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Respondent.

Docket 70868 Document 2017-06094

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1 THE COURT: Wait.

2 MR. SPEED: I'm sorry, but I have to stop you --

3 THE COURT: Don't interrupt.

4 MR. SPEED: Judge, there's --

5 MS. KOLLINS: Come on.

6 THE COURT: Don't interrupt.

7 MR. SPEED: There is a problem here with what the State is saying. These

8 aren't substantially equal contributors. That's another error where we're talking

9 about --

10 MS. KOLLINS: That's cross.

11 THE COURT: You're going to be able to cross-examine, but --

12 MR. SPEED: Fine.

13 THE COURT: Take a deep breath.

14 MS. KOLLINS: She testified that there are substantially equal contributors at

15 each loci and that is -- she cannot make an identity statement when you have a

16 mixture, she has to look at the known profile of Gregory Williams and say it cannot

17 be excluded from my profile. She cannot say it any other way. If she said that there

18 was identity assumed, then we'd be hearing about that, so I don't know what this

19 prosecutor's fallacy is in the case that we don't have the citation to today. That's

20 what the expert testified to. If he wants to cross-examine her about that --

21 THE COURT: Yeah.

22 MS. KOLLINS: -- then, you know, that's fine.

23 THE COURT: Okay.

24 MS. KOLLINS: She also testified -- just one last thing -- that epithelial cells

25 and skin cells are interchangeable in their language in the DNA lab.

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GAL FRIDAY REPORTING & TRANSCRIPTION  
10180 W. Altadena Drive, Casa Grande, AZ 85194 (623) 293-0249

1 THE COURT: Right.  
2 You're going to be able to cross-examine this -- this witness and you'll  
3 handle that. If you want to get me the cite for *Brown versus Farwell*, I'll look at it  
4 but --  
5 MR. SPEED: 525 Fed Third --  
6 THE COURT: Wait, wait, wait.  
7 MR. SPEED: I'm sorry.  
8 THE COURT: 525 --  
9 MR. SPEED: Fed Third --  
10 THE COURT: -- Fed Third --  
11 MR. SPEED: -- 787. And it was a case --  
12 THE COURT: You said --  
13 MR. SPEED: -- that originated here in --  
14 THE COURT: But you said your cite was 4885.  
15 THE CLERK: It's on page --  
16 MR. SPEED: Page 4885. That's the section that I was reading from, Your  
17 Honor. And with this new citation now the page numbers may be different --  
18 THE COURT: You mean it's 3,000 pages long?  
19 MR. SPEED: No. No. Your Honor, with this new citation the page numbers  
20 may be different.  
21 THE COURT: Okay.  
22 MS. ROSS: This is the --  
23 MR. SPEED: I'm reading my copy from page 4885.  
24 MS. ROSS: That's the federal --  
25 THE COURT: All right.

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1 MR. SPEED: This will be the citation so the page numbers would be --

2 THE COURT: All right.

3 MR. SPEED: -- different in what the Court --

4 THE COURT: All right.

5 MR. SPEED: -- or its law clerk reads.

6 THE COURT: I'll -- I'll get my law clerk to pull it and we'll look at it. You'll --

7 MR. SPEED: And if the Court will give a curative instruction then if the --

8 THE COURT: Oh no.

9 MR. SPEED: -- State is -- if the State is conceding that the --

10 THE COURT: No.

11 MR. SPEED: -- reference to epithelial fraction or skin fraction being  
12 interchangeable is how they say it in the lab, then I think the jury needs a curative  
13 instruction --

14 THE COURT: I will --

15 MR. SPEED: -- on that point.

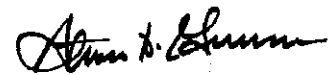
16 THE COURT: I will not give a curative instruction. You can cross-examine.  
17 You haven't done that yet. And we'll see you in the morning at 9:00.

18 [Proceedings concluded at 4:04 p.m.]

19 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
20 proceedings in the above-entitled case to the best of my ability.

21  
22   
23 Tracy A. Gegenheimer, CER-282, CET-282  
24 Court Recorder/Transcriber  
25





CLERK OF THE COURT

1 TRAN

2

3

DISTRICT COURT

4

CLARK COUNTY, NEVADA

5

THE STATE OF NEVADA,

6

Plaintiff,

7

CASE NO. C294607

8

VS.

9

GREG ANTHONY WILLIAMS,

10

Defendant.

11

12

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

13

14

FRIDAY, APRIL 1, 2016

15

**TRANSCRIPT OF PROCEEDINGS**

16

**JURY TRIAL - DAY 4**

**VOLUME IV**

17

APPEARANCES:

18

For the State:

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19

Chief Deputy District Attorney

20

KRISTINA A. RHOADES, ESQ.

21

Deputy District Attorney

22

For the Defendant:

KEVIN C. SPEED, ESQ.

23

KATRINA M. ROSS, ESQ.

Deputy Public Defenders

24

RECORDED BY: JILL JACOBY, COURT RECORDER

25

TRANSCRIBED BY: ASHLEY HINCKLEY, INDEPENDENT TRANSCRIBER

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1 FRIDAY, APRIL 1, 2016 AT 9:06 A.M.

2  
3 [Outside the presence of the jury]

4 THE COURT: All right. Before we get started I want to say this. Mr.  
5 Williams, under the Constitution of the United States and under the Constitution of  
6 the State of Nevada, you cannot be compelled to testify in this case, do you  
7 understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: You may, at your own request, give up that right and take the  
10 witness stand and testify. If you do, you'll be subject to cross-examination by the  
11 Deputy District Attorneys and anything that you may say, be it on direct or cross-  
12 examination, will be the subject of fair comment when the Deputy District Attorneys  
13 speak to the jury in their final argument, do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: If you choose not to testify, the Court will not permit the Deputy  
16 District Attorneys to make any comments to the jury because you have not testified,  
17 do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: If you elect not to testify and if your attorney specifically  
20 requests, the Court will give a jury instruction encompassing the following  
21 proposition, quote: The law does not compel a Defendant in a criminal case to take  
22 the stand and testify. And no presumption may be raised and no inference of any  
23 kind may be drawn from the failure of a Defendant to testify. End quote. Do you  
24 have any question about your rights?

25 THE DEFENDANT: No sir. No, I don't.

1 THE COURT: And I don't know what your background is like, but you are  
2 further advised, if you have a felony conviction and more than 10 years has not  
3 elapsed from the date you have been convicted or discharged from prison, parole,  
4 or probation, whichever is the latter, and Defense has not sought to preclude that  
5 from coming before the Jury and you elect to take the stand and testify, the Deputy  
6 District Attorneys, in the presence of the Jury will be permitted to ask you the  
7 following: Have you been convicted of a felony? What was the felony and when did  
8 it happen? However, no details may be gone into.

9 I want you to talk to your attorneys, I don't know if you have yet, but  
10 over the next couple days talk to your attorneys about that. I'm not asking you to  
11 make a decision right now.

12 All right. Now we need the issue of *Brown*, where is it? Where's my  
13 copy?

14 MS. KOLLINS: Your Honor, before we do that, while your Bailiff is still here  
15 this morning, we had that issue yesterday about a Juror asking him a question. So  
16 we need to make a --

17 THE COURT: Oh, a juror asked you a question?

18 MS. KOLLINS: -- record of that.

19 THE MARSHAL: Yeah, at our lunch break. Juror Number 10, Margaret  
20 Tyree, said she had a question for me. I waited until all the other jurors were out in  
21 the hallway, asked her what her question was. She said can I use the word why in a  
22 question to the Judge? A written question. And I said you can write any question  
23 you want. If the Court feels it's inappropriate it will not be asked. She then said I  
24 just want to know why the little girl didn't tell someone. And I said you can write any  
25 question you want, if the Court feels it's inappropriate it will not be asked. And that

1 was it -- the extent of it.

2 THE COURT: Okay. Do you guy -- do either of you wish to poll the juror, get  
3 rid of the juror or do you want to not pro -- ask her anything about it?

4 MR. SPEED: Perhaps the Court should ask Ms. Tyree to come in outside the  
5 other's presence so that she can be asked exactly what happened and -- this is no  
6 disrespect to you Tom, I understand.

7 MR. SPEED: -- but we should at least interview her.

8 THE COURT: All right.

9 MR. SPEED: Just to learn the extent of the conversation, and if that was, in  
10 fact, the end of it.

11 THE COURT: Bring her in Tom.

12 THE MARSHAL: Yep. You want her up in the chair?

13 THE COURT: Yep.

14 THE MARSHAL: Okay, go up to the chair.

15 THE COURT: You can -- you can sit at the first chair, it's okay, Ms. Tyree.

16 THE MARSHAL: Okay, that's good right there.

17 THE COURT: You can just sit right there. Mrs. Tyree, the question has  
18 arisen that you spoke to the Marshal about an issue. Tell me what question you  
19 asked the Marshal.

20 JUROR NUMBER 10: Well, my question really was can you ask the question  
21 of why. And -- and I know, and then I really did ask question yesterday, basically  
22 why.

23 THE COURT: And you wrote it down.

24 JUROR NUMBER 10: Yeah I wrote it down --

25 THE COURT: Because I think I remember the question --

1 JUROR NUMBER 10: -- and you asked it at -- at the -- at the end for the  
2 young man. At the end -- did your mother ever discipline, basically -- that was the  
3 question.

4 THE COURT: Right.

5 JUROR NUMBER 10: -- that was the question. And my question -- my  
6 concern was, I don't know if I can ask the question of why. I don't --

7 THE COURT: Well you can write anything down. I may or may not give the  
8 question. I review it with the attorneys.

9 JUROR NUMBER 10: Okay.

10 THE COURT: Is there any -- you haven't made up your mind about anything  
11 yet?

12 JUROR NUMBER 10: No, I haven't.

13 THE COURT: Okay. Any questions by the State?

14 MS. KOLLINS: No, Your Honor.

15 THE COURT: Any questions by Defense?

16 MR. SPEED: No, Your Honor.

17 THE COURT: All right. Thank you.

18 JUROR NUMBER 10: Thank you.

19 THE COURT: And don't talk to the other jurors about what we talked about,  
20 of course.

21 JUROR NUMBER 10: Oh no.

22 THE COURT: Okay.

23 JUROR NUMBER 10: Thanks.

24 THE COURT: Thank you.

25 THE COURT: Now we need to discuss the 9<sup>th</sup> Circuit case *Brown v Farwell*.

1 I've read it.

2 MR. SPEED: Your Honor, before the Court announces its' decision, its'  
3 reasoning on that case, I understand that the State ex parte has delivered to the  
4 Court a case that perhaps may limit the holding in *Farwell* or -- or overrule it outright.  
5 I have not seen that case. I would like the State to present a copy of that to us so  
6 that we can be on equal footing in any argument in front of Your Honor.

7 MS. KOLLINS: I sent it from my home email, did you not get it?

8 MR. SPEED: No.

9 MS. ROSS: Neither of us did. We can check in the junk or something.

10 MS. KOLLINS: You're more than welcome to a copy of it Mr. Speed, I wasn't  
11 trying to keep anything from you.

12 MR. SPEED: Oh no. I didn't accuse you of anything.

13 MS. KOLLINS: Well you said --

14 MR. SPEED: I just don't have one and I understand that you delivered a copy  
15 to the Court first.

16 MS. KOLLINS: Well when you say ex parte it makes it sound --

17 THE COURT: No it wasn't ex parte. My understanding is she's provided to  
18 everyone.

19 MR. SPEED: I'm checking my email remotely, Your Honor, and I don't have  
20 anything. If the State was offended by my characterization of her delivery of her  
21 case to the Court as ex parte, I apologize, but at the time I made the statement, we  
22 did not have a copy.

23 THE COURT: She did not send one to me; she sent it to my law clerk.

24 MR. SPEED: To the Court's law clerk.

25 THE COURT: Yes.



1 MS. KOLLINS: And if it didn't go to you it was an oversight. I answered about  
2 twenty five emails last night so I apologize, Mr. Speed.

3 THE COURT: It's all right.

4 MR. SPEED: I have not read *Brown*.

5 MS. KOLLINS: It actually overrules the case provided. And I'll give -- I know  
6 Mr. Speed made his record yesterday and perhaps give him a minute to read that --

7 THE COURT: That's fine.

8 MS. KOLLINS: -- I just wanted to make a couple comments while he's  
9 reading that.

10 THE COURT: Actually page 8 of the decision -- I just got it this morning  
11 actually, Mr. Speed. Page 8 of the decision where it talks about *the Mueller* decision  
12 is where they overturn the *Brown v Farwell*.

13 MR. SPEED: Is the Court looking at a particular citation heading? I'm not --

14 THE COURT: No, on page --

15 MR. SPEED: I'm on page 8 but I'm not sure where the Court --

16 THE COURT: On the right hand side, where those three asterisks are at the  
17 top of the page. Just that paragraph.

18 [Pause in proceedings]

19 THE COURT: When I told you page 8, it's diff -- mine is different to her --  
20 from hers. We had to go right to the Supreme Court -- give those both to him -- and  
21 get ours because it wouldn't copy or print on Alan's --

22 MS. KOLLINS: Oh you pulled the Lexis.

23 [Colloquy between Counsel]

24 THE COURT: Okay, you can't communicate with the Defendant, or you get to  
25 be in custody with him. Okay? Appreciate it. And if either of those -- well, she can't

1 be a witness, she's been in the trial. I don't know the young man. I guess they're  
2 not witnesses.

3 MS. KOLLINS: No, Your Honor.

4 MR. SPEED: Your Honor, after -- we back on?

5 THE COURT: Yeah.

6 MR. SPEED: -- after my brief perusal of *McDaniel v Brown*, while it is true  
7 that some parts of the *Farwell* case were overturned or reversed the portion  
8 indicating how it is erroneous by the State to make the Prosecutor's fallacy mistake  
9 still holds true. That portion was -- that portion was not overruled and the State  
10 conceded in its' petition for relief to the Supreme Court that the Prosecutor did  
11 commit the Prosecutor's fallacy.

12 And in my attention to Ms. Robertson's examination yesterday, I may  
13 have made the error of confusing her statements regarding the epithelial fraction of  
14 the vaginal swab and the random match probability of her inclusion in that being  
15 rarer than 1 in 700 billion and her testimony about that being 100 times the  
16 population of the Earth. I thought that the State may have elicited testimony that  
17 compared that to one of the findings that was made for Mr. Williams.

18 If indeed that was the case, and I raised an objection based on the  
19 Prosecutor's fallacy in that situation, and I believe that was what Ms. Kollins' reply to  
20 after the issue was raised in court. I apologize for that. However, if the State is  
21 going to continue to examine Ms. Robertson and make -- or elicit the kinds of  
22 testimony that says for -- that asks her to put the random match probabilities, the  
23 likelihood ratios, the combined probabilities of exclusion or inclusion into different  
24 words then that is where the Prosecutor's fallacy error is being committed and I will  
25 raise objections to that, in spite of the ruling in *McDaniel v Brown* which overturns

1 the *Farwell* case on other procedural grounds.

2 MS. KOLLINS: May I --

3 THE COURT: I would not stop you from -- go ahead.

4 MS. KOLLINS: Mr. Speed launched his objection when we were discussing a  
5 mixture. In that mixture an identity could never be made. The only conclusion the  
6 analyst could draw is exactly as is indicated in her report that the Defendant could  
7 not be excluded. And specifically I am referring to Item 1.6.1, Stain 1 from the  
8 underwear. That's when he raised his objection. There was no misstatement of the  
9 analysis, the probabilities, the testing, at that portion of the testimony.

10 Now, what he's done is he's launched his objection there and then  
11 looped back to where we have a full profile. And the analyst testified to the results  
12 contained from lab Item 1.3 and that is where the statistic came from, from random  
13 match probability, which is appropriate under the case law. So nothing was  
14 misstated. Nothing was misquoted. No statistics were swapped. No error was  
15 created in this record that I believe.

16 Now my intention today because of what we heard yesterday, is to start  
17 back with Item 1.3 and have her restate her analysis and the genesis of that  
18 analysis and that it is from random match probability. And then I will go back to  
19 Stain 1 on the underwear and conclude the rest of the results. But we have not  
20 violated the Prosecutor's fallacy.

21 And quite honestly, I looked back and I'm like has this ever come up  
22 before? I found one case from my previous tenure where a public defender brought  
23 it up and they did it as a motion ad limina, don't argue this. Now this is similarly  
24 applicable to Mr. Speed. He can't come in and say, well he's not guilty based on  
25 this number and switch the number. He can't do that either. So this goes -- this

1 cuts both ways for both parties.

2 THE COURT: Okay.

3 MS. KOLLINS: The other thing, Your Honor, based on just everything that  
4 transpired yesterday, I offered the Court a bench memo today and it's basically just  
5 to preclude here's State's cross- examination from anything that is not a learned  
6 treatise. In other words, not -- something that the expert would not normally rely on,  
7 just not random statements from Wikipedia and Google on DNA. We have rules --

8 MR. SPEED: May I -- may I respond to that because I have read the bench  
9 brief, Your Honor.

10 THE COURT: Just a minute, let her finish.

11 MS. KOLLINS: I mean, we have rules about cross-examination --

12 THE COURT: Right.

13 MS. KOLLINS: -- and we have rules about what are scientifically acceptable  
14 documents. And so I just want to make sure we're all clear before cross-  
15 examination starts.

16 THE COURT: Right. Okay, go ahead.

17 MR. SPEED: Also, Your Honor, we have rules about what experts are  
18 allowed to testify about. This is NRS 50.275. If scientific, technical, or other  
19 specialized knowledge will assist the trier of fact to understand evidence or  
20 determine a fact in issue, a witness qualified as an expert may testify to matters  
21 within the scope of that knowledge. Also, 50.285, the facts or data in the particular  
22 case upon which an expert bases an opinion or an inference may be those  
23 perceived by or made know to the expert at or before the hearing. That includes in  
24 trial while she's testifying. Also, point 2, if of a type reasonably relied upon by  
25 experts in forming an opinion or inference upon the subject, the facts or data need

1 not be admissible in evidence. So I can cross-examine Ms. Robertson on anything  
2 that I find, if I can show her that it is of the type reasonably relied on by experts in  
3 the field.

4 Now, I'm not the kind of person who does research by just jumping on  
5 Wikipedia or Google and finding some entry or blog entry by some internet hack and  
6 attempt to cross-examine an expert witness based upon that. If I'm going to  
7 cross-examine or bring any item to Ms. Robertson's attention, the Court can have  
8 my assurances that it will be published, written by a person who was qualified --  
9 more qualified than Ms. Robertson in my opinion, and of the type reasonably relied  
10 on by experts in the field.

11 THE COURT: Well at this point, let me just say this. I find that Ms. Robertson  
12 is an expert in the DNA area. She has testified before, she has examined many  
13 things. I am quite impressed with her credentials. I'm not saying this in front of the  
14 jury, I'm just telling you. So you'd better be on firm foundation when you cross-  
15 examine her because she is an expert.

16 MR. SPEED: I have not challenged her expertise, Your Honor.

17 THE COURT: And you're not.

18 MR. SPEED: I have not challenged her expertise --

19 THE COURT: Okay.

20 MR. SPEED: -- but I will be bringing some items to her attention.

21 THE COURT: That's fine.

22 MS. KOLLINS: And just for the record, none of those items have been shared  
23 in the discovery process.

24 MR. SPEED: These are attorney work product, they are not discoverable.

25 MS. KOLLINS: Articles that you're going to cross-examine an expert with are

1 discoverable.

2 MR. SPEED: They are not if they are attorney work product.

3 THE COURT: Well --

4 MR. SPEED: I can do my own research.

5 THE COURT: -- before you do -- but I would like to see what you're going to  
6 cross-examine her on.

7 MR. SPEED: Certainly, Your Honor.

8 THE COURT: Before -- and before that takes place.

9 MR. SPEED: Certainly.

10 THE COURT: But we're not at that level yet. Probably won't be before noon.

11 MR. SPEED: And has this bench brief been filed, or --

12 MS. KOLLINS: Yes.

13 THE COURT: I have not seen a bench brief.

14 MS. KOLLINS: I filed -- I filed it with your clerk, Your Honor, and I just gave  
15 you a courtesy copy --

16 THE COURT: I have not seen a bench brief.

17 MS. KOLLINS: You can have my file stamped copy, Mr. Speed.

18 MR. SPEED: It has been filed.

19 THE COURT: Oh, I apologize, I have read this. All right, and let me just say  
20 this --

21 MR. SPEED: Well, Your Honor, for -- I'm sorry to interrupt, before the Court  
22 does that, I have not received a copy of this. This is an ex parte communication  
23 because it was filed and we don't have a receipt of copy.

24 MS. KOLLINS: I just walked into court with --

25 THE COURT: It was just filed, just now.

1 MS. KOLLINS: This morning, right now. Right be -- right when you were  
2 walking in the door. I gave --

3 THE COURT: Let me see it.

4 MS. KOLLINS: -- you a copy, and I filed --

5 MR. SPEED: It was filed with the clerk without a receipt of copy being  
6 presented to the other side, so this is a fugitive document at this point. Now, I have  
7 read it, I have received it, the Court has received it.

8 THE COURT: One page long, actually. Two -- two pages. And it just cites  
9 51.255.

10 MR. SPEED: Right.

11 THE COURT: Which --

12 MS. KOLLINS: Well, I --

13 THE COURT: -- really is a statute.

14 MR. SPEED: Right.

15 MS. KOLLINS: -- I actually put a copy -- this copy -- on the desk and --

16 THE COURT: On his desk?

17 MS. KOLLINS: Yeah on his desk when his associate was here and filed it  
18 with the clerk. So --

19 THE COURT: You have notice of it.

20 MS. KOLLINS: --they didn't sign it.

21 THE COURT: It's just all she cites is the statute and -- let me see if I have the  
22 statute here.

23 MR. SPEED: The citation is to 51 to 55 the learned treatise --

24 THE COURT: Right.

25 MR. SPEED: -- area of expert testimony to the extent called to the attention,

1 and those were my words in arguing the effort to exclude my attorney work product  
2 from the trial or from my cross-examination of the State's expert.

3 THE COURT: All right.

4 MR. SPEED: To the extent called to the attention of an expert witness upon  
5 cross- examination or relied upon by the expert witness in direct examination, a  
6 statement contained in a published treatise, a periodical, or a pamphlet on a subject  
7 of history, medicine, or other science or art is not inadmissible under the hearsay  
8 rule, if such a book is established as a reliable authority by the testimony or  
9 admission of the witness or by other expert testimony or by judicial notice.

10 The Court has informed both parties that before any cross-examination  
11 of the expert, Ms. Robertson, is to commence, that we are to show the Court the  
12 authority from which I based my questions. And I am certainly willing to do that.

13 MS. KOLLINS: Well, I -- I think judicial notice is appropriate for dates and  
14 calendars. I don't know that this court can take judicial notice of an article in DNA.

15 MR. SPEED: Where is that in the statute?

16 MS. KOLLINS: Judicial notice?

17 MR. SPEED: Where is that in the statute that you cited in your bench brief?

18 MS. KOLLINS: The last paragraph you just read. Are you going to yell at  
19 me? Are we going to start the day like this?

20 MR. SPEED: I'm not yelling, Ms. Kollins.

21 THE COURT: Let's -- can --

22 MS. KOLLINS: Are we going to start the day like this?

23 THE COURT: If you guys are going to fight, fight somewhere else so I can  
24 read. Okay, let me read this from Federal -- I would like you to listen, Mr. Speed.

25 MR. SPEED: I'm sorry, Your Honor.



1 THE COURT: I am reading from a *Learned Treatise Hearsay Handbook*  
2 *David Binder 48:5*. Use of hearsay in cross- examining expert witness. When  
3 cross-examining an expert witness a lawyer will sometimes read a statement from a  
4 document, hearsay, that is favorable to the cross-examiner's position out loud in  
5 front of the trier of fact. And then asks the witness whether the witness agrees with  
6 it or took it into consideration when forming the witness's opinion. This procedure is  
7 improper.

8 Unless the witness has relied on what is being read as distinguished  
9 from simply having considered it irrelevant and usually prejudicial, evidence is being  
10 placed in front of the trier of fact courting reversible error.

11 MR. SPEED: I'd like to see the cite, may I, Your Honor?

12 THE COURT: This --

13 MR. SPEED: May I approach?

14 THE COURT: -- I'm telling -- yeah, come on up. You can come up Stace.  
15 I'm just reading it from right here, 48:5. I'll make you a copy of it. Get Alan in here I  
16 don't want to keep going and making copies. I thought that's why I ran for judge.  
17 No, go get Alan. Somebody get Alan.

18 THE MARSHAL: He's on his way.

19 [Pause in proceedings]

20 THE COURT: You gave two to them. Both sides?

21 THE MARSHAL: Yes, sir.

22 THE COURT: And then further reading, as you now have copies of it, in the  
23 second paragraph the proper procedure is to show the hearsay to the witness first  
24 then ask the witness if the witness relied on it in forming the witness's opinion or if  
25 the witness recognizes his --

1 MR. SPEED: I'm sorry, Your Honor. I'm sorry.

2 THE COURT: I'm reading.

3 MR. SPEED: Your Honor, I have to interrupt now because the witness that  
4 we're talking about is present in court and we'd like to invoke the exclusionary rule.

5 THE COURT: Yeah, that's fine. If you'll sit -- just put her in your office Tom.

6 THE MARSHAL: Okay.

7 THE COURT: The proper procedure is to show the witness the -- da -- da --  
8 da -- or if the witness recognizes it as authoritative. If the witness says yes, the  
9 cross-examiner then can read the hearsay out loud and offer it in evidence. If the  
10 witness says no the cross-examiner is stuck unless the hearsay has been otherwise  
11 qualified as a learned treatise.

12 MR. SPEED: And is this the state of the law in Nevada? We'd also like a  
13 copy --

14 THE COURT: This is federal.

15 MR. SPEED: We'd also like a copy of where the State or where the Court  
16 pulled this information. The cite of the workbook or judges memorandum book --

17 THE COURT: I read it to you. Hearsay Handbook, Trial Practice Series 4<sup>th</sup>  
18 Edition, David Binder, Westlaw.

19 MR. SPEED: Would the Court --

20 THE COURT: Alan.

21 MR. SPEED: Thank you, Your Honor.

22 THE COURT: Somebody make a copy of that. I assure you that I didn't pull  
23 that out of Wikipedia.

24 MR. SPEED: I wouldn't expect the Court to, Your Honor.

25 MS. ROSS: Your Honor, is there a page number reference?

1 THE COURT: Yeah, at the bottom.

2 MS. ROSS: Well 48-29, is that --

3 THE COURT: 48:5 is where you look in here.

4 MS. ROSS: Correct. Is there like a table of context that we could reference  
5 as to where 48:5 comes from? Because I am seeing that chapters conclude with  
6 author's commentary and this says expert opinion at the top not necessarily a  
7 federal statute or a case law.

8 MR. SPEED: Or Nevada statute on point. There's also a reference, a  
9 parenthetical reference to Chapter 26 of the Court's same book. Work book or  
10 bench book, I'm not sure.

11 THE COURT: Yeah I'll do your legal research too. Says on expert opinion I'll  
12 have Alan make copies of this.

13 MR. SPEED: And I'd object to the Court's characterization of doing the  
14 Defense's legal research.

15 THE COURT: Well, you're having me look this up.

16 MS. ROSS: I'd be happy to look it up if I was given a copy, Your Honor.

17 THE COURT: We probably won't get to cross-examination till afternoon  
18 anyways, so. We are copying that whole section.

19 MR. SPEED: Your Honor, I'm sorry. There appeared to be a witness  
20 speaking to the Marshal, Your Honor, I'm sorry.

21 THE COURT: There's what?

22 MR. SPEED: There appeared to be a witness speaking to the Marshal. He  
23 looked like a plain clothes officer.

24 MS. KOLLINS: It was probably the -- it was either Detective Tennant or it was  
25 Officer Burgess. We were not gonna call Tennant, but I understand you

1 subpoenaed him.

2 THE COURT: Who was that?

3 THE MARSHAL: An officer who's supposed to be on 8<sup>th</sup> floor Courtroom D,  
4 Justice Court 8.

5 MS. KOLLINS: There you go.

6 [Pause in proceedings]

7 THE COURT: And quite frankly, what paragraph on 48:5 in that federal book  
8 says, it explains exactly what's in 51.255.

9 MR. SPEED: Your Honor, I'm looking at 51.255, the statute is approximately  
10 an inch long. Now the author's commentary for the workbook that the Court is  
11 looking at has --

12 THE COURT: No, I'm looking at 51.255.

13 MR. SPEED: I'm looking at 48:5.

14 THE COURT: All right.

15 MR. SPEED: And it has language at the end of that final paragraph where the  
16 author of this commentary book is saying if the witness says no, the cross-examiner  
17 is stuck.

18 THE COURT: Yep.

19 MR. SPEED: Now I highly doubt that that kind of language is present in either  
20 the federal statute --

21 THE COURT: Okay --

22 MR. SPEED: -- to which this workbook applies or in State law at 51.255 --

23 THE COURT: Let me read through --

24 MR. SPEED: -- that we're looking at that was attached to the State's bench  
25 brief.

1 THE COURT: Let me read from 51.255.

2 To the extent called to the attention of an expert, which she is, upon  
3 cross-examination is what you'll do, or rely -- relied upon by the expert witness, that  
4 means she must have had relied on that hearsay document. In direct examination,  
5 she didn't because it's work --

6 MR. SPEED: Well --

7 THE COURT: Now stop and let me finish.

8 A statement contained in a published treatise, periodical, or pamphlet  
9 on a subject of history, medicine or other science or art is not inadmissible under the  
10 hearsay rule if such book is established as a reliable authority by the testimony or  
11 the admission of the witness, which is this young lady, Robertson, or by other expert  
12 testimony or other judicial notice.

13 MR. SPEED: Understood.

14 THE COURT: Okay. Thank you. We are following 48:5.

15 MR. SPEED: Your Honor, that's not the law in this jurisdiction.

16 THE COURT: That is the law. And because it -- it's codified in 51.255 and it's  
17 just telling you how to handle it and we'll follow those directions. And you will show  
18 that if -- in cross-examination if you have an article you want to a -- examine her  
19 about. If she looks at it and says no I've never relied on that, I haven't seen that, I  
20 don't recognize it, you cannot use it.

21 MR. SPEED: She will have an opportunity then to review it and review --

22 THE COURT: No.

23 MR. SPEED: -- the author's credentials, Your Honor.

24 THE COURT: No.

25 MR. SPEED: The Court cannot foreclose us from --

1 THE COURT: I can.  
2 MR. SPEED: -- cross-examining a witness in this fashion.  
3 THE COURT: Well under --  
4 MR. SPEED: And cite to --  
5 MS. KOLLINS: I -- I just --  
6 MR. SPEED: -- a subject heading in a workbook.  
7 THE COURT: 51.255.  
8 MR. SPEED: A non-statutory -- the Court didn't say that we're relying on  
9 51.255 --  
10 THE COURT: I did too.  
11 MR. SPEED: The Court said we're relying on 48:5.  
12 THE COURT: I said we're going to follow that procedure. I am relying on  
13 51.255.  
14 MR. SPEED: Fine. And so are we, Your Honor. But --  
15 THE COURT: Okay.  
16 MR. SPEED: -- for the Court to preclude us from cross-examining this  
17 witness using the commentary of an author is improper.  
18 THE COURT: No. I am following 51.255. That's the way I interpret it.  
19 MR. SPEED: That is fine. And we shall also, Your Honor.  
20 MS. KOLLINS: If I may make a suggestion, as to how to kind of streamline  
21 this for being in front of the jury purposes. Perhaps, we call Ms. Robertson in now  
22 and he can ask her outside the presence if she has seen that or relied upon that --  
23 THE COURT: No, he doesn't want to do that.  
24 MS. KOLLINS: -- and then he can --  
25 MR. SPEED: No, no well there's no need in doing that, Your Honor --

1 THE COURT: No.

2 MR. SPEED: -- because she is a State's witness --

3 MS. KOLLINS: I just --

4 MR. SPEED: -- she's going to say no I haven't relied on it because --

5 THE COURT: Then you're not going to be able to use it in cross-examination.

6 MR. SPEED: No, we can use it in cross-examination --

7 THE COURT: No you won't.

8 MR. SPEED: -- at least -- at least in examining the witness because they  
9 aren't inadmissible under the hearsay rule.

10 MS. KOLLINS: I think --

11 MR. SPEED: I'm not asking that it be admitted into evidence. I'm using it as  
12 my cross-examination basis for this expert witness.

13 THE COURT: This expert has not relied on it and according to 51.255 --

14 MR. SPEED: We don't know if this expert has relied on it, Your Honor.  
15 That's -- that's where we're at an impasse. We don't know if this expert hasn't relied  
16 on it.

17 THE COURT: All right. So you can't ask her any questions about it. You  
18 show it to her. If she has not relied on it, according to 51.255 -- you -- I know you  
19 don't interpret it the -- this way, but it says here in 51.255: It's not inadmissible  
20 under the hearsay rule if the book established as a reliable authority by the  
21 testimony or admission of the witness, that's on the stand, or other expert testimony  
22 or judicial notice.

23 MR. SPEED: And that's -- go ahead, your turn.

24 MS. ROSS: Your Honor, the -- the way that Defense is interpreting this  
25 statute is that that is a learned treatise in that area, not --

1 THE COURT: I don't care what you --

2 MS. ROSS: -- specifically relied on by the witness --

3 THE COURT: It has to be relied on by that witness.

4 MS. ROSS: No, the statute says it needs to be a learned treatise in the area  
5 that the expert has been qualified to testify in. And then, when you read the  
6 commentary from the hearsay handbook, that's when it specifically says that --

7 THE COURT: That's teaching you how to do it. But this is what it says. It's  
8 not inadmissible under the hearsay rule --

9 MR. SPEED: If such book --

10 THE COURT: -- if such book is established as a reliable authority by -- by the  
11 testimony or admission of the witness. Of that witness that sits right there, Ms.  
12 Robertson.

13 MR. SPEED: And then --

14 THE COURT: If she says it's not, you can't ask her questions about it.

15 MR. SPEED: But then we have to also look at 50.285 that says if the -- if it's  
16 of a type reasonably relied on by experts in forming opinions or inferences upon the  
17 subject. If we show her research or periodical article, a pamphlet or a learned  
18 treatise that was written by a person whose qualifications far exceed hers, she can  
19 choose, perhaps --

20 MS. KOLLINS: Who says that, Kevin?

21 MR. SPEED: -- she can choose perhaps to say that she didn't rely on it on  
22 the basis of her opinion, but she cannot say that it is not relied on by experts in the  
23 field.

24 MS. KOLLINS: And -- and I would like to know how he's going to lay a  
25 foundation for the reliability of that article. It's -- can't come from Mr. Speed's mouth,



1 he does not have an expert endorsed. He can't wave around a piece of paper and  
2 say this was written by somebody at Stanford, ergo it's reliable, ergo it's cross-  
3 examination material.

4 THE COURT: She -- they -- he has to lay the foundation. If he can't --

5 MR. SPEED: Your Honor, they're -- they are in forensic science journals and  
6 also, I don't have to use evidence or material that's admissible when I'm cross-  
7 examining an expert.

