which is part of State's 2, correct?

6 A Yes.

7 Q All right. Moving to -- I'm going to scroll back
8 to the beginning. The next item we're going to talk about
9 is 1.3 that appears to be -- you circled up in the upper left-
10 hand corner of the evidence 2?

11 A Yes.

12 Q All right. Did you follow those processes and
13 procedures we talked about with 1.2?

14 A Yes.

15 Q And showing you this slide, is that a visual
16 representation of your testing?

17 A Yes.

18 Q And for Item 1.3, did it test positive for the
19 presumptive semen?

20 A Yes.

21 Q And did it also -- did you look at it under a
22 microscope as well to confirm the presence of sperm?

23 A Yes.

24 Q And was sperm in fact present?

25 A Yes.

1 Q All right. Then did you follow your next steps?
2 Was this a mixture profile or a single source profile or
3 something else?

4 A Because I identified semen, I did do that special
5 type of extraction in order to separate the sperm from the
6 non-sperm portion.

7 Q All right. And when you did that, did you reach
8 any conclusions with respect to the non-sperm portion?

9 A May I refresh my memory?

10 Q If it would help you, yes.

11 A I obtained a mixture consistent with two
12 contributors with at least one being a male. I was able to
13 isolate a full major profile. When I compared that profile to
14 the reference profiles from Justin Langford and Heather Haney,
15 it matched Justin Langford. And I did reach the identity
16 threshold statistic, so we assumed that the profile matched
17 because it originated from Justin Langford. I wasn't able to
18 isolate a minor DNA profile. I was only able to do a mixture
19 comparison at some of the locations. Heather Haney could not
20 be excluded from those locations.

21 Q And what was the statistical significance of that?

22 A Approximately one in one hundred ten thousand.

23 Q Okay. You talked about a prior mixture where
24 Heather could not be excluded and that was one in nineteen and
25 a half thousand, and this one is one in one hundred and ten

1 thousand. What significance, if any, is that?

2 A It means that the portion of the mixture that I am
3 comparing is more informative in the one that has the rarer
4 statistic than the other one. It means I had better detail.

5 Q Okay. And then as far as the sperm fraction in Lab
6 Item 1.3, were you able to develop a full profile from that?

7 A Yes, I was.

8 Q And who was that?

9 A It was consistent with Justin Langford. I did
10 achieve the identity threshold.

11 Q Okay. And that's the one in seven hundred billion?

12 A That's correct.

13 Q Okay. And then you tested 1.4, correct, which is
14 that item circled somewhat to the left of center?

15 A Correct.

16 Q Okay. And is that --

17 THE COURT: Let me get that out. There it goes.

18 MS. JOBE: Thank you, Your Honor.

19 BY MS. JOBE:

20 Q Does that show you the -- does that in the picture
21 show the work that you did on 1.4?

22 A Yes.

23 Q All right. And it appears that there is the
24 positive presumptive semen test, is that correct?

25 A Yes.

1 Q And that semen was indicated -- I believe you said
2 it was like a PSA test or something?

3 A Yes.

4 Q All right. And then did you also check under the
5 microscope to confirm whether or not sperm were present?

6 A Yes.

7 Q And were sperm present?

8 A Yes.

9 Q I see on the green and blackish picture there's a
10 circle with an arrow --

11 A Uh-huh.

12 Q -- to the white picture. What is that demonstrating?

13 A This is the area that I am trying to show because
14 the red lines are the area that was reacting with the color
15 semen test and it had a very distinct shape or appearance to
16 it where it kind of went up and down like that. But the whole
17 area was fluorescing, so again, I was looking for places that
18 might be a mixture of semen and other biological fluids, if
19 present. So then that area is this cutting right here which
20 includes a portion on one side of the positive reaction and on
21 the other side of the negative reaction for the semen test.

22 Q So it looks like you only take a small portion to
23 do the -- when you separate or look to see if you can separate
24 the fractions; is that fair?

25 A Yes.

1 Q And you don't take the entire original cutting from
2 the towel. Is that also fair?

3 A That's correct.

4 Q Okay. And your decision as to what portion of that
5 cutting to take is based on how it fluoresces in the test that
6 you do?

7 A It depends what the scenario is and what I'm looking
8 for. Since I am looking for secretions and I can see that
9 semen might be present, I was looking for potential mixtures
10 of the semen and then I was hoping if semen was present with
11 other fluids that I could separate the non-sperm and the sperm
12 portions of the mixture.

13 Q Did you -- Were you able to separate the fractions
14 in 1.4?

15 A Yes.

16 Q Did you reach any conclusions about the non-sperm
17 fraction?

18 A It was a full male profile. It was consistent with
19 Justin Langford and I did reach the identity threshold.

20 Q Okay. And would that be a single contributor then?

21 A That's correct.

22 Q Okay. And as far as the sperm profile, did you also
23 reach a conclusion with that?

24 A Yes.

25 Q And what was your conclusion?

1 A I also obtained a full male profile. It was
2 consistent with Justin Langford and I did achieve the identity
3 statistic.

4 Q Okay. Now, going back a second, I'm just trying
5 to understand when you talked about there is one stain where
6 Heather Haney's identity was assumed, correct?

7 A That's correct.

8 Q And then there was one stain from the towel where
9 the statistical significance was one in a hundred and ten
10 thousand, correct?

11 A That's correct.

12 Q And then on a hair there was a mixture where the
13 statistical significance was only one in nineteen and a half
14 thousand?

15 A Correct.

16 Q As between the one and nineteen and a half thousand
17 versus the one in a hundred and ten thousand -- clearly I
18 didn't major in math -- is one rarer than the other?

19 A Yes.

20 Q Which one?

21 A The stain from the towel is rarer. That fraction
22 is one in -- I'm refreshing my memory from the report --

23 Q Okay.

24 A -- a hundred and ten thousand. The other fraction
25 is only one in 19.5 thousand.

1 Q Okay. So going back to your car analogy, you talked
2 about the car analogy with the one in nineteen and a half
3 thousand. For the one in a hundred and ten thousand, would
4 you be more specific as to the car you're looking for?

5 A There are more characteristics that would be --
6 that you are comparing to include.

7 Q Okay.

8 A So the one in 19.5 might be I'm looking for a red
9 or blue Honda or Toyota, Camry or Accord, versus the other
10 one I might be adding in the years or the license plates.

11 Q Okay, I see. All right. Now, you tested items
12 other than the towel, what we discussed presently, is that
13 correct?

14 A Yes.

15 Q All right.

16 MS. JOBE: I don't know if Your Honor wanted to
17 answer the juror questions with respect to the towel or --

18 THE COURT: Are you at a breaking point? You don't
19 know what these questions are, so.

20 MS. JOBE: No, I don't. I just -- I'm at a point
21 where I'm about to move on to something other than the towel,
22 a different item of evidence.

23 THE COURT: Okay, why don't you come on up.

24 (Bench conference)

25 THE COURT: Okay. Microphones are off?

1 MS. JOBE: Yes.

2 THE COURT: By the way, did you return the two juror
3 questions?

4 MR. BURTON: Yes.

5 THE COURT: Okay.

6 MR. BURTON: I gave them to Melissa yesterday.

7 THE COURT: Perfect. Okay. Well, I'm going to just
8 take these in order. One was -- the first one was a very
9 general question. "How similar is DNA between a biological
10 parent and their children?"

11 MS. JOBE: Okay.

12 THE COURT: Okay. The second one, and that one, by
13 the way, is No. 5. No. 14: "Was a full profile determined
14 for Heather?" That might be one you might want to ask now.

15 MS. JOBE: Okay.

16 MS. McNEILL: I guess that's a little confusing,
17 meaning that they had to compare to or -- inaudible).

18 MS. JOBE: Right. Okay.

19 THE COURT: Okay. And the next one -- Oh, goodness.
20 "In 1.2 non-sperm, do you know where the DNA came from; blood,
21 secretion, etcetera?"

22 MS. JOBE: Okay.

23 THE COURT: And then -- now this one is from Juror
24 No. 3.

25 MS. McNEILL: Well, does she know? Because if she

1 knows, no one ever told me.

2 MS. JOBE: Well, all she can say is the semen versus
3 -- the sperm versus the non-sperm.

4 MS. McNEILL: Right. But they're asking I think the
5 non-sperm, do you know if it's blood or if it's --(inaudible).

6 MS. JOBE: She doesn't.

7 MS. McNEILL: Okay. That's -- (inaudible).

8 THE COURT: Okay.

9 MS. JOBE: But that's -- (indiscernible).

10 THE COURT: Okay. "Was there a test to see if any
11 DNA on towel was from Shayleen or Shaylynn?"

12 MS. JOBE: Okay.

13 THE COURT: Do you want to take these and give them
14 right back to me?

15 MS. JOBE: Sure.

16 THE COURT: Okay, there you go. I'll put them in
17 the order that we got them. There you go.

18 (End of bench conference)

19 BY MS. JOBE:

20 Q Okay. Ms. Adams, you talked previously, you were
21 talking about what DNA is or isn't. You talked about
22 identical twins, but how similar is DNA between a biological
23 parent compared to their children?

24 A We obtain half of our DNA from our mother and the
25 other half from our father. So when you look at my DNA

1 profile, when I look at the locations and what those repeat
2 numbers are, one of those repeat numbers will match one of my
3 mother's repeat numbers.

4 Q And when you I believe used the buccal swab from
5 Heather, did you develop a full profile for Heather?

6 A Yes, I did.

7 Q So, all 16 points for Heather?

8 A Yes.

9 Q And that was a known profile, based on your
10 testimony; fair?

11 A Yes.

12 Q And is that what you compared to the profiles you've
13 been talking about, the mixture profiles and those kinds of
14 things?

15 A Yes.

16 Q In the mixtures that you tested, were you able to
17 see if there's more than two contributors?

18 A On the towel?

19 Q On the towel. I'm sorry. Yes.

20 A All of those mixtures were consistent with two
21 contributors or one contributor.

22 Q All right. And on the testing that you did, did you
23 have any information or any known profile for someone by the
24 name of Shayleen Coon, the biological mother of Heather?

25 A I did not.

1 Q And if you -- Let me ask it as it was written. "Was
2 there a test done to see if any of the DNA on the towel was
3 from Shayleen?

4 A I did not perform any comparisons to anyone other
5 than the two reference samples in the case that was submitted.
6 So the only references that I had were Justin Langford and
7 Heather Haney.

8 Q And for the places where you identified Heather or
9 couldn't exclude Heather, what did that tell you or does it
10 tell you about the uniqueness of Heather's DNA versus a
11 biological relative?

12 A I can't answer that without developing the profile
13 of that relative and then seeing how similar they are.

14 Q Okay. I believe I'm going to need you to put gloves
15 back on. And one more question. As far as the non-sperm
16 fraction that you did the testing on, were you able to
17 determine what source the DNA came from? So, for instance,
18 like blood, secretion, saliva?

19 A The only identifications for body fluids that I
20 could do at the time in this lab is semen and blood. I did
21 do a test for semen, but it was on the sample as a whole. We
22 don't do it after we've already broken open some of the cells
23 and obtained their DNA. I did identify semen and that was for
24 all three stains. I did not perform any blood tests because
25 the appearance of the stains wasn't consistent with blood,

1 which I would expect to see a red-brown dark stain.

2 Q And as far as where you could develop a profile for
3 -- in the non-sperm fraction for Justin and for Heather, fair
4 to say you can't tell where that DNA came from, just that it
5 came from those individuals?

6 A That's correct.

7 Q All right. Now I'm going to show you what's been
8 admitted as State's 45. Do you recognize that?

9 A Yes.

10 Q What do you recognize that to be?

11 A It has my markings that I placed on it during the
12 examination and it also has my signature and P number on the
13 chain of custody and my initials and P number are across the
14 seal.

15 Q Okay. And what items would you expect to retrieve
16 from the envelope?

17 A There are two smaller envelopes inside and these
18 contain hairs that were recovered by someone prior to the
19 evidence coming to me.

20 Q So the hairs had been isolated and impounded before
21 they got to you?

22 A That's correct.

23 Q All right. And do you see your seal on the envelope?

24 A Yes.

25 Q Does that mean you did testing on these items of

1 evidence?

2 A Yes.

3 Q You can put them back in. And when you did testing
4 on these, did you report on any conclusions or findings for
5 these items of evidence?

6 A Yes.

7 Q Now, did you isolate the -- You said they were
8 hairs, is that correct?

9 A Correct.

10 Q Did you isolate the hairs to test them?

11 A I did.

12 Q Okay. And the process we went through earlier with
13 debris where you separated the hairs, did you follow the
14 washing process --

15 A Yes.

16 Q -- and everything you discussed before? And as far
17 as the hair that you tested, were you able to develop a male
18 profile for any of the items?

19 A May I refresh my memory, please?

20 Q If it would assist you, yes.

21 A I isolated two hairs that appeared suitable for DNA
22 testing. One of them I was not able to obtain a DNA profile.
23 The other one I obtained a partial male profile. That partial
24 male profile was consistent with Justin Langford. My
25 statistical association for that comparison was one in one

1 hundred seventy-three million.

2 Q So below the identity assumed threshold?

3 A That is correct.

4 Q But still fair to say consistent with, is that
5 correct?

6 A That's correct.

7 Q Okay. And just for the records, those items, the
8 two packagings, is it your understanding one was from hair
9 retrieved from the towel and one that was items of hair
10 retrieved from a bottle of baby oil?

11 A I examined both sets of hairs. The two that I
12 tested both originated from the towel. The baby oil hairs
13 were not suitable for STR DNA testing.

14 Q Okay. And that's based on what we've previously
15 discussed, either the hair root or something was not there for
16 you to develop a profile from?

17 A That's correct.

18 Q Okay. And did you also do evidence or testing on
19 bedding?

20 A Yes.

21 MS. JOBE: Can I have the giant bag, please?

22 BY MS. JOBE:

23 Q Fair to say you didn't test each and every item
24 contained in this bag, correct?

25 A That's correct.

1 Q And do you recognize this bag?

2 A Yes, I do.

3 Q Okay. And what do you recognize it to be?

4 A It has my -- excuse me, my labels from when I
5 examine an item. I'm also on the chain of custody and my
6 initials and P number are on the seals.

7 Q Okay. And you said you didn't examine each and
8 every item in here, is that correct?

9 A That's correct.

10 Q Okay. Were there two sheets that you tested?

11 A I tested a fitted sheet and a flat sheet.

12 Q Okay. And just -- you don't have to pull everything
13 out, but do you see them in here?

14 A I see the flat sheet with the red stripe. I see the
15 fitted sheet.

16 Q Okay. And fair to say once you were done testing
17 them, you put them back in this bag?

18 A Yes.

19 Q Okay. And like we discussed with the towel, when
20 you were testing the sheets did you go through the process of
21 examining the sheets to see if there was anything you should
22 test or would want to test?

23 A Yes.

24 Q Okay. And describe that process for us briefly.

25 A First I take note of any visible stains that I see.

1 I also use that alternate light source to look for any
2 invisible biological stains. Also, anything that is glowing,
3 I perform that color semen test to identify whether or not the
4 stains might be semen.

5 Q Okay. And fair to say these pictures depict your
6 work in the areas you were looking at for testing?

7 A Yes.

8 Q Okay. And you circled an item, 7.1, is that correct?

9 A Yes.

10 Q Okay. And did you do all the steps of the testing
11 we've talked about with the lights and the PSA and then
12 looking under a microscope?

13 A Yes.

14 Q Okay. And were you able to draw any conclusions
15 as far as stain 7.1 in -- I believe it's Evidence Item 1?

16 A Although my presumptive color test for semen was a
17 weak positive, the confirmatory test did not indicate semen
18 and I did not see any sperm when I did the microscopic
19 examination.

20 Q Okay. And did you develop a profile?

21 A May I refer to the report for the details?

22 Q If it would refresh your memory.

23 A I did develop a profile.

24 Q Okay. And were you able to make any conclusions
25 about that profile?

1 A I was not.

2 Q Okay. And is that -- fair to say whatever you may
3 have found would have been below a threshold?

4 A It was not suitable for comparison because I didn't
5 believe that the result was reproducible.

6 Q Okay. And as far as Item 7.2, it looks like that's
7 circled on the bottom right there in the picture?

8 A That's correct.

9 Q And in 7.2, did you follow all those steps you've
10 previously testified about?

11 A I did not do the presumptive color test for semen
12 because that stain did not glow.

13 Q Okay. And did you develop a profile in Item 7.2?

14 A I did.

15 Q Okay. And what were your conclusions? Are you
16 referring to your report to refresh your memory?

17 A I am.

18 Q Okay.

19 A I obtained a mixture profile that was consistent
20 with at least two contributors. I was able to identify a
21 major profile. When I compared it to Heather Haney and Justin
22 Langford, it was consistent with Justin Langford. I did reach
23 the identity statistic. However, the other information in
24 that mixture was not suitable for comparison. It was not
25 above our confidence threshold for being reproducible, so I

1 could not make any additional conclusions regarding who else
2 might have been a contributor other than the major profile.

3 Q Okay. And then the last item you tested was the
4 flat sheet that was in evidence 1, is that correct, or
5 Exhibit 1?

6 A Exhibit 1?

7 Q The big bag I just showed you. I'm sorry.

8 A Yes.

9 Q Okay. And were you able to develop any profiles
10 from the flat sheet?

11 A May I refer to the report, please?

12 Q If it would refresh your memory, yes.

13 A I did develop a DNA profile.

14 Q And were you able to make any conclusions with
15 respect to that profile?

16 A I was not.

17 Q And as far as your testing is concerned, fair to say
18 that encompasses all the testing that you completed in this
19 matter, correct?

20 A Yes.

21 Q All right. And as you testified, you returned all
22 the items to evidence --

23 A Correct.

24 Q -- when you were done? As far as the profiles are
25 concerned, is there any -- you said -- I'm sorry. You said on

1 the flat sheet and the fitted sheet you weren't able to make
2 a comparison, correct?

3 A There were two stains where I wasn't able to make
4 any comparisons. One of the stains I was able to isolate a
5 major contributor's profile, but I wasn't able to make any
6 additional conclusions about other contributors.

7 MS. JOBE: Okay, thank you. I'll pass the witness.

8 THE COURT: Okay. You know, I think this would
9 be actually a good time for a break. Ladies and gentlemen,
10 we'll go ahead and take our fifteen minute break.

11 During this period of time you are admonished not
12 to talk or converse among yourselves or with any one else on
13 any subject related to the trial, or read, watch or listen
14 to any report of or commentary on the trial by any medium
15 of information, including without limitation newspapers,
16 television, the Internet and radio, or form or express any
17 opinion on any subject related to the trial until the case
18 is finally submitted to you.

19 We'll see you back here in about fifteen minutes.

20 (Jury exits the courtroom)

21 THE COURT: Okay. Let the record reflect that the
22 jury has left the courtroom.

23 And, ma'am, you may step down, enjoy your break,
24 and we'll see you back here in just a few minutes.

25 THE WITNESS: Is it okay if I stay?

1 THE COURT: Well, I may need to talk to --
2 THE WITNESS: Okay.
3 THE COURT: -- the lawyers outside of your presence.
4 You can leave your purse and stuff here if you want.
5 THE WITNESS: Okay.
6 THE COURT: Is there anything that we need to
7 discuss outside the presence of the jury?
8 MS. McNEILL: No, Your Honor. Just so the Court,
9 just so you're aware, all of my witnesses are here. I have
10 them in here early because I wasn't sure what time we would
11 finish today, but they are all here.
12 THE COURT: Okay, perfect.
13 MS. McNEILL: But we would need to, prior to my
14 starting my case, we need to admonish Mr. Langford.
15 THE COURT: Right. Okay. When do you want to do
16 that? Is he still thinking about it?
17 MS. McNEILL: No, I think he's decided.
18 THE COURT: Okay. Well, I'll tell you what. Why
19 don't we do that just before we go to lunch.
20 MS. McNEILL: Okay.
21 THE COURT: We should hopefully have one of these
22 witnesses done by noon, right?
23 MS. JOBE: The State anticipates being -- well,
24 I don't know how long the cross is, but the State is very
25 hopeful of being done with its case-in-chief by lunch.

1 THE COURT: Okay. Why don't we do it about lunch
2 and he can still think about it. Okay? All right, thanks.
3 We'll see you in a few minutes.

4 (Court recessed from 10:10 a.m. until 10:23 a.m.)

5 (Court was called to order)

6 THE COURT: Okay. Counsel, are we ready to proceed?

7 MS. JOBE: Yes, Your Honor.

8 THE COURT: Okay. Why don't we bring that witness
9 back up on the stand and then we'll bring the jury in.

10 MR. BURTON: Thank you, Your Honor.

11 THE COURT: Why don't you go ahead and have a seat.
12 Okay. Are we ready to bring the jury in?

13 MS. JOBE: Yes.

14 THE COURT: Let's do it.

15 (Jury is present)

16 THE COURT: Will counsel please stipulate to the
17 presence of the jury?

18 MS. JOBE: Yes, Your Honor.

19 MS. McNEILL: Yes, Your Honor.

20 THE COURT: All right. You all may be seated.

21 And, Ms. Adams, I just want to remind you again
22 you've been sworn.

23 THE WITNESS: Yes.

24 THE COURT: Okay. Counsel, cross-examination.

25 MS. McNEILL: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MS. McNEILL:

3 Q Ms. Adams, this will be brief because the jurors
4 took most of my questions. You indicated that you have to be
5 careful when you're dealing with DNA because it's possible to
6 contaminate it; right?

7 A I don't recall saying that, but we do take steps to
8 insure that that doesn't happen while we are performing our
9 testing.

10 Q That's in fact one of the reasons why you kept
11 changing your gloves when you were looking at those items;
12 right?

13 A That's correct.

14 Q Okay. So I want to talk to you a little bit about
15 the pictures that you took. Did you take those pictures while
16 you were doing this process of matching or was it done before?

17 A By matching do you mean the comparisons of --

18 Q Yeah. I'm not a scientist.

19 A No. I'm sorry, I didn't mean to interrupt. No.
20 The pictures, I take them while I'm actually screening the
21 evidence and deciding which samples I want to take forward.
22 Sometimes I might go back and try to take pictures that show
23 an area more clearly if it doesn't look as clear as I'd
24 like in the case file documentation, depending on what the
25 technical and the administrative reviewers think.

1 Q Okay. And the reason you wouldn't take those
2 pictures when you're doing your comparison is you'd be
3 touching the camera and then touching these items and you
4 would be worried about contamination, correct?

5 A No. We actually -- we clean everything in-between.
6 So we only handle one item at a time and we do have to touch
7 the camera and we also take notes with the keyboards and
8 things like that. So we decontaminate or change our gloves
9 as we're doing everything. It's just -- it's part of the
10 processing. It's easier for me to take the pictures while
11 I'm actually handling the evidence and I prefer not to handle
12 the evidence any further because, as you could see, some of
13 those bags are very bulky and they're also delicate, so I
14 try to enter and exit the packages the least number of times
15 possible.

16 Q Okay. I want to talk a little bit -- you mentioned
17 -- I think Ms. Jobe asked you if she touched those papers you
18 might expect to see her DNA there, correct?

19 A That's correct.

20 Q But you wouldn't have any way of knowing when that
21 DNA was left there?

22 A That's correct.

23 Q And you wouldn't have any way of knowing how it got
24 there?

25 A That is also correct.

1 Q In fact, if I touched this podium and then you
2 touched the podium, you could actually pick up my DNA?

3 A On the podium?

4 Q Yes.

5 A Yes, I could.

6 Q Onto your hand?

7 A It's possible.

8 Q Okay. And so that's why you have to be very careful
9 when you're processing it?

10 A Especially when you're handling things that contain
11 biological fluids. They are very DNA rich. Touch DNA is not
12 as DNA rich, so there's less risk of contamination that way.
13 But since I was working with a towel that tested positive for
14 semen, that is one thing that I am concerned about when I'm
15 doing my testing and that's why we always examine items one
16 at a time.

17 Q Okay. I want to ask you a little bit about
18 Item 1.2. You talked about how you had a sperm fraction that
19 you were able to identify Mr. Langford, correct?

20 A That's correct.

21 Q And then you had this other part that you identified
22 to Ms. Haney, and that was an epithelial fraction, correct?

23 A The epithelial fraction, if I remember correctly,
24 was a mixture of two people and I was able to isolate partial
25 profiles of each contributor individually.

1 Q Okay. And what is an epithelial? What does that
2 mean?

3 A Epithelial is a special cell for the lining of our
4 body. It's actually -- it would be more accurate to say
5 non-sperm versus sperm than epithelial, but it's commonly
6 epithelial cells. But there's other types of cells like
7 squamous cells. We don't differentiate that. We just say
8 sperm fraction and epithelial fraction.

9 Q Okay. But epithelial could mean skin, correct?

10 A That's correct.

11 Q Okay. And as you indicated, you didn't identify the
12 source of those cells, so we don't know if it's sweat or any
13 other type of secretion?

14 A That's correct. I can only identify semen and blood
15 when this report was written.

16 Q And you had -- I think the jurors asked you a
17 question about parents and children. Siblings also may share
18 some DNA, too, correct?

19 A Biological siblings that have the same biological
20 parents, they can share DNA as well, but they also can share
21 none of their DNA.

22 Q Okay. But you weren't asked to compare, as you've
23 already indicated, anyone other than Justin Langford or
24 Heather Haney?

25 A That's correct.

1 Q You weren't asked to compare Kaylie Langford,
2 correct?

3 A No.

4 MS. McNEILL: Nothing further.

5 THE COURT: Well, could you re-ask that last
6 question? I had a double negative or maybe I heard a double
7 negative.

8 BY MS. McNEILL:

9 Q Did you compare Kaylie Langford?

10 A No, I did not.

11 MS. McNEILL: Thank you. Nothing further.

12 THE COURT: Thank you. Redirect?

13 MS. JOBE: Just a few questions.

14 REDIRECT EXAMINATION

15 BY MS. JOBE:

16 Q When Ms. McNeill was asking you questions, you saw
17 her demonstrate on the podium. If she puts her hand there and
18 then you touch it you may potentially have her DNA on your
19 hand; is that fair?

20 A It's possible.

21 Q Okay. What do you mean by it's possible?

22 A There are many variables or factors that can affect
23 our ability to develop an interpretable profile and it
24 depends mostly on the quality, quantity and the number of
25 contributors. So it's hard to say whether or not I would be

1 able to detect her on my hand after touching the podium or
2 not.

3 Q And you also said that, I believe when you were
4 testifying earlier, there's something about 100 cells to
5 develop a profile?

6 A Even though the tests that we use are very sensitive
7 because they use that chemical xeroxing process, we do have
8 minimum limitations. The ideal amount of DNA would be around
9 100 cells, but we can develop interpretable profiles with less
10 than that.

11 Q Okay. And as far as when you're talking about
12 mixtures -- well, transfer DNA. That's what Ms. McNeill was
13 referring to, correct?

14 A I believe so.

15 Q Okay. And as far as mixtures and the mixtures you
16 developed, I believe earlier you were testifying about quality
17 and quantity and you used a paint bucket type of analogy; is
18 that fair?

19 A Yes.

20 Q And as far as touch DNA, touch the podium and then
21 you touch the podium, if you were to take a swab of your hand
22 is it very probable that the amount of DNA from Ms. McNeill
23 touching the podium compared to a swab of your hand for DNA
24 would be enough to change the color of that bucket of paint?

25 A It all depends on how much DNA she is shedding. If

1 it's simply from transient skin contact, it's not very likely
2 that swabbing my hand roughly would pick up enough of her DNA
3 to compete with my own DNA. If my hand was swabbed very, very
4 lightly, perhaps we would obtain a better proportion of the
5 two of us, but we might not get enough DNA in total, so I
6 still might not be able to develop an interpretable profile.

7 Q Okay.

8 A It's very difficult to detect trace DNA on its own
9 and it's harder to detect it in the presence of overwhelming
10 DNA from someone else.

11 Q And you talked about when Ms. McNeill was asking you
12 questions biological fluids being, quote, "DNA rich" versus
13 touch DNA. What do you mean by that?

14 A Fluids contain a high cell load, so they're a better
15 way to deposit or transfer DNA than just your skin contact
16 alone. Sometimes the skin that we shed is actually dead skin
17 cells and there might not be usable DNA inside them, versus
18 someone who has a very sweaty palm or maybe somebody that was
19 putting their hands in their mouth or something like that.
20 So obviously the touch there, it's not just the skin contact
21 it's relying upon how much biological fluid might be on the
22 hands during the contact. It's kind of like the same reason
23 why you try to cover your mouth with something other than
24 your hand when you sneeze. If you think of DNA being similar
25 to transfer of germs, you instantly understand how it's

1 transferred.

2 Q And you were asked if you had known comparisons for
3 any sibling or the mother of Heather Haney, is that correct?

4 A I did not.

5 Q Okay. But as far as your conclusions where Heather
6 Haney was involved, at least on 1.2 that conclusion was one
7 in seven hundred billion, correct?

8 A The statistic associated with that comparison did
9 reach the identity threshold, yes.

10 Q Okay. And do you know how many people are on the
11 planet today?

12 A I do not.

13 Q All right. But I believe you compared it to one
14 second versus --

15 A Yes.

16 Q I forgot exactly what your numbers were.

17 A The actual statistical calculation that we do is a
18 very, very rare number. It could be one in a trillion or a
19 quadrillion or a quintillion. But for simplicity sake we cut
20 it off once we get to that threshold of one in seven hundred
21 billion. I don't know the actual number without referring to
22 the case file. It was rarer than the one in seven hundred
23 billion, and the time equivalent of that is smaller than one
24 second out of over twenty thousand years.

25 MS. JOBE: Court's indulgence.

1 BY MS. JOBE:

2 Q The one in seven hundred billion is the threshold.
3 How is that determined to be the threshold for identity?

4 A At the time the report was written I believe that
5 that was -- the seven hundred billion was a hundred times the
6 world's population of seven billion, but I don't recall for
7 sure.

8 MS. JOBE: Okay. No further questions.

9 THE COURT: Recross?

10 MS. McNEILL: Nothing further, Your Honor.

11 THE COURT: Okay, ma'am, you may step down. Thank
12 you very much for coming.

13 MS. JOBE: Can I take a moment to return that piece
14 of evidence?

15 THE COURT: Sure.

16 Next witness?

17 MR. BURTON: Your Honor, the State would recall
18 Igor Dicaro. I believe we're at the beginning cross-
19 examination.

20 THE COURT: Okay. That's my memory, too.

21 MR. BURTON: Thank you.

22 THE MARSHAL: Ma'am, does he need to be re-sworn?

23 THE COURT: No.

24 IGOR DICARO, STATE'S WITNESS, PREVIOUSLY SWORN

25 THE COURT: Good morning. And just for the record,

1 sir, I am reminding you you have been sworn.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Okay. Cross-examination.

4 MS. McNEILL: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. McNEILL:

7 Q Good morning, Detective.

8 A Good morning.

9 Q When you were being questioned by the State they
10 asked you some questions about your training methods on
11 obtaining interrogations. That's what I want to talk to
12 you a little bit about, okay?

13 A Sure.

14 Q You indicated that you have training on
15 interrogations?

16 A Interview interrogation classes, yes.

17 Q Yes. Okay. And you had quite a few of those
18 classes?

19 A Yes, ma'am.

20 Q And those were things that you did in order to
21 become a detective?

22 A They were not -- some of them were requirement for
23 certain positions to test, but they are not actually like a
24 requirement to become a detective.

25 Q But it's important in your job as a detective to

1 have those skills?

2 A Yes.

3 Q And I assume that you did well in those classes.

4 A I like to think so.

5 Q You paid attention?

6 A Yes.

7 Q And you use those techniques when you go in to

8 question a potential suspect, correct?

9 A That's correct.

10 Q And you, I assume, try to do your best to use those

11 techniques because a confession is important?

12 A That's correct.

13 Q Sometimes a confession can make or break a case?

14 A In some cases, yes.

15 Q At the time that you questioned Mr. Langford, he

16 had been handcuffed at the Hill Street house prior to that?

17 A That's correct.

18 Q And put into a patrol car?

19 A That's correct.

20 Q And driven to the Searchlight jail by patrol

21 officers?

22 A That's correct.

23 Q And he had been sitting in a holding cell?

24 A That's correct.

25 Q And you Mirandized him before you questioned him?

1 A That's correct.

2 Q And then you used some of these techniques when you
3 started questioning him, correct?

4 A Yes.

5 Q And some of those techniques are saying, as Mr.
6 Burton indicated, saying things you don't believe, like maybe
7 she came on to you?

8 A Yes.

9 Q And you do that because it's likely to get a
10 response?

11 A Sorry, what was that?

12 Q It's likely to get a response.

13 A To obtain some kind of response from the person
14 being interviewed, yes.

15 Q Okay. One of the other techniques you use is to
16 minimize the criminal -- potential criminal behavior?

17 A That's correct.

18 Q You want to build a rapport with the person because
19 they're more likely to talk to you if they like you, right?

20 A In some cases, yes.

21 Q You also indicated that -- to Mr. Langford that
22 things would go better for him if he confessed?

23 A I would not say that. I said that in certain cases
24 from our experience was that the judicial process goes
25 smoother for people that talk to us.

1 Q Okay. So what you said to Mr. Langford was in your
2 experience things go better for people who basically confess?

3 MR. BURTON: Your Honor, at this point I would
4 object under the best evidence rule.

5 THE COURT: I'm going to overrule.

6 MS. McNEILL: Thank you, Your Honor.

7 BY MS. McNEILL:

8 Q I mean, we can play the audio, but you indicated
9 that -- I mean, I can find it for you. You said the process
10 goes easier for somebody --

11 MS. JOBE: What page, Ms. McNeill?

12 MS. McNEILL: Page 21.

13 BY MS. McNEILL:

14 Q The process goes easier for somebody who talks to
15 you versus somebody who stonewalls you. And I'm paraphrasing
16 that, but that's basically what you said?

17 Q Yes. Both Detective Kira and I stated that.

18 A And the process, you meant the judicial process?

19 Q The process overall, yes.

20 A But the judicial process, the court system?

21 Q To include the judicial process, yes.

22 A Okay. And then there was some conversation with
23 Mr. Langford about people who admit to these things can get
24 help they might need?

25 Q That's one of the things we did say in the

1 interview, yes.

2 A Okay. You indicated that you spoke to Megan Jessen
3 at the school the day after -- or the day that Heather made
4 the disclosures, correct?

5 Q Yes.

6 A Were you -- She also indicated to you that she spoke
7 to some other friends of hers, correct?

8 Q That Heather spoke to somebody?

9 MR. BURTON: Objection, hearsay.

10 THE COURT: I'm sorry, could you state the question
11 again?

12 BY MS. McNEILL:

13 Q She indicated to you that she spoke to some other
14 friends of hers?

15 THE COURT: That's the question? Overruled.

16 MS. McNEILL: Thank you.

17 THE WITNESS: I believe if I remember correctly she
18 indicated that Heather also spoke to Xyliana.

19 BY MS. McNEILL:

20 Q Okay. And you indicated that you didn't speak to
21 Xyliana that day?

22 A That's correct.

23 Q You subsequently have spoken to Xyliana, correct?

24 A That's correct.

25 Q Did you ever speak to anyone named Emily?

1 A No, I did not.

2 Q Lisa?

3 A No.

4 Q Did you ever attempt to locate a Sean Kruger.

5 A Yes.

6 Q Were you able to locate him?

7 A Not physically. I spoke to him on the phone, I

8 believe, once or twice.

9 Q Okay. Did you ever document that in a report?

10 A No, I did not.

11 Q Did you ever tell the district attorneys that you

12 spoke with him?

13 A I did have some conversation with the district

14 attorney about Sean Kruger, yes.

15 Q Did you tell them the substance of these

16 conversations?

17 MR. BURTON: Objection, relevance.

18 THE COURT: Overruled.

19 MS. McNEILL: Thank you, Your Honor.

20 THE WITNESS: We did not actually have any

21 significant conversation over the phone. It was me trying

22 to schedule an interview with him.

23 BY MS. McNEILL:

24 Q Okay. But my question was did you ever tell the

25 district attorneys the substance of the conversation?

1 A Substance of the conversation with whom?

2 Q Mr. Kruger?

3 A That I tried to contact him, yes.

4 Q You were asked some questions about the holding cell

5 at the Searchlight jail. Remember that?

6 A Yes.

7 Q I believe you indicated that the door was metal.

8 Did you measure the thickness of the metal?

9 A No, I did not.

10 Q Do you have any idea what type of metal?

11 A No.

12 Q Do you -- Are you familiar with what the walls at

13 the Searchlight Justice Center are composed of?

14 A No, I'm not.

15 Q Are you an expert in acoustics?

16 A No, I'm not.

17 Q You indicated to the State that when you spoke to

18 Mr. Langford his demeanor was calm. Wouldn't you agree with

19 me there were portions on that tape where he was crying?

20 A Yeah, there were some portions where he was crying,

21 yes.

22 Q Okay. Are you aware of where Mr. Langford currently

23 resides?

24 MR. BURTON: Objection, Your Honor. May we approach?

25 THE COURT: Sure.

1 (Bench conference)

2 THE COURT: Microphones off.

3 MR. BURTON: Your Honor, that's getting into custody
4 status.

5 THE COURT: Yeah.

6 Ms. McNeill: They can't do it, but we can tell the
7 jury -- (inaudible).

8 MR. BURTON: I just want to make sure that if she's
9 opening that door --

10 MS. JOBE: That he's in jail.

11 MS. McNeill: Absolutely.

12 THE COURT: Okay. By the way, there was a question.
13 You're touching on it anyway. "Is the room where Mr. Langford
14 was interrogated sound proof? In other words, could he have
15 heard about his charges through a conversation in the
16 hallway?"

17 MS. McNEILL: I can ask him.

18 MR. BURTON: I would object to that as speculation.

19 MS. JOBE: And she just established he doesn't have
20 the requisite knowledge of the sound proof of the walls and
21 the door.

22 THE COURT: Could he have heard about his charges
23 through a conversation in the hallway?

24 MS. JOBE: The testimony was the conversation was
25 in the office.

1 THE COURT: That is -- I think that is speculation,
2 but you can ask the first one.

3 MR. BURTON: And, Your Honor, I would also object to
4 the question that we came up here for as to relevance. Why is
5 it relevant where he's located right now? That's really why
6 the State is not allowed to bring it in. It's prejudicial and
7 it's not relevant.

8 THE COURT: Okay.

9 MS. McNEILL: Well, it's prejudicial if they do it.
10 If we decide to do it, then we've obviously decided it's not
11 prejudicial. The reason is is because there's multiple things
12 that he said in his interview that they are trying to say
13 means -- or as to why he confessed. One of the things -- or
14 why he did confess or why he made certain statements and it's
15 relevant to certain information in there. There's a statement
16 that he made that you could get help if you admit this to us.
17 And he said if I did this, I would do that to get help. And
18 I think I get to argue he's still in jail, wouldn't it have
19 been easier to confess and get that out.

20 MR. BURTON: Your Honor, that would call for
21 speculation, not only on this detective's part, but even --

22 MS. McNEILL: But I get to argue that in closing.

23 MR. BURTON: -- but even on the defendant's part.

24 THE COURT: I understand. She wants to argue that
25 in closing. I'm going to allow it. Do you want to ask the

1 first question, don't ask the second?

2 MS. McNEILL: Okay.

3 MS. JOBE: And if we could just make a record of

4 this conversation about the questions at the break.

5 THE COURT: We can do that after.

6 MS. JOBE: Yeah. Absolutely.

7 THE COURT: Right. Absolutely. You bet.

8 MR. BURTON: Thank you.

9 MS. JOBE: Okay, thank you.

10 THE COURT: You bet.

11 (End of bench conference)

12 BY MS. McNEILL:

13 Q I'm going to go back a little bit to the room in

14 Searchlight that we were discussing.

15 A Yes.

16 Q And I'm just going to read this as written. "Is

17 the room where Mr. Langford was interrogated sound proof?"

18 A To the best of my knowledge, no.

19 Q Okay. And now I'm going to go back to the question

20 I asked you. Are you aware of where Mr. Langford currently

21 resides?

22 A He's currently incarcerated at the Clark County

23 Detention Center.

24 Q And you arrested him on January 21st, 2014?

25 A That's correct.

1 Q As far as you know, he's been there this entire
2 time?

3 A Yes.

4 Q You have a lot of experience working on cases of
5 a sexual nature, correct?

6 A I've been working as a sexual assault or sexual
7 abuse detective for the last -- a little bit over three years.

8 Q Okay. Do you think it's uncommon for an adult man
9 to ask his partner for anal sex?

10 MR. BURTON: Objection, Your Honor, relevance;
11 speculation.

12 THE COURT: State the question again, please.

13 BY MS. McNEILL:

14 Q Do you think it's uncommon for an adult man to ask
15 his partner for anal sex?

16 MS. McNEILL: If we can approach?

17 THE COURT: I'm going to sustain that one.

18 MS. McNEILL: Can we approach, Your Honor?

19 (Bench conference)

20 THE COURT: Microphones off.

21 MS. McNEILL: They asked Shayleen if he had ever
22 asked her for anal sex and she said no. And the inference
23 is that because she said no he had to rape Heather Haney.

24 MR. BURTON: The inference is that this was
25 something that he was interested in. Whether that's normal,

1 not, you know, unique to this circumstance is not at issue.
2 Furthermore, what does this detective know about the frequency
3 of anal sex?

4 THE COURT: You know, I'm still having -- I still
5 have problems with it. I'm maintaining my --

6 MS. McNEILL: They asked her if he ever asked. What
7 was the relevance of that then? They asked her if he ever
8 asked her and she said no.

9 THE COURT: Well --

10 MS. McNEILL: And now the inference is out there
11 that he's some sort of deviant because he asked for that, and
12 there is testimony that Heather was raped anally. So I think
13 that if he knows that --

14 MS. JOBE: I don't believe there was an objection
15 when that question was asked of Shay. And secondly, I go back
16 to the original arguments. The detective -- she's asking him
17 about sexual proclivities of people being common or uncommon
18 in the community. I just don't think that's --

19 THE COURT: Yeah. I'm maintaining my --

20 MS. McNEILL: Okay.

21 THE COURT: Okay.

22 (End of Bench Conference)

23 THE COURT: Okay. Sustained.

24 BY MS. McNEILL:

25 Q All right. Well, along those same subject lines,

1 let me ask you a little bit different question. Does wanting
2 anal sex with an adult partner make you more or less likely
3 to molest a child?

4 MR. BURTON: Objection, Your Honor, speculation and
5 relevance.

6 THE COURT: Sustained.

7 MS. McNEILL: No more questions.

8 THE COURT: Okay. We need that question back.

9 MS. McNEILL: Yes, Your Honor.

10 THE COURT: Okay, thank you. Go ahead and give it
11 to the clerk and she'll mark it the next court in order. And
12 you all will be getting copies of those questions.

13 Okay. Redirect, counsel?

14 MR. BURTON: Thank you, Your Honor. I'm turning on
15 my microphone. Can you hear me, Ms. Ramirez? All right. I
16 can hear myself, so I'm going to put it down a little bit.
17 Still hear me? All right, thank you.

18 REDIRECT EXAMINATION

19 BY MR. BURTON:

20 Q Detective, I just have a few questions for you.

21 A Sure.

22 Q Did you, before you came to court to testify, did
23 you bring any physical evidence to court?

24 A You mean today or before?

25 Q Before you came to court.

1 A Yes.

2 Q Are those the bags that we see in the courtroom?

3 A Yes, they appear to be the bags.

4 Q Where did you get those bags?

5 A From the evidence vault.

6 Q When you got them from the evidence vault, were they

7 in sealed bags like we see them in court?

8 A Yes, they were all sealed.

9 MR. BURTON: Your Honor, may I approach the clerk?

10 THE COURT: Sure.

11 BY MR. BURTON:

12 Q During your investigation did you receive any

13 information concerning Emily or Lisa?

14 A At the initial interview Heather disclosed that she

15 had told her friends Emily and Lisa about the incident.

16 MS. McNEILL: I'm sorry, I didn't hear the answer.

17 THE WITNESS: At the initial interview Heather had

18 stated that she had disclosed to Emily and Lisa, I believe

19 those were the names of the girls.

20 BY MR. BURTON:

21 Q After that initial interview with Heather, did you

22 impound some drawings that were done during that interview?

23 A I believe I did, yes.

24 MS. McNEILL: Your Honor, this is beyond the scope

25 of my cross.

1 THE COURT: I have to sustain that one.

2 MR. BURTON: Okay. Your Honor, no further questions

3 at this time.

4 THE COURT: Any recross?

5 MS. McNEILL: No, Your Honor.

6 THE COURT: Sir, you may step down. Thank you.

7 THE WITNESS: Thank you.

8 THE COURT: Next witness?

9 MR. BURTON: Can we approach, Your Honor?

10 THE COURT: Sure.

11 (Bench conference)

12 THE COURT: Microphones off?

13 MR. BURTON: Yes.

14 THE COURT: Okay.

15 MR. BURTON: First, it looks like we have a jury

16 question for Detective Dicaro, so I think the bailiff is

17 asking him to come back. I'm just saying what I saw.