8 THE COURT: Well that's what 51.255 says.

9 MR. SPEED: No. Well --

10 THE COURT: Yes, it does. It says it's not inadmissible --

11 MR. SPEED: Understood.

12 THE COURT: -- under the hearsay rule if such book is established as a  
13 reliable authority by the testimony or the admission of the witness, Ms. Robertson,  
14 or other expert testimony or judicial notice.

15 MR. SPEED: Understood. Then she will have the opportunity to be asked --

16 THE COURT: So look at it.

17 MR. SPEED: She'll be directly examined.

18 THE COURT: You can't ask her about the -- anything in that article unless  
19 she's relied on it and says it's -- it's -- because you're going to have to establish it  
20 through her.

21 MR. SPEED: Understood, but she also has to look at the authors of those  
22 articles, where they're published, in the journals of scientific knowledge, the  
23 periodical publications, the pamphlets that have been published and admit,  
24 concede, that they are of the type that are relied on by an expert in the field.

25 THE COURT: All right.

1 MR. SPEED: Because there are articles written by her colleagues. Where  
2 else would she learn what DNA stands for? And she told the jury yesterday that it  
3 stands for deoxyribonucleic acid. Certainly she didn't invent that term. She learned  
4 it after reading research materials published, authored by these kinds of experts in  
5 the field. Her colleagues in the area of forensic science.

6 THE COURT: Well, we're going to have to proceed. And before you ask any  
7 questions from any treatise, you'll show it to her. If she didn't rely on it then you can  
8 show it to the Court and if I determine that it's not a -- a learned treatise, according  
9 to the case law that I see, *Foreman v Verbergen*, 81 Nev. 86 --

10 MR. SPEED: From what year, Your Honor?

11 THE COURT: -- and, from 1986. 102 Nev. 43. Okay, let's get started.

12 MR. SPEED: What case is that?

13 THE COURT: That's the same case. *Foreman v Verbergen*.

14 MR. SPEED: The Court gave us a 88 Nev. cite and a 102 Nev. cite, that can't  
15 be the same case.

16 THE COURT: 81 Nev. 86, well it's the same name.

17 MR. SPEED: 81 Nev. 86 --

18 THE COURT: No, it's *Bergen v State*. 102 Nev. 43.

19 MR. SPEED: And what is 81 Nev. 86?

20 THE COURT: That's *Foreman v Verbergen*, it's a malpractice case.

21 MR. SPEED: Okay, so the case that the Court is referencing now --

22 THE COURT: *Bergen v State* is a -- apparently a criminal case.

23 MR. SPEED: The Court is citing that case now, 80 --

24 MS. ROSS: 102 Nevada.

25 MR. SPEED: 102, thank you.

1 THE COURT: Both of those cases. Ones from 1965 ones from '86.

2 MR. SPEED: Excuse -- I do still believe that we are at an impasse in the area  
3 of the law here, on the state of the law and jurisdiction --

4 THE COURT: We're not --

5 MR. SPEED: -- of the Court.

6 THE COURT: -- to cross-examination yet. If you do some research in  
7 between now and your cross-examination, maybe your colleague can do it, we'll  
8 look at it. But at this point, we've got to get going with this trial.

9 MR. SPEED: Then for the record, Your Honor, we are sustained -- well, at  
10 least repeating our objection to the Court's --

11 THE COURT: Noted for the record.

12 MR. SPEED: -- to the Court's foreclosure of an area of cross-examination  
13 pertaining to the State's expert witness by the Defense.

14 THE COURT: Have you noticed an expert witness -- as a -- in this trial?

15 MR. SPEED: I said our cross-examination of the State's expert witness --

16 THE COURT: Have you noticed any expert though?

17 MR. SPEED: I'm not sure what the Court's asking.

18 THE COURT: Have you given them notice that you're going to call an expert  
19 witness?

20 MR. SPEED: We have not.

21 THE COURT: Okay.

22 MR. SPEED: And may I inquire with the Court what -- why Your Honor wants  
23 to know that?

24 THE COURT: Just wanted to know it.

25 MR. SPEED: We have not, Your Honor.

1 THE COURT: Alright. Let's see how they're doing on copying the stuff.

2 [Pause in proceedings]

3 THE COURT: Okay, we broke a machine copying this so we have one copy,  
4 we'll have the others down here shortly. Are you ready to bring in?

5 THE MARSHAL: Yes, sir.

6 THE COURT: All right. Bring them in.

7 How many witnesses do we have today? Maybe just one.

8 MS. KOLLINS: Four.

9 THE COURT: Good.

10 [In the presence of the jury]

11 THE MARSHAL: All rise, please.

12 And be seated.

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

14 MS. KOLLINS: State would, Your Honor.

15 MR. SPEED: Everyone's here, Your Honor, we do.

16 THE COURT: Good morning ladies and gentlemen. Thanks for being on  
17 time, I -- we just had some matters outside your presence we had to take care of.

18 MS. KOLLINS: We call Ms. Robertson back, Your Honor?

19 **CASSANDRA ROBERTSON**

20 [Recalled to the stand, previously sworn, testified as follows:]

21 THE MARSHAL: Just be seated.

22 THE COURT: Yes. I just remind you you're under oath. Okay?

23 THE WITNESS: Okay.

24 **CONTINUED DIRECT EXAMINATION**

25 BY MS. KOLLINS:

1 Q Good morning Ms. Robinson, how are you?

2 A Good morning.

3 Q We're going to rewind just a little bit and then we'll get back to where

4 we left off yesterday, if that's okay with you.

5 A Okay.

6 Q Okay. I want to take you back to Item of Evidence 1.3, specifically the

7 rectal swabs. State's Admitted 8 is up there on the television screen for you.

8 A It's not on.

9 Q Oh, yours isn't on?

10 A No.

11 THE COURT: If yell at my bailiff --

12 THE WITNESS: Thank you.

13 THE COURT: -- don't take anything that he's been with me 21 years. More

14 than most people are married. Okay.

15 BY MS. KOLLINS:

16 Q Ma'am, I want to talk to you about your calculation as it relates to this

17 item of evidence. Can you tell us what kind of calculation you made, and specifically

18 what you concluded?

19 A The -- may we first give my report for --

20 Q Would it assist you?

21 A I'd refer to my report.

22 Q Would it assist you to do so?

23 A I'm sorry?

24 THE COURT: Would it help you?

25 BY MS. KOLLINS:

1 Q Would it help you?

2 A Yes.

3 Q Okay. Are you referring to the final report that you --

4 A Yeah.

5 Q -- made in this case? Okay. Are you okay with that Mr. Speed?

6 A In reference to this profile found on the sperm cell fraction of the rectal  
7 swab, the estimated frequency of the DNA profile of a -- among unrelated individual  
8 in the general population is rarer than 1 in 700 billion identity is assumed. And what  
9 I did is I did a fact -- statistical calculation known as the RMP or Random Match  
10 Probability.

11 And the -- what it is calculating what is the probability of random --  
12 randomly selecting an individual from -- an unrelated individual from the general  
13 population what is the probability of that profile being consistent with the profile from  
14 the evidence. Has nothing to do -- we're not doing the stats on the known sample,  
15 we're doing stat on how rare this evidence profile would be seen among unrelated  
16 individuals in a population.

17 So what my report that statistical calculation is rarer than 1 in 700  
18 billion, identity is assumed. So what that means is it's rarer than 100 times the world  
19 population, which is estimated at approximately 7 billion people.

20 Q Thank you, analyst. Where we left off yesterday is we were actually on  
21 Item Number 1.6.1 that was Stain 1 from the underwear, do you recall that?

22 A I'm sorry?

23 Q I'm sorry. Do you recall being -- leaving off on Stain 1 of the underwear  
24 yesterday?

25 A Yeah.

1 Q Okay. And there were -- and as to Items 1.61 there was an epithelial  
2 fraction that we discussed, do you recall that?

3 A Yes.

4 Q And then we were in the middle of talking about the sperm fraction from  
5 that same stain. Do you recall that when we left off yesterday?

6 A Yeah.

7 Q I'm showing you what has been admitted as State's 11. Tell us what  
8 you did regarding this particular item of evidence?

9 A Like --

10 Q I'm sorry, did I put my hand over my mouth? Tell us what you did  
11 regarding this particular item of evidence and extracting this profile.

12 A This is part of the extraction method that I had mentioned yesterday.  
13 This is a sperm -- sperm fraction of the sample taken from Stain 1, from the  
14 underwear. And the DNA profile obtained from the sperm fraction of Stain 1 from  
15 the underwear is consistent with Greg William. The estimated frequency of that  
16 DNA profile -- of the DNA profile among unrelated individuals in the general  
17 population is rarer than 1 in 700 billion, identity is assumed. So, same thing, the  
18 statistical calculation is performed on Stain 1, the sperm fraction from the  
19 underwear, it is not performed on the known sample.

20 Q So it's the same analysis that you described previously? The random  
21 match probability?

22 A Yeah.

23 Q Okay. And that same analysis applies to this number that you've just  
24 given?

25 A Yeah.

1 Q And just for the record again, what does that mean in terms of when  
2 you say identity assumed, what does that mean?

3 A It just means that the -- the statistical calculation from the evidence  
4 sample is rarer than 100 times the world population.

5 Q I would like to -- there was a second stain that you checked in that  
6 underwear, is that correct?

7 A Yeah.

8 Q Okay. And similar to the first stain, you obtained an epithelial fraction  
9 and a sperm fraction, correct?

10 A Correct.

11 Q Okay. I'd like to talk to you about the epithelial fraction first, if that's ok.  
12 I don't think this one's been admitted. I'm showing Mr. Speed what's been marked  
13 for purposes of identification as State's Proposed 12 and provided in discovery.

14 [Colloquy between Counsel]

15 MS. KOLLINS: And also State's 13. If I may approach the witness, Your  
16 Honor.

17 THE COURT: Okay.

18 BY MS. KOLLINS:

19 Q I'm showing you these two documents, State's Proposed 12 and 13 for  
20 purposes of identification. Are those charts -- that you created, regarding this next  
21 piece of evidence that we started talking about?

22 A Yeah.

23 Q Okay, and you created those at my request?

24 A Yeah.

25 Q And do they fairly and accurately depict the results of your testing in this



1 case?

2 A Yeah.

3 MS. KOLLINS: State would move for the admission of 12 and 13.

4 MR. SPEED: No objection, Your Honor.

5 THE COURT: Admitted.

6 **[STATE'S EXHIBIT 12 AND 13 ADMITTED]**

7 MS. KOLLINS: Permission to publish, Your Honor?

8 THE COURT: Yes.

9 BY MS. KOLLINS:

10 Q So we're talking about the second stain from the underwear. I believe  
11 that's your lab Item 1.6.2 for the record.

12 A Yes.

13 Q Does that sound familiar? Tell me about your analysis regarding -- well,  
14 I guess both the epithelial and the sperm fraction come from the same stain,  
15 correct?

16 A Yeah.

17 Q Okay. So you explained to us yesterday how you divided those out or  
18 why you divided those out. Can you just explain that again, because that was many  
19 hours ago yesterday.

20 A When I performed this specific extraction method, it's usually done on  
21 any samples that have sperm -- have been identified. And the purpose of this  
22 extraction is to pick one sample that has epithelial cell, typically taken from the  
23 individual that the sample is taken from, and the sperm cell. So I want to be able  
24 to -- I'm going to try to attempt to separate those two cell types. Into -- so I can  
25 obtain a -- attempt to obtain a pro -- profile from those different cell types.

1           So the epithelial fraction is named -- typically is where the epithelial  
2 cells will be. They will be broken apart and they DNA will be obtained there. The  
3 sperm fraction is typically where the DNA profile is obtained from the sperm cell in  
4 that sample. And since both of those fractions came from the same -- from the  
5 same stain or the same sample, there are times where you might have -- the profiles  
6 might end up in both -- in the other fraction as well, because they're all coming from  
7 the same sampling. But my -- to make -- interpretation simple -- simpler, I tried to  
8 attempt to separate the two and get a profile from the individual -- from the epithelial  
9 cells and from the sperm cell.

10         Q     So in regards to Stain 2 and the -- were you able to make that  
11 separation then?

12         A     Yes. I was able to separate the two fractions.

13         Q     And were you able to get a profile from the epithelial or the skin  
14 fraction?

15         A     Yes.

16         Q     And is that documented here?

17         A     Yes.

18         Q     And is that -- where is that reflected?

19         A     The first column, where it says Stain 2 from underwear, dash EF, which  
20 is shorthand for epithelial fraction. That shows the DNA information or the DNA  
21 profile that I've obtained from that stain.

22         Q     And what is reflected in the center column?

23         A     I'm sorry?

24         Q     What is reflected in the center column?

25         A     The center column is the major contributors' profile. So, for you to

1 better understand it, the first column is a mixture of two individuals with at least one  
2 male contributor that is below the -- my interpretation threshold. The major  
3 contributor, which is the second column, contributed the -- more DNA than the  
4 second contributor. Therefore, I could see that profile in the mixture and I can  
5 conclusively pull that profile out. And so that is a single source profile, meaning it's  
6 from one individual. And it's consistent with Tyana Hassan. And because I made  
7 that comparison, I follow it up with a statistic. With the estimated frequency of the  
8 DNA profile from the major DNA profile among unrelated individuals in the general  
9 population is rarer than 1 in 700 billion, identity is assumed. And the -- I could not  
10 make conclusions on the other contributor because their DNA information is below  
11 my interpretation threshold.

12 Q And -- and we've used -- we've used that term a lot and I don't know if I  
13 had you define it yesterday. When you say be -- the DNA was below your  
14 interpretation threshold, what does that mean?

15 A It just means that the information is there, however, it is not above an  
16 interpretation -- a threshold where I'm confident that that information belongs to a  
17 specific person. So conservatively, we -- if it's below that interpretation threshold I  
18 will not make any conclusion. The major contributor's DNA information was above  
19 that interpretation threshold.

20 Q You did say, about the mixture, however, there was a male contributor?

21 A There's a male contributor below that threshold. And the -- that's the  
22 only instance I do go below the threshold, only because at amelogenin, there's only  
23 two possibilities. It's either going to be an X -- if there's only an XX, would be a  
24 female. But if there's XY, only males can give me that Y. So I can -- if I see a Y I  
25 know there's at least one male in that sample.

1 Q Thank you. Now, there was a second -- there was a sperm fraction and  
2 we -- we discussed how you -- how that was separated out, showing you what's  
3 been admitted. State's Admitted 13. Were you able to obtain a full profile from that  
4 sperm fraction?

5 A Yes I was.

6 Q And did you make any conclusions based on your -- the reference  
7 standards you already had about that sperm fraction from the underwear?

8 A The DNA profile obtained from the sperm fraction from Stain 2 from the  
9 underwear is consistent with Greg William. The estimated frequency of the DNA  
10 profile among unrelated individuals in the general population is rarer than 1 in 700  
11 billion, identity is assumed.

12 Q And it's that same random match probability process that you explained  
13 earlier, correct?

14 A Yes.

15 Q And that's what that number means? The same 1 in 700 billion  
16 explanation you gave previously?

17 A Yeah.

18 Q Okay. And just noting across, you have a full profile at each one of the  
19 locations matching Greg Williams. Correct?

20 A I'm sorry?

21 Q You have -- you had a full profile and at each location the sperm  
22 fraction from the underwear matches Greg Williams?

23 A Yes. Each of those locations -- the markers at those locations is  
24 consistent with the markers from Greg Williams' sample.

25 Q That was Stain 2, correct? 1.6.2?

1 A Yes.

2 Q Okay, sorry I'm getting myself confused here. There were also some  
3 additional swabbings taken from the underwear or cuttings taken from the  
4 underwear, is that correct?

5 A I -- when I originally examined the underwear I took a swabbing first  
6 before I proceeded to identi -- to try to identify any possible body fluids on the  
7 underwear.

8 Q So we've talked about the two stains that you did find. Did you find  
9 anything that indicated to you on another area of the underwear that needed to be  
10 tested?

11 A No.

12 Q Did you -- well you took the two stains and did you swab the crotch area  
13 before you took the two stain cuttings?

14 A I swabbed the crotch area first and then I did the preliminary  
15 examination to identify any possible bo -- body fluid stains on the underwear.

16 Q Maybe it's the way I'm asking the question. I'm referring to item of  
17 evidence from the lab 1.6.3.

18 A Right, that's the swabbing that I took.

19 Q That's the swabbing before the stains?

20 A Correct.

21 Q Okay. They're just third in order on your report, but that doesn't mean  
22 that they were obtained third.

23 A Correct.

24 Q Okay. And when you took those swabs did you do that -- well, were  
25 you able to create or -- obtain a profile from either one of those swabbings?

1           A     Yes. I -- I did the preliminary examination on that swab, which is the  
2 same enzyme preliminary test that I mentioned yesterday. Which gave a positive  
3 presumptive set resolve for semen. Therefore, I needed to confirm that, so I looked  
4 for the protein that is found in semen as well as sperm cells. Which in both cases  
5 they were positive. Or the proteins indicated and I was able to identify sperm cells.

6                     So because I identified sperm cells, I need to be able -- I'm gonna do  
7 the same extraction that I mentioned earlier, where I'm going to take one sample  
8 and try to separate the epithelial cells in the one fraction and the sperm cells into the  
9 other fraction. In this case, I did that and --

10          Q     May I approach you?

11          A     Yeah.

12          Q     I'm showing you what have been marked for purposes of identification  
13 as State's 14 and 15. Do you recognize what's depicted in 14 and 15?

14          A     Yes I do.

15          Q     And do those accurately reflect the results from the interior crotch of the  
16 underwear, lab Item 1.6.3 as you agree with them for me?

17          A     Yeah.

18          Q     Okay. Thank you.

19          MS. KOLLINS: Move for the admission of 14 and 15.

20          MR. SPEED: Let me see them really quickly, State. Thank you.

21          MS. KOLLINS: Move for the admission.

22          MR. SPEED: No objection, Your Honor.

23          THE COURT: They'll be admitted.

24                     **[STATE'S EXHIBITS 14 AND 15 ADMITTED]**

25          MS. KOLLINS: Permission to publish?

1 THE COURT: Yes.

2 BY MS. KOLLINS:

3 Q Now it sounds like you -- you went through the same separation  
4 process -- what did you learn about the epithelial fraction that you obtained?

5 A The DNA profile obtained from the epithelial fraction from the swabbing  
6 from the interior crotch of the underwear is consistent with a mixture of three  
7 individuals, with at least one being a male. The major DNA profile is consistent with  
8 Tyana Hasan, and the estimated frequency of the major DNA profile among  
9 unrelated individuals in the general population is rarer than 1 in 700 billion, identity is  
10 assumed. No conclusion can be made regarding the minor contributors.

11 Q Okay. So basically, Tyana's DNA is in her own underwear.

12 A She's the major contributor, yes.

13 Q Okay, or at least on that portion of the underwear.

14 A It's -- well it's consistent with her.

15 Q Now, as to the sperm fraction, were you able to get a full profile -- and  
16 I'm putting 15 up there.

17 A I'm sorry?

18 Q I'm putting --

19 A Oh.

20 Q -- State's 15 up there. As to the sperm fraction, were you able to draw  
21 any conclusions?

22 A Yes. The DNA profile obtained from the sperm fraction from the  
23 swabbing from the interior crotch area of the underwear is consistent with Greg  
24 Williams. The estimated frequency of the DNA profile among unrelated individuals  
25 in the general population is rarer than 1 in 700 billion, identity is assumed.

1 Q And again, you got a full profile at each location, and that's where your  
2 statement comes from, your numeric statement?

3 A Yes. I got the full DNA information at all locations and they are  
4 consistent with the DNA information from the sample taken from Greg Williams.

5 Q We discussed very briefly, there were also some fingernail samplings  
6 yesterday that you took. Do you recall that?

7 A Yes.

8 Q We did -- we kind of skipped over those and those were in evidence,  
9 Item 1.5 up there.

10 A Yeah.

11 Q Were you able to draw any conclusions regarding what was taken from  
12 the fingernails?

13 A Well, there was two swabs taken. One swab was taken from the right  
14 hand fingernails, and the second swab was taken from the left hand fingernails.  
15 They were ran separately. The conclusions with regards to the right hand  
16 fingernails swab cannot be reached due to the profile -- because the profile's not  
17 suitable for comparison. The swab taken from the left hand fingernail swab -- the  
18 partial DNA profile was obtained from the left hand fingernail swab is consistent with  
19 Tyana Hasan.

20 MS. KOLLINS: Let me approach the witness, Your Honor?

21 THE COURT: Yes.

22 BY MS. KOLLINS:

23 Q I'm showing you what has been marked for purposes of identification  
24 State's Proposed Exhibit 9. Do you recognize that?

25 A Yeah.



1 Q Fairly and accurately depict the chart that you created regarding the  
2 fingernail clippings?

3 A Yes.

4 MS. KOLLINS: Move for the admission of 9.

5 MR. SPEED: No objection, Your Honor.

6 THE COURT: Noted.

7 **[STATE'S EXHIBIT 9 ADMITTED]**

8 MS. KOLLINS: Permission to publish?

9 THE COURT: Yes.

10 MS. KOLLINS: Thank you.

11 BY MS. KOLLINS:

12 Q And you said you had a partial profile that was consistent with Tyana.  
13 Is that what's depicted in the second column there, from the left hand fingernail  
14 swab?

15 A The partial DNA profile? Yeah.

16 Q And consistent with Tyana?

17 A Yeah.

18 Q And no other conclusions from the fingernail scrapings?

19 A No.

20 Q Okay. Now all of your testing was memorialized in a report, is that  
21 correct?

22 A Yeah.

23 Q And you provided a copy of that report to myself back in, looks like May  
24 of 2015? Does that sound about right?

25 A I believe so.

1 Q The DNA was complete -- the DNA testing was completed in June of  
2 2014, is that correct? Do you recall?

3 A Yeah.

4 Q Sound about right? Now, after the DNA results were offered -- were  
5 distributed to everyone, did the FBI change some of its -- populations? I'll let you  
6 explain that.

7 A Recently, all forensic laboratory in the country have been notified that  
8 there was some discrepancies in the FBI database that is routinely used in DNA  
9 forensic cases. And due to this, they published an article explaining what the  
10 discrepancies were and they created an updated or an amended version of the  
11 database. And the reason they found these discrepancies is because as a country,  
12 we are -- the DNA forensic field is being required to increase the amount of location  
13 that are -- that we see in the DNA profile to more locations to be consistent with the  
14 rest of the world.

15 So when they -- they have to run these sample that they had originally,  
16 again, using the larger -- the more loci or the more locations and when they did that,  
17 some of those locations are the same from before. So they were expecting it should  
18 be the -- the DNA information should be consistent. However, there were some that  
19 were not.

20 And they found that it's because there's -- there's a couple of reasons  
21 why. One is human error. They -- when they ran it originally, they had to type  
22 everything in. The second is technic -- technology has advance since when they ran  
23 it the first time. Because when they ran it -- the D -- the -- it was published back in  
24 1999. So technology has advanced since then. So there were some markers that  
25 they -- not misidentified, but it was not mark -- marked right because the technology

1 was not as sensitive as it is today. So, due to those, they amended the database  
2 to -- for the corrections, as well as all the new information that they gained from the  
3 additional locations that they ran. And they published to let us know that.

4           So when our f -- my forensic lab found out, we went and did a  
5 performance check to make sure that the data -- the amended database they gave  
6 us, is what was in the published article. And then to further that, we did an internal  
7 evaluation to see what is the worst case scenario. So if we -- we put together a --  
8 the DNA information that had the alleles, the markers that were mistyped or that was  
9 miscalled from previous technology used. We wanted to see what was the effect  
10 between the old database and the amended database. And we found that it was  
11 within the plus or minus 10 fold difference that had been published previously.

12           So there -- it wasn't a significant -- a significant finding. We still, if the  
13 profile was a full profile, it still gave statistical value as it would -- very similar -- as it  
14 would if it was used with the older database.

15           Q     And after that new population came out, you had to run -- you ran new  
16 calculations based on those new FBI numbers.

17           A     Yes. We were -- we at the lab, every lab is different -- how they wanted  
18 to address this issue. We decided that any cases that were based on going to court  
19 or by request, that were ran -- statistical calculations that were ran under the  
20 previous or I call, the old database, I take the same DNA profile -- the evidence  
21 profile that I did the statistical calculation originally, I did that again, using the  
22 amended database.

23           Q     Did you do that in this case because of just the timing of this case?

24           A     Yes.

25           Q     Okay. And did it change any of your conclusions?

1 A No.

2 Q Did it change any of the identity statements or anything that you made  
3 regarding the rectal swab?

4 A No.

5 Q Did it change any of the analysis or opinions you made regarding the  
6 stains from the underwear?

7 A No.

8 Q Okay, the vaginal swab?

9 A The vaginal swabs I did not run any statistical calculation.

10 Q Okay. But a -- I guess my point is, it -- when you do those calculations,  
11 I mean, they go out many zeros, correct?

12 A Yeah.

13 Q Those recalculations like into the --

14 A Yes.

15 Q -- like what the trillions?

16 A Yeah, the original -- the actual statistical frequency is -- had a number  
17 followed by a series of zeros.

18 Q Okay. And again, after the FBI suggested recalculation came out, you  
19 performed that on this case.

20 A Yeah.

21 MR. SPEED: Your Honor, asked and answered.

22 THE COURT: Overruled.

23 BY MS. KOLLINS:

24 Q And it didn't change any of your conclusions that you've test --

25 MR. SPEED: Objection, Your Honor, asked and answered.

1 THE COURT: Overruled.

2 BY MS. KOLLINS:

3 Q And it didn't change any of the conclusions that you've given us today?

4 A No.

5 MS. KOLLINS: Okay, I will pass the witness.

6 THE COURT: Cross.

7 MS. ROSS: Brief indulgence, Your Honor.

8 **CROSS- EXAMINATION**

9 BY MR. SPEED:

10 Q Ms. Robertson, I want to clear up a few things for the record before we  
11 begin with the heart of my examination this morning. Now, when you were speaking  
12 with Ms. Kollins just a second ago, you indicated that you did not rerun the statistical  
13 calculations on the vaginal swabs that were obtained, isn't that right?

14 A Well, I did not calculate any statistical calculation on the vaginal swab,  
15 originally --

16 Q Did not calculate -- I'm sorry.

17 A Yeah. Originally.

18 Q Okay. And that was because in the vaginal swabs, when the differential  
19 DNA extraction was performed, you -- the, the test delivered both an epithelial  
20 fraction and what you called a sperm fraction, isn't that right?

21 A Yeah.

22 Q And you testified yesterday that the sperm fraction from the vaginal  
23 swabs belong to or were consistent with the DNA profile in the sperm fraction of the  
24 vaginal swabs were consistent with Tyana Hasan, right?

25 A Yes, a partial profile, yes.

1 Q All right. And also you were asked some questions about some of the  
2 items in the envelope. And I'm not -- I'm not sure what it was marked at this point.  
3 But in the Sex Assault Kit envelope, having to do with bite marks or bite mark  
4 envelopes. You didn't do anything with those, right?

5 A No, it was marked by the nurse that it said none on it --

6 Q Okay.

7 THE COURT: That would be 4H.

8 BY MR. SPEED

9 A -- so I did not open it.

10 Q So nothing was performed at the hospital when the items of evidence in  
11 the rape kit were collected, having to do with bite marks?

12 MS. KOLLINS: Objection. Calls for speculation as to what was accomplished  
13 at the hospital.

14 THE COURT: Sustained.

15 BY MR. SPEED

16 Q It was an empty box when you opened the sex assault kit, right?

17 A I'm sorry. I -- I didn't get that.

18 Q The bite marks box was an empty box when you opened the kit, right?

19 A It was, yes. It was em -- it was not used. Or that was my assumption  
20 when she put none on it.

21 Q Okay.

22 THE COURT: You didn't open it?

23 THE WITNESS: I'm sorry?

24 THE COURT: You did not open it?

25 THE WITNESS: I did not open it.

1 BY MR. SPEED

2 Q And in preparation for your testimony in this case, you prepared a DNA  
3 analysis case file as well as a worksheet labeled Las Vegas Metropolitan Police  
4 Department Forensic Laboratory Worksheet. Isn't that correct?

5 A Yeah.

6 Q You wouldn't happen to have a copy of those two items, would you?

7 A Yes, I do.

8 Q And when those pretty voluminous items are prepared, they're usually  
9 rendered onto a compact disc and distributed to the District Attorney's office, isn't  
10 that right?

11 A For discovery?

12 Q Yes.

13 A Yeah.

14 Q Okay. And based on that report, DNA analysis was requested in this  
15 case in October of 2013, isn't that right? Page 92, last page.

16 A I don't have the date when it was requested.

17 Q You don't have it. Just a moment please.

18 MR. SPEED: May I approach the witness, Your Honor?

19 BY MR. SPEED

20 A Oh, I apologize, I do.

21 Q You have it, all right.

22 A Okay.

23 Q The date of the request was October 26 of '13, yes?

24 A Yes, it is.

25 Q And it was completed, you reviewed this with Ms. Kollins, I believe, on

1 June 19<sup>th</sup> of 2014, yes?

2 A Yeah.

3 Q Okay. Dated June 24<sup>th</sup>, 2014.

4 A Yeah.

5 Q All right. Now, again, you're employed as a DNA analyst with the Las  
6 Vegas Metropolitan Police Department, right?

7 A That is correct.

8 Q And how long have you been employed there?

9 A I've been there since October 2012.

10 Q October of 2012. And I'm looking at your curriculum reader here, and it  
11 indicates that you obtained your Bachelor's degree from the University of Central  
12 Florida, yes?

13 A Yes.

14 Q You do not have a Master's Degree.

15 A No, I do not.

16 Q You do not have a Doctorate or a Ph.D.

17 A Correct.

18 Q Okay. Now, you were able to give us a great deal of -- of information in  
19 testimony about DNA and what it stands for and -- and give me that term again.

20 What does DNA stand for?

21 A DNA stands for deoxyribonucleic acid.

22 Q Okay.

23 A It's the --

24 Q And how does a person learn what DNA stands for?

25 MS. KOLLINS: Your Honor, I would just ask that Mr. Speed let her conclude



1 her responses before --

2 THE COURT: Yeah, you keep cutting her off.

3 MR. SPEED: DNA stands for deoxyribonucleic acid, correct?

4 THE WITNESS: Correct.

5 Q And a person learns that by studying from -- at -- at universities, yes?

6 A Yeah.

7 Q Reading published periodicals, yes?

8 A Yeah.

9 Q Reading pamphlets or articles that were authored by doctors in the  
10 field, yes?

11 A Yeah.

12 Q Other forensic scientists?

13 A Yeah.

14 Q Corporation heads, people who run business who specialize or that  
15 specialize in forensic science and investigative research, yes?

16 A Yeah.

17 Q And people in your position, a DNA analyst with police departments  
18 around the country rely on that kind of information in forming their opinion or in doing  
19 their work every day, isn't that right?

20 A That is correct.

21 MS. KOLLINS: Objection, calls for speculation as to what every analyst relies  
22 on.

23 THE COURT: Sustained.

24 BY MR. SPEED

25 Q You rely on that kind of information in performing your work in the DNA

1 lab at the police department and in testifying as a witness, isn't that right?

2 MS. KOLLINS: Objection, compound.

3 THE COURT: Overruled, I'll let her answer that one.

4 MR. SPEED: Thank you, Your Honor.

5 BY MR. SPEED

6 Q You rely on that information, don't you?

7 A That, as well as my training and my experience.

8 Q Your training and experience. Including but certainly not limited to,  
9 online training, isn't that right?

10 A It is. We -- I'm required to take external training, eight hours every year.

11 Q And you obtained some of that training on the internet, isn't that right?

12 A Not only on the internet. I also can -- I can also attend seminars and  
13 workshops.

14 Q Did you attend a forensic short tandem repeat data interpretation  
15 training class in February of 2011, online?

16 A I --

17 Q Would it help you to see your curriculum?

18 A Yes, please.

19 MR. SPEED: May I approach, Your Honor?

20 THE COURT: Yeah.

21 MS. KOLLINS: And Your Honor, if we could approach the bench, please,  
22 while she looks at that?

23 THE WITNESS: Which one?

24 THE COURT: Let her look at it, don't -- don't ask her anything. Come over  
25 here.

1 THE WITNESS: That one.

2 [Bench Conference Begins]

3 MS. KOLLINS: I didn't want to say this out loud, but she has to read your lips.  
4 So when you look at the jury or you're looking down, she can't hear what you're  
5 saying, do you know what I mean?

6 MR. SPEED: She hasn't expressed a problem so far.

7 MS. KOLLINS: Well, I see her straining --

8 THE COURT: It's -- yeah -- it -- when she talks to me she has to turn to me  
9 and she'll say, I'm sorry what did you say?

10 MR. SPEED: She hasn't expressed a problem with my examination --

11 MS. KOLLINS: Okay.

12 MR. SPEED: -- so far.

13 THE COURT: There is a problem. So just make --

14 MR. SPEED: She hasn't expressed one, Your Honor.

15 MS. KOLLINS: Okay Kevin, I -- I just was trying to be courteous.

16 THE COURT: Okay, I'm just putting you on notice that --

17 MR. SPEED: Certainly, thank you both. And thank you, Your Honor.

18 [Bench Conference Concludes]

19 BY MR. SPEED

20 Q Isn't it a fact, Ms. Robertson, that you do not obtain your information,  
21 the information that you use in performing your analysis from one source?

22 A I'm sorry I --

23 Q You don't obtain your information, your knowledge, about statistical  
24 analysis, DNA research, forensic investigations from one source, right?

25 A That is correct.

1 Q You consult numerous sources, isn't that right?

2 A Yeah.

3 Q And do you have a copy in front of you of the Las Vegas Metropolitan

4 Police Department Forensic Laboratory Worksheet? The worksheet that you

5 completed?

6 A -- I do. Yeah.

7 Q You do have one. All right. Now at page 12 of your worksheet, it

8 shows that the examination kit was booked into evidence. You said that you

9 received them from the evidence lab, yes?

10 A I have -- received them from the evidence vault.

11 Q Evidence vault.

12 A Yeah.

13 Q Okay, I apologize --

14 A No.

15 Q -- I did say lab.

16 A It's okay.

17 Q This one was receive -- or was booked into the vault on September 12<sup>th</sup>

18 of 2013, correct?

19 A I -- don't have page numbers on my worksheet.

20 Q I see.

21 MR. SPEED: May I approach, Your Honor?

22 THE COURT: Yes.

23 BY MR. SPEED

24 Q And I did make a mistake there. I said 12 of 12, it's page 3 of 12.

25 MR. SPEED: May I approach?

1 THE COURT: Yes.

2 MR. SPEED: 3 of 12, folks.

3 BY MR. SPEED

4 Q Now that's not when you started your examination that is when the  
5 investigating detective booked it into the evidence vault, yes?

6 A They book it to the evidence vault before I even get the case.

7 Q And that was on September 12<sup>th</sup> of 2013 in this case, yes?

8 A Yeah.

9 Q And the buccal swab kit from where you obtained your reference  
10 sample for my client was booked on October 28<sup>th</sup> of 2013, correct?

11 A That is cor --

12 Q Looking at page 9 of 12.

13 A That is correct.

14 Q And I'm correct when I say that you opened or you began your analysis  
15 in May of 2014, correct? Of 2014, the next year, correct?

16 A That is correct.

17 Q May 20<sup>th</sup>, to be exact, yes?

18 A Yeah.

19 Q Now, when you perform a DNA analysis in a case like this -- you said  
20 you obtain it from the police and then you retrieve it from the evidence vault and  
21 then you begin your analysis. Yes?

22 A That is -- yes.

23 Q You perform a series of tests before you get started with the DNA test,  
24 isn't that right?

25 A Yes, screening examination, yes.

1 Q Those tests are called presumptive and confirmatory, isn't that right?

2 A That is correct.

3 Q The first test that you perform is one called the acid phosphatase test,  
4 isn't that right?

5 A That is correct.

6 Q And you performed those acid phosphatase tests in this case, yes?

7 A Yes I did.

8 Q Now the acid phosphatase test is known as a presumptive test, you  
9 agree with me there, yes?

10 A Yes.

11 Q It is not a confirmatory test, isn't that right?

12 A That is correct.

13 Q It indicates the presence of a substance, isn't that right?

14 A Yeah.

15 Q But other bodily fluids can give a false positive in the acid phosphatase  
16 test, isn't that correct?

17 A That is correct.

18 Q Other bodily fluids like saliva, yes?

19 A Not -- no, not that I'm aware of. The only body fluid that --

20 Q Let me stop you.

21 THE COURT: Okay, finish answering the question. You can stand at ease,  
22 Mr. Speed until she finishes answering that question. You may finish answering.

23 BY MR. SPEED

24 A The only body fluid that I'm aware that can give a false positive test for  
25 that presumptive test is vaginal fluid. And there are other substances that also can

1 give a false positive.

2 Q But vaginal fluid is one of those?

3 A Yes.

4 Q Okay. Now let's look at the items that you reported on in this case.  
5 Beginning with Item 1.2.1, I believe that those were the buccal swabs that were  
6 obtained from Tyana, yes?

7 A I'm sorry, Item 1.2 point --

8 Q Yes, page 3 in the worksheet.

9 A Right, I'm -- I'm trying to make sure I have the right Item Number.

10 Q Right. Well I apologize, 1.2.1 of the vaginal swabs that were obtained  
11 from Tyana, yes?

12 A That is -- yes, that is correct.

13 Q Okay. And on the vaginal swabs, you performed the acid phosphatase  
14 test, yes?

15 A Yes, I did.

16 Q And the results of that came back as negative, yes?

17 A Yeah.

18 Q Negative for the presence of the enzyme that you testified earlier is  
19 normally found in semen, yes?

20 A That is correct.

21 Q When you performed your presumptive test on the vaginal swabs, it  
22 was negative for the compound that's traditionally or typically found in semen.

23 A Yeah.

24 Q And you put that in your report, right?

25 A Yes, I did.

1 Q Let's go to Item 1.6.1. That is page 6 in your worksheet.

2 A Item 1.6, the underwear?

3 Q Yes. 1.6.1 that is a stain from the underwear, Stain 1 from the  
4 underwear, yes?

5 A Yes.

6 Q You performed the acid phosphatase test for this one, yes?

7 A Yeah.

8 Q And the result in the acid phosphatase test for this stain was a weak  
9 positive, yes?

10 A Yes.

11 Q And this stain was taken from the underwear, right?

12 A Correct.

13 Q And just so that I'm clear, vaginal fluid is another bodily fluid that will  
14 render a false positive from time to time in the acid phosphatase test, yes?

15 A Yes.

16 Q Turning to Item 1.6.2, next page -- of your worksheet. This is another  
17 stain from the underwear, yes?

18 A Yes.

19 Q You performed the acid phosphatase test in this case? Or -- or on this  
20 item, yes?

21 A Yes.

22 Q And the result that was delivered was another weak positive, isn't that  
23 right?

24 A That is correct.

25 Q And 1.6.2 was also taken from the underwear, yes?



1 A Yeah.

2 Q Where one would expect to find vaginal fluid if it was taken from a  
3 female, yes?

4 MS. KOLLINS: Objection, calls for speculation. She can't speculate as to  
5 whether in every underwear sampling there's vaginal fluid.

6 THE COURT: Oh, from that underwear, speculation whether there's  
7 something there.

8 MS. KOLLINS: Yes.

9 THE COURT: Guess I'll sustain that objection. Just re -- re-ask the question  
10 another way.

11 BY MR. SPEED

12 Q Vaginal fluid is another substance that will deliver a weak positive or a  
13 false positive using the acid phosphatase test, isn't that right?

14 A Yeah.

15 Q Let's go to Item 1.3 in your worksheet. Item 1.3 are the rectal swabs, or  
16 is the rectal swab, yes?

17 A Yeah.

18 Q You performed the acid phosphatase test for this item also, didn't you?

19 A Yes I did.

20 Q And in the acid phosphatase test for the rectal swabs, what was your  
21 result?

22 A Negative.

23 Q A negative result under the acid phosphatase test for the rectal swab,  
24 yes?

25 A That meant to you that the protein or the enzyme typically found in

1 semen, according to your testimony, was not present when you viewed them under  
2 the acid phosphatase test conditions. Isn't that right?

3 A Yeah.

4 MR. SPEED: Court's indulgence for just a moment, please.

5 BY MR. SPEED

6 Q Now, Ms. Robertson, when you're doing your work, you have a  
7 standard operating procedure or a protocol that you have to follow as an employee  
8 of the lab. Isn't that correct?

9 A That is correct.

10 Q It is your -- it's known as the Biology DNA Detail Technical Manual.  
11 Isn't that correct?

12 A That is correct.

13 Q And in that technical manual -- all of you use it every day, the  
14 employees at the DNA lab, right?

15 A Yeah.

16 Q It tells you specifically how items of evidence, how the different testing  
17 procedures and protocols ought to be followed. Isn't that right?

18 A That is correct.

19 Q It also gives all of you instruction on how the results of those tests are  
20 supposed to be or should be recorded. Isn't that right?

21 A That is correct.

22 Q Before we get to that, there was Item 1.6.3 that I have not asked you  
23 about. Now Item 1.63 was the swabbing that was taken from the interior crotch of  
24 the underwear. Isn't that right?

25 A That is correct.

1 Q And at Item 1.6.3 you performed the acid phosphatase test, yes?

2 A Yeah.

3 Q And what was the result of that swabbing?

4 A It was positive.

5 Q Okay. But looking at that item in your worksheet, we also see that there

6 was a mixture profile obtained from that particular item. Isn't that right? 1.6.3.

7 A Yeah, from the epithelial fraction, yes.

8 Q Okay. And you were able to determine the number of contributors to

9 that particular mixture profile from the swabbing of the interior crotch of the

10 underwear, weren't you?

11 A Yeah.

12 Q And in your report you noted that there were three contributors to that

13 swabbing. Isn't that correct?

14 A That is correct.

15 Q You noted that the major contributor was Tyana Hasan. Isn't that right?

16 A It is consistent with her, yeah.

17 Q Consistent with Tyana Hasan. That would leave two other possible

18 minor contributors. Isn't that right?

19 A That is correct.

20 Q And again, these were taken from the swabbing of the underwear, yes?

21 A The in -- interior crotch area, yes.

22 Q Now at Item 18 -- or Heading 18.5.2.3.1 of the manual. It notes that

23 when a presumptive acid phosphatase test is utilized during screening the following

24 statement should be placed below the results table. A presumptive test is an

25 indication, but not confirmation of the identity of a bodily fluid. You didn't place that

1 anywhere in your worksheet did you?

2 A We have updated our technical manual a couple times and we, at the  
3 time of writing this report, we did not have that requirement. And then we updated it  
4 for that requirement to clarify what we meant by presumptive test.

5 Q I see. So that is not in the worksheet that you prepared for this case,  
6 right? That statement.

7 A That statement does not come from the worksheet. It is something that  
8 we will add to the report.

9 Q To the report. And it's not in your report either, is it?

10 A Correct. It's not in this report because at this time I -- when I wrote the  
11 report, it was not required. We did not have that requirement.

12 Q Okay. Ms. Kollins just asked you about recalculating some of the  
13 results that you obtained in the first run of your test because of the new information  
14 published by the Federal Bureau. Isn't that right?

15 A Yeah.

16 Q And when you performed those recalculations wasn't this newest  
17 manual the operating manual that you were operating under?

18 A I believe so.

19 Q Now because the DNA lab considers the acid phosphatase test to be a  
20 presumptive and not confirmatory test, your analysis of the DNA evidence in this  
21 case doesn't stop there. Isn't that right?

22 A That is correct.

23 Q You perform another preliminary test on the items that you obtained  
24 from the evidence. Isn't that right?

25 A That is correct.

1 Q The second test is known as the P30 test. Isn't that right?

2 A Well I run a P30 test on the micro examination for sperm cells --

3 Q Second is the --

4 A I can run them about the same time.

5 Q I'm sorry. But the second in this case was the P30, isn't that right?

6 A I'm sorry?

7 Q The second test that you performed was the P30. Isn't that right?

8 A Well, it's not necessarily the second test, because I can run them side

9 by side, together.

10 Q Oh I see. You ran the P30 test as well, isn't that right?

11 A That is correct.

12 Q Let's talk about that P30 test please. Now that P30 test, like the acid

13 phosphatase test, tests for specific enzymes or proteins. I believe you referred to it

14 as a protein -- that's typically found in semen. Isn't that right?

15 A That is correct.

16 Q And in the presence of this substance, this protein typically found in

17 semen, in the P30 test you will see a color change in three lines on a plastic

18 cartridge. Isn't that right?

19 A Yes the cartridge is similar to like a take home pregnancy test.

20 Q And you're looking for a color change on those cartridge to indicate that

21 the P30 substance is present, yes?

22 A Yes. So it -- I'm looking for if there's three lines present when the

23 sample runs through the -- the cartridge, then the protein known as P30 or --

24 Q I believe it's Prostate specific antigen, right?

25 A -- Protein specific antigen. Yes, thank you. The three lines mean that it

1 is present, how -- if there's only two lines then it means that that protein is not  
2 present.

3 Q Looking at your manual at Item Heading 18.5.2.4.1 it says that in  
4 certain instances, additional bodily fluids - saliva and vaginal fluid have been  
5 demonstrated to yield weak P30 results, which may be false positives. Isn't that  
6 correct?

7 A That is correct.

8 Q So other bodily fluids also yield false [sic] -- false positives in your P30  
9 examinations. Isn't that right?

10 A That is correct.

11 MR. SPEED: Madam Clerk, can you hear me with the microphone here?  
12 You're still picking me up good? Thank you.

13 BY MR. SPEED:

14 Q I'm looking at page 13 of 92 in your casefile. Are you familiar with  
15 what's depicted on that page?

16 A Yes, sir.

17 Q You have it?

18 A Yeah.

19 Q On page 13 of 92, those are the P30 test cartridges, isn't that correct?

20 A That is correct.

21 Q Now, we talked about -- you touched on this a second ago and let's  
22 make this clear for the ladies and gentlemen. I'm referring to this -- this antigen as  
23 P30. You called it also the Prostate Specific Antigen, isn't that right?

24 A That is correct.

25 Q But just like with the advancements of technology that we've seen from

1 the federal bureau with respect to the different allele loci, technology has advance in  
2 this area as well, isn't that right?

3 A I believe so, yeah.

4 Q Quite often DNA analyst experts, forensic investigators don't refer to  
5 this protein as Prostate Specific Antigen, isn't that right?

6 A That is correct.

7 Q They call it P30 based on its molecular weight because the antigen isn't  
8 prostate specific, we know that now, right?

9 A Yes.

10 Q Now when you obtain a positive test, like you did here with these items,  
11 you're basically looking for a color change just like you would with an early  
12 pregnancy test. Yes?

13 A That is correct.

14 Q But it is true that other items can yield false positives in the P30 test.

15 A That is correct.

16 Q All right, and you said at the same time you're performing this P30 test  
17 you also perform a microscopic examination, isn't that correct?

18 A That is correct.

19 Q That is another one of the preliminary presumptive confirmatory tests  
20 that DNA analysts at the lab have to run. Isn't that right?

21 A That is correct.

22 Q Based on page 156 of the manual that gives a flow chart of what an  
23 analyst is doing when he or she is working at the lab. Isn't that right?

24 A That is correct.

25 Q Is that upside down on your screen, ladies and gentlemen, I'm sorry. I

1 apologize.

2 MR. SPEED: And, Your Honor, permission to invade the -- well, I'm sorry.

3 BY MR. SPEED:

4 Q Now in your microscopic examination of the evidence, you're looking for  
5 the presence of sperm cells, aren't you?

6 A Yes.

7 Q And just to backtrack a little bit, when you produce your final report -- or  
8 when the final report that was produced in this case, there's no indication at item --  
9 let's start with 1.6.1 -- at the possibility of false or weak positives in the acid  
10 phosphatase test or the P30 test. Isn't that right?

11 A I'm sorry I --

12 Q There's no indication in your report for the possibility of false or weak  
13 positives in your two preliminary tests, the first two that we were talking about.

14 A We just report out if it gave us a positive result or a negative result.

15 Q So no indication about the possibility of false positives that's required  
16 now?

17 A Well, that is just explaining that there are some limitations on the test.  
18 But, in regards to our reporting we just put whether we saw a positive result or a  
19 negative result for that test.

20 Q Now, since a recalculation was done, doesn't the manual instruct you  
21 that you should place some indication in your final report about the possibility of  
22 false positives?

23 A Well -- the -- it's in our worksheet that it's a weak positive, or -- but the  
24 false positive, that is what I explain. It is -- it's -- explaining it in our manual that for  
25 us not to say that the positive result or the weak positive result is conclusively that



1 body fluid or what we're trying to examine for.

2 Q Ms. Robertson, under 18.5.2.3.1 where should that information be  
3 placed?

4 A It will -- it's placed in our manual, in our -- in our worksheet I am just --  
5 in my worksheet and in my report I am just identifying what I observed when I did  
6 these tests.

7 Q Shouldn't it be placed below the results table?

8 A That is just an ex -- it's just a definition of what presumptive test means,  
9 meaning that we are presu -- it is not conclusively that body fluid. It could be -- it's a  
10 preliminary examination of presuming the body fluid might or might not be present.

11 Q All right. Now going back to your microscopic examination, when that is  
12 performed you have to view slides for a microscope at magnification. Isn't that  
13 correct?

14 A That is correct.

15 Q Typically what the lab manual calls for is for the slides to be magnified  
16 at 40 times, isn't that right?

17 A That is correct.

18 Q You're looking for the presence of a particular kind of cell. Isn't that  
19 right?

20 A That is correct.

21 Q If you know, Ms. Robertson, or would you agree that it's estimated that  
22 there're between 10 and 50 million sperm cells in a milliliter of ejaculate.

23 A That is correct.

24 Q Okay, so if you see a milliliter, you're talking about between 10 and 50  
25 million possibly cells, isn't that right?

1           A     That is correct.

2           Q     And just so that the jury's clear on this, when we're talking about a  
3 sperm cell we're talking about a body that is microscopically small, first, yes?

4           A     Yeah.

5           Q     It contains a head what's known as an acrosomal sac and a flagellating  
6 tail. Isn't that right?

7           A     That is correct.

8           Q     Looks something like a tadpole.

9           A     Very similar to a tadpole.

10          Q     All right. And if an analyst is looking for the presence of sperm cells,  
11 that would be an identifying marker, something with a head, a flagellating tail, the  
12 acrosomal sac. Isn't that right?

13          A     Yes. Sometimes we just see the head with the acrosome -- acrosomal  
14 head without the tail.

15          Q     Okay.

16          A     And sometimes we will see it with the tail.

17          Q     Sometimes with the tail, sometimes without, right?

18          A     Yes.

19          Q     It's true that motile sperm often die or degrade after 24 or 48 hours, isn't  
20 that right?

21          A     Not degrade, but the tail will pretty much break apart, so therefore --

22          Q     The tail breaks apart.

23          A     Yeah therefore it's no longer mobile.

24          Q     All right. Now when you're performing that Christmas -- I'm sorry, that  
25 microscopic analysis you perform what's known as a Christmas Tree Stain test, isn't

1 that right?

2 A That is correct.

3 Q The Christmas Tree Stain test uses two chemicals, right?

4 A Yes.

5 Q One is called picroindigocarmine that turns certain kinds of cells -- it  
6 causes a chemical reaction in certain kinds of cells and it makes a green color  
7 change. Isn't that right?

8 A The picro? Yes.

9 Q Okay, and there's another chemical called Kernechtrot --

10 THE COURT: Okay you're talking away from her and you can't talk away  
11 from her.

12 MR. SPEED: I'm sorry, Your Honor.

13 BY MR. SPEED:

14 Q There's another chemical called Kernechtrot -- it's nuclear fast red that  
15 turns other kinds of cells a red color. Isn't that right?

16 A Its nuclei cells are turned red, yes.

17 Q All right. And in this Christmas tree staining analysis you're looking for  
18 the presence of red and green, isn't that right?

19 A Typically, yes.

20 Q Because sperm cells because of their composition will turn red in the  
21 presence of that nuclear fast red, isn't that right?

22 A Part of the sperm cell will.

23 Q The head and the acrosomal sac, isn't that right?

24 A The head -- part of the head, is the acrosomal sac is clear because it's  
25 a very sturdy part of the sperm cell.

1 Q Okay.

2 A So it doesn't take the dye.

3 Q All right. Other cells, epithelial cells turn green.

4 A The nucleus turns red and the cell membrane turns green.

5 Q So, there will be a red coloring in the nucleus of epithelial cells as well.

6 Isn't that right?

7 A Yeah.

8 Q Okay. In this case you reviewed microscopic slides, didn't you?

9 A Yes, I did.

10 Q For Items 121, the underwear items, and Item 1.3 the rectal swabs.

11 Isn't that right?

12 A That is correct.

13 Q If you would turn with me in your case file to page 12. Do you have

14 your case file in front of you? Page 12 of 92, Ms. Robertson.

15 A Yeah.

16 Q That is where you document where you saw -- excuse me, where you

17 performed your microscopic analysis. Isn't that correct?

18 A Yeah.

19 Q And you see, looking at your case file here that you performed a

20 microscopic slide examination on Item 121 those were the vaginal swabs, yes?

21 A Yeah.

22 Q And under your first micro you saw two sperm on the slide, isn't that

23 right?

24 A Yeah.

25 Q And on the second micro you saw five sperm on the slide, isn't that

1 right?

2 A That is correct.

3 Q So in a situation where one would expect to see millions of sperm cells  
4 in your first microscop -- your microscopic analysis you only saw two for Item 121.  
5 Yes?

6 A Yeah.

7 Q And five in your second. Isn't that right?

8 A Yeah.

9 Q Bearing in mind that the nuclei for epithelial cells will also turn red, yes?

10 A Yeah.

11 Q And what you suspect to be sperm cells turn red when you're looking at  
12 this Christmas tree stain, isn't that right?

13 A That is correct.

14 Q There's no way for you to tell with any certainty exactly which kind of  
15 cell you're looking at under Christmas tree stain, isn't that right?

16 A No, I can tell the difference. That is part of my training.

17 Q You can tell the difference?

18 A Yes, the -- the nucleus that are found with the epithelial cell is  
19 embedded in the green membrane and it is larger than the sperm cell that is also  
20 stained red.

21 Q Tell me where that's noted in your report, your worksheet, or in the  
22 manual.

23 A It is not in the report, like I said the report just gives us a -- it explains  
24 what the results are, positive, negative. It's not on the worksheet because that's just  
25 what my results are. And the manual does not dis -- tell everything that is part of my

1 training. It is during my training -- I have a manual during my training that will  
2 explain as well as other practice and that I do. Practice samples that I do in the  
3 laboratory during my training process. And that is both here at Las Vegas  
4 Metropolitan as well as my previous employer.

5 Q But there's nowhere in your case file or the worksheet where anyone  
6 looking at the results of your analysis later can say that when Ms. Robertson looked  
7 at or when Cassandra looked at the slide on this day, she saw five what she  
8 believed to be sperm cells and this is how she was able to differentiate them. You  
9 don't note that in your report, do you?

10 A If I noted that in my report, my report would end up being a short book.  
11 So we just reflect what our results are and --

12 Q You didn't note it did you Ms. Robertson?

13 A Not in my report, no.

14 Q Thank you. Looking at Item 1.3, the rectal swab. You noted in your  
15 first -- I'll tell you what, let's skip over 1.3 for a second. Let's go to the underwear.

16 A Okay.

17 Q Where those weak positives were. For Item 1.6.1, that was Stain 1,  
18 from the underwear, you noticed ten sperm on the slide in your first microscopic  
19 examination, isn't that right?

20 A That is correct.

21 Q In the second, you noted a plus two. Isn't that right?

22 A That is correct.

23 Q For Item 1.6.2 you noticed four sperm on the slide, yes?

24 A Yeah.

25 Q And you noted a plus two on your second slide analysis. Isn't that

1 right?

2 A That is correct.

3 Q And for 1.6.3 you noted eight sperm on the slide.

4 A That is correct.

5 Q And also a plus two in your second microscopic analysis, isn't that  
6 right?

7 A That is correct.

8 Q Tell the jury what's the difference between your first microscope slide  
9 examination and your second.

10 A The first micro -- microscope slide is done during the preliminary  
11 screening process. It's for me to identify if there are any sperm cells present on the  
12 sample. And what these -- what this microscope -- microscopic examination, it is  
13 typically a mixture. The slide will be a mixture of epithelial cells as well as possible  
14 sperm cells, if they're present. Once it goes through the differential extraction  
15 process, as I mentioned earlier, it is -- a -- it goes through a series of epithelial cell  
16 digestion in the beginning so I can digest just the epithelial cell and not the sperm --  
17 try not to digest the sperm cell --

18 Q Ms. Robertson, I'm talking about the microscopic analysis.

19 A Yes, and I'm explaining because the second slide is done in the middle  
20 of my extraction process.

21 Q All right. Go ahead, please.

22 A So the -- once I'm done with the epithelial cell digestion, I now have the  
23 epithelial cell fraction. Then I need to identify to make sure that the sperm cell are  
24 still present in the sample and to also determine if all the e-cells have been digested.  
25 So I will do a second microscope slide, with a small sample of that what's left. And

1 determine if there's sperm there, how many? How much sperm? And it -- it is  
2 usually the case of going to a low sperm count from my previous examination and  
3 increasing it because I have -- now I have digested all the epithelial cells I can see  
4 the sperm cells a lot clearer. So I can -- the numbers usually increase.

5 Q With these two microscopic examinations the numbers decreased,  
6 didn't they?

7 A I'm sorry?

8 Q With these two microscopic examinations the numbers decreased,  
9 didn't they?

10 A No, they increased. The plus two is -- I -- the plus two is part of a  
11 range. We can either say zero or in this case I only have a handful of sperm, I list  
12 out how much sperm I saw. Or it can go to plus one, which means that they're  
13 present, however, they're difficult for me to find on the slide. A plus two means  
14 they're present, however, they're present in several fields meaning every time I look  
15 in the microscope or I move the field of the micro -- the slide -- there will be several  
16 sperm cells present. But it's not in every field. Then we have a plus three which  
17 means they're easier -- they're easy to locate.

18 Q Let me stop you. There is no plus three in your report in this case, is  
19 there?

20 A No, but I'm just explaining the process.

21 Q Thank you. Let's go to Item 1.3 -- or back to Item 1.3. Your  
22 microscopic analysis of the rectal swabs. In the first examination you said that you  
23 saw two sperm on the slide, yes?

24 A Yes.

25 Q And in your second examination, you note the plus one, right?



1 A That is correct.

2 Q We'll get to what those mean exactly in a moment. Let me ask you  
3 some more questions here. Now you talked to the jury about when you're  
4 performing this microscopic examination you perform the first slide exam while  
5 you're conducting your preliminary examination, yes?

6 A Yes.

7 Q After that, you wash or add another chemical to the slide that digests  
8 some of the epithelial cells, yes?

9 A That is not correct. That --

10 Q Explain that part again, please.

11 A That is part of the extraction process to create the epithelial fraction.

12 Q So let me stop you. After that part --

13 MS. KOLLINS: Your Honor --

14 MR. SPEED: -- of the extraction process is performed you --

15 THE COURT: You got to let her answer. You keep stopping her.

16 MR. SPEED: Well I have a specific question, Your Honor and I'm not talking  
17 about the --

18 THE COURT: I understand you want -- you want --

19 MR. SPEED: -- extraction process.

20 THE COURT: -- to direct it a certain way, but you've got to let this expert  
21 answer your question.

22 BY MR. SPEED:

23 Q Let's talk about that second microscopic slide for the rectal exam. After  
24 your addition of the chemical for the differential extraction was performed, you look  
25 at -- you looked at a second slide and you saw a field of plus one, right?

1 A Yeah.

2 Q All right. Now isn't true, Ms. Roberts, that other kinds of epithelial cells  
3 will also stain red in the Christmas tree staining process?

4 A The nucleus of the epithelial cell will stain red. Yeah.

5 Q Okay. And isn't it also true that some mucosal cells will stain red in a  
6 Christmas tree staining process?

7 A Yes.

8 Q So other kinds of cells will stain red or change color under this Christmas  
9 tree staining process, right?

10 A Yeah.

11 Q And there's no way for you to tell, except by your own training that isn't  
12 noted in the report, which cells you're looking at. Either a sperm cell or an epithelial  
13 cell.

14 A Based on --

15 Q Only you know the difference, right?

16 A Well not only me but analysts in this field, during the training process  
17 we learn the difference in the staining of these two cells.

18 Q But you looked at the evidence in this case.

19 A Yeah.

20 Q And didn't report how you differentiated the two kinds of cells, right?

21 A In the report, no.

22 Q Now for our case here, we noted in the second microscope slide, for  
23 three of those, the underwear stains and the underwear swab, you noticed a plus  
24 two. And that means they were some red cells in several fields, right? Isn't that  
25 how the manual defines a plus two reporting?

1           A     That is in relation to the -- well it -- for either sperm -- I can put sperm  
2 cells what I see. So I report out and when I did this case, I report out what I observe  
3 for the sperm cell.

4           Q     All right. But it is true now that other kinds of cells will stain red in the  
5 Christmas tree staining process, right?

6           A     Yeah.

7           Q     And for the rectal swabs, you noted a plus one after your second  
8 microscopic examination. Isn't that right?

9           A     That is correct.

10          Q     And the manual defines a plus one as the analyst seeing one sperm in  
11 the field that is difficult to locate, right?

12          A     It is one to a few in --

13          Q     But difficult to locate.

14          A     It's -- it's difficult --

15          MS. KOLLINS: Your Honor --

16          THE WITNESS: -- to locate.

17          MS. KOLLINS: -- I -- I'm going to ask that he allow her to finish her  
18 responses.

19          THE COURT: I know, he keeps doing this. And I -- I hate to keep telling you,  
20 you got to let her answer. I know it may not be the answer you want to hear but you  
21 still have to let her answer.

22          BY MR. SPEED:

23          Q     A plus one reporting indicates one to a few but difficult to locate, isn't  
24 that correct?

25          A     That is correct.

1 Q And we've established that there are other kinds of cells that will stain  
2 red under your microscopic examination, isn't that right?

3 A That is correct.

4 Q All right Ms. Robertson, let's talk about your DNA extraction. The DNA  
5 extraction is of the four tests that you perform at the lab, probably the one where  
6 analysts have obtained their most certainty, right? Or not certainty, I shouldn't  
7 say -- that's the test where you -- the results of which help you to write your final  
8 report, isn't that right? That separates the contributors into an epithelial fraction and  
9 a sperm fraction, isn't that right?

10 A Well, that extraction is only if there's sperm present.

11 Q Only if there's sperm present.

12 A Yeah.

13 Q Okay. So that means that you performed that extraction after you've  
14 done those first three preliminary tests, yes?

15 A Yes.

16 Q Okay. And in your three tests you did note the presence of sperm, yes?

17 A Yes.

18 Q And the presence of semen, yes?

19 A It's indicated, yeah.

20 Q Okay, it was indicated yes?

21 A Yeah.

22 Q But there are other chemicals that will render false positives in the acid  
23 phosphatase test and the P30 test, yes?

24 A Yeah.

25 Q And sometimes other kinds of cells, not sperm cells exclusively, will

1 stain red in a Christmas tree staining process, yes?

2 A Yes.

3 Q But when you're preparing your report and you see positive findings like  
4 that you have to continue to the differential extraction process according to the  
5 manual, isn't that correct?

6 A That is correct.

7 Q Now in this case, we've talked a lot about a sperm fraction and an  
8 epithelial fraction, isn't that right?

9 A That is correct.

10 Q I also remember you saying something yesterday about a lysing  
11 process that has to occur, isn't that right?

12 A Yeah.

13 Q Where you lyse the cells?

14 A Yeah.

15 Q Okay. Lysing involves breaking open the nucleus of certain cells so  
16 that the DNA contained inside can be examined, isn't that right?

17 A That is correct.

18 Q Because of the composition of certain cells, when this lysing process  
19 occurs an analyst expects certain cells, the epithelial cells in particular, to be broken  
20 apart first, isn't that right?

21 A That is correct.

22 Q Because of the chemical and biological makeup of a sperm cell, when  
23 this initial lysing process is performed and chemicals are added to your evidence  
24 sample, the samples are then centrifuged, isn't that right?

25 A Yeah, it gets spun down.

1 Q And the higher density material will land at the bottom after this  
2 centrifugation process, isn't that correct?

3 A After the first digestion, yes.

4 Q The lighter density or less dense material will rise to the top. Isn't that  
5 correct?

6 A Well, the -- if it's dense it will go to the bottom. The -- when we break  
7 open the cells, the DNA is in the solution.

8 Q Right. And the part of the solution that rises to the top is what's known  
9 as the epithelial fraction, isn't that correct?

10 A Yes, the top part is the epithelial cells, however, it doesn't rise up. It  
11 just, the spun down process it's just to bring down the heavier material.

12 Q The more dense material, right?

13 A Yes, but it's just liquid up at the top.

14 Q That material that remains at the bottom is what you've been referring  
15 to as the sperm fraction, isn't that right?

16 A Not necessary -- well, it eventually becomes the sperm fraction.

17 Q Okay. The -- the material that's left at the bottom after centrifuging, isn't  
18 that right?

19 A Yes, because it has to go through its' own digestion process.

20 Q Right, because of the makeup of sperm cells. Isn't that right?

21 A Yeah.

22 Q They're composed of different chemicals -- disulfide bonds that resist  
23 the chemical that's used to break open the nuclei of epithelial cells. Isn't that  
24 correct?

25 A I'm sorry -- they-- they're composed of the -- the disulfide bond --

1 Q Yes.

2 A -- and that's the sturdy part of the sperm head to keep it hearty. So the

3 first digestion isn't -- typically does not break, cannot break through that.

4 Q Proteinase K cannot break through that disulfide bond present on the

5 cover of a sperm cell. Isn't that correct?

6 A That is correct.

7 Q In fact, it requires another chemical called DKK -- or DTT, I'm sorry --

8 A Yeah.

9 Q -- to break open the nucleus of a sperm cell to show an analyst the

10 DNA contained inside of those. Isn't that right?

11 A That is correct.

12 Q And that portion that's left at the bottom, the pellet portion, after your

13 centrifuging is what's known as the sperm fraction. Isn't that correct?

14 A Yes, once we digest it.

15 Q All right. Now when you were talking about the results from Item 1.2.1,

16 the vaginal swabs for Tyana.

17 A Yes.

18 Q You performed a differential extraction, yes?

19 A Yeah.

20 Q Where lighter material rose to the top, the epithelial fraction, right?

21 A That's in its own tube, yeah.

22 Q And heavier material, the pellet portion, remained at the bottom, right?

23 A The pellet, yes.

24 Q That pellet portion later became the sperm fraction, right?

25 A That is correct.

1 Q There was no male DNA found in Tyana's vaginal swabbed sperm  
2 fraction, right?

3 A There was no male profile, yeah.

4 Q So when we talk about a sperm fraction, we are not necessarily talking  
5 about the presence of sperm cells, are we?

6 A No, typically that's where the -- that's where the sperm cells we expect  
7 to see the male profile. However, it is coming from the same sample, so there is a  
8 chance that there might be what -- carry-over or the DNA profile from the epithelial  
9 cell because it was so overwhelming might digest in the -- sperm fraction as well as  
10 some sperm cells break down a little easier. They're starting to break down in the  
11 body so those might break open during the first digestion. So it's --

12 Q So perhaps -- oh, I'm sorry. I thought you were finished, I apologize.

13 A Oh no, no. So it's not uncommon to see very -- you know, little bit of  
14 carry over in the both fraction because it's coming from the same sample.

15 Q So it is possible for transference between the epithelial fraction and --  
16 and because we've established that sperm cells may not be in a sperm fraction, can  
17 we call it a pellet fraction? Do you understand the difference?

18 A We -- well, at the lab we just, for simplicity, we call it epithelial fraction  
19 because typically that's where the epithelial cells break.

20 Q Right.

21 A And sperm fraction because that's typically where the sperm cells  
22 break. But with the biology of our body, these samples are coming from inside our  
23 body, they might break --

24 Q Just for our purposes here -- I -- I --

25 MS. KOLLINS: And, Your Honor, I -- and I'm sorry, same objection. She's in



1 the middle of her response

2 THE COURT: Yeah.

3 MS. KOLLINS: -- and Mr. Speed cuts her off again.

4 MR. SPEED: The SF fraction is also the pellet fraction -- isn't that right?

5 THE COURT: Just let her answer the questions, please.

6 BY MR. SPEED:

7 Q The SF fraction is also the pellet fraction of the differential extraction.  
8 Isn't that right?

9 A Yes, the pellet gets digested and is now the SF fraction.

10 Q And you just testified that it is possible for there to be transference or  
11 carry-over between the pellet fraction and the epithelial fraction. Isn't that right?

12 A Yes.

13 Q And vice versa, from the epithelial fraction down into the pellet fraction,  
14 yes?

15 A Well it's not necessarily like down into it. It's just two separate tubes,  
16 two separate extracts.

17 Q So there's transference across tubes --

18 A Not across tubes but --

19 Q -- from the epithelial fraction to the --

20 A It is not across the tubes, like it doesn't jump from one tube to another.

21 It just -- it -- when I separate it, there's so, like you said, a pellet and some liquid  
22 behind. So then, once I do that digestion, some of that liquid behind might have  
23 some of the epithelial cell. So --

24 Q I see.

25 A -- that's how the separation is.

1 Q And just so that we're clear again, in Item 1.2.1, those were Tyana's  
2 vaginal swabs. You said you found no male DNA, isn't that right?

3 A No I did not obtain a male profile.

4 Q That means that no male DNA was found, right?

5 A Well, the profile -- I mean, we have tests for we can save D -- male  
6 DNA, the quantity of male DNA is present. I didn't have that at this time of testing,  
7 so I can just say the profile itself, I did not see a male profile.

8 Q And moving onto Item 1.6.1. After you performed this differential  
9 extraction, you obtained a mixture profile, right?

10 A Yes.

11 Q And in that mixture profile there were at least two contributors, yes?

12 A That is true.

13 Q When you say at least two, that means that you see two but your  
14 conclusions aren't limited to two. It's at least two, right?

15 A Yeah.

16 Q And in your conclusion, as far as Item 1.6.1, the stain from the  
17 underwear was concerned, you said that you could make no conclusions concerning  
18 the profile of the minor contributors. Isn't that right?