18 THE COURT: Okay. It's a little late.

19 MR. BURTON: Secondly, I think I'm going to call --

20 recall Detective Dicaro just to get in the evidence that was

21 beyond the scope of cross-examination and lay some foundation

22 for the drawing that Heather did that was impounded by

23 Detective Dicaro, as well as some other evidence that

24 Detective Dicaro impounded. We're not seeking to admit --

25 we're going to seek to admit the drawing at this point, but

1 we're not going to seek to admit other evidence that he
2 impounded; the letters. It's the drawing of the room.

3 MS. McNEILL: Oh, I know. You don't have to --
4 (indiscernible).

5 MS. JOBE: I'm sorry.

6 MR. BURTON: Okay.

7 MS. JOBE: Okay, we could make a record of that then.
8 The other thing, because you asked the CCDC question, there
9 are letters that have been sent from CCDC that Dicaro
10 impounded. And so we're not asking to admit them right now,
11 but we want Dicaro to have -- to do the chain of custody on
12 the envelope to open it in case this becomes relevant later
13 and we want to impound them -- or admit them as evidence.

14 MS. McNEILL: So it's just a chain of custody?

15 MS. JOBE: Yes.

16 MS. McNEILL: I'll stipulate to the chain of custody
17 on the letters.

18 MS. JOBE: Okay.

19 MR. BURTON: Okay, that will work.

20 THE COURT: Okay?

21 MS. JOBE: We're good.

22 THE COURT: All right.

23 MR. BURTON: We just have the juror question. I
24 don't know what you want to do with it.

25 THE COURT: Well, yeah, but if the juror question

1 is on a witness that's already left the stand, we can't go
2 there --

3 MR. BURTON: Okay.

4 THE COURT: -- you know. Now, if it's on --

5 MS. McNEILL: Now, do we want to --

6 THE COURT: You know, if another witness can --
7 you know, do you have any other witnesses?

8 MS. JOBE: Uh-uh.

9 MR. BURTON: I believe we would rest.

10 THE COURT: You're closing? Okay.

11 MS. McNEILL: Do we need to take them just for the
12 record?

13 THE COURT: Yeah, we will. I will. But if the
14 question is submitted after the witness has left -- Now, if
15 you've got some witnesses that we could pose the question to,
16 that's a different deal.

17 MS. McNEILL: Well, and I told my witnesses to be
18 back at 1:00. They may be out there, but I told them to go
19 get lunch. But we could settle the jury instructions.

20 THE COURT: Yeah. Oh, my God, I hate to waste their
21 time, though.

22 MS. McNEILL: Well, let me go see if anyone is out
23 there.

24 THE COURT: Yeah, let's see if he's out there.

25 MS. McNEILL: They could be downstairs in the café.

1 Do you want to give me a minute to run down there?

2 THE COURT: Do you mind?

3 MS. McNEILL: No.

4 THE COURT: I hate to have you do that in your high
5 heels.

6 MS. McNEILL: That's okay. Do you want to give them
7 a break while I run down?

8 THE COURT: Uh, okay.

9 MR. BURTON: Can we just make a real quick record
10 of that --

11 MS. McNEILL: Yeah. Right.

12 MR. BURTON: -- the stipulated admission of the
13 drawing of the room? We'll make a record of the stipulation
14 of the letters if it becomes relevant --

15 MS. McNEILL: Right.

16 MR. BURTON: -- or we seek them to be admitted.

17 MS. McNEILL: Okay.

18 THE COURT: Okay. Well, do you think they are down,
19 just right downstairs?

20 MS. McNEILL: I told them to go get something to
21 eat, so it's possible that they're down there because I know
22 this week I've been eating lunch with them.

23 THE COURT: Okay. Okay, if you don't mind --

24 MS. McNEILL: Yeah.

25 THE COURT: -- that would be good because I'd like

1 to get an hour.

2 MS. McNEILL: Okay.

3 THE COURT: Okay. Okay.

4 MR. BURTON: Thank you, Your Honor.

5 (End of Bench Conference)

6 THE COURT: Okay. Counsel?

7 MR. BURTON: Yes. Thank you, Your Honor. At this
8 time I believe the parties have entered into a stipulation
9 that a drawing of the defendant's bedroom that was done by
10 Heather Haney during her first interview is admitted as
11 evidence. That would be State's Exhibit -- Brief indulgence.
12 I apologize. State's Exhibit 41A.

13 MS. McNEILL: And that is correct, Your Honor. I
14 did stipulate to the admission.

15 THE COURT: Okay, it's admitted. And it's -- is it
16 marked as an exhibit?

17 MR. BURTON: It is. It is.

18 THE COURT: What exhibit is it?

19 MR. BURTON: It's Exhibit 41A.

20 THE COURT: 41A.

21 (State's Exhibit 41A admitted)

22 MR. BURTON: Your Honor, may I approach the clerk?

23 THE COURT: You may.

24 MS. JOBE: We just need to confirm the exhibits,
25 Your Honor.

1 MR. BURTON: Thank you, Your Honor. At this time
2 the State rests.

3 THE COURT: Okay.

4 MS. McNEILL: And, Your Honor, we have -- as I
5 indicated, I have witnesses present. If I could just go see
6 if I can get them.

7 THE COURT: Okay, certainly.

8 MS. McNEILL: Thank you.

9 THE COURT: In fact, ladies and gentlemen, we
10 finished up a little bit earlier than was anticipated, and
11 so she had asked her witnesses just to go down and get some
12 lunch and come back at 1:00. She's going to see if they're
13 downstairs, okay.

14 THE CLERK: So 41A has been admitted, right?

15 THE COURT: 41A is admitted. Yes.

16 THE CLERK: Who has that?

17 THE COURT: Well, you should have it now. It's in
18 those --

19 MR. BURTON: It should be in State's Exhibit 41.

20 THE COURT: Okay.

21 (Colloquy between the Court and the clerk)

22 THE COURT: Okay. We need to have Ms. McNeill in
23 here, but just an FYI, we'll mention it when she comes in,
24 we've got 41 and 41B, but we do not have 41A.

25 MS. JOBE: 41A was in the envelope.

1 (Colloquy between Ms. Jobe and the clerk)

2 THE COURT: Found it? Okay. That's all right.

3 We want to make sure we're straight here. Was 41A admitted?

4 MS. JOBE: Yes, Your Honor.

5 THE COURT: Okay.

6 MS. McNEILL: May we approach?

7 THE COURT: Sure.

8 (Bench Conference)

9 MS. McNEILL: I apologize, Your Honor. I really

10 didn't think we'd get done.

11 THE COURT: Pardon me?

12 MS. McNEILL: I said I apologize. I really didn't

13 think we'd get done.

14 THE COURT: Okay. Well, that's okay. By the way,

15 I would like to leave by 4:00 today because I've got an event

16 I need to go to. Do you think we would be done before then?

17 MS. McNEILL: Yeah, that's fine. Yeah.

18 THE COURT: Okay. Well, let's just see if we can't

19 go to lunch a little early then. Okay.

20 (End of Bench Conference)

21 THE COURT: Okay, thank you. And Ms. McNeill, while

22 you were gracious enough to go downstairs to try and find

23 these witnesses, we were discussing the -- we were getting

24 our exhibits together and we've got them all taken care of.

25 MS. McNEILL: Okay.

1 THE COURT: But I just wanted to make you aware of
2 that.

3 MS. McNEILL: Thank you, Your Honor.

4 THE COURT: Okay. Ladies and gentlemen, Ms. McNeill
5 went downstairs to see if she could find those witnesses and
6 they're just not downstairs. So why don't we take lunch a
7 little early. I'm sorry, but I'm going to go ahead and use
8 our time effectively. Why don't you be back here at about
9 12:20. And so just take lunch a little bit early and we'll --

10 Well, do you think that they're going to be back at
11 1:00, Ms. McNeill?

12 MS. McNEILL: Yes, Your Honor.

13 THE COURT: Do you have a phone number for him?

14 MS. McNEILL: I don't, but I can have my
15 investigator leave her office and see if she can round them
16 up and get them here earlier.

17 THE COURT: Okay. I'll tell you what, how about
18 12:30? That way -- okay. So why don't you be back here at
19 12:30. During this period of time you are admonished not to
20 talk or converse among yourselves or with any one else on
21 any subject related to the trial, or read, watch or listen
22 to any report of or commentary on the trial by any medium
23 of information, including without limitation newspapers,
24 television, the Internet and radio, or form or express any
25 opinion on any subject related to the trial until the case

1 is finally submitted to you. And we'll see you back here at
2 12:30.

3 (The jury exits the courtroom)

4 THE COURT: Let the record reflect that the jury has
5 left the courtroom.

6 Okay, we might as well have a little chat -- you may
7 all be seated -- a little chat with --

8 MS. JOBE: Your Honor --

9 THE COURT: Huh?

10 MS. JOBE: I have a very short attention span with
11 remembering things.

12 THE COURT: Okay.

13 MS. JOBE: Can we make a record of the bench
14 conference?

15 THE COURT: Sure.

16 MS. McNEILL: Oh, that's a good idea.

17 MS. JOBE: And, Your Honor, while Ms. McNeill was
18 questioning Detective Dicaro, she asked if Detective Dicaro
19 knew where the defendant is. The State objected, asked for
20 a bench conference. The State objected to her asking the
21 question because it necessarily was going to elicit that
22 the defendant is currently incarcerated at the Clark County
23 Detention Center. And the State objected to that based on the
24 fact that it's prejudicial to the defendant. And Ms. McNeill
25 made a record of what she wants to argue with that fact and

1 in closings, and the State just wanted to make its objection
2 clear. But since that did come in, that it's opened the door
3 to questions relating to the defendant's custodial status.

4 THE COURT: Okay.

5 MS. McNEILL: Thank you, Your Honor. I understand
6 the prejudicial nature of such testimony. However, Mr.
7 Langford and I have discussed every step of the way evidence
8 that we would intend to produce. He and I discussed that,
9 and with his permission we decided it was necessary to our
10 defense to elicit that information.

11 THE COURT: Okay. All right, thank you. All right,
12 you may be seated.

13 Mr. Langford, I've got some things I need to address
14 with you, okay? Sir, you have the right under the Constitution
15 of the United States and the Constitution of the State of
16 Nevada not to be compelled to testify in this case. Do you
17 understand that?

18 THE DEFENDANT: Yes, I do, Your Honor.

19 THE COURT: That means that no one can make you take
20 the witness stand and make you answer any questions. Do you
21 understand that?

22 THE DEFENDANT: Yes, I do, Your Honor.

23 THE COURT: You may, if you wish, give up this right
24 and you may take the witness stand and testify. If you do,
25 you will be subject to cross-examination by the deputy

1 district attorneys, as well as your own lawyer, and anything
2 you say, whether it is in answers to questions put to you by
3 your lawyer or by the deputy district attorney, will be the
4 subject of fair comment when the deputy district attorney
5 speaks to the jury in closing argument. Do you understand
6 that?

7 THE DEFENDANT: Yes, I do, Your Honor.

8 THE COURT: If you choose not to testify, the Court
9 will not permit the deputy district attorneys to make any
10 comments to the jury concerning the fact that you have not
11 testified. Do you understand that?

12 THE DEFENDANT: Yes, I do, Your Honor.

13 THE COURT: If you elect not to testify, the Court
14 will instruct the jury, only if your attorney specifically
15 requests, an instruction which reads substantially like this:
16 The law does not compel a defendant in a criminal case to take
17 the stand and testify, and no presumption may be raised and
18 no inference of any kind may be drawn from the failure of a
19 defendant to testify. Now, this is also under the Carter v.
20 Commonwealth case. The cite on that is 450 U.S. 288, 101
21 Supreme Court Reporter 1112, 67 Lawyers Edition 2nd, 241, and
22 it's a 1981 case. And sir, your counsel may submit something
23 which is substantially similar to what I've just read to you.
24 Okay. Do you have any questions you'd like to ask
25 me about your constitutional rights?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: If you choose to testify and you have
3 been convicted of a felony within the past ten years or have
4 been on parole or probation for a felony within the past ten
5 years, the deputy district attorneys will be permitted to ask
6 you, one, if you've been convicted of a felony; two, what was
7 the felony; and three, when it happened. No details may be
8 gone into regarding any prior felony convictions. Do you
9 understand that?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: If you deny a felony conviction, the
12 State may impeach your testimony with certified copies of the
13 conviction which may contain more information in them than
14 simply what the felony was and when it occurred. Do you
15 understand that?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Are counsel satisfied with that canvass?

18 MS. JOBE: Yes, Your Honor.

19 MS. McNEILL: Yes, Your Honor.

20 THE COURT: Okay. All right, well, let's go ahead
21 and go to lunch and be back at 12:30.

22 (Court recessed from 11:08 a.m. until 12:40 p.m.)

23 (Jury is not present)

24 THE COURT: All right. We're back on the record.
25 Counsel, are we ready to proceed?

1 MS. McNEILL: Yes, Your Honor.

2 THE COURT: Okay. Let's bring the jury in.

3 (Jury is present)

4 THE COURT: Okay. Will counsel please stipulate to

5 the presence of the jury?

6 MS. JOBE: Yes, Your Honor.

7 MS. McNEILL: Yes, Your Honor.

8 THE COURT: All right. You all may be seated.

9 Okay. First witness, counsel.

10 MS. McNEILL: Thank you, Your Honor. At this time

11 the defense would call Xyliana Clay.

12 XYLIANA CLAY, DEFENSE WITNESS, SWORN

13 THE CLERK: Please state and spell your full name.

14 THE WITNESS: Xyliana. X-Y-L-I-A-N-N-A.

15 THE MARSHAL: Last name?

16 THE WITNESS: Oh. Clay. C-L-A-Y.

17 THE CLERK: Thank you.

18 THE COURT: Okay. Just put yourself up as close as

19 you can to that microphone, okay. We want to make sure you're

20 heard, okay? And also, when the lawyer asks you a question,

21 do me a favor and let the lawyer get the question out before

22 you respond. We have a tendency to interrupt each other all

23 the time, right --

24 THE WITNESS: Yeah.

25 THE COURT: -- in our English language. Well, I've

1 got a great court recorder here. She's wonderful, but she's
2 never mastered the art of taking down two people at the same
3 time, okay? Fair?

4 THE WITNESS: Okay.

5 THE COURT: All right. Go ahead, counsel.

6 MS. McNEILL: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MS. McNEILL:

9 Q Hi, Xyliana.

10 A Hello.

11 Q Do you have a nickname that you go by?

12 A Xylie.

13 Q And do you prefer that?

14 A Yeah.

15 Q Okay. Do you know someone named Heather Haney?

16 A Yes.

17 Q How do you know her?

18 A We're close friends.

19 Q Okay. Do you live in Searchlight?

20 A Yes.

21 Q Is that where you met her?

22 A Yes.

23 Q How long have you been friends?

24 A Early elementary school.

25 Q Okay. And you're still friends now?

1 A Yes.

2 Q Okay. Do you ride the bus with Heather sometimes?

3 A Yes.

4 Q Did you ride the bus with Heather in 2013?

5 A Yes.

6 Q What kind of stuff did you talk about on the bus?

7 A Just whatever we were thinking about, school or

8 whatever came up.

9 Q Okay. Did you ever talk about stuff going on at

10 home?

11 A Yeah.

12 Q Okay. Did Heather ever talk to you about her

13 stepdad?

14 A Yes.

15 Q Okay. What kind of stuff did she tell you?

16 MR. BURTON: Your Honor, I'm going to object as to

17 hearsay.

18 MS. McNEILL: Your Honor, these are -- May we

19 approach?

20 THE COURT: Sure.

21 (Bench Conference)

22 THE COURT: Okay, are the microphones off?

23 MS. McNEILL: Yes.

24 THE COURT: Okay.

25 MS. McNEILL: These are inconsistent statements

1 from Heather. What she's going to say, they elicited the
2 same information from Megan Jessen. She's going to say that
3 Heather never told her that she was raped. That's inconsistent
4 to what Heather said.

5 MR. BURTON: So I guess the question is what Heather
6 didn't say, not what Heather said. I don't have an objection
7 to what Heather didn't say, but I have a hearsay objection to
8 what Heather said.

9 THE COURT: Well, you know, we've been getting into
10 what Heather has said all along through this trial.

11 MR. BURTON: Right, through Heather.

12 THE COURT: Well, not just through Heather, it's
13 been other witnesses, too.

14 MR. BURTON: Okay.

15 THE COURT: So I'm going to allow it.

16 (End of Bench Conference)

17 THE COURT: All right. Overruled.

18 All right, go ahead.

19 BY MS. McNEILL:

20 Q What did Heather tell you about her stepdad?

21 A Any specifics or just like in general?

22 Q Well, let me ask you this. Did Heather ever tell
23 you that her stepdad had raped her?

24 A No.

25 Q What did she tell you about her stepdad and rape?

1 A That he had threatened to rape her.

2 Q Okay. And did you tell the police that at some time?

3 A Yeah.

4 Q Okay. Do you remember when that was?

5 A When they first came and we were interviewed --

6 and I was interviewed in the car.

7 Q Okay. In a police car?

8 A Yeah.

9 Q Okay. And when you talked to the police, did you

10 know that they were there to talk about Heather?

11 A Yeah.

12 Q And they told you they were police officers?

13 A Yeah.

14 Q Did you know they were there to help?

15 A Yeah.

16 Q Okay. And you told them that she only told you that

17 he threatened to rape her?

18 A Yes.

19 MS. McNEILL: Okay. Nothing further, Your Honor.

20 THE COURT: Cross?

21 MR. BURTON: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. BURTON:

24 Q Hello, Xylie.

25 A Hello.

1 MR. BURTON: Ms. Ramirez, can you hear me?

2 COURT RECORDER: Yes.

3 MR. BURTON: Okay. I'm going to put that down just
4 a little bit because I'm getting feedback.

5 BY MR. BURTON:

6 Q During the same conversation that you had with
7 Heather where she said that her stepdad had threatened to rape
8 her, did she also say that her dad had physically abused her?

9 A Yes.

10 Q Or her stepdad. I apologize.

11 A Yes.

12 Q And you said that you rode the bus with Heather in
13 2013, is that correct?

14 A Yes.

15 Q Did you ride -- Was there a time where you did not
16 ride on the school bus with Heather?

17 A Yes.

18 Q Is that because Heather was home schooled?

19 A Yeah.

20 Q During the time that Heather was home schooled, were
21 you able to spend time with her as a friend?

22 A Not really.

23 Q Did Heather have a cell phone during the time that
24 she was home schooled?

25 A No.

1 Q Did Heather have any access to a Facebook account
2 that you know of?

3 A No.

4 Q When Heather's stepdad was home, were you or any of
5 Heather's friends, to your knowledge, allowed to come over to
6 her house and play?

7 A No, only her cousin.

8 Q When you had this conversation with Heather, are you
9 aware that at some point she talked to some adults about what
10 her stepdad was doing?

11 A No, I'm not aware of that.

12 Q After you talked with Heather about what her stepdad
13 was -- Well, what was she like, what was her demeanor like
14 when she talked to you about her stepdad?

15 A Uh, worried and like she wanted to get something off
16 her chest. Yeah.

17 Q After she talked to you, did her demeanor change?

18 A She seemed sort of relieved that she had told me.

19 Q Did Heather mention any specific details either
20 about her stepdad threatening to rape her or about the
21 physical abuse that her stepdad had done to her?

22 A No, no specifics.

23 Q Do you recall when this conversation was with
24 Heather?

25 A No.

1 THE COURT: You might need to move that up. It's --

2 MR. BURTON: It is just -- Does that work? Okay.

3 BY MR. BURTON:

4 Q Now, we talked about you being on the school bus
5 with Heather in 2013?

6 A Yes.

7 Q Is that when this conversation happened?

8 A Uh, yes.

9 MR. BURTON: Nothing further, Your Honor.

10 THE COURT: Redirect?

11 MS. McNEILL: Thank you. Just a couple more
12 questions, Xylie.

13 REDIRECT EXAMINATION

14 BY MS. McNEILL:

15 Q You indicated that when asked if you were allowed to
16 come to Heather's house, you said her cousin was allowed to
17 come over?

18 A Yes.

19 Q Who is her cousin?

20 A Joe McClary (phonetic).

21 Q Okay. So he was allowed to go hang out with her
22 at her house?

23 A Sometimes.

24 Q Okay. And then you were asked if you recall when
25 this conversation with Heather was. Do you remember the

1 detective asking you about it happening at the beginning of
2 2014?

3 A Uh, no. I get years -- I get dates mixed up, so.

4 Q Okay. Well, let me do this for you. Would looking
5 at your -- a transcript of the statement you gave to the
6 officer help you remember that?

7 A Yes.

8 MS. McNEILL: If I may approach the witness, Your
9 Honor?

10 THE COURT: You may.

11 BY MS. McNEILL:

12 Q Does that help you remember?

13 A Yeah.

14 Q Okay. Was it at the beginning of 2014?

15 A Yeah.

16 MS. McNEILL: Nothing further.

17 MR. BURTON: No further questions, Your Honor.

18 THE COURT: You may step down. Thank you so much
19 for coming.

20 Next witness?

21 MS. McNEILL: We would call Nakita Williams.

22 NAKITA WILLIAMS, DEFENSE WITNESS, SWORN

23 THE CLERK: Please state and spell your full name.

24 THE WITNESS: N-A-K-I-T-A, Nakita. W-I-L-L-I-A-M-S,
25 Williams.

1 THE CLERK: Thank you.

2 THE COURT: Okay. And, Ms. Williams, make sure
3 you're up to that microphone. You're doing a real good job
4 there. And when the attorney asks you questions, make sure
5 she gets her question out before you respond, okay?

6 THE WITNESS: Okay.

7 THE COURT: As you know, we have a tendency to
8 interrupt each other all the time whenever we talk to each
9 other, right? Is that true?

10 THE WITNESS: Yes.

11 THE COURT: Okay. And I also need you to answer
12 audibly. No nods, shakes of the head or uh-uh, uh-huh's,
13 okay?

14 THE WITNESS: Okay.

15 THE COURT: All right, thank you.

16 MS. McNEILL: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MS. McNEILL:

19 Q Hi, Nakita.

20 A Hi.

21 Q How are you doing?

22 A Tired.

23 Q Okay. Well, we'll try to get you out of here. Do
24 you know someone by the name of Heather Haney?

25 A Yes.

1 Q How do you know Heather?

2 A We used to be best friends.

3 Q Okay. So you're not best friends anymore?

4 A No.

5 Q All right. Were you best friends in June of 2015?

6 A Yes.

7 Q Okay. Did you ever ride the bus with Heather?

8 A Yes.

9 Q All right. When was that?

10 A I rode the bus with her every day.

11 Q Okay, that was a bad question, Nakita. I'm sorry.

12 A Yeah.

13 Q Did you ride the bus with Heather when you were in

14 high school?