19 A Yeah.

20 MS. KOLLINS: Your Honor, and I'm going to object as to vague because  
21 there are two components to Stain 1 and he needs to differentiate which one we're  
22 talking about. There's two different conclusions.

23 THE COURT: I'll let you clarify it and redirect.

24 You guys need a break? No. Okay.

25 BY MR. SPEED:

1 Q At Item 1.6.1, there is a field where the conclusions can be entered by  
2 the analyst. Isn't that correct?

3 A Yeah.

4 Q And for Item 1.6.1 your field was left blank, right?

5 A I'm sorry?

6 Q For Item 1.6.1, your field major/minor was left blank, yes?

7 MS. KOLLINS: Can I just ask Counsel what he's referring to?

8 MR. SPEED: The worksheet. Item 1.6.1.

9 MS. KOLLINS: Okay.

10 BY MR. SPEED:

11 A Is that for the epithelial fraction?

12 Q I'm looking at the field that says major/minor.

13 A Yes, but --

14 Q You left that field blank.

15 A It's for the epithelial fraction --

16 MS. KOLLINS: Same objection, Your Honor, interrupting her.

17 BY MR. SPEED:

18 A Yes. That particular field, yes.

19 Q At Item 1.6.2, this is Stain 2 from the underwear, yes?

20 A Yeah.

21 Q For that one, you did obtain a mixture profile, yes?

22 A For the epithelial fraction, yes.

23 Q Okay. And for the epithelial fraction of the mixture profile, you saw that  
24 there were two contributors, right?

25 A Yeah.

1 Q The major contributor for the epithelial fraction was Tyana Hasan, right?

2 A It's consistent with her profile, yeah.

3 Q Consistent with her profile. Let's talk about that for a second. You can't  
4 say, even after these differential extractions when you find a DNA profile or if you're  
5 able to create a genotype profile that with 100 percent certainty this is the person,  
6 yes?

7 MS. KOLLINS: And -- and I'm going to object, Your Honor. That's improper  
8 based on the case law we discussed today.

9 THE COURT: Approach the bench.

10 [Bench Conference Begins]

11 MR. SPEED: Her testimony has been that the profile consists --

12 MS. KOLLINS: It's my objection.

13 THE COURT: It's her objection, let her make it.

14 MR. SPEED: Oh, I thought you were finished.

15 MS. KOLLINS: No, I'm not.

16 THE COURT: Okay.

17 MS. KOLLINS: He cannot ask her percentages if I can't. He cannot say  
18 what -- he cannot calculate this to 100 percent certainty about identification or not  
19 identification because that's a violation of the same rule that we had that whole blow  
20 up about yesterday that he's saying that I violated. He cannot -- he cannot attribute  
21 a percentage to innocence either more than I can attribute a percentage to guilt.

22 MR. SPEED: Actually I can because the presumption of innocence still exists  
23 in this trial, and there are different rules for the prosecutor than there are for the  
24 State. Secondly, Your Honor, I wasn't going to ask her about making a percentage  
25 conclusion about what the fragment belongs to. I'm asking her about the procedure

1 for reporting and what that consisted with--

2 THE COURT: Right.

3 MR. SPEED: -- language means.

4 THE COURT: So you can proceed that way.

5 MR. SPEED: Thank you.

6 MS. KOLLINS: But not with the percentage that you --

7 THE COURT: Not with the percentage.

8 [Bench Conference Concludes]

9 THE COURT: Objection sustained, in part. Overruled in part, as we talked  
10 about it up at the bench.

11 BY MR. SPEED:

12 Q And Ms. Robertson, when you say consistent with, and you say that a  
13 profile is consistent with the DNA profile obtained from a reference sample, only  
14 from the reference sample can you say Tyana Hasan is the person who delivered  
15 this sample or provided this sample. Isn't that right?

16 A Her prof -- her what her genetic mat -- information is, is consistent with  
17 the genetic information from the -- from the sample.

18 Q I see. All right. On the epithet -- and back to Item 1.6.2, in that  
19 epithelial fraction you are able to make no conclusions about the minor contributors,  
20 right?

21 A That is correct.

22 Q And to Item 1.6.3, that is the swabbing from the interior crotch. You  
23 were able to make no conclusions about the minor contributor there either, were  
24 you?

25 A In the epithelial fraction, yes.

1 Q And interestingly, at 1.6.3 you noted that there were three contributors  
2 to that epithelial fraction, didn't you?

3 A Yeah.

4 Q Now you opened -- you testify that you opened the sexual assault kit  
5 yourself, yes? When you began your analysis.

6 A Yeah.

7 Q And at page three of your worksheet --

8 MR. SPEED: Court's indulgence, I'm sorry, Your Honor.

9 BY MR. SPEED:

10 Q You noticed that there were no visible stains in the underwear, isn't that  
11 correct?

12 A Yes, I did not observe any stains.

13 Q Then when we talk about these epithelial cells, those that you described  
14 yesterday as skin cells, didn't you?

15 A Yeah.

16 Q Those would be present if, for example, I touch this table. There would  
17 be epithelial cells left on that table, wouldn't there?

18 A Yeah.

19 Q If I touched this overhead stand, some of my epithelial cells would be  
20 left there, yes?

21 A Yes.

22 Q Are you familiar with the term trace DNA?

23 A Yes I am.

24 Q Explain to the jury what trace DNA is.

25 A Trace DNA is where the -- it's very low template DNA. It's very trace is

1 just -- it's insignificant amount of DNA compared to, let's say, like a major profile.

2 Q But it could be present in the minor contribution of a minor contributor,  
3 isn't that correct?

4 A Yeah.

5 Q And is it in fact true, Ms. Robertson, that trace DNA can be obtained  
6 from non-porous surfaces like obviously from porous -- or non-porous surfaces like  
7 this table, yes?

8 A Yeah.

9 Q But trace DNA can also be obtained from porous surfaces like clothing,  
10 isn't that right?

11 A Yeah.

12 Q Isn't it also a fact, Ms. Robertson, that as an analyst at the Las Vegas  
13 Metropolitan Police Department lab, you have a level of digression with respect to  
14 your reporting?

15 A Yeah.

16 Q You report what you see and you're trusted to make professional  
17 judgement calls about if there's any other material needed to further complete your  
18 analysis or situations like that. Isn't that right?

19 A I did not understand the last part of that.

20 Q When you're writing your reports --

21 A Yeah.

22 Q -- you're given a level of discretion, isn't that right?

23 A Yes.

24 Q You're trusted to report what you see, right?

25 A Yes.

1 Q You're also given the latitude to ask for more information if you think  
2 that that would complete your report, isn't that right?

3 A Yeah.

4 [Colloquy between Defense Counsel]

5 MR. SPEED: May I have the Court's indulgence, Your Honor, I apologize.

6 THE COURT: Uh-huh.

7 [Colloquy between Defense Counsel]

8 BY MR. SPEED:

9 Q Now because this trace DNA can be found or can be attributed to minor  
10 contributors in your profile, your DNA lab manual at section 18.8.11.1 spells out the  
11 protocol for when an analyst needs additional information, doesn't it?

12 A I believe so?

13 Q At 18.8.11.1 it says the following statement should also be included at  
14 the end of a report: For comparison purposes, please submit reference buccal  
15 swabs from individual believed to be involved or have reasonable access to this  
16 incident. Isn't that right?

17 A That is correct. However, that statement is added if I have an  
18 unknown -- I have an unknown profile. It's not added if I can't make a conclusion on  
19 a -- like in this instance, I can't make a conclusion on the minor contributor. It  
20 doesn't matter how many reference standards I get, I'm not going to be able to  
21 con -- make a conclusion on the minor contributor.

22 Q But you could ask for one, couldn't you?

23 A I can, but we use that statement only if I have an unknown profile in the  
24 sam -- in the case.

25 Q At one of the underwear items, there were at least three contributors,



1 correct?

2 A Yeah.

3 Q One of them, the major contributor, was Tyana Hasan, right?

4 A It's consistent with her, yes.

5 Q Leaving two other contributors, yes?

6 A I'm sorry?

7 Q Leaving at least two other contributors, yes?

8 A Leaving two others, yes.

9 Q And you could've asked about additional information to help with the  
10 identification of those other contributors where you made no conclusions, right?

11 A I'm sorry, I didn't get the last part that.

12 Q You could've asked for additional information to help you make an  
13 identification of those minor contributors --isn't that -- contributors, isn't that right?

14 A No I can't.

15 Q You can't.

16 MR. SPEED: Nothing further, Your Honor. We pass the witness.

17 **REDIRECT EXAMINATION**

18 BY MS. KOLLINS:

19 Q Just to be clear, let's just speed read through this. If you're referring to  
20 a minor contributor, it's DNA where you do not have a full profile, correct?

21 A No, the minor is -- contributor is the component that has the less -- less  
22 DNA compared to the major. It could be a full or impartial or inconclusive.

23 Q Okay so when Mr. Speed asks you -- and I guess I understood the  
24 question to be the minor contributor you did not have a full profile.

25 A The minor contributor I could not make any conclusion. There were not

1 enough information there for me to say that it -- that it is a partial profile or a full.  
2 profile.

3 Q Okay so when he -- when Mr. Speed asks you, you could've asked for  
4 more information, what would you ask for that might have been helpful?

5 A We -- we could ask for, like he had mentioned, buccal reference  
6 standards from other individuals that may be related to the case. However, in  
7 instances where we cannot make any conclusion, we do not ask for those  
8 references because I'm going to run the sample, but I'm not going to be able to  
9 compare it to the minor contributors because I've already stated I cannot make any  
10 comparison.

11 Q And -- and I know it's -- it's getting kind of late, and I just want to make  
12 a few points with you here. Are you trained to distinguish between an epithelial cell  
13 and a sperm cell?

14 A Yes, it's part of our training.

15 Q Okay. So visibly, when you look through a microscope you can  
16 distinguish between an epithelial cell and a sperm cell.

17 A With the staining --

18 MR. SPEED: I'm sorry --

19 THE COURT: Microphone?

20 MR. SPEED: Thank -- thank you, Your Honor.

21 MS. KOLLINS: I said -- is that what I said? Microscope, sorry. Long couple  
22 days.

23 BY MS. KOLLINS:

24 A With the staining that was mentioned earlier, yes.

25 Q Okay. So despite them both taking on the same colors of dye, you can

1 still distinguish between those two types of cells?

2 A Yes, based on the -- the sizes of those cells.

3 Q Okay. And there's a lot of talk about a presumptive testing and what  
4 you look for with your presumptive testing, with the acid phosphatase te -- acid  
5 phosphatase test. Do you recall that from Mr. Speed?

6 A Yeah.

7 Q Okay. Is that -- is that test perfect?

8 A Well it -- like he had mentioned, it gives false positives.

9 Q Okay. But if you go on to find a profile from that stain, even if you don't  
10 see something from the acid phosphatase test, I mean, that doesn't mean that your  
11 profile is wrong, correct?

12 MR. SPEED: Objection, Your Honor, calls for speculation.

13 THE COURT: She's an expert. Overruled.

14 BY MS. KOLLINS:

15 Q Can you see here what I'm asking? I mean, if the acid phosphatase  
16 test gives a mixed result or a false positive, okay. And then you go one from that  
17 location to find a sperm cell and obtain a profile, does it matter what the presumptive  
18 test said, if you ultimately find a full profile from the sperm sa -- from a sperm cell on  
19 that particular sample?

20 A The acid phosphatase test is just a presumptive test for the enzyme.  
21 DNA is not found in that enzyme.

22 Q Okay so it's a presumptive test the enzyme found in semen.

23 A It is commonly found in semen, yes.

24 Q Okay, and it can give you -- you can get a false positive, but you can  
25 still ultimately get a profile even if you have a false positive, I guess is my question.



1 Q Okay. Specifically, he started at Item 1.61, was -- which was Stain 1  
2 from the underwear. Despite that weak false positive, were you able to obtain a  
3 DNA profile from the it -- the evidence presented?

4 A I -- yes, but it has no bearings on the acid -- acid phosphatase test.

5 Q Okay. And I'm showing you that was specifically the sperm fraction  
6 from 1.61. So despite the weak acid phosphatase test, that had no bearing on your  
7 ultimate conclusion, right?

8 A Well, yes. That's not where the DNA profile's from. The purpose of the  
9 acid phosphatase test is to possibly identify the body -- the -- identify semen. We  
10 have a very similar presumptive test for blood. And for saliva, however, for the  
11 underwear, I didn't see any staining. So I ran this test to kind of zero me in if there  
12 is any possible semen there, where it is.

13 Q And the same things for 1.62, this is depicted in State's 13. Mr. Speed  
14 referred to a, you know, the weak positive for that presumptive test and ultimately,  
15 did that control your conclusions regarding this profile?

16 A It has -- the DNA profile does not come from that but it guided me to  
17 that particular stain.

18 Q Still able to obtain a profile -- a full profile consistent with Gregory  
19 Williams, correct?

20 A From the sperm fraction, yes.

21 Q From the sperm fraction. And same question as to 1.63, which is the  
22 swabbing from the interior crotch of the underwear. I'm not referring to the  
23 epithelial, I'm referring to the -- the item is 1.63, the sperm fraction, the swabbing.  
24 Indulgence for just one second. There we go. And that was a location you  
25 specifically referred to you had the weak positive on the presumptive test.

1 A On the swabbing I had a positive result --

2 Q Okay.

3 A -- for the acid phosphatase exam.

4 Q And I apologize, I must have written down his cross-examination wrong.

5 My apologies. Now there was a lot of discussion about how many sperm were seen  
6 on slides. Whether it was plus one, plus two, plus three, plus four. We learned from  
7 cross-examination that you do that microscopic viewing in two stages. Can you just  
8 explain what those numbers mean? The plus one, plus two, plus three, plus four?

9 A The plus one as --

10 MR. SPEED: Your Honor, I object to relevance with respect to plus three and  
11 plus four. There was no testimony given about any plus three or plus four  
12 indications in cross-examination.

13 MS. KOLLINS: Well, he argued that there should have been millions of sperm  
14 there, so I want her to be able --

15 MR. SPEED: No, that misstates my argument, Your Honor. I was talking  
16 about how she reported what she saw in her second microscopic slide examination.

17 THE COURT: She had testified earlier about three and four, but as an  
18 example as -- I think that was what she said. Three and four was an example  
19 because you only found one or two. Yes?

20 THE WITNESS: I'm sorry?

21 THE COURT: You testified earlier that about three and four would be just as  
22 an example?

23 MS. KOLLINS: Your Honor --

24 THE COURT: You ask.

25 MS. KOLLINS: Mr. Speed asked her about the concentration --

1 THE COURT: Right.

2 MS. KOLLINS: -- of sperm in semen. And one of his questions was phrased,  
3 where you would expect to see millions, you saw only X. So I want her to explain  
4 the numbers --

5 THE COURT: Okay.

6 MS. KOLLINS: -- that he cross-examined her on from her report.

7 THE COURT: All right. Overrule the objection.

8 BY MS. KOLLINS:

9 Q What does plus one mean?

10 A Plus one means that I saw one to few sperm head per view and they're  
11 difficult to locate. So they're not all over the slide.

12 Q Okay. And what does plus two mean?

13 A Plus two means that I see some in several views. So if I move the  
14 slide, every time I move the slide, I may see sperm I may not. But I do see more  
15 sperm in several views.

16 Q And plus three?

17 A Plus three is --

18 MR. SPEED: And I'd object to relevance, Your Honor. The witness did not  
19 testify about a plus three or seeing a plus three.

20 THE COURT: She didn't see it, but she used it as an example for  
21 understanding. Go ahead.

22 BY MS. KOLLINS:

23 Q Go ahead, ma'am.

24 A Plus three is where they're easy to locate, where I'll see sperm cells in  
25 almost every field of view.

1 THE COURT: You did not see a -- you did not see three?

2 THE WITNESS: No I did not.

3 BY MS. KOLLINS:

4 Q And I would assume plus four is even more than that?

5 A Yes, plus four is more than that. There is a lot of sperm cells in every  
6 view that I look at in the -- under the microscope.

7 THE COURT: And you saw no plus four?

8 THE WITNESS: No, I did not.

9 THE COURT: Okay.

10 BY MS. KOLLINS:

11 Q Mr. Speed asked you about the lysing process in the lab. Is that  
12 some -- I mean, obviously, that's part of your procedure.

13 A Yeah.

14 Q Does any way that that's conducted -- let me ask that a different way.  
15 Does the way lysing is -- conducted on a sperm fraction or sperm cell -- how do I  
16 want to say -- I'm sorry. Can -- not enough caffeine this morning. Does the way that  
17 that is conducted preclude you from finding a profile?

18 A I'm sorry I don't understand that.

19 Q Well, I guess, for my -- I don't want to leave anyone with the impression  
20 that that is somehow destructive to the evidence because --

21 MR. SPEED: Objection, Your Honor, Counsel is testifying.

22 THE COURT: Sustained.

23 BY MS. KOLLINS:

24 Q Is that destructive to the evidence in any way, the lysing?

25 A The purpose of the lysing is to break open the cell so if there is cells



1 present so that way DNA could be into the solution so I could obtain -- attempt to  
2 obtain a DNA profile in the end.

3 Q Were you given any items in this case, items of evidence to look for  
4 trace DNA on a non-porous surface? Were you given anything like that in this case  
5 to test?

6 A Like specifically asked?

7 Q Were you given -- did you obtain any items of evidence in this case that  
8 had to do with trace DNA or a non-porous surface? Were there any other items of  
9 evidence other than what we've talked about in here?

10 A Oh, other than this, no.

11 Q Okay. Now when you complete your analysis for any case, does it go  
12 through a technical review?

13 A Yes. It goes through a technical and administrative review.

14 Q Okay. Can you tell us about that and how that happens?

15 A Once I've completed my examination I've -- need to -- I reported my  
16 conclusion in a report as well as with -- in my repor -- my worksheet. I -- my casefile  
17 will go through two separate review process. The first process is known as the  
18 technical review process and both process is done by another trained analyst in the  
19 lab. So the technical review process is to ensure that I followed the procedure  
20 correctly, ensure that my conclusion is exactly what the pro -- you know, what the  
21 DNA analysis results are, and to ensure that I'm reporting it appropriately.

22 The administrative -- once that's completed, the administrative review is  
23 to ensure that I have no grammatical errors or misspellings, any of those types of  
24 things. It's more of an administrative, you know, make sure I have my page  
25 numbers on all my pages my initials where it needs to be. So it's more of an

1 administrative. Once both are completed then the -- and they are both being signed  
2 off. So I have two separate signatures in the file stating that the review was  
3 completed. Once that's done then the file and the report can be released.

4 Q Okay. And that's the file that Mr. Speed was asking you questions from  
5 and that you were referring to while you were seated here today, correct?

6 A Yes.

7 Q Okay, so that's -- that's reviewed for content and administratively for  
8 work product and administratively, correct?

9 MR. SPEED: Objection, Your Honor --

10 THE WITNESS: Yeah.

11 MR. SPEED: -- leading.

12 THE COURT: Overruled.

13 BY MS. KOLLINS:

14 Q And was -- that was done in this case?

15 A Yes it was done.

16 Q And who administratively -- who reviewed this -- who reviewed --

17 A An analyst?

18 Q -- this case for you? Yes.

19 A The analysts that did the technical review is Carol Ratamozo and the  
20 analyst that did the administrative review is Kimberly Danenburger.

21 Q And I do want to take you back just a moment, because I skipped over  
22 this in my notes, I apologize. To lab Item 1.6.3, that is a swabbing from the crotch of  
23 the underwear, the epithelial fraction specifically. Can we talk about that for just a  
24 moment? Did you find the portion of your testing that I'm talking about?

25 A I'm sorry?

1 Q Did you find that in your report?

2 A Yes, I did.

3 Q Okay. You indicated that, at least to the epithelial fraction, that the  
4 profile is consistent with a mixture of three individuals. One of which being male. Is  
5 that correct?

6 A One of it being a male, yeah.

7 Q Okay. So explain to me how you charted that out in the exhibit up  
8 there.

9 A In the first column, which is what the actual sample -- the E -- the  
10 epithelial fraction sample is, if you look at -- very difficult to explain this based on  
11 this. But when I'm looking at the actual profile, it's like a graph. It have peaks on it.  
12 If there is -- I had mentioned earlier that we inherit one copy from mom and one  
13 copy from dad, so in a, for instance, just so I can explain this.

14 In the major profile you see two -- two numbers or one number.  
15 Because you inherit one from each parent. Well, in a mixture, you would have more  
16 than -- you'll either have two or more of those numbers. So when I look at the  
17 graph, there is -- I can tell, based on how many numbers are at the different  
18 location, if there are any that have three to six alleles or six markers, then I know  
19 that there is more than one and more than two and possibly just three.

20 So in this case I was able to identify that there three -- at least -- there  
21 are three people in this mixture. You just can't see that here because some of  
22 those -- the stars, the -- oops, sorry -- the asterisk those are markers that are below  
23 my threshold. So you don't see it on the table but there might be one or two alleles  
24 or more that are below the threshold.

25 Q Is this the only place in your sampling -- in all your testing in this case

1 where you indicate there could be three contributors?

2 A This is a mixture that I said there were three individuals with at least  
3 one being male, yeah.

4 Q Okay and -- but nowhere else in the rest of the testing, the rest of the  
5 items that we've talked about?

6 A There is one mixture where I said there's at least two individuals,  
7 meaning I -- like I mentioned earlier, that there's two, there could be another  
8 contributor but I can't determine -- I can't determine that.

9 Q And only one being male, correct?

10 A On that one -- particular one?

11 Q On the -- on the one we're talking about right here.

12 A Yeah at least one contributor is male.

13 Q Okay. And then from that same portion of the underwear, that same  
14 swabbing, you also recovered a sperm fraction. Is that correct?

15 A Down at the bottom?

16 MR. SPEED: Objection, the characterization of recovered a sperm fraction.

17 THE COURT: Well, I'll let her explain it, she's the expert. Overruled. Ask  
18 that. Or you can ask it on recross.

19 MR. SPEED: Thank you, Your Honor.

20 BY MS. KOLLINS:

21 Q As to that same sampling from the underwear, there was an epithelial  
22 fraction and then there was a sperm fraction. Correct?

23 A From the sample, yes?

24 Q From this particular sample? And from the sperm fraction in that  
25 particular sample, what did you conclude?

1 A From the sperm fraction I concluded that the DNA profile obtained from  
2 the sperm fraction, from the swabbing, from the interior crotch underwear, is cons --  
3 consistent with Greg Williams.

4 Q So in the epithelial mixture from that same portion -- from that same  
5 swabbing -- because these two swabbings in evidence -- Item Number 1.63 are from  
6 the same area of the underwear, correct?

7 A Yes. Both of these are from the same sample that got separated into  
8 two.

9 Q Okay. And there's no mixture of a third party in the sperm fraction,  
10 correct?

11 A That is just a single source profile.

12 Q Okay. Consistent with Greg Williams pursuant to the analysis you gave  
13 us earlier, the probability, excuse me, you gave us earlier, correct?

14 A Yeah.

15 Q Okay.

16 MS. KOLLINS: Pass the witness, Your Honor.

17 MR. SPEED: May I have the Court's indulgence?

18 **RECROSS-EXAMINATION**

19 BY MR. SPEED:

20 Q Now you testified both yesterday and today about finding figures that  
21 were below your interpretative threshold. What does that mean?

22 A That just means that the DNA information that is present is below the  
23 interpretation threshold that had been determined by the laboratory. That I -- I'm not  
24 confident that the information is complete. So I'm not going to make any  
25 conclusions on those information.

1 Q And when you see information, or when you're -- let me work on this so  
2 that I can be more precise with you, Ms. Robertson. When you obtain alleles at the  
3 different loci that are viewed or that are made part of your differential analysis in  
4 your DNA profile, when you find that there are alleles that fall below your  
5 interpretative threshold, you're instructed to note them a different way by your  
6 manual. Isn't that right?

7 A Yes.

8 Q You're instructed to note them with red font, isn't that correct?

9 A Yeah.

10 Q This is State's Exhibit B -- or I'm sorry, 8. 8, your letter -- your number's  
11 wrong.

12 Can you see State's 8, Ms. Robertson?

13 A Yeah.

14 MR. SPEED: I'm sorry, Your Honor, I'm in the -- well, may I approach?

15 THE COURT: Yes.

16 BY MR. SPEED:

17 Q If I talk back here can you hear me well enough?

18 A Yeah, yeah.

19 Q Okay. I'm looking at Item 1.3; these are the rectal swabs, yes?

20 A Yes.

21 Q Okay, now at -- to the left, we're looking at the different DNA identifying  
22 loci, correct?

23 A That is correct.

24 Q The places on a DNA molecule where you're looking to find these  
25 different identifying alleles. Isn't that correct?

1           A     It's a different markers -- or different location, yeah.

2           Q     For example, right here, the first red; third from the bottom.

3           A     Okay.

4           Q     That is the locus known as amelogenin, yes?

5           A     Yeah.

6           Q     That is where an analyst is able to determine that the contributor to that

7 profile is in fact male, yes?

8           A     Male or female, yeah.

9           Q     Because that's where you'll see the Y short tandem repeat. Isn't that

10 right?

11          A     That is correct.

12          Q     Now when you note that there are alleles present that are below your

13 interpretative threshold, your testimony was that you can't be confident that you're

14 obtaining a legitimate match. Isn't that right? Explain the, can't be confident part

15 again please.

16          A     Well, it -- in a mixture, I cannot be confident that the -- the alleles or the

17 markers that are present is complete.

18          Q     Can't -- I'm sorry.

19          A     However, a single source, which is this particular profile, I am saying

20 that it's only one person and I'm o -- and I'm saying that with a one person profile

21 that there's going to be one or two alleles. So an al -- a marker that's below

22 threshold, I am not losing any information then we can make that allele call. It is not

23 going to be an asterisk. The asterisk is for mixture interpreting -- mixture

24 interpretation.

25          Q     All right. But when you're talking about alleles observed at the different

1 loci that are -- or loci -- that are below your interpretative threshold, the manual  
2 instructs you to note them in red font in your report. Isn't that right?

3 A Yes for single source profile.

4 Q All right. At the second loci where you say that you found two alleles,  
5 29 and 30 --

6 A Yeah.

7 Q -- they're consistent with the buccal swab from Mr. Williams.

8 A Yeah.

9 Q Both those alleles are noted in red font, correct?

10 A Yeah.

11 Q Meaning they are below the interpretative threshold, right?

12 A That is correct.

13 Q At the third allele -- where -- at the third loci, I -- I'm sorry -- locus, I'm  
14 sorry. Where we see alleles 8 and 11, those are supposedly consistent with the  
15 buccal swab from Mr. Williams also, correct?

16 A Yeah.

17 Q Both those allele numbers are noted in red font, isn't that right?

18 A That is correct.

19 Q Meaning that they are below the interpretative threshold, yes?

20 A Yeah.

21 Q In fact, Item Number 11 or Allele Number 11 is also bracketed.

22 A Correct.

23 Q Isn't bracketing another way for analyst to show that the allele that  
24 they're observing at that locus is below the interpretative threshold but in some ways  
25 still suitable for use?



1 A No.

2 Q What does the bracket mean?

3 A The bracket means that that particular marker, the 11 peak, is less than  
4 60 percent of the height of the 8 peak. So the bracket is just so I designate that  
5 there is an -- there's some imbalance between the two peaks. So typically in a -- in  
6 an ideal world, every peak is gonna -- if there are two peaks, they're going to look  
7 like this. Even, relatively even. The -- some situations, they are going to look like  
8 this, and there's variations of that imbalance. So if the imbalance is below the 60  
9 percent, so I'm taking -- dividing the smaller height of this peak with the bigger peak,  
10 then I will notate the smaller peak in brackets.

11 Q And that smaller, bracketed peak represents an allele that is 60 percent  
12 less -- or -- or less than 60 percent of the higher allele, correct?

13 A Correct.

14 Q All right. But that 60 percent figure is still below a certain interpretation  
15 threshold in the lab, isn't that right?

16 A The -- I can get the 60 percent imbalance even with profiles that are  
17 above the threshold.

18 Q I see. Looking at the fourth allele -- or the fourth locus where we see  
19 Alleles 7 and 10. Those are both noted in red font. Isn't that right?

20 A I think --

21 Q Or item -- or Allele 10 is -- Item 7 -- Allele 7 is not, right?

22 A Correct.

23 Q The third green locus we see Alleles 10 and 12. Those are both noted  
24 in red font, correct?

25 A Correct.

1 Q Meaning they are below the interpretative threshold, yes?  
2 A Yes.  
3 Q At the second gray I -- or Allele 21. That one is noted in red font also,  
4 isn't it?  
5 A Item 21, yeah.  
6 Q Below the interpretative threshold, yes?  
7 A Yeah.  
8 Q The fourth yellow locus, Alleles 14 and 18 are noted in red font, yes?  
9 A Yes.  
10 Q Below the interpretative threshold?  
11 A Yeah.  
12 Q At amelogenin, the locus where we determine gender. Allele Y is noted  
13 in red font, isn't it?  
14 A Yeah.  
15 Q Also below the interpretative threshold, yes?  
16 A Yeah.  
17 Q At the second red locus, Alleles 12 and 13. Both below the  
18 interpretative threshold.  
19 A Yeah.  
20 Q And at the third red locus, items or alleles 22 and 24. Both below the  
21 interpretative threshold, yes?  
22 A Yes.  
23 MR. SPEED: We have nothing further, Your Honor, we pass the witness.  
24 MS. KOLLINS: Very briefly, Your Honor.

25 **FURTHER REDIRECT EXAMINATION**

1 BY MS. KOLLINS:

2 Q What is the impact of that reporting threshold when you're talking about  
3 a single source? Like the sperm fraction?

4 A The -- with a single source profile I am confident, like I know that there's  
5 going to be two pe -- one or two peaks. So if the profile is only demonstrates one or  
6 two peaks and is below my threshold, and I am no -- and I observe that there is no  
7 possibility of a mixture then I can interpret that, below threshold alleles. Because  
8 I'm saying that there's no other person that could be in that sample, that particular  
9 sample. So if there's two peaks it belongs together or if it's one peak it belongs by  
10 itself.

11 Q And so -- and single source -- and you've prob -- I'm sure you've  
12 covered this, I just want to make sure that I make it clear. A single source, that  
13 sperm fraction, a sperm fraction's always going to be a single source, correct?

14 A That is not correct.

15 Q That's not correct?

16 A The sperm fraction can be a mixture as well.

17 Q Okay -- well -- a sper -- a single sperm is always gonna come from one  
18 person though. Because I guess when you say single source and I say single  
19 source --

20 A Well the sperm is going to come from what -- whomever the individual it  
21 came from.

22 Q Okay. When you say single source then, it -- describe exactly what you  
23 mean. Do you mean just not a mixture of two p -- of one or more persons?

24 A It is, right. It is just coming from one individual, it's not coming -- a  
25 mixture is more than one individual. Single source is, as the name implies, single.

1 It's just one individual.

2 Q Okay. So I guess that I convoluted that. And so then for all the  
3 reasons you stated, if you see those peaks in a single source that are below the  
4 reporting threshold --

5 MR. SPEED: Objection to recording threshold, Your Honor. The attorney's  
6 interpret --

7 MS. KOLLINS: Report, I said reporting threshold.

8 MR. SPEED: The -- the term is interpretative threshold, Your Honor.

9 MS. KOLLINS: I don't need him to correct me.

10 THE COURT: All right. He objected, sustain the objection. Just state it.

11 BY MS. KOLLINS:

12 Q If it is below the interpretive threshold, the interpretation threshold, why  
13 do you feel confident as an analyst when it's a single source to draw your  
14 conclusions?

15 A In this profile, I did not see any indications of a -- a second person. I --  
16 it's a single person, therefore, all the information present belongs to that single  
17 person, therefore, that I can go below the threshold.

18 MR. SPEED: Objection, Your Honor, as to the information present belonging  
19 to that single person.

20 THE COURT: You're objecting to the testimony of this individual? She's the  
21 expert. Overruled.

22 BY MS. KOLLINS:

23 Q Did you finish your answer?

24 A Yes.

25 MS. KOLLINS: Okay, nothing further.

1 **FURTHER RECROSS-EXAMINATION**

2 BY MR. SPEED:

3 Q Ms. Robertson, when you say belong to a single person, that is not  
4 correct. Isn't it consistent with a single person?

5 A You are -- you are right. I misspoke that.

6 Q All right. And just so that it's clear, when we say sperm fraction, we are  
7 not necessarily talking about a sperm cell. Isn't that right?

8 A The sperm cell is typically in the sperm fraction but the sperm fraction is  
9 just the separation from the epithelial fraction.

10 Q But a sperm fraction is not necessarily a sperm cell. Isn't that right?

11 A Well that's typically where the sperm cell is located, but that's where the  
12 name -- the name sperm fraction indicates that I -- if I have sperm present, that the  
13 sperm would typically be in the sperm fraction.

14 Q If you had sperm present?

15 A If I had sperm present, yes.

16 Q That's all, nothing further, Your Honor.

17 MS. KOLLINS: Nothing else.

18 THE COURT: Jury have any questions of this witness, write them down.

19 Send the attorneys out in the hall.

20 [Pause in proceedings while the Court and Counsel discuss Jury Questions]

21 **EXAMINATION BY THE COURT**

22 BY THE COURT:

23 Q Will sperm count decrease with time?

24 A Yeah.

25 THE COURT: Question by the State.

1 MS. KOLLINS: No, Your Honor.

2 THE COURT: Question by Defense?

3 MR. SPEED: Court's indulgence.

4 **FOLLOW-UP EXAMINATION**

5 BY MR. SPEED:

6 Q Now when you testify that sperm count can decrease with time, there's  
7 a distinction between sperm count when we're talking about urological medicine and  
8 counting sperm in a forensic analysis. Isn't that right?

9 A I -- I'm --

10 Q When we say sperm count or low sperm count, typically a person  
11 understands that to mean something related to urology or urological medicine, right?

12 A Yeah.

13 Q That's not what we're talking about here, just so that that's clear.  
14 Right? We're not talking about sperm count; we're talking about number of sperm.

15 A Right, right.

16 Q Okay, all right. Your testimony was that sperm count or number of  
17 sperm can decrease over time, isn't that right?

18 A Yeah.

19 Q Okay. But in the collection of sexual assault kit like the one you  
20 examined in this case, doesn't the DNA lab manual note that the swab should be  
21 collected within a certain number of hours?

22 A Yes.

23 Q Okay and in this case, the swabs were collected on the morning of -- or  
24 the afternoon of September 7<sup>th</sup>, yes?

25 MS. KOLLINS: I'm gonna object, it's beyond the scope of her knowledge. I

1 mean, she'll know when the kit came in, she doesn't know the hour and she wasn't  
2 there for the medical exam.

3 THE COURT: Sustained.

4 BY MR. SPEED:

5 Q When was it booked into evidence? I believe that was September 12<sup>th</sup>,  
6 wasn't it?

7 A Booked, yes.

8 MS. KOLLINS: Same objection because --

9 MR. SPEED: That's in her worksheet.

10 THE COURT: It came from the thing. She answered it.

11 MS. KOLLINS: Well into evidence at the hosp -- foundation then. Hospital or  
12 Metro.

13 BY MR. SPEED:

14 Q When was the sexual assault kit booked, in this case? According to  
15 your worksheet.

16 A Booked where? I'm sorry, I didn't get where.

17 Q Booked according to your worksheet.

18 A Well it was booked at the evidence vault on September 12<sup>th</sup>.

19 Q Of what year?

20 A 2013.

21 Q All right.

22 MR. SPEED: Nothing further.

23 **EXAMINATION BY THE COURT**

24 BY THE COURT:

25 Q All right. Were other biological materials such as blood, saliva, hair

1 found or tested for in the sexual assault kit?

2 A In this particular sex assault kit, no.

3 THE COURT: Questions by the State?

4 MS. KOLLINS: No, Your Honor.

5 MR. SPEED: No, Your Honor.

6 THE COURT: Thank you, you're free to go. You're free to go. We're going  
7 to take a five minute recess. We have two short witnesses that have been here  
8 since nine o'clock this morning. We're going to let -- take care of them after your  
9 restroom break.

10 So, during the recess you're admonished not to talk or converse among  
11 yourselves or with anyone else on any subject connected with this trial. Or read or  
12 watch or listen to any report of or commentary on the trial or any person connected  
13 with this trial by any medium of information including, without limitation, newspapers,  
14 television, the radio, or the internet. Or form or express an opinion on any subject  
15 connected with the trial until the case is finally submitted to you. There's some  
16 evidence over on that -- Okay, take five minutes, please.

17 THE MARSHAL: All right, folks.

18 [Outside the presence of the jury]

19 THE COURT: Door's closed. All right, take five minutes. If you guys need to  
20 use the restrooms, including my staff, Jill you'll stay and watch her stuff. If she  
21 needs you, right? I'll be back shortly.

22 [Recess taken at 12:30 p.m.]

23 [Trial resumed at 12:40 p.m.]

24 [Outside the presence of the jury]

25 THE COURT: You ready? Bring them in Tom.



1 [In the presence of the jury]

2 THE MARSHAL: All rise, please.

3 And be seated.

4 THE COURT: Stipulate to the presence of the jury?

5 MS. KOLLINS: Yes, Your Honor.

6 MR. SPEED: Yes, Your Honor.

7 THE COURT: Okay. Call your next witness State.

8 MS. RHOADES: Detective Jessica Flink.

9 **JESSICA FLINK**

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

11 THE CLERK: Thank you. Could you please state your full name, spelling  
12 your first and last name, please?

13 THE WITNESS: Jessica Flink. J-E-S-S-I-C-A, F-L-I-N-K.

14 MS. RHOADES: May I proceed, Your Honor?

15 THE COURT: Yes.

16 MS. RHOADES: Thank you.

17 **DIRECT EXAMINATION**

18 BY MS. RHOADES:

19 Q Ma'am, how are you employed?

20 A I'm a detective with the Las Vegas Metropolitan Police Department.

21 Q How long have you been with Metro?

22 A It will be 17 years, January.

23 Q And what unit with Metro do you currently work?

24 A Computer forensics.

25 Q How long have you been in computer forensics?

1 A Two years, four months.

2 Q Before computer forensics, what unit in Metro did you work?

3 A Sexual assault.

4 Q In September of 2013, were you assigned to the sexual assault unit?

5 A Yes.

6 Q And how long had you been assigned to that unit back in September of

7 2013?

8 A In the area of five and a half years.

9 Q And when did you get assigned to computer?

10 A December 2013.

11 Q December 2013, okay. Specifically, September 7<sup>th</sup>, 2013 were you

12 assigned to investigate a reported sexual abuse by Aneesah Hasan?

13 A I'm sorry, say that -- rephrase that again.

14 Q Sure. Back September 7<sup>th</sup>, 2013, were you assigned to investigate a

15 reported sexual abuse by Aneesah Hasan?

16 A Well she wasn't the suspect, but I was assigned to that case. It's just

17 the way you sounded, made it sound like she was the suspect.

18 Q Sure. Was it your understanding that it was Aneesah Hasan who

19 initially called 9-1-1 and reported it?

20 A She's the mother, yeah.

21 Q And do you recall the names of the reported victims of sexual assault?

22 A Tyana Hasan and Amia -- I don't remember if it was Hasan or Moody.

23 Q So Amia and Tyana, is that correct?

24 A Yes. Uh-huh.

25 Q What did you do when you were assigned to this call?

1 A I was dispatched to Sunrise Hospital. And that's --

2 Q Do you remember about what time you went to Sunrise Hospital on  
3 September 7<sup>th</sup>?

4 A Early evening? I don't remember -- probably in the maybe the five to  
5 six p.m. hour -- hour?

6 Q And how is it that you get the information to go to Sunrise?

7 A I am called, I believe by the patrol officer. Sometimes the hospital but I  
8 believe it was a patrol officer.

9 Q Did you respond to the hospital with anyone else?

10 A Detective Tennant.

11 Q Was he your partner at that time?

12 A We don't have assigned partners he -- would've just been who was  
13 available to go.

14 Q When you arrived at the hospital what -- what did you do?

15 A I made contact with the -- the uniformed officer that's there.

16 Q And did you get some information from him?

17 A Yeah, I just get -- just an overview and -- and he will eventually give me  
18 the report that he's writing.

19 Q Based on the information that you obtained from that officer, what did  
20 you do?

21 A I went in and spoke with the mother.

22 Q And did you interview her?

23 A Yes.

24 Q And was that interview recorded?

25 A Yes it was.

1 Q Did you also interview all three girls?  
2 A Yes.  
3 Q Do you recall who you interviewed first?  
4 A Amia.  
5 Q Do you remember Amia's demeanor when you talked to her?  
6 A She was very scared. She started crying soon as we walked into the  
7 room, before I even said anything.  
8 Q And who did you interview second?  
9 A I believe it was Tyana.  
10 Q Do you remember Tyana's demeanor?  
11 A Timid, embarrassed, but she was calm.  
12 Q And did you also interview Kayla?  
13 A Yes.  
14 Q And do you remember her demeanor?  
15 A She was for lack of a better word, kind of disinterested, like she didn't  
16 really want to talk to me.  
17 Q How was mom -- what was mom's demeanor like when you spoke with  
18 her?  
19 A She was fine, she was calm, she was cooperative.  
20 Q And did Detective Tennant speak with the two boys?  
21 A Yes.  
22 Q And all of those interviews were recorded?  
23 A Yes.  
24 Q Did you also in your capacity as the assigned detective request that a  
25 full sex kit be done in this case?

1 A Yes.

2 Q And on which child?

3 A On Tyana.

4 Q Was any exam requested on Amia?

5 A No.

6 Q And the full sex kit, why did you request that in this case?

7 A Because what was disclosed to me was skin to skin contact, which

8 sounded to be penetration, so the full kit was required.

9 Q And was that within a certain time period?

10 A 72 hours is the time frame.

11 Q And was it your understanding that --

12 A It was in 24 hours.

13 Q -- an incident had occurred within 24 hours.

14 A Yes. Yes.

15 Q Did you do anything else at the hospital that night, reference this case?

16 A No.

17 Q Going to September 19<sup>th</sup>, 2013 did you obtain a search warrant?

18 A Yes.

19 Q And what was that search warrant obtained for?

20 A For DNA for Mr. Williams.

21 Q Was it for a buccal swab?

22 A For a buccal swab, yes.

23 Q And what's a buccal swab?

24 A It's a Q-tip, basically, two Q-tips in the inside of his mouth.

25 Q But after you obtained that search warrant did you also obtain that

1 buccal swab from the Defendant?

2 A Yes.

3 Q Okay, and do you recognize -- did you make contact with the Defendant  
4 on that day?

5 A Yes.

6 Q And do you recognize him in court today?

7 A Yes, it's this man sitting here at the end in the white long sleeved shirt.

8 THE COURT: Record reflect identified the Defendant.

9 MS. RHOADES: Thank you, Your Honor.

10 BY MS. RHOADES:

11 Q So on September 19<sup>th</sup>, 2013 you obtained a buccal swab from the  
12 Defendant?

13 A Yes.

14 Q Okay. And what did you do with that buccal swab?

15 A I impounded it.

16 Q And did you impound it on that same day?

17 A Yes.

18 MS. RHOADES: Your Honor, may I approach your clerk?

19 THE COURT: Yes.

20 MS. RHOADES: Thank you. And permission to publish what's already been  
21 admitted, that's State's 3.

22 MR. SPEED: No objection, Your Honor.

23 BY MS. RHOADES:

24 Q Okay. What -- what is State's 3 that we're looking at here?

25 A This is the envelope for the buccal swab.

1 Q Okay, and do you recognize it?

2 A Yes.

3 Q How do you recognize it?

4 A It's my handwriting.

5 Q Can you point to your handwriting? Oh --

6 A My -- oh.

7 Q -- or can you mark it on the screen, Your Honor?

8 THE COURT: Yeah. You can touch the screen.

9 THE WITNESS: Oh.

10 THE COURT: Circle it. It won't circle real well, but --

11 THE WITNESS: And it's not pink.

12 THE COURT: Somebody changed the color.

13 THE WITNESS: All right, a little sloppy there.

14 BY MS. RHOADES:

15 Q So that's all your handwriting up at the top of that envelope?

16 A Yes. Not the H -- oh I'm sorry, yeah that is. It -- the -- the 1-1 is me too,  
17 yes.

18 Q Okay, so this up here is the date and is that September 19<sup>th</sup>, 2013?

19 A Yes.

20 Q And that's the date that you obtained it and also impounded it?

21 A Yes.

22 Q Okay. And then the event number -- is every case that Metro gets  
23 assigned to assigned an event number?

24 A Yes.

25 Q And is it the date, starting with the year, the month, and the day?

1 A Yes.

2 Q And then the last four are the random numbers that get assigned to it?

3 A Well, this is indicating that it was the 2,553<sup>rd</sup> call of the day.

4 Q Okay. And the event number is 1309072553.

5 A Yes.

6 Q And then your signature right here, indicating that you impounded that

7 buccal swab on that day.

8 A Right. Uh-huh.

9 Q And then this red evidence tape that we see on the back --

10 A Those are my initials and the -- the date.

11 Q Is your employee identification number on there too?

12 A Yeah.

13 Q Okay. And this seal, did you put this seal on it yourself?

14 A Yes.

15 Q And just kind of zooming out, if I can. Is there anything different about

16 this envelope than when you initially impounded it on September 19<sup>th</sup>, 2013?

17 A Yeah, they chain of custody, the blue tape at the bottom, the blue

18 writing on all of it is not me.

19 Q Okay. When you obtained the buccal swabs, how many -- how many

20 did you take in this case?

21 A There's two in the kit.

22 Q After you did this, did you submit a request to compare what had been

23 done at the hospital with the buccal swabs that you impounded?

24 A Yes.

25 Q To your knowledge, were any -- was any clothing collected as a result



1 of the kit that you had requested at the hospital?

2 A Underwear is always collected as well, and included with the kit.

3 Q Were there any other clothing items collected?

4 A I do not know. Not by me. I don't see the kit, I'm not there for the exam  
5 so I -- I know the underwear is for sure, but of the outer clothing I'm not -- I don't  
6 know.

7 Q Did you collect any items of clothing --

8 A No.

9 Q -- from the apartment?

10 A No. No.

11 Q And are you aware that any other items besides what items were  
12 collected in the sex kit and collected in this case?

13 A No, I'm not aware.

14 Q Was there any processing done at the apartment with regard to blood,  
15 hair, saliva, anything of that nature?

16 A No, did not go to the apartment.

17 MS. RHOADES: Pass the witness, Your Honor.

18 THE COURT: Cross.

19 **CROSS-EXAMINATION**

20 BY MR. SPEED:

21 Q Detective Flink, you testified that you obtained and booked the buccal  
22 swab on September 19<sup>th</sup> of 2013, yes?

23 A Yes.

24 Q Where was it from that date until October 28<sup>th</sup>, 2013, if you know?

25 A I don't know.

1 MR. SPEED: Nothing further.

2 MS. RHOADES: Just briefly.

3 **REDIRECT EXAMINATION**

4 BY MS. RHOADES:

5 Q When you impounded the buccal swab, where did it go?

6 A It goes into our locked evidence vault that is at the headquarters  
7 building on Martin Luther King and Alta.

8 Q And you didn't get it out after you impounded it on September 19<sup>th</sup>?

9 A I don't have access. Once it's locked in, it's locked in. I don't have  
10 access after that.

11 Q Who has access after that?

12 A The evidence techs and I -- I believe a supervisor may.

13 Q Can you describe the evidence well -- what the process of what  
14 happens to evidence after you drop it off at the vault? Do you know?

15 A I know that they're picked up daily at -- from all of the -- all of the  
16 evidence vaults that we have in the -- in the valley. And then they're taken to the  
17 main evidence vault, which is located on Spectrum, which is in the area of Pecos  
18 and Stewart. And then from there I have no idea.

19 Q Okay, and only evidence vault technicians or supervisors would have  
20 access to the evidence and then send it out if someone requests it.

21 A They would have access to the evidence at the substation only the  
22 evidence personnel would have access to it over at Spectrum. If I need to get  
23 something out, I wait in the waiting room and they go back and they get it, provided I  
24 have the proper paper work and the I.D. to get it out.

25 Q And when you say they go back and they get it you mean the evidence

1 vault technicians?

2 A Yeah. And I've never been back there so I couldn't tell you what it  
3 looks like.

4 Q So when you booked the evidence into evidence, it was booked into  
5 sexual assault then it was transported to the vault?

6 A It's booked into the -- the one evidence room that we all have -- use,  
7 down at headquarters. And for something the size of this, it would have gone into; it  
8 looks almost like a locker. And so you have to push a button to open it, once it's in,  
9 you lock it and then it cannot be opened, unless from the other side; which is in the  
10 back side of the secure vault that I don't have access to.

11 Q And headquarters is a separate building from the main vault?

12 A Yes.

13 MS. RHOADES: Nothing further, Your Honor.

14 **RECROSS-EXAMINATION**

15 BY MR. SPEED:

16 Q Detective Flink, when did you book it into the evidence vault?

17 A On the 19<sup>th</sup> of September at 5:55.

18 MR. SPEED: Court's indulgence.

19 BY MR. SPEED:

20 Q Detective Flink, what is your Metro Police Department P-number?

21 A 6272.

22 Q And was it 6272 in September of 2013?

23 A It's always been 6272.

24 Q It's always been 6272. You don't recall booking the buccal swab  
25 belonging to Greg Williams into the evidence vault on October 28<sup>th</sup>, 2013?

1 A I did not book the evidence on October 28<sup>th</sup>. It was September 19<sup>th</sup>.

2 Q So if that was reported, that would be mistaken.

3 A I don't know what you're looking at, sir. It was impounded by me into  
4 the evidence vault that I have access to at headquarters on September 19<sup>th</sup>.

5 Q You don't recall making a note where the evidence was booked on  
6 October 28<sup>th</sup>, 2013?

7 A No.

8 MR. SPEED: May I approach, Your Honor?

9 THE COURT: Yes.

10 BY MR. SPEED:

11 A That's my P-number.

12 Q And this says date.

13 A This is not me. This is a -- this is what I'm assuming is WIN-A [sic]. So  
14 I don't know what it is exactly -- I don't know what this database is. I do a  
15 handwritten report. Who would've impounded that into the computer, on what date,  
16 I have no idea.

17 Q Nothing further, Your Honor.

18 **FURTHER REDIRECT EXAMINATION**

19 BY MS. RHOADES:

20 Q Do you know how evidence gets from the main vault to the DNA lab?

21 A I do not.

22 Q And do you know what process they go through when they're notating  
23 when they get the evidence into their DNA lab when they get it from the vault. Do  
24 you know that process at all?

25 A I do not.

1 Q Do you know the process from how evidence gets from headquarters to  
2 the main vault?

3 A Driven from the evidence techs.

4 Q From the evidence techs?

5 A Yes.

6 Q Okay, and how does that work?

7 A They go down, I've seen a couple of them, come down on a very large  
8 van. I don't know their schedule, you know, who -- what substation goes first. But  
9 they will go and they will take the -- the evidence out of the evidence vault and then  
10 take it back to the main evidence vault.

11 Q And the evidence envelope that we looked at, containing the buccal  
12 swabs that you impounded from Gregory Williams, the date at the top left corner is  
13 indicating the date that you impounded those swabs.

14 A That's the day I dropped it, yes.

15 Q The day that you dropped it.

16 A Yes.

17 Q At headquarters?

18 A Correct.

19 Q Okay.

20 MS. RHOADES: Nothing further.

21 MR. SPEED: That's all, Your Honor.

22 THE COURT: Okay. Does Jury have any questions of this Detective? No.

23 Thank you Detective, you're free to go. Call your next witness, State.

24 MS. RHOADES: Officer Tyler Burgess.

25 **TYLER BURGESS**

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

2 THE CLERK: Please state your full name, spelling your first and last name for  
3 the record.

4 THE WITNESS: Tyler Burgess. First name, T-Y-L-E-R. Last name,  
5 B-U-R-G-E-S-S.

6 THE COURT: Go ahead.

7 **DIRECT EXAMINATION**

8 BY MS. RHOADES:

9 Q Thank you, Your Honor. Sir, how are you employed?

10 A I work for the Las Vegas Metropolitan Police Department.

11 Q And are you a patrol officer?

12 A I am.

13 Q How long have you been a patrol officer with Metro?

14 A Eight years.

15 Q Do you work in a particular area of the Las Vegas valley?

16 A Right now I work up in the Northwest part of town.

17 Q Back in September 2013 were you a patrol officer with Metro?

18 A I was.

19 Q Were you working in a different area?

20 A I was. I worked in the Downtown Area Command.

21 Q And do you recall what shift you were working back in September of  
22 2013?

23 A It'd be the swing shift.

24 MS. RHOADES: Your Honor, may I approach your clerk?

25 THE COURT: Yes.

1 MS. RHOADES: Thank you.

2 BY MS. RHOADES:

3 Q So, swing shift, what hours is that.

4 A Two-thirty in the afternoon to twelve-thirty a.m.

5 Q Say that again?

6 A So, two-thirty in the afternoon to twelve-thirty a.m.

7 MS. RHOADES: May I approach the witness, Your Honor?

8 THE COURT: Yes.

9 BY MS. RHOADES:

10 Q You said you worked at Downtown Area Command?

11 A Correct.

12 Q I'm going to show you what's been marked as State's Proposed Exhibit

13 Number 1. Do you recognize what's depicted in this photograph?

14 A I do.

15 Q And what is it?

16 A It's a neighborhood to the east of the Area Command.

17 Q So is it in the Downtown Area Command?

18 A It is.

19 Q Okay, and what are the main cross streets here?

20 A The -- the area there's north of 28<sup>th</sup> Street and Charleston, which is  
21 basically northwest of Fremont and Charleston.

22 Q And are you famil --

23 A I'm sorry, northeast of -- sorry, northeast of Fremont and Charleston.

24 Q Okay. Are you familiar with this area in your capacity as working as a  
25 patrol officer in Downtown Area Command?

1 A I am.

2 Q And does this fairly and accurately depict the area that you've  
3 described for us?

4 A It does.

5 Q I move for the admission of State's 1, Your Honor.

6 MS. ROSS: No objection, Your Honor.

7 THE COURT: Be admitted.

8 **[STATE'S EXHIBIT 1 ADMITTED]**

9 MS. RHOADES: And permission to publish?

10 THE COURT: Yes.

11 MS. RHOADES: Thank you.

12 BY MS. RHOADES:

13 Q All right. Showing you State's 1. On September 7<sup>th</sup>, 2013, did you  
14 respond to an apartment located at 2851 Sunrise Avenue?

15 A I did.

16 Q And is that the Juan Garcia Apartment Complex?

17 A It is.

18 Q And do you recall what specific apartment you went to?

19 A I believe it was B205.

20 Q And the red dot that we're looking at here in State's 1, is that the  
21 general location of the apartment?

22 A That's the general location, yes.

23 Q Okay. Why did you respond to that location on that day?

24 A We received a call of a -- child molest call. That the mother of the  
25 victim was calling in saying that her boyfriend -- live-in boyfriend had molested --



1 had been molesting two of her five children.

2 Q And when you responded to that apartment, were you by yourself?

3 A At that time, I believe I was.

4 Q Do you recall about what time you arrived at the apartment?

5 A I was dispatched approximately 4:09 in the afternoon so probably  
6 roughly quarter after 4.

7 Q And when you arrived at the apartment do you remember anything  
8 about what the apartment looked like?

9 A It just looked like five kids lived there. It was -- it was cluttered but it  
10 wasn't filthy or anything like that.

11 Q When you got there, who was there?

12 A There was -- I believe it was the five children, the caller, which was the  
13 mother Aneesah Hasan and the Defendant Gregory Williams.

14 Q And do you see Gregory Williams in court today?

15 A I do.

16 Q Can you point to him and tell me something he's wearing today?

17 A White collared shirt.

18 THE COURT: Record will reflect he's identified the Defendant.

19 MS. RHOADES: Thank you, Your Honor.

20 BY MS. RHOADES:

21 Q When you arrived at the apartment, where was Gregory Williams?

22 A If my memory recalls, I believe he was in the living room at the time.

23 Q And do you recall where the mom was?

24 A I believe -- she -- she answered the door so I'm not sure if she -- at the  
25 door but I don't know where she was prior to that.

1 Q Do you remember where the kids were?

2 A All about the apartment.

3 Q Okay. And when you got there, who was it that you first made contact  
4 with?

5 A The caller, Aneesah Hasan.

6 Q After your conversation with her, did you talk to any of the kids?

7 A I did. I talked to the alleged victims, Amia Hasan and Tyana Hasan.

8 Q When you talked to Amia, did you talk -- did you separate her from the  
9 other kids?

10 A I did. But I had Aneesah, her -- her mother, with her at the time.

11 Q And where were you guys at?

12 A We went back to a back bedroom and spoke.

13 Q And did the same thing go for Tyana?

14 A That's correct.

15 Q About how long did you talk to Amia?

16 A Very shortly, I'd probably say a minute or two.

17 Q And about how long did you talk to Tyana?

18 A Probably about the same?

19 Q About how long were you at the apartment?

20 A I would say with talking to the caller, talking to the victims, calling the  
21 detectives, figuring out what we're going to do, maybe a half hour.

22 Q So after you spoke with Amia and Tyana, did you speak with any of the  
23 other children individually?

24 A No.

25 Q After you spoke with them did you contact sexual assault detectives?

1 A I did.

2 Q You're not -- you weren't a sexual assault detective, right?

3 A No.

4 Q Did you do any kind of a recorded interview with them?

5 A I did not, no.

6 Q And any interview you had with them was fairly short?

7 A It was fairly short, just to get the preliminary information so I know which  
8 route we're going to go, what detectives we're going to call and basically what  
9 direction we'd like to go with the investigation.

10 Q After you called the sexual assault detectives, what did you do?

11 A At that time I escorted Aneesah with the two alleged victims and the  
12 other three kids to Sunrise Hospital.

13 Q When you say you escorted, do you remember who drove?

14 A I be -- if -- I believe Aneesah did, in her vehicle, and I followed.

15 Q Do you remember anything about an uncle showing up at the apartment  
16 or at the hospital?

17 A I don't recall.

18 Q And did you drive straight from the apartment to the hospital?

19 A Yes.

20 Q When you arrived at the hospital what did you do?

21 A It's customarily what we do is we go in there, we talk to the charge  
22 nurse or the nurse checking them in; let them know what we have. And then they'll  
23 bring them in -- and -- escort them in and start the process from there.

24 Q Did you stay at the hospital after that?

25 A For a short time until the sexual assault detectives sh -- arrived. And

1 then I left.

2 Q Did Gregory Williams go to the hospital with you?

3 A No.

4 Q Did he remain at the house?

5 A When I left, he was at the house, yes.

6 MS. RHOADES: State will pass the witness, Your Honor.

7 MS. ROSS: A brief indulgence, Your Honor.

8 **CROSS-EXAMINATION**

9 BY MS. ROSS:

10 Q Officer Burgess, you testified back in September of 2013 you were a  
11 patrol officer?

12 A Yes.

13 Q And as a patrol officer, you drive a patrol cruiser, correct?

14 A That is correct.

15 Q Do you -- did you have a car on that day?

16 A It was a Crown Vic at that time, yes.

17 Q Crown Vic. And you testified that you escorted Aneesah to the hospital,  
18 correct?

19 A With her children.

20 Q With her children. Did all the children ride with her?

21 A I believe they did. I don't believe any of the children rode with me.

22 Q You did not transport anyone to the hospital?

23 A No.

24 MS. ROSS: No further questions, thank you.

25 MS. RHOADES: Nothing from the State, Your Honor.

1 THE COURT: Jury have any questions of this witness? Thank you officer,  
2 you're go home -- free to go home.

3 THE WITNESS: Thank you.

4 THE COURT: All right, we'll take our afternoon recess. During the recess  
5 you're admonished not to talk or converse among yourselves or with anyone else on  
6 any subject connected with this trial. Or read or watch or listen to any report of or  
7 commentary on the trial or any person connected to this trial by any medium of  
8 information including, without limitation, newspapers, television, the radio, or the  
9 internet. Or form or express an opinion on any subject connected with the trial until  
10 the case is finally submitted to you. Remember, no Twitter, no Instagram, no social  
11 media. See you back here at 1 -- no -- 2:15.

12 THE MARSHAL: All rise. Ladies and gentlemen, right this way.

13 [Outside the presence of the jury.]

14 THE COURT: Door closed. See you guys at 2:15.

15 THE COURT: Have all your witnesses here, we'll go through all -- yeah --  
16 four of them?

17 MS. KOLLINS: No, we just got rid of two and I have two more.

18 THE COURT: All right, we'll do them both.

19 [Recess taken at 1:05 p.m.]

20 [Trial resumed at 2:23 p.m.]

21 [Outside the presence of the jury]

22 THE COURT: Bring them in. Do we have jury instructions done yet?

23 MS. ROSS: We have them done. We will be needing to make a record about  
24 them.

25 THE COURT: Well I want the clean ones done and given to me and then

1 we'll make a record. Just the ones that you guys are fighting about.

2 MS. ROSS: You have the clean copies of both of ours and it's my  
3 understanding the State is objecting to all of ours.

4 THE COURT: Okay -- I'll -- you've got them? All right, I'll go through and look  
5 at them.

6 MS. KOLLINS: Not all.

7 [In the presence of the jury]

8 THE MARSHAL: All rise for the presence of the jury, please.

9 Thank you, you may be seated.

10 THE COURT: Stipulate to the presence of the jury?

11 MS. KOLLINS: Yes, Your Honor.

12 THE COURT: Call your next witness, please.

13 MS. KOLLINS: State calls Doctor Vergara.

14 **THERESA VERGARA**

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

16 THE CLERK: Thank you. Can you please state your full name, spelling your  
17 first and last name for the record?

18 THE WITNESS: Theresa Vergara. That's V as in Victor, E-R-G-A-R-A.  
19 Theresa, T-H-E-R-E-S-A.

20 **DIRECT EXAMINATION**

21 BY MS. KOLLINS:

22 Q Good afternoon Doctor, how are you?

23 A Fine, thank you.

24 Q Ma'am where do you practice?

25 A Sunrise Pediatric Emergency Room.

1 Q And how long have you been at Sunrise Pediatrics' Emergency Room?

2 A Since 1999.

3 Q And what is your educational background and your residency  
4 background that qualifies you to work there?

5 A Well I'm -- I'm double boarded in both pediatrics and pediatric  
6 emergency medicine. I did a residency program in St. Joseph Hospital in Patterson,  
7 New Jersey followed by additional training at Mt. Sinai in New York for Pediatric  
8 Emergency Medicine Fellowship. I stayed at Mt. Sinai for eight years until 1999  
9 when I located from Mt. Sinai Hospital to Sunrise Hospital in Nevada.

10 Q And you've been in the Pediatric Emergency unit since your arrival at  
11 Sunrise?

12 A Yes, my entire career is been in the -- working in the pediatric  
13 emergency room from Mt. Sinai's pediatric emergency room to Sunrise pediatric  
14 emergency room.

15 Q As part of any of your training or background have you had training in  
16 performing sexual assault examinations on children?

17 A Yes. With pediatric emergency medicine, anything that -- anything  
18 that -- shows up in the emergency room, whether fever, breathing difficulty, asthma,  
19 and trauma. Whether if it's stitching up a cut or broken bones to trauma of which  
20 abuse is part of trauma.

21 Q Okay so you have had specific classes then in how to conduct those  
22 examinations and/or training?

23 A Yes.

24 Q Where you on duty at Sunrise Hospital in the pediatric ER on  
25 September 7<sup>th</sup> of 2013?

1 A Yes.

2 Q Okay. And I don't know if I asked you pre -- I don't think I did ask you  
3 previously, have you testified as an expert here in Clark County regarding the  
4 performance and diagnosis from sexual assault examinations?

5 A Yes, I have.

6 Q Did you have occasion to treat one, Tyana Hasan, on September 7<sup>th</sup> of  
7 2013?

8 A Yes.

9 Q And that would've been about 17 to 20 hours about, in the early  
10 evening hours?

11 A Yes.

12 Q Okay, and before we get started with Tyana's exam could you just give  
13 us an overall -- just explanation of how a sexual assault examinations take place?

14 A Well just like any child that comes to the emergency room, there's a  
15 chief complaint. It -- anyone showing up in the -- in the window with a parent. For  
16 Tyana, it was already -- I believe -- went through the police report was already made  
17 and so I was informed. Dr. Vergara, we have a SCAN patient. At Sunrise we have  
18 this SCAN program -- I'm meaning S-C-A-N Suspected Child Abuse and Neglect.  
19 So once they present in the window, that get activated and -- and get treated  
20 accordingly.

21 Q And -- does a nurse see them prior to you seeing them?

22 A Yes.

23 Q Okay, so some kind of triage is performed with the child?

24 A Just like any other patient, they go to the window we have the triage  
25 nurse and then -- and then the doctor is informed -- but yes, everyone gets triage by



1 the nurse.

2 Q Okay and when we say triage, what do we mean? What happens  
3 specifically with a child abuse suspected situation?

4 A Well because it's a -- a child abuse, it gets assigned a -- a senior nurse  
5 or the charge nurse to address that patient. That is, of course, one patient among  
6 the number of patients that that nurse is -- is handling at that time.

7 Q Okay so what function -- what does she perform? In other words, what  
8 information does she gather in her triage that she passes on to you?

9 A Well she gets -- if the -- again, if the police were already involved, they  
10 get the report that yes, this is a sexual abuse versus let's say a physical abuse case.  
11 And then the -- the story if -- if it's already known or reported by let's say, the parent  
12 to exactly what happened or if the -- the disclosure of the child. That information is  
13 relayed and -- and then there's -- the patient gets assigned a special room, which is  
14 Room 1. Where we deal with all the S -- SCAN patients.

15 Q Okay. So somebody gathers the nature of the abuse, whether there's  
16 been penetration or not. Would that be accurate?

17 A Yes.

18 Q Okay, if we're talking about a sex case --

19 A Correct.

20 Q That's what we're going to focus on today.

21 A Yes.

22 Q And then does the child also from the triage nurse get kind of a  
23 wellness exam? Height, weight, temperature, those kind of things?

24 A Yes, just like all patients.

25 Q Okay. And you get -- if the police are involved, the triage nurse

1 provides you the information that the police department is brought forward, would  
2 that be fair?

3 A Yes.

4 Q Okay. The child's put in a special room for these type of examinations?

5 A Yes.

6 Q Do -- strike that -- Now, are there certain types of examinations that are  
7 performed in the ER versus somewhere else? Certain types of sexual assault  
8 examinations that are performed in the ER?

9 A Well Room 1 is a special room because we have a colposcopy, which is  
10 basically a machine that could magnify the genitalia as well as provide  
11 documentation -- take photos -- of -- of that area.

12 Q What about the timing of the sexual assault controls where the  
13 examination is done?

14 A Well Room 1 usual -- if -- if the assault occurs within 72 hours, then we  
15 have an opportunity to have a -- a sexual assault kit -- a rape kit, if you will to  
16 collect -- forensically, to collect the evidence.

17 Q And those usually take place in the emergency room, correct?

18 A Yes. Yes.

19 Q And if -- and are those also referred to as acute exams?

20 A Acute?

21 Q Acute exams?

22 A Yes.

23 Q If they're within 72 hours?

24 A Yes.

25 Q Okay. And if it's outside the 72 hours for children, we have some place

1 else for them to go?

2 A Yes, the Child Advocacy Center.

3 Q Getting back to Tyana's case, did you receive information from the  
4 triage nurse, like we spoke about?

5 A Yes, that it was a -- a SCAN S, sexual assault that occurred less than  
6 24 hours, so it did qualify -- it -- a requirement to do the kit. And the kit was -- was  
7 done.

8 Q Okay. Did you know whether or not there was an allegation of  
9 penetration when you -- after you spoke to the triage nurse?

10 A It was reported that the child disclosed of -- of a penis stuck into her  
11 butt, quote on quote.

12 Q Okay. Now after you receive your triage information from the nurse  
13 and -- and you kind of have the background, either, you know, from the victim, from  
14 the parent, from the doc -- from the police officers and from the nurse, there's a  
15 physical portion of your examination. Is that correct?

16 A Yes.

17 Q And just overall, tell us what you do.

18 A So they go into Room 1, and -- and there's a bed there. So I do a head  
19 to toe, just like any other patient. But then when it comes to the genitalia, we pause  
20 there to set up the machine and -- and put it beds -- you know, because it's -- it's  
21 stored in the closet so we take out that machine, put it bedside so that when I do the  
22 genitalia examination as well as performing the kit, it'll be all done at one time. And  
23 so when I do the gen -- examine the -- the genitalia, it's with documentation and  
24 proceed with opportunity to collect swabs for the kit.

25 Q Okay. First do you check the child head to toe to make sure there's

1 nothing that needs immediate attention?

2 A Correct --

3 Q Immediate medical --

4 A -- any bruising, any bleeding, any pain.

5 Q Okay and with Tyana, was there anything like that that required your

6 attention?

7 A No, there was no bleeding.

8 Q And then you do an examination of the genitalia. That's what you were

9 starting to speak about --

10 A Yes.

11 Q -- just a second ago? How is it that -- first you start with a visual

12 examination?

13 A Yes.

14 Q Okay and that's before anything is collected, would that be accurate?

15 A Yes.

16 Q Tell us about the visual examination regarding Tyana.

17 A Well, even before I -- the -- the -- my nurses will brief the -- will

18 basically, sort of tell -- tell -- prepare the patient -- to prepare the patient for the

19 examination which is usually lying on her back in what we call the frog leg position.

20 If -- if the child is -- is tall enough, we use the stirrup -- the stirrups just like the -- a

21 GYN examination where the -- so that provides exposure to the genitalia.

22 Q And which position was Tyana placed in? Was she placed in the frog

23 leg position or was she able to use the stirrups?

24 A I think she was able to use the stirrups.

25 Q Okay. So did you do a visual examination of that child's genitalia then

1 at that time?

2 A Yes. A visual with, while using the colposcopy too, as well.

3 Q And what, if anything, did you see, visually?

4 A So she's in the frog leg position and with general retrac -- gentle  
5 retraction of her labia, I was able to see generalize erythema, or redness to the  
6 area.