15 A Yes.

16 Q And what grade was she in?

17 A When I started riding the bus she was still in 8th

18 grade.

19 Q Okay. Are you older than her?

20 A Yes.

21 Q How much older are you?

22 A If she's still 14, two years.

23 Q Okay. On the bus did you ever talk about boys with

24 Heather?

25 A Yes.

1 Q Okay. Do you remember talking about someone named
2 Sean Kruger?

3 A Yes.

4 Q What did -- Let me ask you this. Did Heather have a
5 crush on Sean?

6 A For awhile she did.

7 Q Do you know if Sean was older than Heather?

8 A Not when she told me about him at first, no.

9 Q Do you know that now?

10 A Yes.

11 Q Is he an adult?

12 A Yes.

13 Q Did Heather ever tell you about Sean coming over
14 to her house?

15 A Yes.

16 Q What did she tell you?

17 A She told me that Sean was Justin's friend and that
18 they would hang out, and that when he would go take showers --
19 when Justin would go take showers, Sean and her would be on
20 the couch and then they would start doing stuff together.

21 Q Okay. And by stuff, what do you mean?

22 A I don't want to explain this again.

23 Q I know. It's hard. Well, let me ask you this. Did
24 she tell you that Sean would touch her?

25 A Yes.

1 Q Where would he touch her?

2 A He would touch her in the chest area.

3 Q By chest do you mean breasts?

4 A Yes.

5 Q Okay. And did he -- Did she tell you that he would

6 kiss her?

7 A Yes.

8 Q Did Heather ever tell you about her stepdad raping

9 her?

10 A Yes.

11 Q Do you remember when she told you that, was her

12 stepdad in jail?

13 A Yes.

14 MS. McNEILL: Nothing further.

15 THE COURT: Counsel, cross?

16 MS. JOBE: Yes, Your Honor, just briefly.

17 CROSS-EXAMINATION

18 BY MS. JOBE:

19 Q Good afternoon, Ms. Williams. Just a couple of

20 questions for you. Were you in Searchlight in January of

21 2014?

22 A Yes -- No, I was not.

23 Q Okay. Did you move back to Searchlight at some

24 point in time?

25 A Yes, I did, on July 4th.

1 Q Okay. So you moved back July 4th, 2014, so the
2 conversations you described to Ms. McNeill happened after
3 that. Fair?

4 A Yes.

5 Q And isn't it true that Heather told you about her
6 stepdad in September of 2014?

7 A Yes.

8 Q And she told you about Sean in December of 2014,
9 correct?

10 A Yes.

11 Q And she did in fact tell you that Sean would kiss
12 her?

13 A Yes.

14 Q And as far as what Heather said about her stepdad
15 raping her, didn't she tell you that her mom found out her
16 stepdad had been raping her after Heather told people?

17 A Yes.

18 MS. JOBE: No further questions.

19 THE COURT: Counsel, would you approach?

20 (Bench Conference)

21 THE COURT: This is from Juror No. 5: "When exactly
22 were you and Heather best friends? What grade was Heather
23 in?"

24 MS. JOBE: Okay.

25 THE COURT: Any problem about me asking it?

1 MS. McNEILL: No.

2 THE COURT: Okay.

3 (End of Bench Conference)

4 THE COURT: Okay. When exactly were you and Heather

5 best friends?

6 THE WITNESS: Uh, from July 4th of 2014 to this last

7 December.

8 THE COURT: Okay. What grade was Heather in?

9 THE WITNESS: When we stopped being best friends

10 she had just become a freshman.

11 THE COURT: Okay. And in July you guys obviously

12 were not in school, so she was between 8th and 9th grade?

13 THE WITNESS: Yes.

14 THE COURT: Okay. Redirect?

15 MS. McNEILL: No, Your Honor. Nothing further.

16 THE COURT: You may step down. Thank you.

17 MS. McNEILL: Roger Langford. We would call Roger

18 Langford at this time, Your Honor.

19 THE COURT: Okay. Mr. Langford? Oh, not him?

20 THE DEFENDANT: No.

21 THE COURT: Oh.

22 MS. McNEILL: No. Roger. Sorry.

23 THE COURT: Okay. You said Mr. Langford. I was

24 like, okay.

25 MS. McNEILL: I probably did.

1 ROGER LANGFORD, DEFENSE WITNESS, SWORN

2 THE CLERK: Please state and spell your full name.

3 THE WITNESS: Roger Langford. R-O-G-E-R L-A-N-G-

4 F-O-R-D.

5 THE CLERK: Thank you.

6 THE COURT: Okay. Mr. Langford, I'd like you to

7 sit up as close as you can to that microphone. And then also,

8 the attorneys are going to be asking you questions. Do me

9 a favor, let the attorney get their question out before you

10 respond and then they're not going to interrupt you, either.

11 The reason I say that is we have a tendency to interrupt each

12 other all the time when we talk in our English language. But

13 I've got a great court recorder here. She can't take you both

14 down at the same time. All right?

15 THE WITNESS: Okay.

16 THE COURT: Go ahead, counsel.

17 MS. McNEILL: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. McNEILL:

20 Q Hi, Mr. Langford.

21 A Hi.

22 Q How are you doing?

23 A Okay.

24 Q Are you a little nervous?

25 A No.

1 Q Okay. Do you know this gentleman sitting here,
2 Justin Langford?

3 A My son.

4 Q Okay. So your relationship with him is he's your
5 son, right?

6 A Yes.

7 Q Okay. I want to talk to you a little bit about June
8 of 2009, all right. Do you remember where you were living?

9 A I had just moved from California.

10 Q To where?

11 A Searchlight, Nevada, the 29th of June.

12 Q All right. Were you living -- who were you living
13 with?

14 A My son and his wife.

15 Q Anyone else live in the house with you?

16 A My youngest granddaughter.

17 Q Okay. At some point did Heather Haney move into
18 the house?

19 A Yes, she did.

20 Q Okay. You were living in the house with Justin,
21 Shayleen, Kaylie and Heather?

22 A Correct.

23 Q How long did you live in the house with all of
24 them?

25 A About a year and a half.

1 Q All right. During that time were you frequently
2 home with Justin and the children?

3 A Yes.

4 Q After you moved out, did the girls ever come to your
5 house?

6 A Not where I was living at the time.

7 Q Okay. At some point after that where you moved
8 into, did they come visit?

9 A Yes.

10 Q All right. Were you ever kept from seeing the
11 girls?

12 A No, never.

13 Q Did you go visit them at their house?

14 A Frequently.

15 Q Were you ever told you couldn't come see them?

16 A No.

17 Q At any of the times that you were at the house, did
18 you ever see Heather in Justin's bedroom?

19 A No. Well, you know, in there.

20 Q Well, did you?

21 A Yes.

22 Q What was she doing?

23 A What she was doing? You know, to me she was looking
24 for some stuff, you know.

25 Q Okay. So you saw her going through items?

1 A Yes.

2 Q Was she supposed to be in there?

3 A Not to my knowledge.

4 Q Okay. I want to ask you some questions that might
5 be kind of hard for you. Does Justin have a temper?

6 A Now and then.

7 Q Now and then?

8 A Yeah.

9 Q What kind of parent would you say he is?

10 A Extremely strict.

11 Q Extremely strict. Did you ever have conversations
12 with him about that?

13 A Oh, yeah.

14 Q Did you think at times he might be a little too
15 strict?

16 A I told him a couple of times, you know, because
17 Heather was, you know, coming into a teenager. You know,
18 things would get different between the ages.

19 Q Okay. So did you notice it was causing maybe some
20 tension in the house with Heather?

21 A Oh, yeah. He said it a few times, you know.

22 Q Okay. And the last thing I want to talk to you
23 about, Mr. Langford, is July 4th of 2014. Do you remember
24 where you were?

25 A Well, the evening I was at the fireworks display.

1 Q Who were you with?
2 A Shay and Heather and Kaylie.
3 Q Okay. Was there anyone else there?
4 A Her cousins.
5 Q And what's the cousins' names?
6 A Julie and Ashley.
7 Q Okay. Did you hear a conversation between Heather
8 and Ashley?
9 A Yes.
10 Q What was that conversation?
11 MS. JOBE: Objection, hearsay.
12 THE COURT: Approach.
13 (Bench Conference)
14 MS. JOBE: Your Honor, I asked Heather about this
15 conversation, did she make the statement that he's going to
16 testify to, and she said no. So this is now inconsistent with
17 her testimony.
18 THE COURT: Okay. But we're not going to get into
19 what Ashley had said?
20 MS. McNEILL: No.
21 MS. JOBE: And, Your Honor, the State believes this
22 is entirely inappropriate because there aren't any details
23 elicited from Heather as far as what this conversation was or
24 was going.
25 MS. McNEILL: I asked Heather, did you have a

1 conversation with Ashley about how to get rid of your mom's
2 boyfriend, and she said no. That's what he's going to testify
3 to, that that's what he heard.

4 MS. JOBE: The State's position is it's still
5 hearsay. It's not an inconsistent statement.

6 THE COURT: I understand. I'm going to overrule.

7 MS. McNEILL: Thank you.

8 THE COURT: Okay.

9 (End of Bench Conference)

10 BY MS. McNEILL:

11 Q Let me ask you this.

12 THE COURT: Wait, wait, wait. Just a second.

13 MS. McNEILL: I'm sorry.

14 BY MS. McNEILL:

15 Q You said you heard a conversation between Heather
16 and Ashley, right?

17 A Yeah.

18 Q Okay. Did that conversation have to do with
19 Ashley's mother's boyfriend?

20 A Yes, it did.

21 Q What did Heather say to Ashley?

22 A She started to tell her how to get rid of him, by
23 calling the CPS.

24 MS. McNEILL: Nothing further, Your Honor.

25 THE COURT: Counsel?

1 CROSS-EXAMINATION

2 BY MS. JOBE:

3 Q Good afternoon, sir. Hi. You said you moved to
4 Searchlight on June 29th of 2009, correct?

5 A Yes.

6 Q And you lived at the residence with your son, Shay
7 and Kaylie for a year and a half?

8 A No, that's how long I lived there, a year and a
9 half. Heather moved in right around trick-or-treat time,
10 Halloween.

11 Q Of 2009?

12 A Yes.

13 Q Okay. While you were living there, you worked?

14 A Right.

15 Q And you worked swing shifts and graveyard sometimes?

16 A Correct.

17 Q And you -- fair to say you weren't in the home
18 24 hours a day?

19 A No.

20 Q And while you went to work you don't know who all
21 was in the house?

22 A When I went to work? No.

23 Q And you didn't know what Justin or Heather were
24 doing while you were gone at work?

25 A No. Well, at that --

1 THE COURT: Wait, wait, wait. There's a double
2 negative there.

3 MS. JOBE: Okay.

4 THE COURT: Were you aware of what Justin and
5 Heather may have done in the house when you were working?

6 THE WITNESS: No.

7 MS. JOBE: Thank you, Your Honor.

8 BY MS. JOBE:

9 Q While you were living there, did you ever see your
10 son watching pornography on the computer in the living room?

11 A No.

12 Q Do you know how old Heather is today?

13 A Fourteen.

14 Q So when you were living there in 2009, she was eight
15 years old, correct?

16 A That's what her age was; I believe it was.

17 Q So from when she was approximately eight to nine
18 years old?

19 A About that.

20 Q And you said you saw Heather in Justin's bedroom
21 looking through stuff, correct?

22 A Yes.

23 Q Do you know he would hide Halloween candy or some
24 type of candy in his drawers?

25 A I don't know about him. I know mother did.

1 Q You didn't see what Heather was looking at or what
2 she saw in the drawers?

3 A No. I could see -- most of the time when I looked
4 back down the hall you can see her -- she wasn't at no drawer,
5 she was at the closet.

6 Q Okay. She was at the closet?

7 A Yes.

8 Q I apologize. Where is the closet?

9 A Well, if you look down the hallway of the place,
10 it's right into the door. You go in and you turn left and
11 you're at it.

12 Q If you will indulge me, I'm going to go get some
13 pictures, okay?

14 A Okay.

15 MS. JOBE: Would you please turn on the ELMO?

16 THE CLERK: I'm going to need a minute. I have to
17 reboot the system, so give me just one minute.

18 MS. JOBE: Sure.

19 BY MS. JOBE:

20 Q I'm going to show you some pictures. They're going
21 to come up on your screen and then we'll talk about them,
22 okay? Okay. This has been admitted as State's Exhibit 8.
23 Is that the residence you lived in with Justin, Shay --

24 A Yes.

25 Q Okay. And you talked about seeing Heather in the

1 closet, is that correct?

2 A Yes.

3 Q Showing you State's 9, that's the entrance to the

4 bedroom that Justin --

5 A Right.

6 Q -- and Shay shared, correct?

7 A Correct.

8 Q And the closet you're talking about, showing you

9 State's 16, is that the closet you were talking about?

10 A Yes.

11 Q Where you could see Heather sometimes looking for

12 stuff in this closet?

13 A Yes.

14 Q Do you still home school Kaylie?

15 A Yes.

16 Q And is the -- going back to when you would see

17 Heather near the closet, would that bedroom door I showed you,

18 would that be open for you to see her?

19 A Yes. It was always open.

20 Q And there are board games in that closet, correct?

21 A I don't know about games. There's a lot of stuff,

22 you know. There's makeup and all kinds of stuff that she's

23 always wanting from mom.

24 Q Okay. You've stayed in regular contact with the

25 defendant since January 21st, 2014, correct?

1 A Right.

2 Q And you understand he was arrested on January 21st,
3 2014, correct?

4 A Right.

5 Q And this conversation that Ms. McNeill asked you
6 about in July of 2014 was approximately five to six months
7 after the defendant had been arrested, correct?

8 A Correct.

9 Q And while the defendant has been incarcerated, he's
10 mailed you things about this case, correct?

11 A Correct.

12 Q And in fact --

13 A One item that's directly about it.

14 Q Okay. And in fact, he's also mailed you letters,
15 asking you to give them to Shay, correct?

16 A Correct.

17 MS. JOBE: Pass the witness.

18 THE COURT: Counsel, why don't you approach real
19 quick.

20 (Bench Conference)

21 THE COURT: Juror No. 14. "Who told who about how
22 to get rid of Justin on the 4th of July?" I don't think
23 that's what the testimony was.

24 MS. JOBE: No, that was -- (indiscernible).

25 THE COURT: But it tells me that there was -- you

1 might want to clarify that.

2 MS. JOBE: Okay.

3 (End of Bench Conference)

4 REDIRECT EXAMINATION

5 BY MS. McNEILL:

6 Q Mr. Langford, I just have some clarification
7 questions. This conversation on the 4th of July, it was
8 Heather telling Ashley how to get rid of the mom's boyfriend?

9 A Correct.

10 Q Okay. And she was telling Ashley, I know how to
11 get rid of your mom's boyfriend?

12 A Correct.

13 Q And that would be to call CPS?

14 A Uh-huh.

15 Q Okay.

16 THE COURT: Now, counsel -- Approach.

17 (Bench Conference)

18 THE COURT: We're still using a lot of pronouns.
19 So you're talking about -- Are we talking about Ashley's mom's
20 boyfriend?

21 MS. McNEILL: Yes.

22 THE COURT: Well, that's not how it's coming across.

23 MS. JOBE: Okay.

24 THE COURT: It's coming across as -- I don't know
25 which mother's boyfriend we're talking about, right?

1 MS. JOBE: Fair enough.

2 MS. McNEILL: Sorry.

3 THE COURT: Okay, thank you.

4 (End of Bench Conference)

5 BY MS. McNEILL:

6 Q Sorry, Mr. Langford. I'm not good at having my own
7 witnesses as a defense attorney. The conversation was about
8 Ashley's mom's boyfriend, not about Justin, right?

9 A Right.

10 Q Okay. So Heather was telling Ashley how Ashley
11 could get rid of Ashley's mom's boyfriend?

12 A Correct.

13 Q Okay, thank you.

14 MS. JOBE: If I may follow up?

15 MS. McNEILL: Well, can I --

16 MS. JOBE: Oh, I'm sorry.

17 MS. McNEILL: I'm sorry. I was just going to do a
18 brief redirect.

19 THE COURT: Okay, go ahead.

20 BY MS. McNEILL:

21 Q You were asked some questions about if you're still
22 in contact with Justin?

23 A Yes.

24 Q All right. And you still have regular contact with
25 him?

1 A Yes.

2 Q Okay. You're under oath today, right?

3 A Correct.

4 Q You wouldn't lie for Justin, would you?

5 MS. JOBE: Objection, Your Honor.

6 THE WITNESS: No.

7 THE COURT: I think that's argumentative. I'm going

8 to sustain that.

9 MS. McNEILL: Okay. Nothing further.

10 May I approach your clerk?

11 THE COURT: Absolutely. And mark that next in

12 order, Court's exhibit.

13 MS. McNEILL: Thank you.

14 RE CROSS EXAMINATION

15 BY MS. JOBE:

16 Q Sorry, we're asking a lot of questions about this

17 July 4th conversation between Ashley and Heather. So, at the

18 time that Heather was talking to Ashley, Justin was already --

19 had already been arrested, correct?

20 A Correct.

21 Q And are you aware that Heather had talked to CPS?

22 A At what point?

23 Q In January?

24 A In January?

25 Q Correct.

1 A Oh, I learned later.

2 Q Okay. And so you're aware that everything she said
3 to Ashley came after the investigation by the Las Vegas
4 Metropolitan Police, correct?

5 A Correct.

6 Q And after the defendant had been arrested?

7 A Correct.

8 MS. JOBE: No further questions.

9 THE COURT: All right. Sir, you may step down.
10 Thank you so much for coming.

11 Next witness?

12 MS. McNEILL: Your Honor, at this time the defense
13 would call Justin Langford.

14 THE COURT: Okay. Mr. Langford, if you would please
15 step up to the podium.

16 JUSTIN LANGFORD, DEFENSE WITNESS, SWORN

17 THE CLERK: Please state and spell your full name.

18 THE WITNESS: Justin Langford. J-U-S-T-I-N
19 Langford, L-A-N-G-F-O-R-D.

20 THE CLERK: Thank you.

21 THE COURT: Okay. And you've heard what I've said
22 about don't talk over the lawyer, right?

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Okay.

25 MS. McNEILL: Thank you.

1 DIRECT EXAMINATION

2 BY MS. McNEILL:

3 Q Good afternoon, Justin.

4 A Afternoon.

5 Q How are you doing?

6 A Pretty good.

7 Q Okay. When did you meet Shay?

8 A 2006.

9 Q Where at?

10 A California. Brea.

11 Q Okay. And you have a child with Shay?

12 A Yes, I do, ma'am.

13 Q When was she born?

14 A 2007. July 5th.

15 Q Okay. When did you move to Searchlight?

16 A May of 2008.

17 Q Okay. And we heard some testimony about you living
18 in the house with Shay's mom, right?

19 A Yes, ma'am.

20 Q Is it fair -- Well, describe your relationship with
21 Leslie.

22 A It was rocky. We had lots of arguments. She would
23 always make snide comments at me behind everybody's back.

24 Q Okay.

25 A And it was just always arguing with her.

1 Q Do you think she likes you?

2 A No.

3 Q Was your relationship with Shay perfect?

4 A No.

5 Q Whose fault was that?

6 A Mine.

7 Q Was your relationship with Heather perfect?

8 A No.

9 Q Whose fault was that?

10 A Mine.

11 Q Why was it your fault?

12 A Because I was the adult. I knew better than to do

13 -- call her the names that I called her. I should have just

14 let things go.

15 Q Do you have a little bit of a temper?

16 A Yes, I do, ma'am.

17 Q Is the temper the reason that your relationship

18 wasn't perfect?

19 A Yes, it is, ma'am.

20 Q Do you regret losing your temper?

21 A Yes, I do.

22 Q Did you treat Heather differently than you treated

23 Kaylie?

24 A Yes.

25 Q Why?

1 A Because of the age difference.

2 Q Okay. What did that have to do with anything?

3 A I felt 'cause Heather was older at the time that she

4 needed more rules than what Kaylie did because she had a six

5 year age difference between them. They don't understand

6 different things at a younger age.

7 Q Did you feel some frustration in parenting Heather?

8 A Yes, I did.

9 Q Have you ever raised a teenage girl?

10 A No.

11 Q I assume you were not a teenage girl?

12 A No.

13 Q So was it very different?

14 A Yes.

15 Q When you were at the Searchlight jail on January

16 21st, did you hear -- don't tell me what you heard -- did you

17 hear some conversation when you were in the holding cell?

18 A Yes, I did, ma'am.

19 Q Do you know who it was that was talking?

20 A No.

21 Q Justin, did you put your penis in Heather's mouth

22 at any time?

23 A No.

24 Q Did you put your penis in Heather's anus at any

25 time?

1 A No.

2 Q Did you put baby oil on Heather's body at any time?

3 A No.

4 Q Did you thrust up and down on Heather with your
5 penis touching her body at any time?

6 A No, ma'am.

7 Q Did you touch her breasts at any time?

8 A No, ma'am.

9 Q Did you put your mouth on her breasts at any time?

10 A No, ma'am.

11 Q We heard your conversation that you had with the
12 police officers, and they asked you about some items that they
13 might find in the house. How come you knew that they were
14 talking about the towel?

15 A I didn't know about it. All I knew was they -- I
16 was already accused of a sex crime against someone and I knew
17 they would be looking for things in that nature, so I told
18 them about it.

19 Q I know this is really probably uncomfortable. What
20 did you use that towel for?

21 A For self pleasure.

22 Q And how did you use that towel?

23 A For masturbating.

24 Q Okay. What did you do with the towel?

25 A I usually laid it over myself when I ejaculated and

1 then put it in the drawer.

2 Q Okay. Did you use the baby oil?

3 A Yes, I did, ma'am.

4 Q Is that why the baby oil was in that drawer?

5 A Yes, it was.

6 Q Does your chest of drawers have any type of lock
7 on it?

8 A No.

9 Q And that was a room that you shared with Shay?

10 A Yes, ma'am.

11 MS. McNEILL: Your Honor, I will pass the witness.

12 THE COURT: Okay. Cross?

13 CROSS-EXAMINATION

14 BY MS. JOBE:

15 Q You said you met Shay in 2006, right?

16 A Yes, ma'am.

17 Q She didn't have Heather?

18 A No, ma'am.

19 Q Heather was living with her grandmother?

20 A Yes, ma'am.

21 Q You didn't meet Heather or start to live with
22 Heather until you moved to Searchlight?

23 A Correct, ma'am.

24 Q And Heather didn't move in with you until she was
25 eight years old?

1 A Correct.

2 Q And she only lived with you from the time she was

3 eight years old to twelve years old?

4 A Correct.

5 Q Not even thirteen years old?

6 A No, ma'am.

7 Q And she was home schooled for the majority of the

8 time?

9 A Yes, ma'am.

10 Q You said that the grandmother, that's Leslie, right?

11 A Yes, ma'am.

12 Q That she never liked you?

13 A Yes, ma'am.

14 Q Always had lots of arguments?

15 A Yes.

16 Q Always making snide comments --

17 A Yes.

18 Q -- from the beginning when you met her?

19 A Not from the very beginning. When I first met her

20 when she came down to meet me in California she didn't. We got

21 along that day. But when me and her daughter moved up here

22 was when all the snide comments began.

23 Q In 2008?

24 A Correct, ma'am.

25 Q When you're living in her house?

1 A Yes, ma'am.

2 Q With -- under her roof?

3 A Correct.

4 Q And as you sit here today, you're saying your
5 relationship with Heather was not perfect?

6 A Correct, ma'am.

7 Q And that it was your fault?

8 A Correct, ma'am.

9 Q Yet when you were interviewed by the detectives you
10 said Heather was the one who would yell at you?

11 A Yes, I did.

12 Q You'd say that Heather was the one who provoked you?

13 A Yes, I did.

14 Q You said actually a number of things were Heather's
15 fault, not yours?

16 A Correct, ma'am.

17 Q And you said you had a little bit of a temper?

18 A Yes, ma'am.

19 Q At least that's your testimony, right?

20 A Correct, ma'am.

21 Q In fact, when you were talking to the detectives,
22 you didn't minimize your temper, you said you had lots of
23 outbursts?

24 A Yes, ma'am.

25 Q That you get very angry?

1 A Correct, ma'am.

2 Q That there were times that you and Shay got so
3 heated you left the house?

4 A Correct.

5 Q There were other times you and Shay got so heated
6 you slept in a different room?

7 A Correct.

8 Q You also testified today that you never at any time
9 have ever touched Heather's breasts?

10 A Correct.

11 Q When you were speaking with the detectives, coming
12 up with -- discussing how Heather might have been mistaken
13 about what she said about you, didn't you in fact admit to
14 accidentally touching her breast in the shower?

15 MS. McNEILL: Objection, Your Honor, that misstates
16 the testimony.

17 THE COURT: Overruled.

18 THE WITNESS: No, ma'am.

19 BY MS. JOBE:

20 Q So you never told the detectives you accidentally
21 touched her breasts?

22 A No, ma'am.

23 Q Never said you may have accidentally touched her
24 breast when you were helping her out with her menstrual cycle
25 problems?

1 A No.

2 THE COURT: Well, I got a double negative there.

3 MS. JOBE: I apologize.

4 BY MS. JOBE:

5 Q When you were helping Heather out with her menstrual

6 cycle problems, you told -- in explaining that scenario to the

7 detectives you told them you may have accidentally touched

8 Heather's breasts?

9 A No, ma'am.

10 Q And as you sit here today you said you didn't know

11 -- you said you knew you had been accused of a sex crime?

12 A Correct.

13 Q Didn't know who?

14 A Correct.

15 Q And so you told them about the towel?

16 A Correct.

17 Q You would use this towel to self pleasure?

18 A Correct, ma'am.

19 Q You put it back in your drawer?

20 A Correct, ma'am.

21 Q You didn't wash it every time?

22 A No, not every time.

23 Q And you'd move it between the second and the third

24 drawer in that dresser, correct?

25 A I moved it throughout the dresser, ma'am, but I did

1 move it.

2 Q When you talked to the detectives you told them you
3 moved it between your second and third drawer, correct?

4 A On the last occasion that I did move it, yes.

5 Q Well, you didn't --

6 A I didn't specify to the detective, ma'am.

7 Q Right. You didn't specify to the detectives only
8 on the last occasion?

9 A Right.

10 Q And in fact, to the detectives you said you moved
11 it between the second and the third drawer when you moved it?

12 A Correct.

13 Q And there was baby oil in the drawer with the rag,
14 correct?

15 A Correct.

16 MS. JOBE: Court's indulgence.

17 BY MS. JOBE:

18 Q And when you talked to the detectives you said
19 Heather's DNA shouldn't be on that towel?

20 A Correct.

21 Q Now, you've sat here through the whole trial?

22 A Correct.

23 Q You've seen the evidence in this case?

24 A Correct.

25 Q In fact, you had a chance to pour over it before

1 ever coming to trial?

2 A Correct.

3 Q Had a chance to review all the reports?

4 A Correct.

5 Q But you didn't have that opportunity before you

6 talked to the detectives, correct?

7 A Correct.

8 MS. JOBE: Pass the witness.

9 THE COURT: Redirect?

10 MS. McNEILL: Yes, Your Honor. Thank you.

11 THE COURT: In fact, counsel, why don't you come

12 on up here a minute.

13 (Bench Conference)

14 MS. JOBE: I'm finally catching on on the last --

15 THE COURT: Huh?

16 MS. JOBE: I'm finally catching on on the last

17 witnesses.

18 THE COURT: Okay. I allowed her to go on mainly

19 because of this question. "From the interview Justin stated

20 he did touch Heather's breasts to teach her about the body.

21 Just now stated under oath that he did not touch her breasts."

22 MS. McNEILL: I'm going to go through that.

23 THE COURT: "Clarify." Will you do that?

24 MS. McNEILL: Yeah.

25 THE COURT: Okay.

1 (End of Bench Conference)

2 REDIRECT EXAMINATION

3 BY MS. McNEILL:

4 Q Okay, Justin, I just want to go through a couple of
5 things with you. Ms. Jobe asked you some questions about your
6 conversation with the detective and touching Heather in the
7 bathroom.

8 A Correct.

9 Q Do you remember them asking you if there was any
10 time you might have touched her?

11 A Yes, ma'am.

12 Q Okay. And what you -- all you could remember was
13 the time in the bathroom?

14 MS. JOBE: Objection; form.

15 THE COURT: Sustained. Rephrase.

16 BY MS. McNEILL:

17 Q When they asked you those questions about any time
18 you might have touched her, what was the only thing you could
19 remember?

20 A It was just that occasion, ma'am. There was all the
21 questions, they were flying at me at random like they were.

22 Q And do you -- Ms. Jobe said that you admitted that
23 you had touched Heather's breast. Do you remember what you
24 said, the part that you might have touched?

25 A Her body. Her chest.

1 Q But in fact, that was after repeated questioning,
2 wasn't it?

3 A Correct.

4 Q Do you remember when they initially asked you, you
5 thought it could have been her arm?

6 MS. JOBE: Objection; form.

7 THE COURT: Sustained.

8 BY MS. McNEILL:

9 Q What part did you tell them you might have touched
10 when they first questioned you?

11 A Her arm.

12 Q At this time when you said that you may have touched
13 her breast, how many times had they been asking you about this
14 incident?

15 A Numerous. I can't remember the exact amount, but
16 it was numerous times, ma'am.

17 Q And then you were asked some questions by Ms. Jobe
18 about this incident with the period. The detectives also
19 asked you -- you also gave some information to the detectives
20 about teaching Heather about her body?

21 A Correct.

22 Q Do you remember what you told them about that?

23 A No, I don't, ma'am.

24 Q Would looking at your statement refresh your
25 recollection?

1 A Yes, it would, ma'am.

2 MS. McNEILL: Court's indulgence. I'm sorry, Your
3 Honor, I'm going to need a minute.

4 BY MS. McNEILL:

5 Q Well, let me back up while I'm there. Do you
6 remember what you told them about this incident with her
7 period?

8 A Vaguely.

9 Q When you were explaining what happened with that,
10 did you ever tell them that you had touched her chest during
11 that time?

12 A No, ma'am.

13 Q What was the conversation about with the detectives?
14 What were you doing?

15 A I explained to the detective on what happened, how
16 that situation came up.

17 MS. McNEILL: I'm sorry, Your Honor, I just have to
18 find this part.

19 BY MS. McNEILL:

20 Q Do you remember the conversation with the detectives
21 about teaching Heather about her body?

22 A Vaguely.

23 Q During that conversation with the detectives, did
24 you admit to touching Heather's breast?

25 A No.

1 Q Did you instead tell them that you just pointed at
2 her chest?

3 A Yes.

4 Q Can you describe how you pointed at her chest?

5 A Using my finger, ma'am.

6 Q Did your finger touch her chest?

7 A No, ma'am.

8 Q And that conversation would have been for the
9 purposes of what?

10 A I believe at the time she had just started to
11 develop and she was asking questions.

12 Q So it was to provide her with information?

13 A Yes, ma'am.

14 MS. McNEILL: Nothing further.

15 THE COURT: Recross?

16 MS. McNEILL: If I may approach your clerk?

17 THE COURT: Yes.

18 RE CROSS EXAMINATION

19 BY MS. JOBE:

20 Q When Ms. McNeill was asking you questions, you said
21 you never admitted to touching Heather to the detectives,
22 correct?

23 A Correct.

24 Q Would it refresh your memory to review your
25 transcript?

1 MS. McNEILL: Objection, Your Honor. He admitted
2 to touching her.

3 THE COURT: Well, wait. What's the objection?
4 No speaking objections.

5 MS. McNEILL: It misstates his testimony.

6 THE COURT: I'm going to overrule.

7 BY MS. JOBE:

8 Q Would it refresh your memory to review your
9 transcript of exactly what you said to the detectives about
10 whether or not you touched Heather?

11 A Yes, ma'am.

12 MS. JOBE: 62, counsel.

13 BY MS. JOBE:

14 Q Does that refresh your memory?

15 A Yes, it does, ma'am.

16 Q And in fact, you admitted to touching Heather a
17 couple of times?

18 A Correct, ma'am.

19 Q And then you after that told the detectives, well,
20 you only pointed?

21 A Correct.

22 Q And when you were talking about the menstrual cycle,
23 you say Heather didn't have any clothes on other than her
24 underwear?

25 A Correct.

1 Q In fact, she didn't have a shirt on?

2 A Correct.

3 Q And neither did you?

4 A Correct.

5 Q And you said you may have bumped into her at that

6 point in time?

7 A Correct. Those were my exact words.

8 Q And when you were helping her with her menstrual

9 cycle, you said to the detectives that you touched her

10 underwear to put on a panty liner and that Heather was wearing

11 a different pair of underwear at that time, correct?

12 A Correct.

13 Q And then you told the detectives that once you put

14 the pad on the underwear, you handed that pair -- you handed

15 the pair that -- sorry. You told the detectives once you put

16 the pad on that Heather then handed you the pair she was

17 wearing which was covered -- soaked in blood. And you showed

18 her on that pair and then she put them back on?

19 A Can you please rephrase that?

20 Q Sure. I'm going to back up a little bit. So, you

21 were talking about helping Heather with her menstrual cycle,

22 correct?

23 A Correct.

24 Q And you told the detectives that you touched the

25 underwear of Heather's to put a panty liner on, correct?

1 A Correct.

2 Q And that Heather was wearing a different and
3 separate pair when you did that, correct?

4 A Correct.

5 Q And then you also told the detectives that Heather,
6 quote, "handed you the pair she was wearing which was
7 covered/slash soaked in blood and then you showed her how to
8 put the pad on and then she put the underwear back on."

9 A Correct.

10 Q And then you told the detectives that Heather was
11 wearing a fresh pair and in fact carrying the dirty pair
12 and you had her change into the dirty pair once you put the
13 pad on?

14 A Correct.

15 Q And then you also denied that Heather changed back
16 into her dirty underwear in front of you, correct?

17 A That I don't remember, ma'am.

18 Q Would it refresh your memory, sir, if I showed you?

19 A Yes, ma'am.

20 MS. JOBE: Page -- I believe it's 38, counsel.

21 BY MS. JOBE:

22 Q You can read as much as you like to refresh your
23 memory.

24 A Okay.

25 Q Does that refresh your memory?

1 A Yeah, ma'am.

2 Q And in fact you told the detectives that time that

3 she went somewhere else to put the underwear back on and get

4 dressed?

5 A I believe she stayed in that bathroom and changed,

6 as I said in that statement. I left the room.

7 Q At that time?

8 A Yeah.

9 Q And yet, you never told Shay about any of this,

10 correct?

11 A Correct, ma'am.

12 MS. JOBE: No further questions.

13 THE COURT: Sir, you may step down. Thank you.

14 THE WITNESS: Thank you.

15 MS. McNEILL: Your Honor, I had just a brief

16 follow-up.

17 THE COURT: Well, it's direct, cross, redirect,

18 recross and that's it.

19 MS. McNEILL: Oh, okay.

20 THE COURT: All right. So go ahead and step down.

21 THE WITNESS: Thank you, ma'am.

22 MS. McNEILL: Your Honor, at this time the defense

23 would rest.

24 THE COURT: Okay.

25 Counsel, will you approach?

1 (Bench Conference)

2 THE COURT: Okay, microphones are off? Okay. We
3 need to settle jury instructions, so we should go ahead and
4 just let them go and have them come back at 8:30 on Monday.

5 MS. JOBE: Your Honor, I apologize. I am not a
6 morning person. It's the time change on Sunday. Since we
7 have 8:30 to 5:00, can we push it back just a little?

8 THE COURT: Okay, you'll be done Monday, right?

9 MR. BURTON: Oh, yes.

10 MS. JOBE: Oh, yes. Yes.

11 MR. BURTON: We have --

12 MS. McNEILL: Just closings, right?

13 MS. JOBE: Yes.

14 THE COURT: Okay. All right, I don't have a problem
15 with that.

16 MS. JOBE: Okay. Even half an hour, I would really
17 appreciate it.

18 THE COURT: Okay. All right, I'll have a chat with
19 the jury.

20 (End of Bench Conference)

21 THE MARSHAL: A slightly delayed question.

22 THE COURT: Oh, we can't take any more questions.
23 The evidence is in.

24 MS. JOBE: It was when he was still on the stand,
25 but I --

1 THE COURT: Okay. No. Okay, sorry about that.

2 Okay. Ladies and gentlemen, at this point the
3 evidence is in and I need to work with the lawyers to make us
4 productive for Monday. The good news is the evidence is going
5 to be -- the case is going to come to the jury on Monday.

6 Now, this is the dilemma we have. As you know, we
7 have a time change this weekend and on Monday morning 8:30
8 is going to be more like 7:30 on your time clocks. And given
9 that the attorneys have been very efficient getting the
10 evidence in, frankly they thought it would go into Monday,
11 the proposal is that we start at 9:30 instead of 8:30. What
12 are your thoughts? Are you okay with 9:30?

13 JURORS IN UNISON: Yes.

14 THE COURT: I didn't think you would have a problem
15 with that. Okay, 9:30. What's going to happen is I'm going
16 to instruct you on the law and then you're going to hear the
17 closing arguments of counsel. After that I will let you know
18 who the two alternates are and then the jury will deliberate,
19 okay. So I'm going to let you go early today. We got done.
20 And I'll see you at 9:30 on Monday morning.

21 Okay. So during this period of time you are
22 admonished not to talk or converse among yourselves or with
23 any one else on any subject related to the trial, or read,
24 watch or listen to any report of or commentary on the trial
25 by any medium of information, including without limitation

1 newspapers, television, the Internet and radio, or form or
2 express any opinion on any subject related to the trial until
3 the case is finally submitted to you.

4 Have a great weekend.

5 (The jury exits the courtroom)

6 THE COURT: Let the record reflect that the jury
7 has left the courtroom. Okay, we need to go through jury
8 instructions, and I know you guys have been working on them.
9 Why don't you give me a status of what's going on.

10 MS. JOBE: There are really only a couple, Your
11 Honor, to address. I have the State's pink ones as pink and
12 the defense's yellow, where there are things for Your Honor
13 to address. I don't know how Your Honor wants me to -- I feel
14 awkward handing it --

15 THE COURT: As long as Ms. McNeill knows that you've
16 given me all of them, I'm good.

17 MS. JOBE: I guess what I'll do is -- I'm going to
18 hand you -- I'll hand you all of them, but I'm separating the
19 two competing ones between the State and the defense. And
20 then I just need you to address -- I think one of the yellow
21 ones, other yellow ones we've figured out.

22 THE COURT: Okay.

23 MS. JOBE: And there's some we just need to -- I
24 think we're close to figuring out.

25 THE COURT: Okay. And you've got them in the order

1 you want them in?

2 MS. JOBE: Yes. I put a yellow Post-it. Whichever
3 one you pick of the two that are the competing ones is in the
4 spot where --

5 THE COURT: Okay.

6 MS. JOBE: There's a yellow Post-it on the back of
7 the sheet before it.

8 THE COURT: Okay.

9 MS. JOBE: If I may, Your Honor?

10 THE COURT: Sure.

11 MS. JOBE: See that Post-it?

12 THE COURT: Oh, got it.

13 MS. JOBE: This one right there.

14 THE COURT: All right. And then the ones that are
15 the two are not competing, they're the additional that the
16 defense wants but you don't?

17 MS. JOBE: There's one I have no objection to.

18 THE COURT: Okay.

19 MS. JOBE: The two with the yellow Post-it notes,
20 I think it's just a language thing we need to resolve.

21 THE COURT: Okay.

22 MS. JOBE: And I think it's resolved on one of them.

23 THE COURT: All right.

24 MS. JOBE: And I think we're close, if not resolved
25 on the other one.

1 THE COURT: Okay. All right, let's see. Let's go
2 to the competing ones.

3 MS. McNEILL: I don't know which those are. Sorry.

4 MS. JOBE: It's essentially the same instruction
5 about the credibility or believability of a witness --

6 THE COURT: Right.

7 MS. JOBE: -- phrased differently as between the
8 State and the defense.

9 THE COURT: Okay. One I can tell you is a complete
10 stock and that's the one with the pink and the other one is
11 different. "In deciding the facts of this case you may have
12 to decide which testimony to believe and which testimony not
13 to believe. You may believe everything a witness says or part
14 of it or none of it."

15 MS. McNEILL: Yes, Your Honor, that's mine. If I
16 could make my record?

17 THE COURT: Okay.

18 MS. McNEILL: This instruction comes from the
19 federal jury instructions. I have used this in other cases
20 in this courthouse; in fact, in front of your husband, who
21 allowed us to use this. I think that it is --

22 THE COURT: Well, he's never been a judge at the
23 federal courthouse. You mean, as a lawyer he used it?

24 MS. McNEILL: No, no, I used this in a trial in
25 front of him --

1 THE COURT: Oh, okay.

2 MS. McNEILL: -- as a judge. This comes from the
3 federal jury instructions. Obviously I'm entitled to an
4 instruction on the theory of my defense. The believability
5 of Heather Haney is the crux of our defense. I don't think
6 we have to be limited to a jury instruction that's a stock
7 instruction. I think that this does a better job at laying
8 out all of the things that the jury can consider when they're
9 considering her testimony. And so I would ask to use this
10 instead of the stock instruction.

11 MS. JOBE: And, Your Honor, the State's concern is
12 that some of the language appears a bit confusing or I guess
13 superfluous to the State in that, for instance, on the bottom
14 she talks about the weight of the evidence as to a fact does
15 not necessarily depend on the number of witnesses who testify.
16 I appreciate that thought, but I think she's giving them --
17 trying to lead them into the defense theory about what they
18 should or shouldn't consider as far as the believability or
19 credibility on the stand and enumerating eight things and then
20 adding two more at the bottom. All the case law talks about
21 the jurors determining credibility and believability of a
22 witness on the stand and that they determine what weight to
23 give the witnesses, that they have to decide which testimony
24 to believe and which testimony not to believe. So those are
25 the language issues that the State would object to.

1 THE COURT: So if we were to take out the sentence
2 that says "the weight of the evidence as to a fact does not
3 necessarily depend on the number of witnesses who testify" and
4 if we put the sentence "what is important is how believable
5 the witness is and how much weight you think his testimony
6 deserves," you'd be okay with that?

7 MS. JOBE: I'd be fine with that.

8 THE COURT: How's that? Because I assume that
9 there's another instruction in here that talks about the
10 number of witnesses, right?

11 MS. JOBE: No, Your Honor.

12 THE COURT: Oh, there's not? Okay.

13 MS. McNEILL: And that's the thing. To me, I have
14 had that instruction in other cases because, as Your Honor
15 is aware, there's many -- usually many more witnesses for
16 the State than the defense, and I think that's why that's
17 important for them to know that it's not who has more
18 witnesses. It's not a civil case where it's the preponderance
19 of evidence, who has more witnesses.

20 THE COURT: Right.

21 MS. McNEILL: It's did they do their job. I'll
22 submit it to Your Honor on that sentence, but I don't think
23 that sentence is improper. I didn't write it, so it's not as
24 if I stuck it in there to lead them to my theory of defense.
25 As I said, this is from federal criminal jury instructions.

1 So I'll submit it to Your Honor on that sentence.

2 THE COURT: Okay. Gosh, I was --

3 MS. JOBE: We have the one instruction that says
4 the victim's testimony, if believed beyond a reasonable doubt,
5 is sufficient to sustain a conviction, which is case law.
6 But that's the only thing we talk about. We don't talk about
7 the number of witnesses. But if Your Honor wants to use that
8 instruction, it's not -- the State is not vehemently opposed.

9 THE COURT: Well, I thought there was an instruction
10 that talked about the number of witnesses, that you could
11 believe -- you know, even if you only have one versus a
12 hundred or -- it's more eloquent than that. And I know that
13 -- let's see.

14 MS. JOBE: I did not include that in the State's
15 jury instructions. I've not regularly seen it in the State's
16 jury instructions. So I'll submit it. If the Court is
17 inclined to use the defense's, it's okay.

18 THE COURT: I was trying to remember where that --
19 I'm looking at my civil pattern jury instructions right now.
20 Okay, number of witnesses. And I'm looking at 3.01. Now,
21 this is obviously civil. You'd have to word this -- I'm sure
22 there's got to be one in your criminal. Do you guys have one
23 of these books?