7 Q And the labia are what portion of the female anatomy?

8 A Is -- at the lips the one that you have to spread.

9 Q And you said generalized erythema. What is that caused from?

10 A Well, erythema means redness, so that could be from friction, rubbing.  
11 It could be an early sign of infection to the area -- localized to that area.

12 Q Okay. And you could -- you could not draw a conclusion as to whether  
13 that's from penetration?

14 A No.

15 Q Okay. But not inconsistent with penetration, correct?

16 A Correct.

17 Q Did you do an examination of the child's hymenal tissue?

18 A Yes.

19 Q And what, if anything, did you see?

20 A It was adequate hymenal tissue; there was no specific cut to the hymen  
21 so the hymen was intact.

22 Q Is -- she was about ten at the time, correct?

23 A Yes.

24 Q Is that unusual?

25 A No, that's not -- it's -- it's very common.

1 Q Okay, so there could be penetration and you could still see hymenal  
2 tissue as it was present on Tyana Hasan?

3 A Yes.

4 Q Okay, because you don't automatically lose your hymen, correct?  
5 Once your vagina's been penetrated. Would that be an accurate statement?

6 MR. SPEED: Your Honor, that's leading, I object.

7 THE COURT: Yeah, the way that question -- restate your question.

8 Sustained.

9 BY MS. KOLLINS:

10 Q Okay, I'll pose it in a hypothetical then. If -- if a vagina is penetrated,  
11 would you always necessarily see either injury to the hymenal tissue or less  
12 hymenal tissue, if you will?

13 A The hymenal tissue is -- is usually intact if you have penetration and --  
14 well, first of all, penetration -- like for example, this is my lips, okay. This is my lips  
15 or the labia, okay. If I just touch this -- well that's not the penetration but if I go  
16 beyond my lips and touch my teeth, well that's penetration. Versus if I stuck it all the  
17 way in back of my throat, well that's deeper penetration. So here, all right, but if I go  
18 and if the hymen was my teeth and it penetrated towards my dentition, then -- then  
19 that's penetration, so depending on the force -- because the hymen has some  
20 elasticity to it.

21 Especially at age 11, adolescence, puberty, horm -- hormones, the --  
22 the tissue has some elasticity, just like your rectum will stretch when you pass a  
23 stool. Of course, not as stretchy I guess, as your rectum, but that kind of similar  
24 tissue elasticity, if you will, and accommodation, if you will can occur with a -- a ten,  
25 eleven year old, which clearly does have signs of prepubertal -- effects on her.

1 Because she also had pubic hair too, a little pubic hair too, as well to confirm that  
2 yes, she does have estrogen and -- and concluding that her hymen has some  
3 elasticity to it.

4 Q So then the answer to my hypothetical --

5 A Oh, sorry.

6 Q That's okay. So the answer to my hypothetical would be you -- you  
7 wouldn't always see injury then?

8 A Correct, actually it's normal to be normal. In the great majority of -- of,  
9 let's say a perpetrator that confessed to sexually assaulting --

10 MR. SPEED: Objection, Your Honor.

11 THE WITNESS: -- a patient --

12 MR. SPEED: Objection, Your Honor.

13 THE WITNESS: Oh.

14 MR. SPEED: Relevance, at this point?

15 THE COURT: What?

16 MR. SPEED: Non-responsive answer.

17 MS. KOLLINS: Well she's just -- she's talking about --

18 THE COURT: I think she's trying to answer. Overrule the objection. Go  
19 ahead, Doctor.

20 BY MS. KOLLINS:

21 A For those that have -- have admitted to sexually assaulting a -- a female  
22 child, it's normal to be normal. Meaning it's -- it's normal -- it's very common to see  
23 normal anatomy. No findings that the exam is normal.

24 Q And regarding Tyana, you only had the -- the redness, correct, as a  
25 finding?

1 A Oh there -- there was some yes, generalized redness as well as the  
2 introitus, which is like the entrance to the vaginal area was moist. So that's like a  
3 little maybe fluid like, where it kind of pools -- in the entrance of the vaginal canal.

4 Q Okay. And if the top of -- if the top of the vagina towards the clitoris is  
5 twelve o'clock and the bottom is six o'clock, what area are you talking about?

6 A Six o'clock.

7 Q Six o'clock. You did note a ridge at nine o'clock. Can you talk about  
8 that?

9 A Well, that's non-specific. It could be normal. Normal anatomy -- that's  
10 basically how her vagina -- vaginal area looks like. Or it can be from chronic irritation  
11 to -- to that area. And older child that wears -- that uses tampons in their  
12 menstruation can have sort of the -- for example, yes, back to the tampons --  
13 inserting a tampon in penetration, but your hymen is still intact.

14 Q So when you noted this ridge, you just noted it because you observed it  
15 and it --

16 A Yes.

17 Q -- it really doesn't draw you to any conclusion, right?

18 A No, it's non -- again, non-specific finding.

19 Q Okay. Now, after you do this visual observation what is the next part of  
20 the SCAN exam?

21 A So after the visual, then we proceed with the assault kit which has  
22 already been opened, again, I'm there with -- with the -- the nurse, the senior nurse  
23 in charge of -- of the patient. The nurse would have opened the kit to, for example,  
24 collect panties and -- maybe doing the reference buccal swab, the DNA of the  
25 patient. Because that box has specific envelopes and swabs so that the chain of



1 custody is maintained and -- and everything is -- the swabs are not mixed, it's -- it's  
2 pretty much step by step, orderly manner of collection.

3 Q So is it fair to say then, that the -- that every sexual assault kit comes in  
4 a box and it comes in a fresh, sealed condition?

5 A Yes.

6 Q And if -- if a sexual assault kit were not in a sealed condition, you would  
7 not utilize it?

8 A Correct.

9 Q Okay. Do you recall -- did you use a -- a fresh sexual assault kit for  
10 Tyana Hasan?

11 A Yeah -- yes.

12 Q Okay and do you recall who your nurse was that day, that was assisting  
13 you?

14 A Giselle -- Giselle, sorry.

15 Q Do you remember her last name?

16 A No.

17 Q No? Okay, that's alright. Giselle. So tell me if I have this correct. So  
18 you would swab the child and you would give the swabs to Giselle?

19 A Yes, she would -- she's right there with the kit. She would open the  
20 swabs, when it was time for that then hand me the swab. I would swab my patient  
21 and re -- return the swab to her, and she'll put it in the envelope.

22 Q And you did those swabs one at a time?

23 A Yes.

24 Q Okay. Where on Tyana's body did you swab?

25 A Around the va -- vaginal area and the rectal area.

1 Q Okay and you mentioned a reference standard.

2 A That would -- that was co -- collected earlier by the nurse.

3 Q By the nurse? In the same exam room though, out of the same kit?

4 A Yes.

5 Q Correct? Do you also do fingernail scrapings?

6 A The nurse would do that part.

7 Q And you mentioned earlier collecting underwear?

8 A The nurse would do that part.

9 Q Okay. Any place else on the body you would swab?

10 A It depends on the story. If there's oral -- a reported oral penetration,  
11 vaginal penetration, rectal penetration, so those are the three sites that I -- that I  
12 swab.

13 Q So the information coming into you controls what you collect?

14 A Yes.

15 Q Was there any -- did you have any information that there -- that you  
16 should be looking for blood evidence on the child anywhere --

17 A No.

18 Q -- based on what you knew? Okay.

19 MS. KOLLINS: May I approach the witness, Your Honor?

20 THE COURT: Yeah.

21 BY MS. KOLLINS:

22 Q Doctor I'm going to show you what has already been marked and  
23 admitted as State's Exhibit 4 and all of its contents. I was using gloves with these  
24 before but they've gotten cumbersome so -- Now, those components of that sexual  
25 assault kit actually have steps to them, do they not?

1 A Yes.

2 Q Okay. And they did not go back in in order, so bear with me for just a  
3 moment. There we go, sorry about that. If we could just go through those; and tell  
4 me whether or not you recognize those as being from Tyana Hasan from September  
5 7<sup>th</sup> of 2013 at Sunrise.

6 A Yes. This --

7 Q Just start with the first one.

8 A Okay, so I have here Step 3, this is the oral swabs.

9 Q Okay and you recognize that as being from the sexual assault kit from  
10 Tyana Hasan?

11 A Yes.

12 Q And what's the next one?

13 A Step 4, underpants.

14 Q Collected by the nurse, as well?

15 A Yes.

16 Q Okay and part of the components, the first couple components of that  
17 sexual assault kit are paperwork, is that correct?

18 A Yes.

19 Q Okay. And what is the next in line that you have?

20 A I have here -- debris, bite marks, secretions.

21 Q Okay. Did you have any information that were -- that there was any  
22 debris, or bite marks or secretions?

23 A No.

24 Q Okay. So that envelope was left empty during your examination?

25 A Yes.

1 Q Okay. And you also recognize that from being from Tyana Hasan?  
2 A Yes.  
3 Q And that -- that applies to all these envelopes that we're gonna talk  
4 about?  
5 A Yes.  
6 Q Okay and what's the next one that you have?  
7 A Fingernail swabbings.  
8 Q And you said that Giselle would have taken those?  
9 A Yes.  
10 Q And you would've been present in the room for those, correct?  
11 A No, not necessarily.  
12 Q Not necessarily? Okay but do you recognize the documentation as  
13 being from Tyana Hasan at Sunrise Hospital?  
14 A Yes.  
15 Q Okay and what is the next in order?  
16 A Rectal swabs.  
17 Q Okay and --  
18 A Oh, actually vaginal -- Step 8 is va -- vaginal/cervical swabs.  
19 Q Okay. And do you recognize those as being from Tyana Hasan?  
20 A Yes.  
21 Q Okay, and as each one -- each one of these are taken and sealed  
22 before the next step is --  
23 A Collected, yes.  
24 Q -- collected, correct? Okay and what is the next?  
25 A So Step 8 was the vaginal swabs and Step 9 is the rectal swabs.

1 That's when I, basically, get involved and -- and handle the swabs.

2 Q Okay, the vaginal --

3 A Limited to the genitalia. The rest of the body, the nurse can handle,  
4 but pretty much those three sites -- if there's oral penetration, vaginal penetration, or  
5 rectal penetration, those swabs -- that area is swabbed by me.

6 Q And the visual observations you made about the redness -- those visual  
7 observations were made prior to you swabbing or touching the genital area with any  
8 of these implements, correct?

9 A Absolutely.

10 Q Okay. And at Sunrise Hospital, do you have a place that acts a  
11 evidence vault, such that Me -- the Metropolitan Police Department can transfer this  
12 evidence?

13 A That is -- just like how the nurse opens and breaks the seal of the box  
14 and then chain of custody is maintained. After I do my swabs of the area, and  
15 photos of -- of the area, I answer any questions that the parents might have because  
16 the parent is usually right there, bedside, in the room. The nurse after receiving the  
17 last swab, basically, seals it. So I could've left the room by the time the nurse has  
18 sealed it. And then -- so the nurse is actually the last person to touch the box and  
19 she takes it to the propers. I don't know exactly where, but it's --

20 Q That's not your job --

21 A Yes, exactly --

22 Q -- but that happens there. Okay, we got you.

23 A -- I'm seeing another patient already.

24 Q Did you memorialize all of your -- the information that you've told us  
25 today, in a report? In a medical report?

1 A Yes, it's -- there's the SCAN report and yes, just like paperwork, there's  
2 a lot of redundant paperwork present. So just -- again -- just like any other patient  
3 that comes to the emergency room, there's that generic chart that I have to fill out.

4 Q But there is -- there is a special charting -- there's special charting for  
5 SCAN --

6 A Yes.

7 Q -- correct? And that comes as part of the kit? There's charting --

8 A Yes.

9 Q -- with in the kit?

10 A Yes, it's our -- there's the kit, there's the SCAN forms to fill out, and  
11 then there's the generic because being an ER patient. That also gets filled, more  
12 paperwork for that.

13 Q And you documented -- just your examination and your conclusions  
14 regarding Tyana, correct?

15 A Yes.

16 Q Okay and at or near the time you did the examination?

17 A Yes.

18 Q And you concluded non-specific findings, correct?

19 A Correct.

20 Q Okay.

21 MS. KOLLINS: I will pass the witness.

22 **CROSS-EXAMINATION**

23 BY MR. SPEED:

24 Q Doctor, in your report, you noted that there were no lesions to your  
25 patient Tyana's external genitalia, correct?

1 A Correct, no lesions.

2 Q You noted that she had adequate hymenal tissue, right?

3 A Correct.

4 Q But that's not necessarily indicative of whether or not a sexual abuse  
5 situation had taken place, right?

6 A Correct.

7 Q But as you testified for a patient of Tyana's age, having this amount of  
8 adequate hymenal tissue or the amount of hymenal tissue that you observed, is  
9 perfectly normal?

10 A Yes.

11 Q Okay. You said that there was no local redness or hymenal  
12 transections, isn't that right?

13 A Correct.

14 Q You noticed no vaginal discharge. Or at least that's where you  
15 recorded noticing no vaginal discharge, right?

16 A Yes, there's no discharge pouring out of the vaginal canal. Correct.

17 Q Pouring out of the vaginal canal, I see. And that's what the term gross  
18 vaginal discharge --

19 A Yes.

20 Q -- refers to?

21 A Yes.

22 Q All right. You said that her rectal area was -- the rectal had good  
23 sphincter tone, yes?

24 A Yes.

25 Q No lesions?

1 A Correct.

2 Q And no tears in the rectum, right?

3 A Correct.

4 Q And you also discharged Tyana with a clinical impression. It says that  
5 she had vaginitis, non-specific. What exactly is vaginitis?

6 A That redness that we talked about, where it can be from early infection  
7 to a child with poor hygiene.

8 Q Okay, and you also noticed that Tyana had a urinary tract infection,  
9 yes?

10 A Because the initial urine sample, the quick test with the urine sample  
11 that Tyana provided looked a little suspicious for possible, possible urinary tract  
12 infection. The key thing is to send that urine for a culture. If that culture is positive,  
13 then definitely we have a urine infection. But I did treat it as a possible urinary tract  
14 infection. Yes, I did.

15 MR. SPEED: Nothing further, Your Honor.

16 MS. KOLLINS: If I may approach your Clerk, Your Honor?

17 THE COURT: Yep.

18 [Colloquy between the Clerk and Counsel]

19 MS. KOLLINS: Your Honor, State's showing Mr. Speed what has been  
20 marked for purposes of identification as State's Proposed 17.

21 If I may approach, Your Honor?

22 THE COURT: Sure.

23 **REDIRECT EXAMINATION**

24 **BY MS. KOLLINS:**

25 Q Doctor, I'm showing you what has been marked for purposes of



1 identification as State's Proposed Exhibit 17. I would like you to look through it and  
2 let me know whether that document looks familiar to you --

3 A Yes, oh.

4 Q -- save and except the pages that were filled out by Giselle Campbell,  
5 the nurse.

6 A Okay.

7 Yes.

8 Q Fair and accurately depicts the report that we've been discussing  
9 today -- the SCAN report that was just -- we just asked you questions about?

10 A Yes.

11 Q Okay, save and except a portion that was created by Ms. Campbell?

12 A Yes.

13 Q Okay, thank you.

14 MS. KOLLINS: No more questions, Your Honor.

15 MR. SPEED: Nothing further from us, Your Honor, thank you.

16 THE COURT: Okay, jury have any questions of the doctor?

17 [The Court answers the phone]

18 THE COURT: Sorry. Just come up here, it's a simple question.

19 [Bench Conference Begins]

20 MS. KOLLINS: No, I don't have a problem asking that.

21 MR. SPEED: Yeah, she's already talked about it but yeah, you can.

22 MS. KOLLINS: She's already talked about it.

23 [Bench Conference Concludes]

24 **EXAMINATION BY THE COURT**

25 **BY THE COURT:**

1 Q All right. What was Tyana's stage, if recorded?

2 MS. KOLLINS: Tanner stage.

3 MR. SPEED: Tanner stage.

4 THE COURT: Tanner --

5 THE WITNESS: Tanner stage.

6 BY THE COURT:

7 Q Tanner stage.

8 A Well a Tanner Stage Four would be you actually have your  
9 menstruation. And I do believe that -- I don't recall, but I do not think she was having  
10 her menses so that would be a three.

11 THE COURT: State

12 MS. KOLLINS: I have no questions.

13 THE COURT: Defense?

14 **FOLLOW-UP EXAMINATION**

15 BY MR. SPEED:

16 Q Doctor, did you record it?

17 A Well based on the pubic hair, just recalling the pubic hair that I  
18 documented --

19 Q I'm sorry, Doctor --

20 A Oh, sorry.

21 Q -- did you record the patient's Tanner stage?

22 A No, I did not.

23 MR. SPEED: Nothing further.

24 THE COURT: Thank you Doctor, you're free to go. Call your next witness.

25 MS. KOLLINS: State calls Nurse Campbell.

1 **GRISELDA CAMPBELL**

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

3 THE CLERK: Thank you and be seated. Please state your full name, spelling  
4 the first and last name for the record.

5 THE WITNESS: Griselda Campbell, G-R-I-S-E-L-D-A. Last name,  
6 C-A-M-P-B-E-L-L.

7 **DIRECT EXAMINATION**

8 BY MS. KOLLINS:

9 Q Good afternoon, Ms. Campbell, how are you?

10 A I'm good.

11 Q Good, thank you for waiting. Ma'am, how are you employed?

12 A I'm employed at Sunrise Hospital, I'm a registered nurse.

13 Q How long have you been an RN at Sunrise?

14 A Eleven years.

15 Q And what educational background do you have that qualifies you to be  
16 an RN at Sunrise?

17 A I have my Associate Degree in Nursing, I also have some extended  
18 education, advanced cardiac life support, pediatric advanced life support,  
19 emergency nurse pediatric care, trauma nurse and care, and burn care.

20 Q How are you assigned at Sunrise?

21 A We come in and we're assigned by the charge nurse.

22 Q Do you ever have occasion to work in the pediatric emergency room?

23 A That's where I work, yes.

24 Q Okay. Do you frequently work under Doctor Vergara that just left?

25 A Yes.

1 Q Okay. Where you working on September 7<sup>th</sup> of 2013?

2 A Yes.

3 Q Do you assist Doctor Vergara with sexual assault examinations,  
4 specifically SCAN examinations?

5 A Yes.

6 Q And do you perform part of the triage function in those examinations?

7 A Yes.

8 Q Tell us a little bit about how a sex --

9 THE COURT: You need to speak out because she's recording everything.

10 THE WITNESS: Okay.

11 BY MS. KOLLINS:

12 Q I apologize. Tell us a little bit about how one of those examinations  
13 gets initiated.

14 A When a patient is brought in they're triaged, just like our medical  
15 patients are. We ask them basic medical questions, nothing very specific in the  
16 triage area. We take them to a room and they're assigned to a nurse and from there  
17 we have law enforcement help us to figure out what type of exam we're going to be  
18 doing. And the nurses assist the doctor with it.

19 Q So you take information from Detectives or police if the patient is  
20 accompanied by detectives or police?

21 A Yes.

22 Q And -- it would be fair to say that guides the examination?

23 A Yes.

24 Q Okay. And do you have the first contact done with the family and the  
25 detectives prior to the doctor seeing the patient?

1 A Yes.

2 Q Okay. Do you recall assisting -- or performing triage for a child by the  
3 name of Tyana Hasan on September 7<sup>th</sup> of 2013?

4 A Yes.

5 Q Okay.

6 THE COURT: Speak up, please.

7 THE WITNESS: Sorry.

8 THE COURT: You have a very soft voice.

9 THE WITNESS: Okay, sorry.

10 THE COURT: Can you hear her okay?

11 MS. KOLLINS: Why don't you just bend that microphone down a little bit, it  
12 might pick you up just a little bit better. There you go.

13 THE WITNESS: Okay.

14 BY MS. KOLLINS:

15 Q Tell me what happened as far as Tyana coming in and you starting your  
16 participation in her examination.

17 A Tyana was brought in, she was with her parent and she was also with  
18 law enforcement. And so the first thing I have to do is gather the information from  
19 law enforcement. And then gather some information from mom so I have to  
20 separate mom and child so I can ask mom some questions. And then once law  
21 enforcement tells us which direction to go in as far as the exam then we can get that  
22 started.

23 Q Did you gather information from the mom?

24 A Yes.

25 Q And did you document that information in a report?

1 A I did.

2 Q What did you document for the doctor's purposes?

3 A I have to put in quotes, generally I ask the parent what they're here for,  
4 what they're concerns are. When mom told me I just put it in quotes in my  
5 documentation and then let the physician know what the detectives had told me and  
6 what mom had told me.

7 Q Okay. Explain to me, after you gather that information, is that when you  
8 kind of begin the physical portion of your triage with the child?

9 A Yes.

10 Q Tell me -- tell me about what you did with Tyana -- Tyana.

11 A So, she would get her regular medical screening, as far as vital signs,  
12 heart rate, blood pressure, temperature, height and weight, medical history,  
13 allergies, medical problems, those types of things before we started the actual  
14 exam.

15 Q Okay so kind of a wellness portion?

16 A Yes.

17 Q Okay and did that happen with this child?

18 A Yes.

19 Q Okay and after -- was there anything that she had -- any immediate  
20 medical necessity for --

21 A No.

22 Q -- at that time? Okay. So after you do that what happens?

23 A After we do that, if law enforcement tells us that we need to collect,  
24 what we call a kit, then we start the process for collecting the kit and the paperwork  
25 and everything involved with that.

1 Q What did you know about the necessity of collecting a kit with Tyana?  
2 A That the detectives wanted us to collect the full kit with her.  
3 Q Okay. Did you know the time frame with -- within which the assault  
4 occurred?  
5 A Yes, it has to be within 72 hours for them to request a kit. So hers was  
6 within 72 hours.  
7 Q Okay. Do you -- once you know that there's -- that a kit is going to be  
8 required, is there a special room that a child's taken to?  
9 A Yes.  
10 Q Okay and what's -- where is that in Sunrise?  
11 A It's Room 1 of the Pediatric Emergency Room and it's designated just  
12 for that.  
13 Q Just for acute sexual assault examinations on kids?  
14 A Yes.  
15 Q Okay. And what makes it a different room than any other ER room that  
16 an adult would be in?  
17 A It has what we call a gyne bed. So it has stirrups for the exam. It's also  
18 next to the room where we keep all the equipment locked.  
19 Q When you know that a sexual assault kit is required, how does -- how  
20 do you go about getting a clean sexual assault kit to start an exam with?  
21 A The exam kits are locked in a storage room and once we obtain one of  
22 the kits, they're sealed. So we have to break the seal once we start each kit.  
23 Q Did you get a clean kit for this child?  
24 A Yes.  
25 Q Okay, now when the doctor commences their part of the examination,

1 the visual portion and then when they start actually conducting the kit, what are you  
2 doing?

3 A I have to hold everything in the kit. So once I open a kit, the kit has to  
4 stay with me until it's sealed and locked away. So I have to hold all the envelopes  
5 and the boxes and hand the doctor the swabs and then collect them from her  
6 immediately after.

7 Q Okay. And all of those things are done one at a time, right?

8 A Correct.

9 Q Okay, so you don't start another swabbing until one is sealed, correct?

10 A Correct.

11 Q With Tyana, did you, in fact, get a sealed kit?

12 A Yes.

13 Q And were you present when the doctor performed the physical  
14 swabbings of that child?

15 A Yes.

16 Q And did you, in fact, open each envelope, hand the doctor the swabs,  
17 wait till she swabbed the appropriate area and then you sealed them for the doctor?

18 A Yes.

19 Q And you would have deposited all those back into the sexual assault  
20 kit?

21 A Yes.

22 Q When you sealed all those envelopes and placed them back in the sex  
23 kit, what happens to that, where does it go?

24 A Security has to come and they lock it up and it has to be signed by the  
25 nurse locking it up and the security guard. They're the only ones that have the keys.



1 Q I'm going to bring you a stack of envelopes and one big envelope,  
2 okay?

3 A Okay.

4 MS. KOLLINS: Your Honor, may I approach?

5 THE COURT: Yes.

6 BY MS. KOLLINS:

7 Q I'm going to show you ma'am, what has been marked for purposes of  
8 identification as 4 and its contents. And it should go A, B, C, D, E, F, G, H, I. Okay?  
9 They're just in order right now.

10 A Uh-huh.

11 Q I had them in order. What I would like for you to do is just briefly look at  
12 those, all of those --

13 A Okay.

14 Q And then I'll ask you some questions about them.

15 A Okay.

16 Q First, the big envelope, State's Admitted 4. Do you recognize that?

17 A Yes.

18 Q How is it that you recognize that?

19 A How do I recognize the envelope?

20 Q Uh-huh.

21 A It's my handwriting.

22 Q Okay and would you have put your handwriting on it the day the kit was  
23 taken from Tyana Hasan?

24 A Yes.

25 Q Okay and when you put your handwriting on that kit, was it in a sealed

1 condition?

2 A Yes.

3 Q Okay, save and except the red tape that's on the top and I believe  
4 there's blue tape on the bottom, is that correct?

5 A Yes.

6 Q Now those evidence pieces of tape were not on that when you sealed it,  
7 correct?

8 A Correct.

9 Q Okay. And you delivered it in a sealed condition?

10 A Yes.

11 Q Okay now going through the contents, 4A, do you see that envelope?

12 A Uh-huh. Yes.

13 Q Are those -- contained therein are buccal swabs? Is that correct?

14 A Yes, that's correct.

15 Q Do you recognize that envelope?

16 A I do.

17 Q Okay. Those are buccal swabs from where?

18 A The patient's cheek, the inner mouth.

19 Q Okay did you take those buccal swabs?

20 A I did.

21 Q Okay. And took them from the child's mouth and then placed them in  
22 that -- in 4A and sealed that up?

23 A Yes.

24 Q Okay. And you recognize your handwriting on that envelope as well?

25 A My handwriting is not on this envelope.

1 Q Okay. Is there -- there's a number designation on there?

2 A Yes. Each envelope and each box inside has to have the sticker

3 placed on it that correlates with the outer envelope.

4 Q Okay, so you recognize that sticker as correlating to Tyana's --

5 A Yes.

6 Q -- sexual assault kit? Okay and as to 4B, do you see that envelope?

7 A Yes.

8 Q And do you recognize 4B?

9 A Yes.

10 Q And what is contained in 4B?

11 A It's says vaginal and cervical swabs.

12 Q Would you have taken those swabs from the doctor as she performed

13 those and sealed those in that envelope?

14 A Yes.

15 Q Okay and you recognize that again, because of the unique sticker to

16 this medical file, correct?

17 A Yes.

18 Q Okay and you would have sealed those before you received any other

19 swabs, correct?

20 A Correct.

21 Q Okay. I'd like to call you to 4C. And what's 4C?

22 A Rectal swabs.

23 Q Okay, and those again, were taken by Doctor Vergara?

24 A Correct.

25 Q And as she takes those swabs you take them and place them in a

1 sealed condition?

2 A Yes.

3 Q And you do that before you receive any other swabs or before you've  
4 set aside any swabs that were previously taken?

5 A Yes.

6 Q Okay. Same thing as to -- well I'd ask you to look at 4D, what's 4D?

7 A Oral swabs.

8 Q Okay, did you take oral swabs in this case?

9 A I did.

10 Q You did? Okay, and sealed those as well?

11 A Yes.

12 Q Okay and 4E. What's in 4E?

13 A Fingernail swabbings.

14 Q Did you take those?

15 A I did.

16 Q Okay, and would you have taken those before or after the doctor did  
17 her geni -- her -- examination of the genital area?

18 A Before.

19 Q Okay, and placed those in a sealed condition?

20 A Yes.

21 Q Okay. And had the unique number, again, that was assigned to this  
22 case, right?

23 A Right.

24 Q And 4F, what's contained in 4F?

25 A Underpants.

1 Q And do you recognize the seal on the outside as having the unique  
2 number associated with this case?  
3 A Yes.  
4 Q And did you collect those underwear?  
5 A I did.  
6 Q Who did you collect those from?  
7 A From the patient --  
8 Q Okay.  
9 A -- from Tyana.  
10 Q And did you collect those prior to the doctor taking her swabbings?  
11 A Yes.  
12 Q Okay. And did you place them in a sealed condition prior to the doctor  
13 beginning her examination -- her genital examination?  
14 A Yes  
15 Q Okay. What is 4G?  
16 A Paperwork.  
17 Q That would just be the checklist for the sexual assault kit?  
18 A Yes.  
19 Q Okay and would you have filled that out?  
20 A A portion of it is mine; the portion of it is the doctor's.  
21 Q Okay and you also -- there's 4H up there?  
22 A Yes.  
23 Q And what is contained in 4H?  
24 A Debris, bite marks, and secretions.  
25 Q Okay, base -- did you have any information that swabbing would be

1 required for debris, bite marks, or secretions from the information from the  
2 detectives or the patient or the mother?

3 A No.

4 Q Okay so was anything done with that envelope?

5 A No, not with this one.

6 Q Okay, and what about 4I?

7 A Miscellaneous.

8 Q And what is 4I?

9 A We use it to collect any miscellaneous extra swabs, any extra clothing,  
10 those types of things.

11 Q Was anything collected in this case?

12 A Not for this one, no.

13 Q Okay. That's for anything that might be of value that's not already  
14 covered in the prelabeled envelopes?

15 A Correct.

16 Q Okay. Thank you.

17 MS. KOLLINS: Your Honor, if I might approach?

18 THE COURT: Yes.

19 BY MS. KOLLINS:

20 Q Now as part of your triage and part of your assisting the doctor, you  
21 also filled out some reports, correct?

22 A Correct.

23 Q And you document what you do?

24 A Yes.

25 Q Okay. I'm showing you what has been marked and personally looked

1 at by Doctor Vergara. I'd like to -- for you to look at the portions that you authored  
2 and see if that -- you recognize those fro -- as being from September 7<sup>th</sup> of 2013.

3 A Okay.

4 Q All right? Did you have a chance to take a look at them?

5 A Yes.

6 Q Are there -- now I know you can't authenticate Doctor Vergara's portion,  
7 but can you look at those documents, at least the portion that you authored, and  
8 does that fairly and accurately depict what you documented about Tyana's SCAN  
9 exam on September 7<sup>th</sup> of 2013?

10 A Yes.

11 MS. KOLLINS: State would move for the admission of 17.

12 MS. ROSS: Brief indulgence, Your Honor.

13 No objection, Your Honor.

14 THE COURT: Being admitted.

15 **[STATE'S EXHIBIT 17 IS ADMITTED]**

16 BY MS. KOLLINS:

17 Q After the examination of Tyana's concluded, what happens -- do you  
18 put all of those items back together in -- in the kit?

19 A Yes.

20 Q Okay. And you said you deposited them in a locker --

21 A Yes.

22 Q -- at Sunrise? You do not have any of the responsibility for getting  
23 those items from Sunrise to Metro?

24 A No.

25 Q Okay.

1 MS. KOLLINS: I will pass the witness, Your Honor.

2 **CROSS-EXAMINATION**

3 BY MS. ROSS:

4 Q Thank you, Nurse Campbell. You testified today that you were  
5 documenting the -- the history of the patient after she had been essentially triaged,  
6 correct?

7 A Correct.

8 Q Did you ever speak to the siblings or anyone else involved in this case?

9 A The siblings, no.

10 Q You also testified earlier that you were familiar with the Detective Flink,  
11 correct?

12 A No.

13 Q If the -- excuse me, police officer accompanied the mother and Tyana  
14 into the examination, correct?

15 A Into the examination? No, they can't be in the room during the exam.

16 Q At -- at the beginning when they're --

17 A When they arrived?

18 Q -- they come into the -- yes.

19 A Yes.

20 Q Do you remember who that officer was?

21 A I'd have to look at my paperwork.

22 Q Was it a man?

23 A Yes.

24 Q Okay and they were not put -- present after the initial central, essentially  
25 handoff to the emergency room?



1           A     I don't remember.

2           Q     Okay. You also testified about a locker at Sunrise Hospital where this  
3 evidence would be deposited. Can you tell us a little more about that?

4           A     So we have a room, it's a locked room. So the nurse and staff has the  
5 access code into the room. Inside the room there is a cabinet with a lock on it, so  
6 we have to call security to come to unlock it, to deposit the kits.

7           Q     Okay. I believe your testimony earlier was that the nurse and the  
8 security officer are the only ones who have keys to that cabinet?

9           A     We sign for the deposits into the cabinet.

10          Q     Okay so who has a key to that -- cabinet?

11          A     I know that security does.

12          Q     Okay.

13          A     And that's all I know.

14          Q     Did you have a key to that --

15          A     No.

16          Q     -- cabinet? Did you accompany the security officer to deposit the  
17 evidence into that locker?

18          A     Yes.

19          Q     Brief indulgence. This security officer you're talking about, is it private  
20 security hired by the hospital, or is it a police officer?

21          A     No, it's by the hospital.

22          Q     And once evidence is deposited in that locker, how does -- how does it  
23 get out of there to go somewhere else? Does the security officer take it out?

24          A     I don't know what the process is for picking up.

25          MS. ROSS: Okay, no further questions. Thank you.

1 MS. KOLLINS: I have no redirect, Your Honor.

2 THE COURT: Jury, you have any questions of this nurse?

3 Thank you ma'am, you're free to go.

4 THE WITNESS: Thank you.

5 THE COURT: State have any other witnesses tonight?

6 MS. KOLLINS: Your Honor, I do not. State having being satisfied, it's

7 State's --

8 THE COURT: Is everything marked?

9 MS. KOLLINS: -- 1 through 17 and its component parts have been admitted,  
10 the State's prepared to rest.

11 THE COURT: Counsel approach the bench.

12 [Bench Conference Begins]

13 THE COURT: Do you have any witnesses to call?

14 MR. SPEED: I need to speak with him; can we take a break till 3:30?

15 [Bench Conference Concludes]

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

23 Take five minutes, please.

24 THE MARSHAL: Okay, folks.

25 [Outside the presence of the jury]

1 THE COURT: All right, jury's out, door's closed. You need to talk to your  
2 client?

3 MR. SPEED: Yes, Your Honor.

4 THE COURT: Do you want to go in the back?

5 MR. SPEED: Yes.

6 THE COURT: You want us just to leave? All right. Everybody use the  
7 restroom if -- as they need.

8 [Recess taken at 3:22 p.m.]

9 [Trial resumed at 3:34 p.m.]

10 [Outside the presence of the jury]

11 THE COURT: You did not, it's just --

12 MS. ROSS: Marked both side proposed in the record?

13 THE COURT: No, we'll -- the -- the ones of the State that I've looked at are  
14 general ones that we always give. And you guys are, I'm sure, proposing new ones.  
15 We'll deal with that on Wednesday --

16 MS. ROSS: You got it.

17 THE COURT: -- I mean Monday, Monday. Okay? So you guys are ready for  
18 the jury to come back?

19 MS. KOLLINS: Yes, sir.

20 MR. SPEED: Yes.

21 THE COURT: So my intent is then, you're going to rest, he's going -- not take  
22 the stand, you're going to rest. Monday we'll come at 9:30, do jury instructions,  
23 bring the jury back at 10:30, and argue, right?

24 MR. SPEED: Yes, sir.

25 THE COURT: Okay.

1 [In the presence of the jury]

2 THE MARSHAL: All rise, please.

3 And be seated.

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

5 MS. KOLLINS: By the State, yes, Your Honor.

6 MR. SPEED: Yes, Your Honor.

7 THE COURT: All right. Mr. Speed?

8 MR. SPEED: Your Honor, the Defense rests.

9 THE COURT: All right. So ladies and gentlemen, we're done for the evening.  
10 We'll argue on Monday morning at 10:30. You'll come back at 10:30. We have to  
11 settle jury instructions, so I'll prepare those. I have a calendar, I should be done  
12 before -- before 9:30, but understand if -- if I'm not.

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

19 Have a good weekend. See you Monday at 10:30.

20 THE MARSHAL: Okay folks, leave your notebooks on your chairs, bring all  
21 your personal property.

22 [Outside the presence of the jury]

23 THE COURT: All right, so we'll do jury instructions at 9:30?

24 MS. KOLLINS: Sure.

25 THE COURT: Okay, be ready. See you.

1 MS. KOLLINS: Thank you, Your Honor. Happy Friday.

2 MS. ROSS: Thank you.

3 THE COURT: See you.

4 MS. RHOADES: See you.

5 [Evening recess at 3:38 p.m.]

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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case.

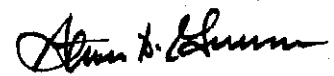
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Ashley Hinckley

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Independent Transcriber



CLERK OF THE COURT

1 TRAN

3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6 Plaintiff,

CASE NO. C294607

DEPT. VIII

7 vs.

9 GREG ANTHONY WILLIAMS,

10 Defendant.

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

14 MONDAY, APRIL 4, 2016

15 **TRANSCRIPT OF PROCEEDINGS**

16 **JURY TRIAL - DAY 5**

17 **VOLUME V**

18 **APPEARANCES:**

19 For the State:

STACEY L. KOLLINS, ESQ.

Chief Deputy District Attorney

20 KRISTINA A. RHOADES, ESQ.

Deputy District Attorney

21 For the Defendant:

22 KEVIN C. SPEED, ESQ.

KATRINA M. ROSS, ESQ.

23 Deputy Public Defenders

24 RECORDED BY: JILL JACOBY, COURT RECORDER

25 TRANSCRIBED BY: ASHLEY HINCKLEY, INDEPENDENT TRANSCRIBER

1 MONDAY, APRIL 4, 2016 AT 9:50 A.M.

2  
3 [Outside the presence of the jury]

4 THE COURT: All right, this is C294607, State of Nevada v Gregory Williams.  
5 Everyone's present, we're about to do jury instructions. I reviewed the State's,  
6 which are the standard instructions provided. I don't remember if I saw the one  
7 about --

8 MS. KOLLINS: I don't think I included a testifying instruction.

9 THE COURT: Get one.

10 MS. ROSS: And I included one of those for the Court.

11 THE COURT: Yeah, you did. But yours, I'll have to redo all yours. Yours' all  
12 say Defense proposed exhibits.

13 MS. KOLLINS: On the jury instructions?

14 THE COURT: Yeah.

15 MS. ROSS: I can clean that up and email it to you right now.

16 THE COURT: All right. All right, let's go to page two of the Defense. It  
17 appears to the Court that all of the ones that you -- you guys are typing out new stuff  
18 to go -- and then mirrors what the State has.

19 MS. ROSS: Yes, Your Honor. There are some where I would prefer our  
20 language with the law that is cited instead of the State's. There's one or two, I think  
21 that are supplemental to the State's. Like the need to test -- or the testi -- testimony  
22 instruction. The rest are -- we would propose our language instead of the State's.

23 THE COURT: Well, I worked on them this weekend. I didn't see any cites.

24 MS. ROSS: I had sent a copy of all the citations to your chambers last  
25 Tuesday.

1 THE COURT: Get him in here. Tell him I need the jury instructions --  
2 Defense jury instructions with cites, I didn't see them. All right.

3 MS. KOLLINS: Your Honor, if we could just start with Instruction Number 2.

4 THE COURT: Right, page two?

5 MS. KOLLINS: Page two. I believe that the state of the law is now that the  
6 word material is to be deleted from material elements. That would be line five. I  
7 think that's consistent with current case law and that's why our instruction no longer  
8 says that.

9 THE COURT: And they've been instructed a couple times on this, I haven't  
10 given it in writing but --

11 MS. KOLLINS: Well, it's part of -- I think it's part of the reasonable doubt  
12 instruction, however, they've bifurcated it and added that word material and under  
13 the case law now you can't --

14 THE COURT: Okay.

15 MS. KOLLINS: -- say that.

16 MS. ROSS: Your Honor, we can redact the word material, however, I would  
17 ask that this be given as a -- an instruction as to just solely the element of the  
18 burden of proof of the State's case.

19 MS. KOLLINS: Well, and additionally, the State objects to the second  
20 paragraph that, again, comments on he doesn't have to testify. I mean, we have a  
21 clear instruction that they cannot hold him not testifying against him. They've been  
22 instructed regarding the State's burden of proof. I think this just exemplifies that  
23 unnecessarily.

24 THE COURT: Right, and -- and it confuses the jury somewhat.

25 MS. ROSS: Your Honor, that second paragraph does not regard his right or



1 ability to testify or not to testify. This is simply stating what we've already talked  
2 about in jury instructions that this -- the Defense is not required to put any evidence.

3 THE COURT: That'll be marked as proposed by Defense not given.

4 MS. ROSS: The entire instruction --

5 THE COURT: Yes.

6 MS. ROSS: -- on burden on proof is not going to be given?

7 THE COURT: No, it's -- it's given in the general instructions and we'll get to  
8 those. Also, as we're doing these, the one instruction that includes the -- the  
9 information, I can read it to them again or by stipulation Ad justice Cherry, when he  
10 was a district court judge if you guys waived it, I wouldn't read it to them a second  
11 time since the Clerk has already read it to them.

12 MS. ROSS: Defense would stipulate to that.

13 THE COURT: Do you guys want it read to them?

14 MS. KOLLINS: I don't have a problem with that, that's fine.

15 THE COURT: All right. All right now the credibility or believability is on -- is  
16 your page three, Defense. Which is really -- encompasses -- wait a minute, now I've  
17 lost it. The State's proposed, which has been the normal one given.

18 MS. KOLLINS: Well, and, you know, specifically, I mean, I think it goes far  
19 beyond what they're taking in credibility. But specifically when you get down to line  
20 22, if you do not believe a witness's testimony that he or she no longer remembers  
21 something -- something, that is inconsistent with the witness's earlier testimony.  
22 Earlier statement on the subject. I mean --

23 THE COURT: And it doesn't come from any statute or case in Nevada, it  
24 comes from Cal -- Cal Criminal Jury Instructions.

25 MS. ROSS: Yes, Your Honor, and Nevada courts have relied on Cal Crim

1 Jury Instructions before. And I believe that it is a correct statement regarding the  
2 jury's ability to take note of any inconsistency of the witness's testimony.

3 THE COURT: Okay, that will be marked as proposed, not given. The next  
4 one you have is page four.

5 MS. KOLLINS: And Your Honor, I don't think, when I did these --

6 THE COURT: Get Alan in here.

7 MS. KOLLINS: -- when I did these instructions I asked them whether their  
8 client was going to testify or I knew or not. So I did not propose one of those, so --

9 THE COURT: That's all right. We'll have Alan type one up.

10 MS. ROSS: Your Honor, I can email any clean versions of these --

11 THE COURT: You want to email a clean version to Alan you can.

12 MS. ROSS: I will as -- as soon as we finish settling them.

13 THE COURT: All right, so --

14 MS. KOLLINS: And -- and just for the record, we will take out the caption at  
15 the top and we'll take out the citation at the bottom.

16 MS. ROSS: And also just write jury instruction number on the top.

17 THE COURT: And no page at the bottom.

18 MS. ROSS: Correct.

19 THE COURT: I guess they've decided they'll clean them up. All right, and  
20 page five is the evaluation of evidence.

21 MS. ROSS: Yes, Your Honor, this is current state of the law in Nevada  
22 through *Bales v State* and *Mason v State* that I cited on the instructions given to the  
23 Court. The language comes directly from that case law that has not been  
24 overturned here in Nevada.

25 MS. KOLLINS: I believe what they said was that was discretionary and not

1 obvious error to give it. I don't think it is the law in the state of Nevada. It has been  
2 given over state objection it is not the state of the law here, it has not been deemed  
3 absolute error. I have a copy of bails if the Court can indulge me just a second.

4 THE COURT: I'm going to mark that as proposed, not given, but I'm having  
5 my law clerk review the two cases right now.

6 MS. ROSS: I have copies of the cases also, if needed.

7 THE COURT: You want to give him copies of the cases, he'll -- he won't have  
8 to look them up.

9 MS. ROSS: Sure thing. Brief indulgence.

10 THE COURT: Yes.

11 MS. KOLLINS: Your Honor, just for the record, I mean, the bails court  
12 addresses that that might be appropriate in the circumstantial evidence case, and  
13 that's regarding the interpretation of circumstantial evidence.

14 THE COURT: The law clerk is reviewing it right now. All right, let's go over  
15 page six.

16 MS. ROSS: Page six of the Defense, yes, Your Honor.

17 THE COURT: And reasonable doubt. Try to review them with the same --

18 MS. KOLLINS: Well, as the State's position is paragraph one is already  
19 been -- that's already addressed another --

20 THE COURT: Right.

21 MS. KOLLINS: -- just instructions. Paragraph two is an accurate depiction of  
22 the reasonable doubt statute. State has a problem with the third paragraph that you  
23 must reach a subjective state of near certitude on the facts at issue. That's --  
24 language is used in an interpretation faction in cases, but it is not to be read to the  
25 jury. That -- that's a quan -- that's almost a quantification concept to the jury. I

1 mean, that's when the Supreme Court is in case law tried to explain what  
2 reasonable doubt is, but they don't give that instruction to a jury about certitude.

3 THE COURT: That'll be -- mark --

4 MS. ROSS: Your Honor, if I just may make a brief record --

5 THE COURT: Sure.

6 MS. ROSS: The -- the Supreme Court in *Randolph v State*, repeatedly said  
7 reasonable doubt instruction should impress on the jury the need to reach a  
8 subjective state of near certitude and further that subjective state of near certitude  
9 remains the requirement for a jury determining the facts in issue. It is not  
10 quantifying what reasonable doubt is. What it is saying as an instruction regarding  
11 right abo -- right above it in this instruction, doubt to be reasonable must be actual  
12 not mere possibility or speculation and furthermore it must -- you must reach a  
13 subjective state of near certitude on the case law that is still good law in Nevada.

14 MS. KOLLINS: I'm not disagreeing that *Randolph* is good law, but the -- the  
15 Nevada Supreme Court has been very clear, you give the statutory definition of  
16 reasonable doubt, period. You don't embellish on it.

17 THE COURT: And that's what I'm -- that's what I'm giving. So that'll be  
18 marked as proposed, not given. Number seven.

19 MS. ROSS: This is just statutory law, Your Honor.

20 THE COURT: That's covered, I'm trying to figure -- remember where it --  
21 where it is in the general --

22 MS. KOLLINS: Oh, it's -- it's covered in the reasonable doubt instruction.  
23 You know, we talk about -- we -- it's our burden to prove all the material -- or all the  
24 elements beyond a reasonable doubt. And it's already given.

25 MS. ROSS: And, Your Honor, this is -- this is just a -- a *Crawford* negatively

1 worded phrase regarding statutory law that I believe is proper to give after the  
2 reasonable doubt instruction so that the jury may, in their deliberations, remember  
3 that they must have a -- beyond a reasonable doubt of every element of the charge  
4 defense.

5 THE COURT: But that's included in all reasonable doubt instruction -- the  
6 general instructions, I believe. And the State provided these two, there's no number  
7 on this one, it comes at the bottom.

8 MS. KOLLINS: I'm sorry, I can't -- may I approach, Your Honor?

9 MS. ROSS: It's just on -- on your --

10 THE COURT: On a person subjects a minor under 14 --

11 MS. KOLLINS: Oh, it -- it didn't -- it didn't roll over.

12 THE COURT: -- and then the next one says physical force but the instruction  
13 number's at the bottom of here and not at the top of this one.

14 MS. KOLLINS: And not at -- okay, it didn't roll over. Okay, we'll fix it, Judge,  
15 thank you.

16 MS. ROSS: And, Your -- Your Honor, while you brought this up, I actually had  
17 an objection to the State's proposed instruction on this case. The, I believe, the  
18 language of evidence of ejaculation is not necessary was added to what their  
19 standard instruction is on -- on sexual assault or sexual penetration and I believe  
20 that was just added based on the facts in this case. I would request that that  
21 sentence be redacted because nowhere in case law or statutory law do they define  
22 whether ejaculation is necessary to the definition of the crime of sexual penetration.  
23 I believe it's prejudicial in this case.

24 THE COURT: Why?

25 MS. ROSS: Because the -- the testimony regarding, I believe, specifically

1 facts in this case said, did you ever see anything come out of his penis? That --

2 THE COURT: How is this prejudicial to the defendant?

3 MS. ROSS: Well, if you --

4 THE COURT: Ejaculation is not necessary.

5 MS. ROSS: Correct, Your Honor, but as adding this into what the statutory  
6 definition of sexual intercourse is, we don't need it. It's -- it's, yeah, it's already been  
7 defined what sec -- sexual penetration is and nowhere is ejaculation even  
8 mentioned in the statute or case law.

9 MS. KOLLINS: Well, we can put it in a separate page, if you don't want it on  
10 that page, that's just where --

11 THE COURT: I'm going to give it over the objection of the Defense. All right,  
12 now we're on page eight of Defense, Lewdness with a child under 14.

13 MS. KOLLINS: Just -- just for the record, the -- Mr. Conrad is fixing that  
14 page --

15 THE COURT: Okay.

16 MS. KOLLINS: -- and going to send it back over. The actual citation for  
17 *Crawford* on Defense's proposed on page eight should be 746 instead of 744. You  
18 know, I don't -- it's not so much with the definition of what lewdness is, it's more with  
19 if the State fails to prove. I mean, we've already addressed reasonable doubt.  
20 We've given a definition, we've talked about elements.

21 MS. ROSS: Your Honor, this is a *Crawford* instruction which we have been --  
22 it's repeatedly been upheld that Defense is entitled to. We -- I understand that --

23 THE COURT: Where?

24 MS. ROSS: In *Crawford v State*.

25 THE COURT: Where has it been repeatedly upheld?

1 MS. ROSS: I do not have a citation, Your Honor, I can get one but --

2 THE COURT: Well, no. This is the time to settle it so --

3 MS. ROSS: -- when --

4 THE COURT: It's -- it's going to be proposed, not given. I've never given that  
5 jury instruction in a case.

6 MS. ROSS: Your Honor, just for the record, it's a *Crawford* instruction that  
7 would not be repetitive. We would ask that it be inserted right behind their definition.

8 THE COURT: Eight and nine are not going to be given.

9 MS. ROSS: Same record for those, Your Honor.

10 THE COURT: All right, now number ten, multiple acts.

11 MS. KOLLINS: Court's indulgence. I think particularity is an appellate issue,  
12 not a jury instruction. Particularity is something that the Supreme Court looks on our  
13 record upon and decides whether there is enough particularity to -- that's an  
14 appellate review standard, it's not a conviction standard. So the State objects, I  
15 mean, I -- I agree that *La Pierre* stands for that premise, but again, in the venue of  
16 appellate review not testimony.

17 THE COURT: I -- I've never given that.

18 MS. ROSS: Then, Your Honor, just for a record, I would propose taking out  
19 the second half of the first sentence, if the State's objection is to particularity. And I  
20 would request that the Court instruct the jury where multiple counts are charged  
21 there must be some reliable indicia that the number of acts charged actually  
22 occurred. That is statutory law regarding multiple acts of -- of anything, in this case,  
23 the sexual assault.

24 MS. KOLLINS: Well, I don't believe it's statutory --

25 MS. ROSS: It's --

1 MS. KOLLINS: -- I believe *La Pierre* stands for the premise that when a  
2 Supreme Court sits in review of child acts of sexual assault, they want particularity in  
3 order to uphold them. I don't believe that is a conviction standard. If they want to  
4 argue credibility because she was not detailed enough, that's a credibility issue and  
5 that's covered in another instruction.

6 MS. ROSS: Your Honor, specifically with the facts at hand here, I believe the  
7 testimony of -- of Tyana was that there were some more other times that I don't  
8 remember. And that specific testimony, there's not a reliable indicia that the number  
9 of acts charged actually occurred. And we ask the jury be instructed on that specific  
10 point of the law.

11 THE COURT: All right, thank you. I -- I have not given that before and I'm --  
12 I'm not satisfied that that's the state of the law at this point. I'm not giving it. It'll be  
13 marked proposed, not given.

14 Now on page 11. Approximate date, timing requirement.

15 MS. KOLLINS: Again, Your Honor, the State objects to this. We are allowed  
16 to prove a time frame, and that's what we've done in this case. And that's clear --  
17 and that's clear under the case law. We do not have to get to any particularity as to  
18 date. We can prove a time frame and here we've alleged between January of 2011  
19 through September of 2013. They did not move in that apartment until April 2011,  
20 so the conduct is obviously truncated for those few months. I don't think that this is  
21 an appropriate instruction.

22 THE COURT: 11 and 12 are -- are going to be marked as proposed, not  
23 given.

24 MS. ROSS: Your Honor, are the -- the Defense proposed jury instructions  
25 with the citations, are they part of this record or would you like me to make a record



1 for each of them before --

2 THE COURT: No, they're going to be part of the record.

3 MS. ROSS: Okay. Your Honor, on page 13 I propo -- I -- I put on Your  
4 Honor's bench this morning and gave a copy to the State, a proposed -- another  
5 instruction that I would like to address before we get to number 13. It's a *Crawford*  
6 for the corroboration necessary of a witness.

7 MS. KOLLINS: Well --

8 THE COURT: Well, two problems with it. It's got a number at the bottom and  
9 you've got Defense proposed jury instruction again.

10 MS. ROSS: Which I would be happy to clean up and send to Alan, I'm doing  
11 that with another one.

12 MS. KOLLINS: And, Your Honor, we've clearly proposed an instruction that  
13 the victim's testimony need not be corroborated. I mean, it's been explained to them  
14 that testimony is evidence and they're to assess her credibility in other instructions.  
15 I think this is redundant as to credibility.

16 MS. ROSS: And just so, Your Honor, for the record, it's a *Crawford*  
17 instruction that we would be entitled to.

18 MR. SPEED: Well, it's a --

19 MS. KOLLINS: *Crawford* -- *Crawford's* --

20 THE COURT: Actually, you don't cite that, you cite *May and Turner*.

21 MS. ROSS: No, Your Honor, that's on page 13. I'm just talking about the  
22 additional one of page two. *Crawford* instructions are negatively word inferences --  
23 worded inferences of the law. This is exactly what this is.

24 MS. KOLLINS: Well, and *Crawford* actually speaks to their theory and so if  
25 they want to discuss how this particular instruction speaks to their theory, beyond

1 just being versed in the negative. I mean, you can't just verse something in the  
2 negative and call it a *Crawford* instruction and so you're entitled to it. It doesn't  
3 speak to any unique theory in this case.

4 MS. ROSS: And, Your Honor, the theory that we would assert is that the DNA  
5 science is unreliable. So without furthermore, if you do not believe the testimony of  
6 the alleged victim, he's entitled to a verdict of not guilty.

7 THE COURT: That'll be proposed, not given.

8 MS. KOLLINS: And that's as to vo -- both versions of 13?

9 THE COURT: Yes. Yes. Right, 14 is the same. That's the proposed, not  
10 given. Same argument we'll attach to that. Page 15, that's a *Crawford* cite.

11 MS. ROSS: Correct, Your Honor.

12 THE COURT: That's the negatively -- I -- I just think it confuses the jury. It'll  
13 be proposed, not given. And then the verdict form.

14 MS. ROSS: Yes, Your Honor. We're requesting that the option for not guilty  
15 be presented to the jury first. As we sit here, Mr. Williams is still not guilty.

16 THE COURT: That's fine with me, I don't care.

17 MS. ROSS: The presumption of innocence stands through the turn of the  
18 verdict.

19 THE COURT: That's fine. I said yes.

20 MS. ROSS: I didn't hear that, Your Honor. I just heard I don't care.

21 THE COURT: I don't care. It's -- it's going to be given.

22 MS. ROSS: All right, it just went through there. Thank you, Your Honor.

23 MS. KOLLINS: I guess, Your Honor, the only thing in the State's verdict form  
24 it says guilty of lewdness with a child under the age of 14. So we have spelled out  
25 the crimes next to each --

1 THE COURT: I think they can -- they -- they're probably --

2 MS. KOLLINS: That's fine.

3 THE COURT: -- bright enough to figure that out. And I'm going to Ill give the  
4 Defense verdict form.

5 MS. ROSS: And, Your Honor, I will email Alan the clean version of the  
6 Defendant's right not to testimony -- to testify if -- if he prefers that instead of typing  
7 out his own.

8 THE COURT: The jury instruction that I gave you guys about --

9 MS. KOLLINS: Oh, I forgot about that.

10 THE COURT: -- implicit bias. Does -- do either of you have an objection to  
11 implicit bias?

12 MS. ROSS: The only objection I had, Your Honor, was that it's already been  
13 covered in the State's proposed jury instructions. I don't have a specific objection as  
14 to which one --

15 THE COURT: You don't want me to give it?

16 MS. ROSS: -- you use.

17 THE COURT: I won't give it.

18 MS. ROSS: No, I just would like just one. I don't -- I don't think we need two  
19 of them.

20 THE COURT: Okay. I won't give it. That was given to me by the Judge from  
21 Iowa or somewhere. We have marked Defendant's proposed jury instructions,  
22 verdict form. I will add the additional ones that have the citations on as proposed.  
23 It'll be Court Exhibit, not be sent back to the jury. It's kind of like the other one, but  
24 that one has the cites to it. All right. Bring me when you get the -- the instructions  
25 being them. Have you got yours cleaned up? Do you know?

1                   Because I have to go make -- we got to number these. And then I have  
2 to make --

3           MS. KOLLINS: Well, and --

4           MS. RHOADES: It's in word.

5           MS. KOLLINS: -- it's in word so perhaps I can come back and just --

6           THE COURT: Word is good.

7           MS. KOLLINS: -- fix it for Alan because we're not hearing back from him just  
8 yet.

9           THE COURT: All right, go -- go see Alan.

10          MS. KOLLINS: Hold on. Do you have any objection to me going back there?  
11 It's just the --

12          MR. SPEED: No.

13          MS. KOLLINS: -- numbers ran over on the page.

14   [Pause in proceedings]

15          THE COURT: How long is your closing?

16          MR. SPEED: Between 45 and an hour, I would say.

17          THE COURT: Okay, do you know how long yours are?

18          MS. RHOADES: 40 minutes. 35, 40 minutes. Mine's 35 - 40 minutes.

19          THE COURT: So an hour and a half, two hours? We'll just go right to lunch  
20 and I have to order them lunch now. Yeah, order lunch, but have it here at one.

21          MS. ROSS: I'm just going to use the restroom quick.

22          THE COURT: We'll number these now, or as soon as she gets back because  
23 they have to go to different floors to make 14, 15, 16, 17, 18, 19 copies.

24          MS. KOLLINS: Okay.

25          THE COURT: Because our machine gets broken real fast.

1 MR. SPEED: Your Honor, will you give us two, that means twenty, I'm  
2 thinking because --

3 THE COURT: No, I'm giving you two.

4 MR. SPEED: Okay.

5 THE COURT: Them two, one for the Clerk, 14. 14, 15, 16, 17, 18, 19.

6 MR. SPEED: Okay.

7 THE COURT: So you all won't have these numbered, so keep track of where  
8 you want to number them. Then we'll make copies for everybody and you'll have  
9 them.

10 MS. ROSS: Your Honor, if it's just the one additional from the defense, if you  
11 could just put that wherever you're giving the --

12 THE COURT: Right.

13 MS. ROSS: -- generic ones and I have no objection to the order that they're  
14 in.

15 THE COURT: I just need to number them. As soon as she comes back, we'll  
16 number them then send -- before we get the jury in -- I'll have to send my clerk and  
17 my law clerk again to different floors because our copy machines are  
18 temperamental. All right.

19 Jury Instruction Number 1, instructions to the jury and hasn't already  
20 numbered number one.

21 Number 1, if in these instructions, that just says the order in which the  
22 instructions given has no significance.

23 Number 3 is the indictment, and that's about four pages -- five pages.

24 Number 4, to constitute the crime charger must exist the union or joint  
25 operation of an act forbidden by law.

1 5, the Defendant is presumed innocent until the contrary is proved.

2 Number 6, you are here to determine a guilt or innocence of the  
3 Defendant in this case.

4 You know, maybe that's where I should put Number 7 -- I'll put the --  
5 Number 7 will be it the constitutional right of Defendant in a criminal case not to  
6 testify.

7 8, the -- the evidence which you are to consider in this case consists of  
8 testimony, witnesses, exhibits, and any facts agreed to.

9 9, the credibility or believability instruction.

10 10, a witness who has special knowledge, skill, or experience.

11 11, a person who submits a minor under 14 to sexual penetration.

12 12, physical force is not in the commission of the assault.

13 13, a person is not required to know more than her age, strength, or  
14 surrounding facts.

15 14, there is no requirement of the testimony of the victim -- be  
16 corroborated.

17 15, where multiple sexual acts occur as part of a single encounter.

18 16, any person who willfully commits lewdness, a lascivious act.

19 17, the law does not require the lusts, passions, or sexual desires.

20 18, to constitute lewdness with a child under 14.

21 19, lewdness with a child under 14.

22 20, where a child has been a victim of sexual assault.

23 21, consent in fact of a minor.

24 22, starts the general, although you are to consider only evidence in the  
25 case.

1 23, in your deliberation we're going to not discuss punishment.  
2 24, when you retire select one of your members to be foreperson.  
3 25, if you want read back. T  
4 26 is the signature line, now you'll listen to argument Counsel.  
5 The State is familiar with jury instructions 1 through 26?  
6 MS. KOLLINS: Yes, Your Honor.  
7 THE COURT: Do you have any more to propose?  
8 MS. KOLLINS: No, Your Honor.  
9 THE COURT: Are you familiar with the jury verdicts and other than the  
10 objections that you made, do you have any objection to the verdict form being sent  
11 back?  
12 MS. KOLLINS: No, Your Honor.  
13 THE COURT: Defense is familiar with 1 through 26?  
14 MS. ROSS: Yes, Your Honor.  
15 THE COURT: Except the objections that you've already made do you have  
16 any objections from 1 to 26?  
17 MS. ROSS: Submit on our previous arguments.  
18 THE COURT: Right. And your verdict form I'm giving --  
19 MS. ROSS: Thank you.  
20 THE COURT: -- so you have any objection of the verdict form?  
21 MS. ROSS: No, Your Honor. All right. We'll go make them, get them out as  
22 soon as we get them done we'll distribute them and start.  
23 [Pause in proceedings from 10:24 a.m. to 10:51 a.m.]  
24 THE COURT: You got them all to the door?  
25 THE MARSHAL: Yeah.

1 THE COURT: All right.

2 THE MARSHAL: Mr. Speed is in with the Defendant for two minutes, he said.

3 THE COURT: All right. All right, bring the jury in Tom.

4 [In the presence of the jury]

5 THE MARSHAL: Okay. All rise, please.

6 And be seated.

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

8 MS. KOLLINS: Yes, Your Honor.

9 MR. SPEED: Yes, Your Honor.

10 THE COURT: All right, ladies and gentlemen, good morning. Thank you for  
11 your being prompt. You have jury instructions in front of you, we're -- I'm going to  
12 read them to you. Make note on what you would like to make note of. You'll be  
13 taking these back to the jury room with you. We'll have arguments in just a -- as  
14 soon as this is read to you.

15 **[THE COURT READS JURY INSTRUCTIONS]**

16 THE COURT: Now, you'll -- your jury foreperson will also have the verdict  
17 form. It'll have boxes and all -- your foreperson has to do is mark the box, check the  
18 boxes, sign it and return it to Court. State?

19 MS. RHOADES: Yes, Your Honor.

20 If we can get the laptop up.

21 THE COURT: Yep.

22 MS. RHOADES: Thank you.

23 **CLOSING ARGUMENT BY THE STATE**

24 BY MS. RHOADES:

25 Good morning. In opening, Defense Counsel told you that because two



1 stepchildren got upset with the Defendant, Gregory Williams, for some unknown  
2 reason, they made up an unbelievable story. That these stepchildren, along with  
3 their brothers and sisters, came up and concocted a story. A story that would cause  
4 police to come to their house. A story that would cause each individual child to be  
5 interviewed by police. A story that would cause all of the children to go to the  
6 hospital. A story that would cause Tyana to be medically examined and swabbed.

7 A story that would eventually cause Amia and Tyana to be interviewed  
8 by Mr. Speed and his investigator. A story that came to perfect fruition when they all  
9 got to come in here and testify in front of a courtroom full of strangers about  
10 embarrassing, private, sad details about their lives. Whether that story was made  
11 up by these brothers and sisters, whether that story that just happened to be  
12 corroborated by DNA evidence. Whether that's a story that's made up is up to you.  
13 You are judges of these witnesses' credibility and of what they said during this trial.

14 In every criminal case, the State must prove two things. One, that  
15 crimes were committed. And two that it was the Defendant that committed the  
16 crimes. So two, it -- this is not a who-done-it case. There were not multiple  
17 suspects that have been alleged. We know that Tony, the Defendant, was the  
18 one, the adult male, that was living with the kids and the mom from April 2011 to  
19 September 2013. They all come in here and identified him. This is not a  
20 who-done-it. If crimes were committed, they were committed by the Defendant. So  
21 the question is what crimes, if any, were committed. And that's -- that's up to you to  
22 decide.

23 Before we get to the elements of the crimes, I want to go through some  
24 very important jury instructions that, you know, you need to keep in the back of your  
25 mind when you're evaluating the testimony, when you're evaluating the witnesses,

1 when you're evaluating everything that happened last week. And the first instruction  
2 is the reasonable doubt instruction. A reasonable doubt is one based on reason; it  
3 is not mere possible doubt. Doubt to be reasonable must be actual not mere  
4 possibility or speculation. It can't be speculative. It has to be based on reason.

5 And the Judge just told you what the evidence is in this case, and you  
6 have direct evidence. Direct evidence from Tyana, direct evidence from Amia that  
7 came in here and told you what Gregory Williams did to them. But you also have  
8 circumstantial evidence, which is the corroboration of the kids, the corroboration of  
9 the mom, the DNA evidence, the doctor's testimony.

10 What is not evidence, and I know that you've heard this and I just want  
11 to go over this. Statements, arguments, and opinions of Counsel are not evidence.  
12 And you cannot speculate to be true any insinuations, suggested by a question  
13 asked by a witness. And again, you must disregard what you know and what you've  
14 been instructed. Anything that's been stricken, any objection that's sustained -- that  
15 was sustained by the Court.

16 In addition to the evidence, the direct and circumstantial, you can bring  
17 in too your common sense. You must bring your instruction to the consideration of  
18 the evidence your everyday common sense and judgement as reasonable men and  
19 women. You may draw reasonable inferences from the evidence, but again, here  
20 we are again with those words. You cannot speculate or guess. And you know the  
21 difference between guessing, speculation versus drawing reasonable inferences  
22 from what you heard and what you saw and what you'll have back with you in the  
23 deliberation room.

24 So what are the crimes? Lewdness with a child under the age of 14.  
25 Amia, we have two counts, that's Counts 1 and Count 2. For Tyana we have a total

1 of seven counts of lewdness with a child under 14. Count 3 is for the buttocks, and  
2 we'll get into this. The other six counts are for the genital area. The Defendant  
3 putting his penis in the genital area of Tyana. The other crime you have sexual  
4 assault with a minor under 14, and that's only as to Tyana. And we have 6 counts  
5 for the Defendant putting his penis into the genital area of Tyana.

6 The time frame that we're talking about, and this is all found in that Jury  
7 Instruction Number 3, which is the char -- which are the charges, the information, it  
8 lays it all out for you. January 1<sup>st</sup>, 2011 through September 6<sup>th</sup>, 2013. So just  
9 briefly, I want to go over their birthdays. Tyana, her birthday's July 31<sup>st</sup>, 2003.  
10 Amia's November 13<sup>th</sup>, 2000. Aneesah told you that they all moved in with the  
11 Defendant into that Sunrise Avenue apartment April of 2011.

12 So really, we're talking about April 2011 through September 2013.  
13 Tyana when they moved in was 7 years old, Amia was 10 years old when they  
14 moved in. Tony was gone September 7<sup>th</sup>, 2013. Tyana was 10 and Amia was 12.  
15 And so the important thing is everything that the girls testified to happened in that  
16 Sunrise apartment between that time period. Everything happened when they were  
17 under 14, because that is an element of each and every one of the crimes that he's  
18 charged with that the girls were under 14 years old. And this, you know, clearly  
19 outlines the fact that they were both under 14 years old.

20 We're going to start with the counts involving Amia. And again, she's  
21 10 -- between and 12 years old. So what is lewdness with a child under the age of  
22 14? Any lewd or lascivious act upon or with any part of the body of a child under the  
23 age of 14 with the intent -- the intent of arousing, appealing to, or gratifying the lust  
24 or passions or sexual desires of that person or of the child. The law doesn't require  
25 that those passions actually be aroused. You have an instruction that tells you it's

1 not necessary that the bare skin of the child be touched for this crime to have  
2 occurred. And again, it's an act upon or with the body of a child under 14.

3           Some other very important instructions are the credibility instructions.  
4 And along with the credibility instruction, which is below, I want you to keep in mind,  
5 there is no requirement whatsoever, that the testimony of a victim of sexual assault  
6 or lewdness be corroborated. And if you believe that witness beyond a reasonable  
7 doubt, that testimony alone is enough to sustain a conviction, if you believe that  
8 testimony beyond a reasonable doubt.

9           And so what do you take into account when you're assessing the  
10 credibility? You have an instruction about it. Credibility or believability, manner  
11 upon the stand, relationship to the parties, fears, motives, interests, feelings,  
12 reasonableness of their statements, and the strength and weakness of their  
13 recollections. Ask yourselves when you're back there; what motive does Amia have  
14 to lie about what she told you from the witness stand? Remembering, you can't  
15 speculate, you can't guess. What evidence of a motive does Amia have to lie?

16           So what did Amia tell you? And you are her judge, you know, of how  
17 she testified, what she said. How she remembered it. How she seemed. She told  
18 you that she was scared to tell. And when you're taking this into consideration, think  
19 of the household, I mean for all intents and purposes, he was essentially the  
20 stepfather. He was an authority figure in that house. She told you that she was  
21 scared to tell. Is that reasonable for a 10 -- 12 year old -- 10, 11, 12 year old to be  
22 scared to tell?

23           She told you from the stand that she was in the living room, in the  
24 corner, and the Defendant called her over. And that the Defendant lifted up her  
25 shirt. She remembered that she was wearing a red shirt; it was from a school with a

1 name on it. She told you that this was before they told the mom the first time.  
2 Which, I'm going to say is about March 2013 because there was testimony that it  
3 was about 6 months before that second time that they told, September 2013. So  
4 we're talking about March 2013, she remembers these specific details about what  
5 happened. What she was wearing, the shirt that she was wearing. Defendant lifted  
6 up her shirt, sucked on her breast. She said that it felt like a long time. Two, three  
7 minutes, to her it felt like a long time.