24 MS. JOBE: We do not.

25 THE COURT: Oh.

1 MS. JOBE: We have a different application.

2 THE COURT: Well, this is what this one says. "The
3 preponderance or weight of the evidence is not necessarily
4 with a greater number of witnesses. The testimony of one
5 witness worthy of belief is sufficient for the proof of any
6 fact and would justify a verdict in accordance with such
7 testimony, even if a number of witnesses have testified to the
8 contrary. If from the whole case, considering the credibility
9 of the witnesses and after weighing the various factors of
10 evidence you believe that there is a balance of probability
11 pointing to the accuracy and honesty of the one witness, you
12 should accept his testimony." Now, this is --

13 MS. JOBE: Well --

14 THE COURT: Huh?

15 MS. JOBE: I apologize for short-circuiting this.
16 We can just go with the defense proposed and take out the
17 State's. That's fine. Based on what Your Honor is reading
18 and trying to incorporate that, I think that Ms. McNeill's
19 captures all of those things in one instruction.

20 THE COURT: Okay. So you're okay with the defense
21 instruction as it reads?

22 MS. JOBE: Yes, Your Honor.

23 MS. McNEILL: Thank you, State. I appreciate that.

24 THE COURT: Okay, then we'll go ahead and keep that.
25 By the way, for a clear record I'm going to suggest this, that

1 if I reject one that you simply put a cover sheet on it, like
2 this one would be a cover sheet and it would be the State's
3 proffered instructions rejected by the Court.

4 MS. JOBE: Okay.

5 THE COURT: That way you've got it on your record,
6 as opposed to the supreme court going through what we're going
7 through right now in terms of the transcripts. It just makes
8 it easier on you.

9 MS. JOBE: Okay.

10 THE COURT: Okay. So I will put that in where you
11 have your yellow. Is that --

12 MS. JOBE: Yes, please.

13 THE COURT: If I can find it now. There it is.

14 Okay. The next instruction I see is a State
15 instruction. "Any person who willfully commits any lewd or
16 lascivious act other than the acts constituting the crime of
17 sexual assault upon or within any part of the body of a child
18 under the age of 14 with the intent of arousing, appealing to
19 or gratifying the lust or passions or sexual desires of that
20 person or of that child is guilty of lewdness with a minor."

21 MS. JOBE: I'm confused. I apologize.

22 MS. McNEILL: Your Honor, just for the record, I
23 didn't have any objections to the State's --

24 MS. JOBE: Oh, that's the next one we'll discuss.
25 I apologize. The next one that I don't have an objection to --

1 THE COURT: Okay.

2 MS. JOBE: -- is the "a separate crime is charged
3 against the defendant in each count."

4 THE COURT: Hold on, let me get there. Is that in
5 this pile?

6 MS. JOBE: Yes, Your Honor.

7 THE COURT: Okay.

8 MS. JOBE: It's at the top.

9 THE COURT: "A separate crime is charged against
10 the defendant in each count. You must decide each count
11 separately. Your verdict on one count should not control
12 your verdict on any other count."

13 MS. JOBE: The State has no objection, and Ms.
14 McNeill and I believe it should go right after the Information
15 instruction.

16 THE COURT: Okay, let me get that. Boy, that one's
17 a big one. All right, got it.

18 MS. JOBE: And then the next one I have from the
19 defense is the "If the State fails to prove that the defendant
20 engaged in an act of sexual penetration."

21 THE COURT: Yes.

22 MS. JOBE: We don't have an objection to it, with
23 a modification that "if the State fails to prove beyond a
24 reasonable doubt that the defendant engaged in an act of
25 sexual penetration."

1 MS. McNEILL: And I should have put that in there.
2 That was just -- it was very early this morning and I forgot
3 that.

4 THE COURT: Make that change, we're good.
5 Okay, next one.

6 MS. JOBE: And we're going to -- I apologize. We're
7 going to put that one, if everyone is on board -- I'm trying
8 to find the State's sex assault -- There's a -- and I'm going
9 to have to take off the citations, Your Honor, before I send
10 them to Your Honor, and I apologize, on the sex assault
11 instruction that starts with "A person who subjects a minor
12 under 14 to sexual penetration."

13 THE COURT: Hold on, let me get there. I'm just
14 writing this note here so that we know that this is going to
15 go there and it's okay.

16 All right. Now, the next one I've got is "If the
17 State fails to prove beyond a reasonable doubt that the
18 defendant acted willfully and lewdly while committing an
19 alleged lewd or lascivious act." Is that the one you're
20 talking about?

21 MS. JOBE: I was talking about the one with the sex
22 assault amended to "if the State fails to prove beyond a
23 reasonable doubt the defendant engaged in an act of sexual
24 penetration."

25 THE COURT: Yes. "Then you must find the defendant

1 not guilty of sexual assault with a minor under 14."

2 MS. JOBE: Correct. We were going to ask that that
3 one -- with that modification of the "beyond a reasonable
4 doubt" be placed right after the instruction from the State
5 that says "A person who subjects a minor under 14 to sexual
6 penetration."

7 THE COURT: Okay.

8 MS. JOBE: I should have numbered these. I apologize.

9 THE COURT: Okay. "Any person who willfully commits
10 any lewd or lascivious act"?

11 MS. JOBE: No, it's after that.

12 THE COURT: "Although an essential element of the
13 crime of lewdness with a child"?

14 MS. JOBE: No. It's a couple after that.

15 MS. McNEILL: It starts I think with, "A person who
16 subjects a minor under 14." That one.

17 MS. JOBE: Yes.

18 THE COURT: Okay, got it.

19 MS. JOBE: After that one, with adding the "beyond
20 a reasonable doubt."

21 THE COURT: Okay. All right, so that's where that
22 one will go. All right?

23 MS. JOBE: Yep. And then the last one from the
24 defense that's proposed.

25 THE COURT: Yes?

1 MS. JOBE: "If the State fails to prove beyond a
2 reasonable doubt that the defendant acted willfully and lewdly
3 while committing," the State's only objection to that is the
4 statement that the defendant -- the "and lewdly part." The
5 statute requires willful acting -- willfulness of a lewd act,
6 not willfully and lewdly committing a lewd and lascivious.

7 MS. McNEILL: And that's fine, Your Honor. I don't
8 have -- I'll take that out.

9 THE COURT: Okay. So it would be "that the
10 defendant acted" --

11 MS. JOBE: "willfully while committing."

12 THE COURT: "While." Okay, hold on. "While."
13 Oh, okay. Oh, so just take out "and lewdly"?

14 MR. BURTON: Correct, Your Honor.

15 MS. JOBE: Yes, Your Honor.

16 THE COURT: Okay, got it.

17 MS. JOBE: And that can go after the State's
18 instruction that says, "Any person who willfully commits any
19 lewd or lascivious act."

20 THE COURT: And that's the one with the pink?

21 MS. JOBE: Yes, Your Honor.

22 THE COURT: Okay. Is there any problem with the
23 instruction, it's got a pink -- and it was in the --

24 MS. JOBE: That was just to juxtapose ours from
25 theirs as far as the language is concerned. But we resolved

1 that, so you don't have to -- you can disregard the pink
2 Post-it.

3 THE COURT: Okay, so these are all agreed to.

4 MS. JOBE: And we also need to take out the Carter,
5 Your Honor. "It is a constitutional right of the defendant
6 not to testify."

7 THE COURT: Okay. Where is that one?

8 MS. JOBE: Towards the back, Your Honor. It's the
9 sixth one from the verdict, not counting the verdict.

10 THE COURT: Okay, so we're taking that one out.
11 All right.

12 MS. JOBE: I believe that settles the instructions,
13 Your Honor.

14 THE COURT: Okay, perfect.

15 MS. McNEILL: And then would you -- I can easily
16 correct mine and email them to your JEA, or I don't know how
17 you want to do it.

18 THE COURT: Well, this is what I would ask that you
19 do, is make these corrections. We've got to make twelve --
20 they've got to be numbered --

21 MS. JOBE: Yep.

22 THE COURT: -- first before we copy. Make at least
23 twelve, okay. And I don't care which one of you do it, but
24 they need to be corrected, they need to be numbered, then
25 copied. I say that because there's been many times where we

1 get copies and then we're numbering them as we go along.

2 MS. JOBE: Right.

3 THE COURT: So I would say number them. Then, like
4 I said, make twelve for the jury. I only need the original --

5 MS. JOBE: Okay.

6 THE COURT: -- that I read to, and then however many
7 copies you guys feel like you need at your table.

8 MS. JOBE: Okay.

9 THE COURT: You're going to need some obviously
10 because in your closing you may want to show an instruction,
11 for example.

12 MS. JOBE: Right.

13 THE COURT: Okay. So that would be what I ask that
14 you do, as opposed to having us copy them.

15 MS. JOBE: Sure. And what I'll do, Your Honor, I
16 have both sets. I can even sit and do it right now in court.
17 You want us to make the copies, correct? Okay. And then --
18 some judges are very specific about how this works in that
19 regard.

20 THE COURT: I trust you.

21 MS. JOBE: I appreciate that. So I'll number them,
22 combine them. I'll email them to Ms. McNeill to verify and
23 then we'll make the copies.

24 THE COURT: Okay. Any problem with the verdict
25 form?

1 MS. McNEILL: No, Your Honor.
2 THE COURT: Okay. So again, we only need the
3 original --
4 MS. JOBE: Sure.
5 THE COURT: -- to give to the jury, and then how
6 many you guys feel you need. You may want to use them in your
7 closing argument. That's fine with me. And I think we're
8 done. Wow, that's great.
9 MS. JOBE: Thank you.
10 (Court recessed at 1:54 p.m until
11 Monday, March 14, 2016 at 9:30 a.m.)
12 * * * * *
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
-------------	---------------	--------------	-----------------	----------------

STATE'S WITNESSES

Tiffany Adams	4	76	80	--
Igor Dicaro	--	85	97	--

DEFENDANT'S WITNESSES

Xyliana Clay	112	115	118	--
Nakita Williams	120	123	--	--
Roger Langford	126	132	137	139
Justin Langford	141	145	152	155

* * *

EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
---------------------	-----------------

STATE'S EXHIBIT NO.

41A	103
50	37

* * *

CERTIFICATION

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

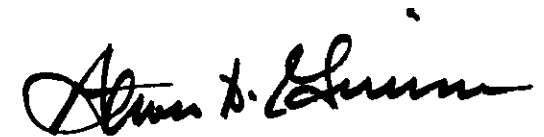
AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**LIZ GARCIA
LGM TRANSCRIPTION SERVICE
Henderson, Nevada 89002**



Liz Garcia, Transcriber



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA

Plaintiff

vs.

JUSTIN O. LANGFORD

Defendant

.

.
. .
. .
. .
. .
. .
. .
. .
. .

CASE NO. C-296556

DEPT. NO. XXII

**Transcript of
Proceedings**

BEFORE THE HONORABLE SUSAN JOHNSON, DISTRICT COURT JUDGE

JURY TRIAL - DAY 6

MONDAY, MARCH 14, 2016

APPEARANCES:

FOR THE STATE:

CHRISTOPHER BURTON
MICHELLE JOBE
Deputy District Attorneys

FOR THE DEFENDANT:

MONIQUE McNEILL, ESQ.

COURT RECORDER:

NORMA RAMIREZ
District Court

TRANSCRIPTION BY:

LIZ GARCIA
Henderson, Nevada 89002

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

1 LAS VEGAS, NEVADA, MONDAY, MARCH 14, 2016, 9:31 A.M.

2 (Court was called to order)

3 (Jury is not present)

4 THE COURT: Okay, everyone may be seated. Okay, are
5 we ready to go?

6 MS. JOBE: Yes, Your Honor.

7 MS. McNEILL: Yes, Your Honor.

8 THE COURT: All right. Let's go ahead and -- I do
9 have the jury instructions and everything is okay with them?

10 MS. McNEILL: Yes, Your Honor.

11 THE COURT: Okay. All right, let's go ahead and
12 invite that jury in.

13 (Jury is present)

14 THE COURT: Okay. Will counsel please stipulate to
15 the presence of the jury?

16 MS. JOBE: Yes, Your Honor.

17 MS. McNEILL: Yes, Your Honor.

18 THE COURT: You all may be seated. Good morning.

19 JURORS IN UNISON: Good morning.

20 THE COURT: I trust you all got a good night's sleep
21 last night. All right.

22 Okay. Ladies and gentlemen, I'm about to instruct
23 you upon the law as it applies to this case. I would like
24 to instruct you orally without reading to you. These
25 instructions, however, are of such importance that almost

1 every word is of some significance. Therefore, it is
2 necessary for me to read to you these carefully prepared
3 written instructions. The instructions are long and some are
4 quite complicated. If they are not especially clear when I
5 read them to you, please bear in mind when you go to the jury
6 room you will be able to take these written instructions with
7 you so that you can there read and consider them carefully.

8 (The Court reads the jury instructions aloud)

9 THE COURT: Okay. Counsel.

10 MR. BURTON: Thank you, Your Honor.

11 Can you hear me all right?

12 COURT RECORDER: Yes.

13 CLOSING ARGUMENT

14 BY MR. BURTON:

15 Good morning, ladies and gentlemen. I'd like to begin my
16 comments this morning by repeating something that a number of
17 you said during jury selection, and that is the truth always
18 comes out. Now, you remember some of you said this when we
19 asked you questions about children and that sometimes children
20 say things that are true and sometimes children say things
21 that aren't true, but that the truth always comes out, sooner
22 rather than later on most occasions.

23 And that can certainly be applied to people in
24 general and it can certain be applied to this case because
25 in this case the defendant, Justin Langford, had a secret.

1 He had a secret for a number of years and he did everything
2 in his power to control that secret. And Heather Haney had
3 a secret and she did everything in her power to keep that
4 secret, though for very different reasons than Justin
5 Langford. But just like a number of you said, the truth
6 always comes out. And in this case that's what the truth
7 looks like, a stained, sticky rag that the defendant kept
8 secret in his dresser drawer covered in his DNA and covered
9 in Heather Haney's DNA.

10 In every criminal case the State is required to
11 answer beyond a reasonable doubt two essential questions.
12 Number one, was there a crime? And number two, did the
13 defendant do it? Now, the second question is a question of
14 identity. Do we have the right person charged? And in this
15 case there's no doubt. There's no question that this is an
16 identity case. This is not like Harrison Ford in "The
17 Fugitive" where there's some one-armed man on the loose. It's
18 the defendant who is the stepfather of Heather Haney. It was
19 the defendant who raised her from approximately 2009 until she
20 disclosed this abuse in 2014. It was the defendant who
21 Heather Haney called dad for those years.

22 In this case the defendant has been charged with a
23 number of crimes. You just heard the judge read those crimes
24 to you and they basically break down to three types of crimes,
25 the first being lewdness with a child under the age of 14, the

1 second being sexual assault of a minor under 14 years of age
2 and the third being child abuse, neglect or endangerment. And
3 what I'd like to do is break down these crimes, explain to you
4 what the facts as they relate to these crimes are.

5 First, lewdness with a child under the age of 14.
6 In order to prove that the defendant committed this crime,
7 the State must show that he willfully committed a lewd or
8 lascivious act, something other than sexual assault on Heather
9 Haney while she was under 14, and that he did that with the
10 intent to arouse sexual desires of Heather or himself. Now,
11 the defendant is charged with a number of these counts.
12 First, Counts 1 and 10, he's charged with lewdness for
13 fondling the vaginal area of Heather with his hand. You
14 remember Heather testified that on numerous occasions the
15 defendant would rub baby oil on her inner thighs and that he
16 would also rub baby oil on her vaginal area. You'll recall
17 she also testified that as she was required to stand over the
18 defendant in the shower as he sat in that tub and masturbated
19 himself that he would rub her genital area with his free hand.
20 So the defendant is charged with those counts.

21 Count 2, ejaculating on Heather's face. You recall
22 again Heather's testimony that on occasion the defendant would
23 have her kneel down in front of him in the shower while he
24 continued to masturbate and that he would do so until he
25 ejaculated and that the ejaculate would land on her face. And

1 he would then tell her to stand up, wash her face off, wash
2 her body off and then go get dressed. So he's charged with
3 putting ejaculate, rubbing that ejaculate on her face.

4 Counts 6, 7 and 8, fondling of Heather's genitals
5 with his penis. This is by far Heather's -- the most
6 consistent offense committed against Heather. She described
7 this as occurring numerous times over the four years that she
8 lived with the defendant. The defendant would call her into
9 the bedroom, where the defendant would have her take off her
10 clothes, he would take off his clothes, he would have her lay
11 naked on the bed on top of that towel. He would then put baby
12 oil on his penis and her inner thighs and have her squeeze her
13 thighs together and insert his penis in-between her thighs and
14 up against her vaginal area and thrust up and down, up and
15 down until he ejaculated.

16 Count 11, the touching or licking of Heather's
17 breasts. You recall Heather describing that on at least one
18 occasion, and there's one charge here, the defendant put her
19 breast in his mouth and he did so while they were both naked,
20 while they were both in that same bedroom with the door
21 closed, and that they did that as part of at least one of
22 these incidents where he put baby oil on her thighs and rubbed
23 himself between her thighs until he ejaculated.

24 Count 12, the fondling of Heather's anal area with
25 his penis. You recall Heather testifying that on some

1 occasions she would be told to flip over from her back onto
2 her stomach, and that the defendant would then again reinsert
3 his penis into her thighs and up against her anal area and rub
4 it.

5 Now, we know, obviously, that Heather was under 14
6 during all of this because she was 12 at the time that she
7 disclosed, so that's a no-brainer. And we also know that all
8 of those acts were committed with the intent to gratify the
9 sexual desires of the defendant. We know that because what
10 made him stop? Why did he stop every single time he did these
11 things? Because he gasped and he ejaculated. He orgasmed.
12 That was why he stopped. So we know exactly what his intent
13 was because he accomplished that intent every time he
14 committed these lewd acts.

15 You were instructed that consent is not a defense to
16 these charges. Heather could have gotten on that stand, not
17 to say that she did, but she could have gotten on that stand
18 and said this was everything I wanted my stepfather to do.
19 I wanted him to take me into his room, to force me on that
20 bed, to rub on my vaginal area with his penis. I wanted him
21 to make me kneel down in front of him and have him ejaculate
22 on my face. I wanted him to fondle my vaginal area and my
23 anal area, to put my breast in his mouth. She could have said
24 that and the defendant would still be absolutely, one hundred
25 percent guilty of every single count of lewdness charged in

1 this case.

2 Sexual assault with a minor under 14 years of age.
3 In order to show the defendant committed sexual assault upon
4 Heather Haney, we have to show that he willfully subjected
5 Heather Haney while she was under the age of 14 to sexual
6 penetration and that it was against her will. Now again, the
7 age is the easiest element because we know that Heather was
8 12 when she disclosed. And so all of the sexual acts against
9 her occurred before she was -- excuse me, while she was under
10 the age of 14.

11 The defendant is charged with three counts of sexual
12 assault. First, Count 3, anal intercourse. You recall that
13 Heather testified that several occasions, although there's one
14 here charged, that the defendant inserted his penis into her
15 anal opening and that it hurt, and she cried out and asked for
16 him to stop and he told her to shut up or just ignored her
17 request. And that when he inserted his penis into her anal
18 opening that he moved it in and out of that anal opening, so
19 he's charged with anal intercourse.

20 Counts 4 and 5, two counts of fellatio. Now, you
21 recall again Heather testified that this happened on more than
22 one occasion. And we know beyond a shadow of a doubt that it
23 happened at least twice because Heather Haney describes one
24 incident where the defendant put what she believed to be
25 sugar, because she could taste it, on his penis and told her

1 to suck it off. And she testified that there was at least one
2 other occasion where there was no sugar on his penis and she
3 was told to suck on his penis with her mouth. So he's charged
4 with two counts of fellatio.

5 Sexual penetration is defined as it relates to these
6 charges as fellatio, the touching with the penis by the mouth
7 or tongue of another person. The moment that Heather's tongue
8 or mouth touched the defendant's penis, that was fellatio.
9 That was sexual penetration and that was sexual assault upon
10 Heather Haney. And then any intrusion, however slight, of any
11 part of a person's body into the genital or anal openings of
12 the body of another. The moment that the defendant's penis
13 inserted into Heather's anal opening, causing her pain,
14 causing her discomfort, causing her to beg for the defendant
15 to stop, that was sexual assault. That was sexual penetration
16 upon Heather Haney.

17 Now, physical force is not necessary to show that
18 this sexual penetration was against Heather's will. It's not
19 required that we show that she was hit or that she was tied
20 down or that she was held down by the defendant. The question
21 is, was this against her will? And similarly, it is not
22 required to show that Heather refused to submit. It's not
23 required to show that Heather fought tooth and nail during
24 these sexual crimes. I know there was a question about
25 control. What was the level of control that the defendant had

1 over Heather Haney as it relates to the sexual assaults? And
2 Heather was unequivocal. The defendant was someone that she
3 feared. The defendant was someone that controlled nearly
4 every aspect of Heather's life for those four years. The
5 defendant was someone that constantly yelled at Heather Haney,
6 called her names and physically abused Heather Haney. And
7 that she did these things not because she wanted to but
8 because she was forced to by the defendant and that she was
9 afraid what would happen if she said anything.

10 And that brings us to the evidence of other non-
11 sexual abuse that the defendant committed against Heather
12 Haney. You were instructed that -- there was evidence
13 presented that is not to be considered as bad character
14 evidence or evidence showing that the defendant has a
15 disposition to commit crimes, and that's absolutely true.
16 That evidence was not admitted to show you that the defendant
17 is a bad person or to show you that he had a disposition to
18 commit the charged offenses. The reason certain evidence was
19 presented was for a very specific reason. It included the
20 defendant yelling at Heather, yelling at Shayleen, calling
21 Heather names, calling Shayleen names, and physically abusing
22 Heather. The reason that evidence was admitted was because
23 it's impossible to explain to you why this was against
24 Heather's will without giving you an understanding of the
25 other types of abuse that Heather suffered. And it is

1 impossible to explain to you why Heather held on to that
2 secret as long as she could without explaining to you
3 Heather's fear of the defendant. So that evidence was
4 presented to you to explain those things and to explain to you
5 the defendants' intent when he committed the sexual assaults
6 on her.

7 Child abuse, neglect or endangerment is one charge,
8 Count 9. In order to show the defendant committed child abuse
9 we have to show the defendant willfully caused Heather Haney,
10 who was under 18 years of age, to suffer unjustifiable mental
11 suffering or physical pain by inserting his penis into her
12 anus. You see, because abuse and neglect is defined in part
13 as sexual abuse and sexual abuse is defined as constituting
14 sexual assault. So when the defendant placed his penis inside
15 of Heather's anus without her consent and against her will,
16 not only was he committing sexual assault, he was also
17 committing child abuse by causing her unjustifiable pain and
18 suffering.

19 Now we've talked about the charges. Let's talk
20 about the evidence. In most cases with charges of this nature
21 it becomes sort of a he said, she said case. That's because
22 these types of crimes are committed usually behind closed
23 doors, usually beyond the eyes of independent witnesses,
24 beyond objective evidence. And so it becomes a question of
25 credibility. It becomes a question of weighing the credibility

1 of a victim's allegations against a defendant's denials.
2 However, that is not this case. This is not a he said, she
3 said case. When we look at credibility of a witness, you are
4 told to consider a number of things: their manner on the
5 stand, the relationship of the parties, their fears, their
6 motives, their interests, their opportunity to have observed
7 the matter, the reasonableness of their testimony and their
8 strength of memory.

9 So now let's look at Heather's testimony and her
10 credibility, the details that she provides. Now, I'm not just
11 talking about the details of the crimes but the circumstances.
12 She tells you where these crimes occurred. They occur in the
13 bedroom or in the bathroom of 390 Hill Street. She tells you
14 that these occur when her mother is at work, or at least when
15 her mother is not in the house. You remember that around
16 November or December Shayleen is no longer employed and there
17 were sexual assaults and lewdness that occurred after that
18 time but mother was not home. She explains to you that when
19 it happened in the bedroom the defendant would close the door,
20 and to make sure that that door didn't open on its own he puts
21 a flip-flop underneath the door to keep it jammed closed.

22 She tells you that they were both naked and that
23 their clothing is on the floor. She tells you that the
24 defendant never wears underwear. She knows that because she's
25 seen him take off his pants a number of times right before he

1 commits these lewd acts on her, right before he sexually
2 assaults her. She knows exactly what type of clothing he is
3 wearing and what type of clothing he isn't wearing. She tells
4 you that baby oil and a towel were involved and that this baby
5 oil and towel were taken from either the second or the third
6 drawer because that's where the defendant kept those items.
7 They were either in the second or the third drawer. And he'd
8 pull them out, he'd rub them on -- he'd rub the baby oil on
9 her thighs, he'd rub the baby oil on his penis and then he'd
10 have her lay on that towel. She tells you that sometimes that
11 towel was washed and sometimes it wasn't. And she can tell
12 you that because she's felt that towel on her body. She knows
13 when it's been washed and she knows when it hasn't because
14 she's been forced to lay on it and she's felt when it hasn't
15 been washed as it's rubbed up against her body, wiping the
16 defendant's ejaculate off of her and the baby oil off of her
17 after he's done.

18 She's told to squeeze her thighs together and that
19 he would stop when he gasped and orgasmed, ejaculated, and
20 that it looked like a white liquid coming out of his privates.
21 She tells you that he put his penis inside of her butt and it
22 hurt, ignored her cries for help and told her to shut up and
23 continued to move his penis inside and outside of her anal
24 opening.

25 She tells you that on occasion she stood over him as

1 he pleasured himself and that sometimes kneeled down in front
2 of him. She tells you that he ejaculates on her face and then
3 tells her to wash it off in the shower and go get dressed.
4 She tells you that the defendant told her to put her mouth on
5 his penis and suck it, and that on one occasion in order to
6 encourage her he put penis -- excuse me, he put sugar on his
7 penis.

8 The circumstances of Heather's disclosure. You see,
9 Heather was not someone who tried and ran to tell the nearest
10 adult that she could, and that's relevant to her credibility.
11 You see, Heather was actually confronted, essentially, with
12 her own disclosure. She held on to this secret as long as she
13 could. And the defendant controlled the secret as long as he
14 could, home schooling Heather for a number of years, severely
15 restricting the amount of time that she gets to spend with
16 really anyone outside of the house, specifically her friends.

17 In December of 2013, Heather goes back to public
18 school. Does she immediately tell someone? No. She holds on
19 to that secret. And it's her friends who notice she's upset
20 one day on the bus and they asked her what's wrong. She's so
21 upset they can't really understand what she's saying. They
22 make out something about physical abuse. You hear Megan and
23 Xyliana both say she said something about the defendant
24 physically abusing her. And Xyliana even hears something
25 about rape. She hears that the defendant threatened to rape

1 Heather.

2 And what do her friends do? Her friends say you
3 need to tell an adult, you need to tell a teacher, Heather,
4 that the defendant is doing these things to you, and Heather
5 doesn't. Now, the friends try to, right? Megan and Xylina,
6 they go to the school, they try and talk to the school
7 counselor and the school counselor is not there that day.
8 And so Heather holds on to that secret a little longer. And
9 then she's confronted again with her own emotional state.
10 A cafeteria worker sees Heather. Heather is upset. The
11 cafeteria worker asks Heather what's wrong and Heather says
12 something about home, trouble at home. And the cafeteria
13 worker decides on her own to go and talk to another adult,
14 to go talk to that school nurse, Christy Thunstrom, because,
15 again, the school counselor is busy or not there that day.

16 And the school counselor takes Heather out of class
17 and talks to Heather about the fact that someone saw her and
18 that she looked upset, and Heather starts to talk. And the
19 first things out of her mouth are that the defendant is
20 abusing her physically, the defendant is hitting her, the
21 defendant is calling her names, the defendant is yelling at
22 her and that's upsetting her. And in the middle of all this,
23 as she's telling the school counselor all of the abuse that
24 she's suffering, the rape comes spilling out. She can't hold
25 it in any longer. So she says, and he's raping me. And Ms.

1 Thunstrom, she doesn't ask for any details. All she asks is
2 are we talking about one time, are we talking about more than
3 one time. Heather says numerous; many times this has
4 happened.

5 And the school counselor tells Heather what her
6 friends told her, you need to tell someone else. You need to
7 tell your mom. And what does Heather say? She says I don't
8 want to tell anybody else, I'm afraid. I'm afraid of the
9 defendant. She says I'll tell my mom next week. I'll tell
10 my mom when I no longer have to be afraid of the defendant.
11 I'll tell my mom when the defendant is gone out of the house
12 at his new job. Heather doesn't want to tell anybody about
13 these things that are happening to her. She's confronted
14 with it at a time that she is emotionally upset.

15 Source of knowledge. Heather knows these things
16 because they happened to her. There's just no other
17 reasonable source of knowledge for her to be able to describe
18 the things that she described. I know there was a question
19 about what type of Internet access did Heather have, and
20 Shayleen testified that she was supervised. If she was on
21 that computer when she was home schooled, she was absolutely
22 supervised. Now, we know Heather is not getting it from her
23 friends when she's home schooled because she doesn't get to
24 see her friends when she's home schooled. She is in that
25 house essentially every hour of every day for four years.

1 She's able to describe these things because that's where these
2 things happened and that's where she learned about them, from
3 the defendant's crimes.

4 Her manner on the stand. You were able to not only
5 hear Heather's words but to see her, to see how she was in the
6 presence of fourteen strangers, in the presence of attorneys,
7 and in the presence of the defendant. And we asked the
8 question, but really we didn't need to. It was obvious to
9 everyone in this room that Heather did not want to be here and
10 that she was afraid. She didn't want to be here because she
11 doesn't want to talk about these things. She doesn't even
12 want to think about these things. This was not a girl who's
13 experiencing the pinnacle of a revenge scheme two years in the
14 making. This was a girl who's forced to sit in front of
15 fourteen strangers and talk about four years of sexual abuse
16 that she wished she didn't have to even think about.

17 Corroboration. You were told when you look at the
18 credibility of witnesses on the stand you are to look at the
19 other evidence in the case and to determine whether that
20 contradicts or corroborates their testimony. Now, there are
21 three key pieces of evidence that corroborate Heather's
22 testimony before you. First, the physical evidence in this
23 case. Now, I'm not talking about DNA right now. We'll talk
24 about that in a little bit. I'm talking about physical
25 evidence that is not DNA. I'm talking about when Heather

1 talks to CPS on January 21st, 2014, they asked her to draw a
2 diagram of the room in which most of the sexual crimes
3 occurred, and she does. And she draws this depiction of that
4 room. And if you look at photographs of the scene,
5 specifically photographs of the defendant's bedroom, this
6 diagram matches it to a tee. You see the door leading into
7 the bedroom on the bottom right; the dresser depicted right
8 below that. Not the dresser that we've heard so much about,
9 but another dresser. You see the closet next to that on the
10 bottom and then a TV stand with a TV kind of at a diagonal on
11 that corner. You see the safe that belongs to Shayleen on the
12 top right. You see the bed in the middle pushed up against
13 that far wall away from the door. And then you see the
14 dresser that we've heard so much about, the defendant's
15 dresser. And you seen on that left-hand side that there's
16 three drawers depicted and that she circled that middle
17 drawer. She says that's where I think the towel is right now,
18 but he keeps it in the second or third drawer. So they go,
19 they search the defendant's bedroom, they search that dresser,
20 they search those left-hand drawers, and in that third drawer
21 they find exactly what Heather told them they would find in
22 that dresser. They find the towel, they find the baby oil.
23 And not only do they find a towel and baby oil, they find that
24 there are pubic hairs on the baby oil.

25 MS. McNEILL: Objection. That misstates the

1 testimony about what the hairs were.

2 THE COURT: Whoa, whoa, whoa, whoa. Wait. Don't do
3 speaking objections. Your objection?

4 MS. McNEILL: It misstates the testimony.

5 MR. BURTON: I'll restate.

6 THE COURT: Okay, thank you.

7 BY MR. BURTON:

8 They find hair on that bottle of baby oil. This is not
9 baby oil used to clean gravestones. This is not baby oil used
10 around the house for cleaning projects. It corroborates
11 Heather's testimony that this was baby oil used by the
12 defendant in a sexual manner. And they take that towel and
13 it's balled up inside the drawer, and when they pull it apart
14 you'll remember that it was stuck together, that it was
15 difficult to pull apart and it actually made an audible sound
16 as it's being ripped apart against itself. And they find
17 hairs on that towel, which again corroborates Heather's
18 testimony that this was a towel used for sexual purposes,
19 just like that bottle of baby oil. And they pulled it apart
20 and they see it's got stains on it and they do a presumptive
21 test there at the scene and they detect that it's presumptive
22 positive for semen. And they take it to the lab and they test
23 it and as part of the test they do an alternative light source
24 and that towel literally glows with defendant's semen,
25 corroborating Heather's testimony that this was a towel that

1 he used to wipe off his semen from her body.

2 Second, the defendant's statement. Now, you
3 listened to the defendant's statement. It's approximately an
4 hour and twenty minutes long. And you're going to have the
5 defendant's statement with you in the back. We're not going
6 to listen to it again, but you have all the permission in the
7 world to listen to it in the back as many times and as long as
8 you want. What I'm going to do, though, is I'm going to
9 highlight just a few things about the defendant's statement
10 and I'm going to give you some time codes as well so that if
11 you want to go back and you want to check my depiction of
12 what's in that call, during that recorded statement, you are
13 more than free to do that.

14 The first thing I want to highlight about the
15 defendant's statement are what I would like to call unintended
16 admissions. Now, it's absolutely true the defendant denies
17 the allegations in this case and he does so in the recorded
18 statement as well. But in the middle of trying to describe
19 and explain away the charges in this case, the defendant says
20 a number of things, and usually they're not even responses
21 to direct questions, usually they are freely offered by the
22 defendant that corroborate Heather's testimony.

23 He says things like that he never wears underwear.
24 You remember that the detectives asked him, well, when Heather
25 saw you masturbating were you completely naked, were you semi-

1 naked? He said, well, I was naked from the waist down. Okay,
2 so your pants and your underwear were off? Yeah, my pants --
3 well, I don't wear underwear -- which is exactly what Heather
4 says -- I never wear underwear, he never wears underwear.

5 He says that the towel is kept in the second or
6 third drawer. The second or third drawer, which is clear that
7 he's saying obviously it moves around. Sometimes it's in the
8 second, sometimes it's in the third. And that's exactly what
9 Heather said. His towel and his baby oil are in the second or
10 the third drawer. She knows that because she's seen him take
11 it out of both, she's seen him put it in both, because this
12 has happened numerous times. He indicates that it's a very
13 specific towel. This isn't a towel that's just whatever
14 happens to be lying around, sometimes it's in the bathroom,
15 sometimes it's wherever else. This is a very specific, unique
16 towel that is only used for one thing, and that is to clean up
17 the defendant's ejaculate.

18 That's exactly what Heather says. This is a unique
19 towel. She describes the same towel and it's used for the
20 exact same purpose that the defendant said, to clean up his
21 ejaculate. That he occasionally washes that towel. The
22 defendant, when he's describing Heather has found this towel
23 before, he says sometimes I wash it, sometimes I don't.
24 Heather said the same thing. How does she know that? She
25 knows it because she's felt it on her body. She knows when

1 it's been cleaned and when it hasn't.

2 That he puts baby oil on his penis. Heather
3 describes that to a tee. The defendant rubbed baby oil on his
4 penis. And when the defendant is interviewed, he confirms
5 that he uses the baby oil to rub on his penis.

6 Lesbian pornography. You remember when the
7 defendant is asked about pornographic videos that Heather may
8 have seen, pornographic videos that may be on his computer,
9 he tells the detectives that the video that Heather might have
10 seen a couple minutes of was a lesbian pornographic video and
11 that the videos, most if not all on his computer are going to
12 be lesbian pornographic videos. Maybe there's a couple that
13 are male-female pornographic videos, but the vast majority
14 are going to be lesbian pornographic videos. Now, that
15 corroborates Heather's source of knowledge, because if she
16 saw a couple minutes of a lesbian pornographic video she's not
17 going to know about fellatio, she's not going to know about
18 anal penetration, she's not going to know about ejaculating
19 on the face. She's not going to know about the things the
20 defendant did to her from those pornographic videos.

21 Heather's fear based on abuse. The defendant
22 corroborates that he is verbally abusive to Heather, that he
23 calls her names, and that corroborates Heather's fear of him.

24 The second highlight of the defendant's statements
25 are the inconsistencies. And the reason I want to talk about

1 these is because this is the defendant's opportunity to
2 explain the allegations against him, as well as any potential
3 evidence that may support those allegations. For example,
4 evidence that might be in that drawer. You remember that
5 right out of the gate before Detective Dicaro even tells the
6 defendant that he's under arrest for sexual assault against
7 Heather, before Detective Dicaro says anything about what
8 Heather has said the defendant had done to her, he mentions
9 that drawer. As soon as Heather's name is mentioned -- the
10 drawer, the drawer, the drawer, the drawer. And as soon as
11 a search warrant is mentioned, the towel in the drawer, the
12 towel in the drawer. He knows there's a chance -- he knows
13 that if Heather has talked to the detectives about the sexual
14 abuse there's a good chance she's told them about that towel
15 and there's a good chance that her DNA is going to be found
16 on that towel, so he wants to explain that.

17 So what does he tell us and the detective about the
18 drawer? How many times has he seen Heather in that drawer?
19 Well, first he says once. Eighteen minutes, fifty-eight
20 seconds into the interview, I saw her in my drawer once a week
21 and a half ago. And then he tells the detective, I actually
22 -- I don't know if she found anything, I didn't see her
23 actually find the towel -- but once. Then it quickly becomes
24 twice. Actually, I saw her before that, too. Twenty-one
25 minutes, twenty-two seconds into the interview. And you

1 remember the second incident is when he found Heather in his
2 room wearing just her bra and her underwear. And again, he
3 tells the detective, I don't know what she found that time,
4 either. Now, six minutes later, twenty-seven forty-three to
5 twenty-eight fifteen, he talks about a third time that he's
6 allegedly found Heather in his drawer. And we know it's
7 different because this time he actually claims that he knows
8 that she found the towel because he talked to her about it
9 and told her, drop the towel, and she does. And he washed it
10 after that and moved it.

11 The bra and underwear incident. When he first
12 describes this incident the detectives pointedly ask him,
13 twenty-one minutes, fifty-five seconds, What was Heather doing
14 when you walked in? His response: She was going through my
15 drawers. As I walked in, she was going through my drawers.
16 Now, almost an hour later, 1:18:58 to 1:19:31, what was
17 Heather doing when he walks in? She was sitting or leaning on
18 my bed after having gone through drawers on my side of the
19 room because I could hear her before I entered the room. Now,
20 something very interesting happens between those two accounts.
21 Specifically, the detectives ask the defendant, Has Heather
22 ever been in your bed? No, she's never slept in my bed. Is
23 there any reason we're going to find Heather's DNA in your
24 bed? Well, all of a sudden it changes between Heather going
25 through is drawers to Heather now being on his bed because he

1 knows full well Heather's DNA could very well be on his bed
2 and he needs to explain that, too.

3 Showers. The defendant describes a number of times
4 where he is naked and Heather is naked in the bathroom and he
5 describes it as mishaps involving him in the shower. How many
6 times did this happen? First he says once, nine minutes,
7 thirty-three seconds into the interview. Then he says, oh,
8 actually it happened two other times. Now, specifically we're
9 talking about when the defendant describes as one time that he
10 opens the shower and she's there, so after that he started
11 announcing, he started asking, is there anybody else in here,
12 and whether Heather ever said anything. First he says, well,
13 this one time she didn't say anything, so I opened it up and
14 she's there naked on the toilet and I'm naked in the shower,
15 so I quickly closed the curtain. Then he says, well, actually
16 that happened, that same thing happened two other times.

17 Where was the defendant at? Initially and usually when
18 the defendant describes times where he has been naked in the
19 bathroom and Heather has been naked in the bathroom he has
20 been in the shower, right? At 9:33 and 10:39 he's in the
21 shower. However, just a few minutes after that, 10:57 to
22 11:07, he describes walking in on Heather and she's naked on
23 the toilet. Why? Because Heather didn't shut the door.
24 You'll notice that there's a theme. All of these are
25 Heather's fault. Every time the defendant has had

1 inappropriate conduct as he describes it with Heather, it's
2 always Heather's fault. So this one time he walked in on
3 Heather and she hadn't shut the door and she's on the toilet
4 and she's naked, and he turns around and he walks back out.
5 So now we have the defendant somewhere else in the bathroom.
6 Then he goes back to talking about him being in the shower,
7 in the shower, in the shower.

8 Where is Heather at these times that he allegedly
9 reaches out and actually grabs Heather or might have grabbed
10 Heather when he's naked in the bathroom and she's naked in the
11 bathroom? Initially and usually she's on the toilet. She's
12 naked sitting on the toilet. But then forty-eight minutes,
13 twenty-seven seconds to forty-eight minutes and forty-six
14 seconds he describes her being near the cabinets and actually
15 going through the cabinets looking for a towel. And you see
16 those cabinets and the towels, they're right where you would
17 be if you were standing up. So now instead of sitting on
18 the toilet, Heather is standing up going through the towels,
19 grabbing a towel, and he reaches out and grabs her. And he
20 describes this whole scenario where she would actually be
21 right in the path. If she were standing by those cabinets,
22 she would be right in his path when he was reaching for that
23 towel. And then she's on the toilet again -- an hour and nine
24 minutes into the interview.

25 Was the defendant looking? You remember when he

1 describes this time that he might have grabbed Heather
2 initially he says not looking, right? And I want you to
3 picture that because the way the defendant describes it is
4 he's in the shower, he turns off the water, he's ready to get
5 a towel, he announces himself: Is anyone else in the
6 bathroom? He receives no reply. Nevertheless, he reaches out
7 without looking, with his eyes closed, blindly trying to grab
8 his towel and he might have grabbed something. But then
9 forty-seven minutes into the interview he says, well, that one
10 time that I happened to look out and Heather is there as I'm
11 reaching for my towel, she's naked and I might have grabbed
12 something.

13 Mark Twain said, "If you tell the truth, you don't
14 need to remember anything." And I submit to you that what's
15 going on here is the defendant is struggling to remember the
16 details as he has previously described them because we have
17 a significant break, twelve minutes into the interview versus
18 forty-seven minutes into the interview. And the detectives
19 have talked about a lot of different things in those
20 intervening minutes. And when they circle back around to the
21 shower, the details are changing because the defendant is
22 struggling to remember.

23 Pornography. This is a very interesting part of the
24 interview. Was there pornography in the house? This was
25 discussed thirty-nine minutes into the interview to forty

1 minutes in the interview. When the detective asked, are there
2 any pornographic materials in the house, the defendant's
3 response is immediate, it's unequivocal, it's unconditioned.
4 No, none. And the detective's follow-up is, well, look,
5 Heather, she described a lot of sexually explicit stuff, stuff
6 that she's just not going to know about -- source of knowledge
7 -- without it actually happening to her or something. And
8 then the defendant immediately responds with, well, actually,
9 you know, there was this one time. There was this one time
10 where I was watching a pornographic video and Heather came in.
11 And by approximately fifteen minutes later there's
12 pornographic material all over that computer all the time,
13 incessant, non-stop pop-up ads, with Heather constantly over
14 his shoulder. It's an immediate about-face when he recognizes
15 there's a source of knowledge problem.

16 Was it off or on? This is that specific instance
17 of where Heather might have seen a couple minutes of a
18 pornographic video. First he says Heather came in. Well, did
19 you leave it -- No, I turned it off. I turned it off because
20 Heather was home. No inappropriate conduct on my part,
21 Detective. I turned it off. Well, then did she actually see
22 any of it? Well, I actually left it on, so she might have
23 seen it because I had to go to the bathroom so I left it on.
24 I wasn't there when she might have watched it, so no
25 inappropriate conduct on my part, I just left it on.

1 The incident of Heather starting her menstrual
2 cycle. When the defendant first describes this, he says I
3 helped her show -- I showed her how to put a pad or panty
4 liner, as he described it, in Heather's underwear while she
5 was wearing a different pair. Then when he goes through the
6 story, the account, again he says I took Heather to the
7 bathroom. "She handed me the pair that she was wearing."
8 That's a direct quote by the defendant. "She handed me the
9 pair that she was wearing." I put the pad on that pair. She
10 put them back on. The detective confronts the defendant on
11 that. Whoa, whoa, whoa, whoa, now your story just changed a
12 whole lot. I think you're painting yourself into a corner.
13 That's what the detective says. And then the defendant says,
14 wait, wait, okay, wait a minute. What happened was she was
15 wearing a fresh pair of underwear. She comes in with a pair
16 that is soaked and covered in blood. That's the defendant's
17 words describing Heather's underwear, soaked and covered in
18 blood. I put the pad on the pair that were soiled and tell
19 her to put those pair back on. This is the extent to which
20 the defendant wants to make sure that there's no inappropriate
21 conduct noted in that recorded interview.

22 Nudity. Again, during the account of the menstrual
23 cycle beginning he describes Heather as being naked except for
24 that fresh pair of underwear that she's wearing. And the
25 detective asks the defendant fifty-nine minutes into the

1 interview, Was this a common thing for Heather to go around
2 the house nude or semi-nude like that? Now, we already know
3 the answer from Shayleen. Absolutely not. This was not
4 something that Heather did. She didn't walk around the house
5 naked, she wore clothes in the house. And that's what the
6 defendant says as well. No, this was totally peculiar, this
7 was totally unique, this was totally abnormal. I didn't think
8 anything of it when it was happening, but this was not
9 something that she did. But then we consider the rest of the
10 defendant's interview and Heather seems to be naked all the
11 time all over the house. The defendant has seen her naked
12 except for her underwear in the living room. The defendant
13 has seen her fully nude in the bathroom several times. The
14 defendant has seen her in her bra and underwear in his
15 bedroom. The defendant has seen her nude at least on top in
16 her bedroom as she's massaging her breasts, apparently while
17 Kaylie is in the room because it was a room that she shared
18 with Kaylie, and the reason the defendant is going in there is
19 to say goodnight to Kaylie. So despite the fact that Kaylie
20 is in the room, she's there in view of Kaylie massaging her
21 breasts, exploring her body as the defendant claims she said.

22 Touching. This was something that happened on a
23 Friday. The defendant testified. The defendant was asked a
24 series of questions. The answer to every single one of those
25 questions was an unequivocal, unconditioned no. Did you ever

1 touch Heather's vagina? No. Did your penis ever touch
2 Heather's vagina? No. Did your penis ever touch Heather's
3 anus? No. Did your penis ever touch Heather's mouth? No.
4 Did you ever touch Heather's breasts? No. But then we look
5 at the recorded statement and at least five instances where
6 the defendant either admits to touching Heather's breasts or
7 at least conditions and recognizes the possibility that he's
8 touched Heather's breasts. Eleven minutes into the interview:
9 I might have touched her when I was reaching for a towel,
10 keeping my eyes closed behind a curtain in the shower.
11 Thirty-two minutes in: I might have bumped up against
12 Heather's naked torso with my naked torso because I don't wear
13 a shirt and she wasn't wearing a shirt when I was trying to
14 show her how to put a pad in her underwear. Forty-seven
15 minutes into the interview: And that one time that I happened
16 to look out when I was grabbing for a towel, I could have
17 grabbed something I shouldn't have on her chest, on her arm,
18 not realized it was a different body part than one of her
19 privates like her boobs and not realized it. Forty-seven
20 minutes into the interview: I grabbed once out of the shower
21 and she said "Ow." And hour and six minutes into the
22 interview: I touched her a couple of times explaining things,
23 but that's it. I pointed to her. I tried to point above her
24 boobs and that's all I've ever touched.

25 Not only can the defendant not be consistent during

1 his recorded statements, his testimony before you under oath
2 is also inconsistent with that same recorded statement. In
3 fact, one of the only things that the defendant is consistent
4 about during his recorded interview is that he never told Shay
5 or anybody else about any of this. He never told Shay that
6 he's seen Heather naked in the bathroom. He never told Shay
7 that he's seen Heather massaging her breasts in her own
8 bedroom. He never told Shay that he's seen Heather in her bra
9 and underwear in his bedroom. He never told Shay that Heather
10 has seen him naked. He never told Shay that Heather has seen
11 him masturbating. And he never told Shay that Heather has
12 seen him watching pornographic videos.

13 What does that mean? That means that Shay cannot
14 corroborate any of this. That means that as far as the
15 defendant is concerned the best case scenario for him is a
16 he said, she said case because no one can corroborate any of
17 this. And in fact, Shay tells us the exact opposite, that
18 when she's at home the defendant makes it a point to avoid
19 Heather when she might be in some state of undress. He stays
20 away from her bedroom when she's changing clothes, stays away
21 from the shower when Heather is in there, away from that
22 bathroom.

23 Finally, the DNA in this case corroborates Heather's
24 testimony. Back to the towel. You were told -- Ms. Adams,
25 the DNA expert, came in here and testified that she examined

1 and analyzed three key parts of this towel, that she cut from
2 the towel trying to get parts that both had some what appeared
3 to be semen and some part of the towel that did not have semen
4 so that she could do both a non-sperm fraction as well as a
5 sperm fraction for DNA analysis. She looked at 1.2 and in the
6 non-sperm fraction she found a mixture profile of at least two
7 individuals. The defendant is identified as the major profile
8 and Heather Haney is identified as the minor profile, both
9 going above that threshold of one in seven hundred billion,
10 and that the defendant's DNA is identified as the sperm on
11 that towel.

12 Now, if there is a reasonable doubt that that is
13 Heather's DNA on that towel, if it's the case that it's
14 somebody else's DNA in that minor profile and it just so
15 happens to also match Heather Haney, then that means the
16 defendant is the most unlucky person to ever cross the city
17 limits of Las Vegas, a town built on unlucky people, because
18 that is a one second in twenty thousand years chance. That's
19 Heather's DNA on that towel and it's Heather's DNA because
20 that was the towel used to wipe her. You remember Ms. Adams
21 testified about trace DNA, about touch DNA and about how it's
22 a very poor source or quality of DNA that you get from touch
23 DNA. It could be difficult to see. And it could be
24 especially difficult to see if it's in a mixture because now
25 you're trying to see two different people's DNA. And she said

1 that it becomes near impossible if one of those sources of DNA
2 is touch and one of those sources of DNA is something else,
3 biological fluid. She compared it to one drop of yellow paint
4 in a bucket of black. We know that that non-sperm fraction
5 major profile is the defendant's and it's biological fluid
6 because we have his sperm. We know that that's ejaculate,
7 that's his bodily fluid on that towel. And because we know
8 that, we know that we need to have a rich source of Heather's
9 DNA to be able to even see, otherwise it's a drop of yellow
10 paint in a bucket of black. That's Heather's biological
11 fluid. That's not her skin cells. That's not her messing
12 around with the towel once or twice. That's her biological
13 fluid because that's the towel that was used to wipe up the
14 defendant's crimes.

15 Item 1.3, non-sperm, a mixture profile. The
16 defendant is identified as the major profile. Heather cannot
17 be excluded from the minor profile. And there's a statistical
18 probability of one in one hundred and ten thousand. Now,
19 certainly lower than seven hundred billion, right? Certainly
20 lower than that identity assumed threshold, right? But from
21 the other evidence that we know about in this case, the fact
22 that there's only two people in that house that know anything
23 about that towel, the defendant and Heather Haney, and the
24 only person's DNA that should be on that towel is the
25 defendant's, based on that, that's Heather's minor profile.

1 The sperm, again, is the defendant's major profile.

2 And Item 1.4, non-sperm, defendant's identity
3 assumed; sperm, defendant's identity assumed.

4 The hairs. You remember these are the hairs that
5 were taken from that towel, debris that was taken off of that
6 towel. A lot of these were not suitable for comparison but
7 some were. I'd like to focus on those. Item 1.1.3, a mixture
8 profile. Defendant is identified as the major profile because
9 that's his hair. And even by the defendant's account, that's
10 his pubic hair because this is the towel that he uses to self
11 pleasure. We can't conclude anything about the other profile
12 in that hair, but again, this is the defendant's, quote,
13 unquote, "jack-off towel," so this is the towel that is
14 dedicated to that purpose. What is anybody else's DNA doing
15 anywhere near it?

16 Item 1.1.6, mixture profile. The defendant is
17 identified as the major profile. Heather cannot be excluded
18 from the minor profile. There's a one in 19.5 thousand
19 probability.

20 When you look at the hairs taken from the towel and
21 when you look at the stains actually on the towel, Heather is
22 all over that towel. She's all over that towel because this
23 happened just as Heather said it did, numerous times, and that
24 sometimes that towel was washed and sometimes it wasn't.

25 At the end of the day you have to look at the

1 evidence and you have to make a decision. Is the defendant
2 guilty beyond a reasonable doubt? When you look at the
3 evidence what you realize is that all of the evidence points
4 at the defendant's guilt. The details that Heather is able
5 to provide, not only about the crimes themselves but the
6 surrounding circumstances of those crimes. The closing and
7 barring of the door with the flip-flop. The ejaculate looking
8 like white liquid. The body positions of the defendant and
9 Heather, both on the bed as well as in the shower. The sugar
10 sprinkled on his penis. All of those details point to the
11 defendant's guilt. Heather's source of knowledge and frankly
12 lack of alternative, a reasonable alternative source of
13 knowledge points to the defendant's guilt. Heather knows
14 these things because they happened. Heather can describe
15 these things because they happened to her. Heather can
16 describe how it felt with the defendant's penis inside of her
17 anus because she felt it. Heather can describe what it tasted
18 like when the defendant put sugar on his penis because she
19 tasted it.

20 Circumstances of Heather's disclosure. The fact
21 that Heather, just like she was on the stand, did not want to
22 talk about this with anyone and certainly not with anyone
23 while the defendant was still around, that she was essentially
24 confronted with her disclosure points to the defendant's
25 guilt. The presence of the towel and the baby oil in the same

1 dresser in one of the same two drawers that Heather described
2 points to the defendant's guilt. She knows about them because
3 she's seen them on numerous occasions.

4 The defendant's unintended admissions. The times
5 that he volunteers things that corroborate Heather's
6 testimony, Heather's testimony to the point where the only way
7 she could know about those things was because they actually
8 happened point to his guilt. His inconsistencies. The fact
9 that he cannot tell the same account twice throughout his
10 interview points to his guilt. And finally, the DNA evidence
11 in this case unequivocally points to the defendant's guilt.

12 And that's why we ask that you find him guilty of
13 all charged offenses.

14 THE COURT: Why don't we go ahead and take a break
15 before you start.

16 MS. McNEILL: Yes, Your Honor.

17 THE COURT: Okay. Ladies and gentlemen, you are
18 admonished not to talk or converse among yourselves or with
19 any one else on any subject related to the trial, or read,
20 watch or listen to any report of or commentary on the trial
21 by any medium of information, including without limitation
22 newspapers, television, the Internet and radio, or form or
23 express any opinion on any subject related to the trial until
24 the case is finally submitted to you.

25 We'll see you back here in about fifteen minutes.

1 (Jury is not present)

2 THE COURT: Let the record reflect that the jury has
3 left the courtroom. Is there anything that we need to discuss
4 outside the presence of the jury?

5 MS. McNEILL: No, Your Honor.

6 MS. JOBE: No, Your Honor.

7 THE COURT: Okay.

8 MR. BURTON: Very briefly, Your Honor. I just
9 wanted to note that I did show that PowerPoint presentation
10 to counsel before court. I have a hard copy to mark as a
11 court exhibit.

12 THE COURT: Okay.

13 MS. McNEILL: That's fine, Judge.

14 THE COURT: You can go ahead and do that.

15 MS. McNEILL: Thank you.

16 THE COURT: All right. Thank you.

17 (Court recessed from 11:05 a.m. until 11:21 a.m.)

18 (Jury is not present)

19 THE COURT: Okay. Counsel, are we ready to bring
20 the jury in?

21 MS. McNEILL: Yes, Your Honor.

22 MS. JOBE: Yes, Your Honor.

23 THE COURT: Okay, we'll go ahead and do that.

24 (Jury is present)

25 THE COURT: Okay. Will counsel please stipulate to

1 the presence of the jury?

2 MS. JOBE: Yes, Your Honor.

3 MS. McNEILL: Yes, Your Honor.

4 THE COURT: Okay. You all may be seated.
5 Counsel.

6 MS. McNEILL: Thank you, Your Honor.

7 CLOSING ARGUMENT

8 BY MS. McNEILL:

9 Mr. Burton said that the truth always comes out. When he
10 said that, it reminded me of a quote from Oscar Wilde that
11 says, "The truth is rarely pure and never simple." And that's
12 kind of what you're tasked with. As I said in opening, what
13 you have to do is put this puzzle together. And the district
14 attorneys hand you a box and they said here's all the pieces
15 that you need, but what they didn't tell you is that not all
16 the pieces are in that box and there's pieces in the box that
17 don't actually go to that puzzle. And so when you look at all
18 of the pieces of evidence that you saw over the last week, you
19 need to look at each of those pieces carefully and critically
20 to make sure it actually fits the way they say that it does.

21 The first thing that we have is Justin. I'm going
22 to start with him and I'm going to finish with him. You
23 probably don't like him very much right now. You probably
24 don't think he was a very good stepfather. And you heard him
25 and Heather, Shay and Leslie and Roger. He was too strict.

1 He said mean things. He pushed Heather. But you cannot let
2 how you feel about that keep you from holding them to their
3 burden because that's not why you're here. You're not here to
4 judge Justin for what kind of stepfather he was. You're not
5 here to judge how you felt about how he treated Heather in
6 those instances. It's so much more important what you're here
7 to do. And so I ask you to take those feelings that you have
8 about him and set those aside. Take that piece, because that
9 piece doesn't belong in this puzzle, and take it out of the
10 box, your feelings about that, and look at only what they
11 presented to you and does it meet the burden of proof.

12 And when you look at that, you have an instruction
13 that says that you can bring your common sense. When you set
14 aside your feelings about how you might feel about Justin as a
15 stepfather and you bring in your common sense, putting the
16 puzzle together is pretty simple.

17 Start with Heather. Heather was 12 years old. She
18 went from an environment where there were no rules. None.
19 Shay said that. Well, it was grandma. It's hard for grandma
20 to be a disciplinarian. And she lived with grandma for eight
21 years. She lived in an environment for eight years with no
22 rules. And then she went to an environment where there were
23 too many. Kids at 12, what did Shay say? Well, yeah, she's
24 at that age, she wants to assert her independence, she's
25 pushing back, she's breaking rules, little rules here and

1 there. She's trying to assert herself. All those things are
2 normal, but when you take those and you put them in an
3 environment going from no rules to too many rules, it sets up
4 this framework even more. And she had older friends. Her
5 friends that came in and testified are older than her. So not
6 only is she wanting all of the things that a 12-year-old girl
7 wants anyway, more independence, more freedom, she wants all
8 this stuff these friends have. She didn't have a cell phone.
9 That's got to be like torture for a 12-year-old girl.

10 She wanted her mom. She didn't get to live with her
11 mom for the first eight years of her life. And it didn't
12 sound like she had had a lot of contact with her mom when mom
13 was in California living her own life, meeting Justin, having
14 another child. And then when her mom moved to Searchlight
15 this is her chance to have this relationship with her mother.
16 She wants her mom. She doesn't want that guy in the way.
17 And Justin treated Kaylie very differently. That's always a
18 source of tension between siblings, and in this case she was
19 right, he did treat Kaylie better.

20 None of these things are imagined on Heather's part
21 and they go to explain the perfect storm of things that
22 collided on January 20th when she makes these allegations.
23 She said to you, nothing was right if Heather was not in
24 trouble, and that's how it felt for her. And for a 12-year-
25 old girl that can't be an environment you want to stay in.

1 And then the last piece of this puzzle that fits in
2 her mind about how much she wanted to get rid of Justin, her
3 dad was never involved in her life. And about six months
4 before this in January she finds out what? Her dad has been
5 contacting Shay on Facebook, and she said that Heather knew
6 about that. I don't think that your common sense couldn't
7 tell you kids want their parents.

8 All these things swirling around in Heather's brain.
9 And she wants him -- she says I want him out of Searchlight,
10 but I want to stay in Searchlight where my friends are. I'm
11 not saying that this was some sort of plot that Heather sat
12 down and hatched and she came up with these things and these
13 details, but all of these things that are in her head
14 certainly collided together when she's brought in to talk to
15 Christy Thunstrom.

16 What else do we know was swirling around in her
17 head? She had heard a conversation between her friends about
18 their friend Raven, who was what? Taken away from her
19 parents. She said she knew how Raven had gotten away from her
20 parents; swirling around in her mind. She said I had a
21 conversation with some of my friends about a friend that had
22 been raped. And all of these things are in her head.

23 And the State said that she didn't want to make this
24 disclosure, that she was forced to, but that's not actually
25 how that went down. Before we get to that, we need to talk a

1 little bit about Heather's believability. And I don't want to
2 suggest to you that she's some sort of horrible lying human
3 being, but she is a kid. People lie. Kids lie. Kids like
4 for their own self interest. They don't put a lot of thought
5 into the consequences. Do you think that Heather knew the
6 series of events that would be set into place by these
7 allegations? Do you think she cared? Or do you think she
8 thought it would be like Raven, she was just taken away from
9 that man? I don't think she would realize that she would be
10 later questioned by multiple people multiple times, and
11 lawyers and judges and juries would be involved. And so when
12 they say to you that her demeanor is because she was sitting
13 in here because she was scared of Justin and she didn't want
14 to have to say these things, it could be just as likely that
15 this is something that went too far and she can't get out now.
16 There's no way out.

17 Her demeanor was kind of similar, I noticed, to
18 Megan's demeanor. Megan has no reason to have all these
19 fears. And Heather knows that Justin has been in jail for
20 two years. He can't hurt her. So it could be that this is
21 the demeanor of a child who's told a lie that's gone too far.

22 When you look at her believability, her own friends
23 don't even corroborate her version of events. She said to
24 Christy Thunstrom, I told my friends about two months before
25 this, right, she said two months, that my stepdad had been

1 raping me. And when the State said that when this
2 conversation came up Heather was crying, it's not actually
3 what they said. Remember, they said she was happy and then
4 she told us about this and she seemed sad and then she seemed
5 relieved. So it wasn't as if she was sobbing all day and
6 couldn't stop and they had to goad her to tell them this.
7 They said she was happy and then we had this conversation.
8 And they said physical abuse, mental abuse. And Xylie said --
9 Xylie didn't say, oh, she was crying so hard I couldn't
10 understand her. All Xylie said was he said he threatened to
11 rape her. So her own friends don't even corroborate her
12 version of events.

13 And then they said -- Megan said that we told her
14 you have to talk to a counselor. We went to talk to the
15 counselor, we left this note. Heather said I told Xylie
16 because I knew she would know who I could go talk to. So her
17 own friends who, by the way, have no reason to come in here
18 and say anything other than what they remember happening,
19 don't corroborate what Heather said.

20 Which brings us to Nakita and this incident with
21 Sean Kruger. Now, Nakita and Heather aren't friends anymore
22 and she was up front with that. Teenage drama; we probably
23 don't want to know. But on June 1st, 2015 when she talked to
24 the detective, they were best friends. They were best friends
25 then when she told the detective who asked her questions about

1 Sean Kruger. And she said, yeah, Heather told me about him.
2 She told me that he would come over to the house and he would
3 put his hands on her breasts. And Xylie said, well, I didn't
4 think anything of this thing with Sean because it seemed like,
5 you know, she wanted it. This wasn't something she didn't
6 want, so I didn't think I should tell anybody.

7 So clearly Heather had been talking about Sean
8 Kruger. But what's interesting -- and talking about him on
9 the bus to these older girls, right? They're having
10 conversations about boys. These girls are older than her.
11 We were all a teenager once. We remember how much we wanted
12 to impress the older kids. But the interesting thing is that
13 Heather tells the detective, I didn't say that. She told you
14 I didn't say that. I never said that, it didn't happen, he
15 didn't touch my breasts. And what that is important for is
16 because it shows you that Heather says what she means to say
17 when it suits her, because why would Nakita make that up?
18 What motive would she have? But Heather has every motive.
19 And again, it's not this nefarious thing. These are just the
20 motives of teenage girls, the motives that drive. We all have
21 motives when we do everything that we do, and this is just
22 what drives her.

23 And that's why you have the jury instruction about
24 what to look at when you look at the witnesses' testimony and
25 all those things to think about when you think about what

1 Heather told you. And I want to talk about the details of
2 what Heather said happened, and I would submit to you that the
3 details, the actual details of the actual abuse that Mr.
4 Burton talked about, he was much more detailed than Heather
5 was on that stand.

6 Now, the conversation happens because Christy
7 Thunstrom gets this conversation from the lunch lady that
8 Heather seemed sad. And she talks to Heather and Heather
9 talks all about this physical abuse and then mentions that she
10 had been raped. And then when she talks to CPS, same thing,
11 she talks all about this physical abuse at length and how
12 he's mean to her. And there's a lot of conversation about
13 that because that's why we're here. She's upset and she's sad
14 and she wants him out of her life.

15 And then she talks about, oh, and then he raped me,
16 and they want to know about the first time. And she was very
17 clear that the first time it happened she was six. She was
18 six years old. Mr. Langford lived in California then. But
19 she's consistent with that. In fact, she remembers that she
20 was six because Ashley was involved. It was this incident at
21 the rec center where Ashley made some comments about sex and
22 Heather told Ashley's mom and Ashley got in trouble. And she
23 remembers that Ashley was five. Ashley is her cousin and she
24 knows she's a year older. And that's what sparked this whole
25 thing and over the course of her conversations with the

1 detectives she's clear multiple times that she was six, it
2 happened when she was six. She was six years old and that he
3 raped her to punish her for telling on Ashley. It doesn't
4 really make any sense. But again, this is a girl who's just
5 saying what she needs to say so that she can go have him taken
6 away like Raven's parents were.

7 Now, she's 12, so as the State brought up during
8 jury selection, kids don't always have the best memory of
9 time. But she was 12 and now she's 14. She's not a small
10 child. She's certainly got the capability of understanding
11 time a little better than that. And again, these aren't minor
12 details in her life, these are traumatic events that she's
13 describing. What's interesting is that consistently she was
14 six. At one point she might have said I might have been
15 seven, I might have been eight, but she always came back to
16 six.

17 Two months later at the preliminary hearing when she
18 testifies, now suddenly six never comes up again. What's
19 happened in the meantime? He's been arrested, charges have
20 been filed. She's had to talk to attorneys. She has to come
21 in and testify. The details didn't matter when she's telling
22 CPS because she's not thinking about anything other than he's
23 just going to go away, so it just doesn't matter what I say,
24 I'm just going to tell the story. But now the details matter
25 and she knows he didn't live with her when she was six, so you

1 never hear that again. She doesn't say I was just confused
2 and here's why, it's just I was eight.

3 Some more of her details. She didn't remember if it
4 was day or night when these things would happen and she said
5 she didn't remember because the windows in the bedroom were
6 covered. But then she admitted that there were actually spots
7 on the windows where light could come through and the windows
8 in the rest of the house weren't covered. She doesn't
9 remember if it's day or night because, again, when she's
10 making these initial allegations the details don't really
11 matter to her. She's not imagining that she's going to have
12 to come in here and be questioned by lawyers about all of
13 these things. But if you're standing in the living room in
14 the middle of the day or the middle of the night, you're going
15 to be aware of that because you can see out all of the
16 windows. And if you're called back into the bedroom, you're
17 not sucked into some time vortex where now you don't know if
18 it's day or night.

19 She never told CPS that he put his mouth on her
20 breasts.

21 MS. JOBE: Objection, Your Honor; facts not in
22 evidence.

23 THE COURT: Approach.

24 (Bench conference)

25 MS. McNEILL: Your Honor, I asked her that and she --