8 And that's what she testified to when she told you what he did and she  
9 told you what happened. And that's a lewd or lascivious act upon her body with the  
10 intent to arouse. How do you know what his intent was? We can't get into his head;  
11 why else would he be doing that, ask yourselves, why else is he doing that?

12 Count 2, she told you that the very next day, again, those are the  
13 elements. No corroboration necessary as you're instructed. The very next day she  
14 told you that he had called her into the living room and that he grabbed her shirt and  
15 lifted up the front of her shirt. She started to cry and he stopped, but he still did that.  
16 Basing, you know, what happened the day before; what was his intent in lifting up  
17 her shirt that very next day? The circumstantial evidence of his intent is what he did  
18 the day before by sucking on her breast when he lifted up her shirt.

19 This instruction regarding time frame. And this goes into that kid  
20 standard. Kids don't remember things often in a linear fashion. They don't  
21 remember the exact day that something happened. They remember the general  
22 time frame. And this is your instruction, I mean, the law tells you and carves out  
23 these exceptions for minors. The State is not required to prove a specific day, but  
24 may prove a time frame within which the act took place. She told you that both of  
25 these instances happened before they told mom the first time. She told you it was

1 at the Sunrise Avenue apartment and we've already gone through how she was  
2 under 14 years old that entire time they were at the Sunrise Avenue apartment.

3 All of the elements have been met with regard to Amia and that's Count  
4 1 and Count 2. And the State has proven these beyond a reasonable doubt. We  
5 ask that you find him guilty of both of these charges.

6 Now moving onto Tyana. Again, with these credibility instructions, if  
7 you believe Tyana alone and no corroboration is necessary, if you believe her  
8 beyond a reasonable doubt that's evidence to sustain convictions. So we're talking  
9 about the rest of the Counts, 3 through 15. Again, the credibility, believability of a  
10 witness, all of those things can be taken in to consideration and you're taking that  
11 into consideration not only for Tyana, but for Kayla, for James, for Damarius, for  
12 Amia because they all told you facts that corroborate what Tyana told you. So you  
13 need to take into account their credibility and their believability too. And I submit to  
14 you again, what motive was presented to you that these kids have to lie about this?

15 Going into the reasonableness of their statements, the Defendant's  
16 position in the household. She told you that she was scared to tell. Is that  
17 reasonable? Ask yourselves that. She told you that she was ashamed and she told  
18 you that he knew -- she knew what he was doing was wrong. What's her motive to  
19 lie? She told you the reason that she told mom. She wanted to talk to mom  
20 because she didn't want it to happen anymore. That's the evidence that's been  
21 presented to you about why she told mom this -- during this time period. No other  
22 evidence has been presented to you for any other motive other than she didn't want  
23 it to happen anymore.

24 This is -- we're going to start with a timeline before we get into  
25 specifically what she told us. And so we know April 2011, they moved into the Juan

1 Garcia Apartments. We know September 7<sup>th</sup>, 2013 was the day that the police  
2 came and took Tony away. That very night -- that very night before September 7<sup>th</sup> is  
3 the first instance that Tyana told you about and she specifically remembered. We've  
4 got this other kind of marking point on our timeline, about six months before  
5 September 2013. That's when James went to mom the first time, March 2013.  
6 Tyana told you about the specifics of an extra room time and she said that that was  
7 before they went to mom the first time.

8 She also told you the specifics about another living room time where  
9 there were naked pictures on the TV and she said that that was after they went to  
10 mom the first time. And then, just for reference, Amia told you that what Tony did to  
11 her, he did before they went to mom the first time. And so this is the timeline and  
12 the time frame that we're going to work with.

13 And in looking at this time frame, I just want to go back over statements  
14 of Counsel are not evidence. What I'm saying right now is not evidence, and you  
15 know that. In opening, the State told you that Tyana was going to relay specific  
16 information about the living room, the night before September 7<sup>th</sup>. We told you that  
17 she was going to relay a specific incident with naked pictures in the living room and  
18 an extra room time. There was another instance that the State informed you that  
19 she was going to relay specific ins-- specific details about, another living room  
20 incident that Tyana wasn't able to testify about on the stand. We don't know why  
21 she wasn't able to testify about the specifics of that.

22 We do know that she testified and she told you that this happened over  
23 and over and over again. That it happened all the time. That every time that it  
24 happened, he put his penis in her vagina and he put his penis in her butt. And she  
25 told you that this happened every time that this occurred. She told you most of the

1 times it happened in the living room. That's what she testified to. And what else we  
2 know is that on March 4<sup>th</sup>, 2015, when she was interviewed by Mr. Speed and his  
3 investigator, she told him the same thing on that day. That it happened all the time.  
4 This is repeated conduct that happened over and over again and Tyana couldn't  
5 remember the specific details of some of the times that it happened. Again, not  
6 required to prove the specific date. She told you that everything happened at the  
7 Sunrise apartment and she was under 14 the entire time.

8 Count 3, again, we have our lewd -- lewdness elements. Count 3  
9 specifically going to Instruction Number three is for Tony's penis touching and/or  
10 rubbing and/or fondling the buttocks of Tyana. So this happened each and every  
11 time that Tony sexually assaulted her. She told you that. Each and every time.  
12 There's one count for the buttocks. There's one count for him putting his penis in,  
13 around, fondling her buttocks, and this is it. And every time she talked about that, it  
14 goes to this count. Because all of the other counts go to the genital area and him  
15 putting his penis in her vagina. So this Count 3 is for the buttocks.

16 And she told you that each and every time he put he'd put it in her  
17 vagina and then he put it in her butthole. Going on this also, you're instructed  
18 multiple sexual acts occur as part of a single criminal encounter and he can be  
19 found guilty for each of these acts. Our main one is number two where the acts of  
20 the same specific type are interrupted by a different specific type of sexual assault  
21 or lewdness. So him placing his penis in her vagina is different than him placing his  
22 penis or rubbing or fondling her butt with his penis. And those are two separate acts  
23 and he can be held accountable for each act, separately.

24 All right, so I'm going to go on the order of which she testified to. And  
25 the first time that she told you about was the living room time, which is the night



1 before -- we actually know a specific date on that time, that was September 6<sup>th</sup>,  
2 2013, the night before the police came. So going to the Count 3, with the penis in  
3 the buttocks, it happened in the living room. She told you that Tony told her to come  
4 to the couch. She was at the table in the living room. While she was standing, Tony  
5 told her to pull her pants and underwear down; she said that she was facing him.  
6 She told you that his penis was near her butt and that it went in her butt. That's  
7 what she testified to.

8 Here are the elements for the sexual assault with a minor under 14.  
9 Which is going to be Count 4. A person who subjects a minor under 14 to sexual  
10 penetration under conditions in which the perpetrator knows or should know that the  
11 minor is mentally or physically incapable of resisting or understanding the nature of  
12 their conduct. Basically, these are the elements of sexual assault with a minor  
13 under 14. What makes it different from lewdness is the penetration.

14 We have penetration without consent or incapable or incapable of  
15 understanding or resisting, mentally or physically, incapable of understanding or  
16 resisting the nature of the conduct; and age. We know that sexual penetration  
17 includes penetration however slight, of the penis into the genital opening of the  
18 victim. So penetration, however slight, into the genital opening. The hymen doesn't  
19 have to break. Doctor Vergara gave you a good example of penetration. Inserting a  
20 tampon is penetration; it doesn't even have to go as far as a tampon. It's however  
21 slight.

22 Physical force is not necessary, and this is the second instruction and  
23 we get the same language. The question is whether the act was committed under  
24 conditions in which the Defendant knew or should have known that the person was  
25 incapable of understanding the nature of the act. A 9, 10 year old girl, a 9, 10 year

1 old stepchild in the home, that's someone that is mentally and physically incapable  
2 of understanding the nature of the conduct that's happening. Here you go again  
3 with the kids' standard and the law carving out, you know, what to take into  
4 consideration. A person is not required to do more than her age, strength,  
5 surrounding facts, and attending circumstances make it reasonable for her. So her  
6 age, I mean, 7, 8, 9, 10 years old. Surrounding circumstances, position in the  
7 house, authority figure. All of those things. She's not required to do her strength, I  
8 mean, you saw her when she was here. You see him when he's over there.

9           So Count 4, we know September 6<sup>th</sup>, 2013, it was in the living room, so  
10 this is kind of the same stuff that's going on for Count 3 that she told you about. She  
11 was at the table, he told her to come over, told her to pull down her underwear. She  
12 was standing up. She told you that he stuck his penis in her vagina after it touched  
13 her butt. She said that it's the part where you pee from and she kept wanting to call  
14 it the part where you pee from. And Ms. Kollins kind of clarified are you talking  
15 about your vagina? And she confirmed that she was talking about her vagina. And  
16 she told you that it hurt. So her testimony that he stuck his penis in her vagina  
17 and it hurt, that's evidence of penetration. Incapable of understanding, well she's  
18 10 years old when it happened. So you've got the penetration, you've got the  
19 incapable of understanding, and her age is under 14. So all of the elements of that  
20 Count 4, sexual assault with a minor under 14, have been met beyond a reasonable  
21 doubt.

22           What else is part of this same night? This September 6<sup>th</sup>, 2013 night is  
23 Count 5, lewdness with a child under 14. And you know the elements of lewdness.  
24 We went over it with Amia. No penetration is necessary. She told you that his penis  
25 touched, rubbed, fondled her genital area. That's what he's charged with. He can

1 be held accountable for both the penetration and for the lewdness if you find all of  
2 the elements of both. There's different elements because you've got to have the  
3 penetration for Count 4.

4           So you have Tyana's testimony that which doesn't need to be  
5 corroborated. But what else do you have for these counts? Count 3, 4, and 5. You  
6 have the corroboration of her siblings. James told you that he saw something going  
7 on that night. That he had a bad feeling about what was going on. All of the kids  
8 told you that Tyana was the Defendant's favorite. That there were often times she  
9 was in the living room alone with him. That he would pull her out of the corner after  
10 they -- after he sent the other kids to the corner. He would pull her out of the room  
11 after he sent the other kids to the room.

12           And he had the opportunity to do it because the kids, mom, everybody  
13 told you that mom was in her room often with the door closed. There was an  
14 instruction that tells you no one else is on trial here, so whether or not you think  
15 Aneesah is a good mother, bad mother, that doesn't matter. You're only here to  
16 judge the guilt or innocence of the Defendant. But he did have the opportunity and  
17 the kids told you that and the mom told you that. Brothers and sisters know what's  
18 going on with their siblings. I mean, when James says he has a bad feeling about  
19 something, he knew what -- he had a bad feeling about something. He knew  
20 something bad was happening.

21           What other corroboration, Doctor Vergara. She told you that there was  
22 genital redness. It can be attributed to friction; it can also be attributed to an  
23 infection. She couldn't tell you for sure, but there was genital redness the very next  
24 day that she told you -- that Tyana told you something happened. She told you  
25 about the elasticity and normal to be normal. Again, the hymen was intact, and

1 there was all that evidence about that.

2 And what else do you have for Counts 3, 4, and 5? You have the DNA.  
3 And there was a lot of -- a lot of talk about the DNA and a lot of questions about the  
4 DNA. So the DNA goes to Counts 3, 4, and 5. Cassandra Robertson told you that  
5 she examined the evidence first and then the reference samples. And remember  
6 from Cassandra's testimony, DNA comes in sperm cells and epithelial cells.  
7 Semen -- the semen is the liquid that carries the sperm. There's no DNA in semen.  
8 The DNA is found in the sperm cells and in the epithelial cells.

9 There was a lot of talk about presumptive tests and how you can get  
10 false positives and things of that nature. But remember, that's only for the  
11 presumptive tests. All that talk about false positives was for the presumptive tests  
12 because Cassandra told you that she goes on and she does two additional tests,  
13 testing for this DNA and trying to see if there's sperm present where she can get the  
14 DNA from the sperm. In these false positives, DNA is not found in semen, which is,  
15 you know, the presumptive test only for the semen. There's no presumptive test for  
16 sperm.

17 The chain of custody, there was testimony about how the evidence was  
18 locked up in the locker at the hospital. And how she got the evidence and it's all in  
19 a -- it's all indicated on the -- you have the evidence bags there. And every time the  
20 evidence was impounded or taken out is all indicated on those bags there for you.

21 So what do we know? You have her report; you have all those charts  
22 that we went through. So I'm just going to go through this briefly. The vaginal  
23 swabs -- again up at the top is the presumptive tests, that there was a lot of talk  
24 about. So the vaginal swabs, we know that even though there was a negative test  
25 for semen, a negative presumptive test for semen, she went on and did additional

1 tests and she found sperm. She was able to separate an epithelial fraction and a  
2 sperm fraction. There just wasn't enough sperm to get the DNA from those swabs.  
3 From those fractions. So you have, in her report on the first page, you've got 1.21.  
4 That corresponds to 1.21 on that second page, and you'll have all this with you and  
5 you can refer to it. And then you've got the charts as well that -- it's just kind of just  
6 another form with showing what she concluded, and you'll have all that back there  
7 with you. So vaginal swabs, we know that sperm was there, she just couldn't get  
8 the DNA because there wasn't enough sperm present. Sperm doesn't come from  
9 females.

10           Rectal swabs is 1.3. Again, we have sperm, positive. She was able to  
11 separate the epithelial fraction and the sperm fraction. From the epithelial fraction,  
12 she was able to conclude that it was consistent with Tyana. From the rectal swab,  
13 the sperm fraction is consistent with the Defendant. And there was this random  
14 match probability. So one in 700 billion. Picking an individual, a random individual,  
15 the chances of doing that -- picking a random individual with the same DNA, the  
16 chances of doing that is one in 700 billion, which is 7 times the world's population.  
17 His identity is assumed. So the DNA that was found in the sperm that was found on  
18 the rectal swab is consistent with the Defendant. That's corroboration of what  
19 Tyana told you, what the kids told you. And again these are the different ways of  
20 showing that same data that she testified to.

21           Now she did the underwear swabbing. She told you that she did that  
22 first. And then she took the stains secondly. The cuts, I guess, from the underwear  
23 secondly. So the underwear swabbing is 1.63. Again, sperm positive. She was  
24 able to separate the epithelial fraction and the sperm fraction. The epithelial  
25 fraction, there was a mixture. The only person she was able to testify about, it was

1 consistent with Tyana. The sperm fraction, there was only one DNA con -- one DNA  
2 contained from that sperm fraction, and that was the Defendant's. Consistent,  
3 again, random match probability, the likelihood of picking out one with the same  
4 person -- with the same DNA, one in 700 billion, seven times the world's population.  
5 Identity is assumed. I mean, these are separate.

6           So there was some talk about the three individuals in the epithelial  
7 fraction, but she was unable to conclude anything about the other two individuals.  
8 But the sperm fraction is separate and she was able to get a full profile from that  
9 sperm fraction in the underwear swabbing and it was consistent with the Defendant.  
10 And you have the tables that showed the swabbing and the major profile and then  
11 the sperm fraction as well. Stain 1 from the underwear, sperm positive, again, able  
12 to separate the epithelial fraction and the sperm fraction. This time, from the  
13 epithelial fraction, there was so much of the Defendant's DNA that is showed up in  
14 the epithelial fraction as well. The separate sperm fraction, again, consistent with  
15 the Defendant, identity assumed.

16           Stain 2 from the underwear is 1.62, sperm positive. Again, separated  
17 epithelial fraction, consistent with Tyana. Sperm fraction, once again, identity  
18 assumed, consistent with the Defendant. All of that is corroboration to what the kids  
19 testified to, to what Tyana testified to, what the Doctor testified to, and -- briefly  
20 going over vaginal swabs, sperm present. Rectal swabs, sperm present, enough  
21 DNA to find that it was consistent with the Defendant. Underwear swab, sperm  
22 present, enough DNA to confirm consistent with the Defendant. Both underwear  
23 stains, sperm present, enough for DNA and consistent with the Defendant.

24           The State has proven, beyond a reasonable doubt, Count 3. That he  
25 fondled her buttocks with his penis. Count 4, sexual assault. And Count 5,

1 lewdness with a child under 14 for September 6<sup>th</sup>, 2013.

2           The next time that she told you about was the extra room time. And  
3 that was before March 2013, when they told mom the first time. So Count 6, you  
4 know the elements penetration and capable of understanding nature of the conduct.  
5 We know she was 9 or younger because she -- we know that happened before  
6 March of 2013. She testified and she told you that is happened in the extra room.  
7 That Tony was sitting in a chair next to the door in the extra room. She was  
8 standing by the closet in the corner because Tony told her to go to the corner. Tony  
9 told her to pull her pants down. She testified that he stuck his penis in her butthole  
10 and then where she pees from. She told you that she was facing him for one part,  
11 and not for the other part. Again, the lewdness. Count 7 is the penis touching,  
12 rubbing, fondling Tyana's genital area. No penetration is necessary. The same  
13 incident, that extra room time. And he can be found guilty of both if you find beyond  
14 a reasonable doubt that all of the elements for both crimes have been proven to you.

15           With Tyana's testimony, with the kids' corroborative testimony that he  
16 would take her out, she got special treatment, she got taken out of the room, she got  
17 taken out of the corner early; all of that is evidence of his guilt beyond a reasonable  
18 doubt and this is for the extra room time, Count 6, guilty. Count 7, guilty. And also  
19 going back to Count 3 which is the only count that deals with the buttocks, and the  
20 penis fondling, rubbing, touching the buttocks; this incident proves that as well, in  
21 addition to that September 6<sup>th</sup> incident. So just more evidence of Count 3 and he's  
22 guilty of Count 3.

23           The next time she told you about was the second living room time that  
24 she told you about where the naked pictures were on TV. Again, we know through  
25 elements she was either 9 or 10 years old because she told you that it happened

1 after March of 2013 and her birthday's in July. She turned 10 July 2013. She  
2 testified that it happened in the living room, that there were naked pictures on TV.  
3 She remembered that her brothers and her sisters were in the girl's room. She  
4 remembered that her mom was in her room. She told you his penis touched the part  
5 where she pees from and that it went inside. That's evidence of penetration. And  
6 then she told you that the penis -- his penis went into her butt. Same thing here,  
7 Count 9, this is for the naked picture time in the living room. All of the same  
8 elements are proven and he can be found guilty of both. So Count 8 and 9 and 3,  
9 because she told you, again, he put it in her vagina and then he rubbed in on her  
10 butt and put it in her butt. She told you that. So that's more evidence of Count 3.  
11 And that's for the naked picture time.

12                   So there are three other times that you're left with charges. We  
13 have Counts 10 and 11. Because these are both for the same count. The same  
14 time, I guess, just like all the other ones were. The sexual assault and the  
15 lewdness. So you have 10 and 11, 12 and 13, and 14 and 15. So those are three  
16 separate incidents that she couldn't remember specific details. She couldn't  
17 remember exactly where she was, exactly where her brothers and sisters were.  
18 Just like she did for the other three times that she told you about. We were talking  
19 about these three other times, this is -- these are the two paragraphs after the  
20 information in same count -- or not count but -- Instruction Number three. Each  
21 charge and the evidence pertaining to it should be considered separately. So each  
22 incident should be considered separately. And these three additional incidents  
23 should be considered separately as well.

24                   She testified that it happened all of the time. She said that each time  
25 that it happened, he did the same things. He put his penis in her vagina and put his



1 penis in her buttohole. The sibling's testimony, again, is corroboration of that. He  
2 would always pull her out, she was his favorite. March 4<sup>th</sup>, 2015, interview with  
3 Defense Counsel. She told him that it happened all the time. And these are just  
4 three additional instances of that all the time. And ask yourselves, is it reasonable  
5 for a little girl to forget the specifics when something has been going on for so long?  
6 The same thing happening over and over and over again. So those are the three  
7 instances, 10, 12, and 14 are all the sexual assault with a minor under 14. 11, 13,  
8 and 15 are the lewdness with a child under 14. She didn't remember the other times  
9 as well. I think these are her words that she testified to regarding her interview with  
10 Mr. Speed. "Tony was touching me a whole bunch of times. Tony was using his  
11 penis." And she told you on the stand that it happened a lot of different times. It's  
12 for all these times in between. She told you it happened in the Sunrise Avenue  
13 Apartment, it's for all these times that happened in between.

14 April 2011, September 2013 and the State would submit that it is  
15 proven to you -- those three additional times beyond a reasonable doubt, and we  
16 ask that you find him guilty for that one additional time, Counts 10 and 11. For that  
17 second additional time, Counts 12 and 13. And for that third additional time, Counts  
18 14 and 15. When you're back there deliberating I want you to ask yourselves, if  
19 these kids were making this up, they would have the exact same details about every  
20 single thing that happened. But they don't. There's a few different details they don't  
21 remember whether the uncle got there at the apartment, whether he got there at the  
22 hospital. They remember things slightly differently because they have different  
23 perspectives because this happened in real life. And what the Defendant did to  
24 these girls, he did to them in their real lives. Tyana came in and told you what Tony  
25 did to her. She knows what he did to her. Amia came in and told you what he did to

1 her; she knows what Tony did to her while they were at that Sunrise Apartment.

2 The Defendant knows what he did to those girls at the Sunrise  
3 Apartment and today we ask that you hold him accountable for each and every one  
4 of these crimes. Thank you.

5 THE COURT: Mr. Speed.

6 **CLOSING ARGUMENT BY THE DEFENSE**

7 BY MR. SPEED:

8 For those of you who revealed to us that you're married. Imagine going  
9 to an exquisite dinner with your spouse, your significant other. It's your anniversary.  
10 You've planned for this evening for months and months and months. You're so  
11 happy to be celebrating the day that your families, in the presence of God, your  
12 friends, you came together. And you decided to make one unit out of two people.  
13 And at this anniversary dinner, you're served what you ordered and what you hope  
14 is going to be an exquisite plate of pasta. It's topped with the finest, freshest  
15 marinara sauce, the tomatoes are vine-ripened, they're red and they're plump and  
16 they're juicy and the chef is a renowned culinary artist from Italy and he does the  
17 best that he can and his reputation is all -- it's widely known and he's highly  
18 acclaimed. You order a plate of his pasta. And when it's brought out to you, you  
19 notice that there is a cockroach in the middle of your pasta. Now, don't get me  
20 wrong, if you planned on your anniversary dinner this long, you're certainly not going  
21 to get up and walk out. Especially considering the prices at the menu of this fine  
22 Italian restaurant. But, the staff brought your plate of pasta out with a cockroach in  
23 the middle of it.

24 So -- so what do you do? Do you take your silver and cut away at the  
25 part of the serving dish where the cockroach is laying and eat the rest of it? Do you

1 take your fork and pick out the cockroach and continue to eat it? Do you cut the  
2 serving in half and say well, this is the side that had the cockroach on it, but  
3 because I've waited for this this anniversary meal with -- with my loved one for so  
4 long, I'll eat this part. Of course not. Of course not. That's not what you do. What  
5 do you do when you're served a plate of adulterated food? You get rid of the whole  
6 thing because even though you've waited for months to go to this anniversary dinner  
7 with your spouse, with your loved one, with your significant other; close enough isn't  
8 good enough. Everything that looks like what you came to buy and you came to  
9 enjoy, if it isn't what you thought it was going to be, then you shouldn't put your  
10 hard-earned money down for it. And the people who are responsible for serving you  
11 that have to be held accountable. Do you swallow your pride and say, you know  
12 what, we've waited for these reservations for this table for months, I'll just go ahead  
13 and take it. No. Absolutely not. You demand what it is you've paid for. That you're  
14 planning to pay for. You demand that they give you what they advertised.

15 Ladies and gentlemen, when we selected all of you, I remember telling  
16 you that this isn't going to be the kind of affair where I get up at the end and I say,  
17 thank you for your time and I know that this is difficult -- no. I -- I don't think of jury  
18 trials that way. That's not how I've been conditioned to think about what it is that we  
19 do for a living, especially in this building. All of you are among the best because the  
20 answers that you gave us in jury -- jury selection let us know that you can look at  
21 what seems to be very complicated issue, wrought with complicated science and --  
22 and big words that may be hard to understand for the uninitiated, but after the  
23 professionals, the people who do this kind of thing for a living, either examined the  
24 witnesses or provide you with their testimony, you would be able to take all of those  
25 things into consideration and follow the law.

1           My client trusts that you will do that. He knows that you will do that.  
2 He's confident that you will do that because in this case, the trial that you've helped  
3 us work on for the last seven days now, Greg Williams is innocent, period. Point  
4 blank, end of story, full stop. Greg is innocent. He did not molest Amia or Tyana  
5 when they were 10, not when they were 11, not in 2012, not in 2013, not when they  
6 first moved into the Juan Garcia Gardens Apartment on Sunrise Avenue. He didn't  
7 molest them at any time. He is not guilty of these things. Because the stories that  
8 they told you over the last few days, did not happen. The case against my client  
9 stands on three legs. While I'm talking to you I want all of you to imagine a three  
10 legged bar stool or a -- a piano stool or -- or something like that. And the three legs  
11 that this case is going to be built on are believability, reliability, and credibility. And if  
12 there is a reasonable doubt you cannot convict. Keep that in mind.

13           As to believability, we know that the stories that Tyana and Amia, the  
14 complaining witnesses in this case, kept changing. Depending on who was asking  
15 them the questions and Ms. Rhoades just gave you a number of reasons why  
16 children don't remember details. And sometimes these things happen and -- and  
17 children aren't able to pinpoint exactly where they were or what was happening or  
18 what was going on or who was there. We'll explain that more in a minute. But  
19 depending on who was asking Tyana and Amia questions, their stories kept  
20 changing. Keep that in mind when you consider the believability of the stories that  
21 they told you.

22           Also, bear in mind the complexion, the tenor, the features of the  
23 allegations of such a brutal and violent sexual assault. And then recall their  
24 demeanor on the witness stand. Remember how Tyana and Amia looked when  
25 they were telling you about these things that were supposed to have been so

1 traumatic for them and so traumatizing for them. When you're weighing the  
2 believability, and considering the strength of one of the legs that the State's case  
3 against my client stands on, keep those things in mind.

4           With respect to reliability, what the police department and the State  
5 don't tell you about how unreliable this DNA evidence is, when you're considering  
6 the reliability of the State's DNA evidence, the testimony of their expert witness,  
7 keep those things in mind. Not so much about what the DNA is supposed to tell  
8 you. What's more important in this case is what the DNA doesn't tell you and what  
9 the State and the police department, remember Ms. Robertson works for the Las  
10 Vegas Metropolitan Police Department Crime Lab and DNA Lab. Keep in mind what  
11 they don't tell you or what they didn't tell you in the three page report that you'll take  
12 with you into your deliberation room.

13           And finally, on the leg of credibility. Remember what the family said.  
14 And this is Tyana, Amia, little sister Kayla, little brother James, big brother  
15 Damarius, mom Aneesah; remember what all of the members of the family told you.  
16 In how they behaved, both back then in 2013 when the outcry was made; and over  
17 the last few days in our trial, in this courtroom. Both Amia and Tyana tell horrible  
18 stories of sexual abuse but, ladies and gentlemen, those stories can neither be  
19 trusted nor believed because they didn't happen. They did not happen. The Hasan  
20 girls have told so many different and wildly inconsistent stories that you can't believe  
21 any one of them is true beyond a reasonable doubt. And you have an instruction in  
22 your packet, Instruction Number 14 that says the State doesn't have to corroborate  
23 their testimony. If you believe their stories, if you believe what the Hasan girls told  
24 you last week, beyond a reasonable doubt that's all they need. And believe you me,  
25 Hasan and -- Tyana and Amia are relying on that. They're depending on all of you

1 depending on believing what they say and buying it wholesale in order for the State  
2 to convict my client of these horrible crimes that he's been accused with.

3           Amia Hasan described herself as the leader of the pack. She's the  
4 oldest girl. And so when the family was paying that kind of attention to Tyana, Amia  
5 had to have a story also. And when she was transported to Sunrise Hospital and  
6 she met with Doctor Vergara and Nurse Campbell, she had a story to tell also. Her  
7 story was just like or -- or at least it most closely resembled what Ms. Rhoades  
8 described to you here a few seconds ago. That she was made to stand in the  
9 corner, that Tony, what they called Greg, pulled her out of the corner and started  
10 sucking on her breast. But remember this; what did Ms. Rhoades neglect to tell you  
11 about that we learned, for the first time, last week? That this sucking of the breast,  
12 this licking of the breast, this pulling up the shirt episode both times involved Greg  
13 taking her out of the corner and then putting her on the couch. That is a specific  
14 detail, having her lay down on the couch. That's a specific detail that you didn't hear  
15 in the State's opening, you didn't hear in their first closing argument, but you heard it  
16 from Amia, the leader of the pack.

17           And then you also heard from Tyana. Tyana talked about being  
18 violently, sadly, and horribly sexually abused. In the place where I pee from and in  
19 my buttock. And her testimony was that it hurt. She told a horrible story of  
20 sexual abuse, so did her sister. And the State has an instruction that says if you  
21 believe it, that's all we need, case closed. But ladies and gentlemen, you have to,  
22 you must look further than that. And that's where the second leg of their case  
23 against Greg comes into play.

24           If you don't believe the stories that Tyana and Amia tell beyond a  
25 reasonable doubt, then Greg is entitled to a verdict of not guilty. If you don't believe

1 that a 10 year old girl can be assaulted in the terrible way that Tyana described and  
2 not cry out, not tell anybody, not say anything to her mother, not to her uncle who  
3 lived minutes away, not to a teacher, not to Tony's parents who babysitted them  
4 from time to time, who came to their house and whose house they went to for  
5 barbeques; we heard all of that from the family. If you don't believe that Tyana was  
6 assaulted the way that she said she was, given the surrounding circumstances of  
7 her family situation that she told you, not having to do with the allegation of sexual  
8 assault, just the everyday comings and goings of their life together. If you believe  
9 that that kind of thing could happen, with the kind of trauma that she described, with  
10 her mother in the house every time, if you believe that, then they don't need any  
11 further corroboration. If you don't believe that story, then Greg is entitled to a verdict  
12 of not guilty.

13 Now, I touched on that second leg, the reliability of their case, the  
14 State's case against Greg, earlier. And I'm certain that most of you are saying, well  
15 the story, it isn't consistent. But all of you did say that children -- when we were  
16 selecting you -- that children remember things differently and that sometimes things  
17 that are big stories for us, or inconsequential things for us are big stories, important  
18 things for children. The stories are a little bit off base, they're a little bit off kilter,  
19 they've got this DNA. What about this DNA? Well, ladies and gentlemen, we  
20 submit to you that the DNA evidence, the evidence that you heard in this case is  
21 unreliable. And where there's reasonable doubt, you cannot convict. Let's look at  
22 these six points and we'll get to each one of them with respect to each test that was  
23 performed by specialist Roberts.

24 First, the presumptive tests, the acid phosphatase test as it was called,  
25 for semen is not confirmatory. And in this case, you heard Specialist Robertson tell

1 you that it delivered numerous weak positives. Second, the so called confirmatory  
2 tests, also deliver false positives when semen isn't present. And Specialist Roberts  
3 told you that as well. Third, in the microscopic analysis, the Christmas tree analysis  
4 we called it; one to a few -- what Specialist Roberts believed were sperm cells, were  
5 present in the microscopic field. The problem that we have in trusting her testimony  
6 on her second confirmatory test wholesale is this. Other cells that are not sperm  
7 also turn red. The nuclei from epithelial cells also turn red when exposed to the  
8 nuclear fast-red chemical used to create the Christmas tree slides in the microscopic  
9 analysis.

10               Number four, Ms. Robertson left out the warnings, and she could have  
11 done a whole lot more. I remember talking to her and asking her about Section  
12 18.8.11.1 in her own manual that suggests, strongly recommends, that analysts, for  
13 comparison purposes, ask for a reference buccal swab for, fill in the blank. If there  
14 are this many unanswered questions, and her testimony was that she's left with a  
15 great deal of discretion, certainly Specialist Roberts could have done more.

16               She left out the warnings also. I remember asking her about Section  
17 18.5.2.3.1 with respect to her acid phosphatase test, her presumptive test. And how  
18 the manual says that the acid phosphatase test is an indication but not confirmation  
19 of the identity of a bodily fluid. And that statement should be placed below the  
20 reference table of your report. I asked Ms. Robertson if she placed that statement in  
21 her report, she said no. Why didn't Ms. Robertson do these things? Why leave all  
22 those questions unanswered when you're the expert witness who's going to try to  
23 explain to a panel of ladies and gentlemen why this DNA evidence is so important?  
24 She left it out because to include that kind of information in her report would have  
25 made her report a short book. And that's why. That's why you're left with a three



1 page document that doesn't give you any of the warnings about the inherent  
2 unreliability of the testing procedures and the tests themselves that were utilized in  
3 this case. Too many mysterious contributors about which Specialist Robertson  
4 could make no conclusions.

5 And finally, there were supposed matches and full male profiles that the  
6 State wants to present to you that were below her own interpretive threshold. You'll  
7 see them with one of the State's exhibits. Whenever that -- they have a situation  
8 where the alleles, the genetic markers, on the different locations, the different loci  
9 are printed in red font; she testified that means that they are below the interpretive  
10 threshold. And for Item 1.3 the rectal swabs that were taken from Tyana at Sunrise  
11 Hospital, all of the supposed allele matches are -- that are supposed to be  
12 consistent with the DNA profile belonging to Greg Williams, for more than half of  
13 those, those alleles fell below her interpretive threshold. What does that mean? It  
14 means that she can't be confident, that her search is incomplete and she testified  
15 about all of those things. She could have told all of us that. That kind of language  
16 could have been included in her report, but it wasn't. Because to include that  
17 language means Specialist Roberts would have had to take the extra step and do  
18 more.

19 Let's talk about that acid phosphatase test where the specialist is  
20 supposed to be looking for a particular enzyme that is present in semen. Section  
21 8.12.1 of their manual says, the acid phosphatase test is a preliminary color test  
22 which if positive indicates the possible presence of semen. It is not a confirmatory  
23 test since acid phosphatase is found in other substances including other bodily  
24 fluids. You wouldn't know that if all that you had to rely on is the three page report  
25 that the State had admitted into evidence. We know that now. We know that

1 because that was Specialist Robertson's testimony. And she also talked about the  
2 acid phosphatase tests that she performed on all of the different items of evidence in  
3 this case. Let's look at them, one at a time.

4 1.2.1 was the vaginal swab that was taken from Tyana as a  
5 complaining witness in a sexual assault case at Sunrise Hospital. The acid  
6 phosphatase test there was negative. The conclusion being -- or -- or the  
7 presumption being that there was no semen present in her vagina. But wait a  
8 minute; we have a victim of sexual assault who's describing having been vaginally  
9 raped. As recently as 10:30 the night before. But when the acid phosphatase test  
10 was conducted on the swabs that were taken of this young sexual assault victim --  
11 supposed sexual assault victim's vagina, the test that the police department, DNA  
12 lab uses as a presumptive test for the presence of semen, came up negative.

13 What about 1.6.1? That was a cutting, not a stain. I saw that Ms.  
14 Rhoades referred to it as a stain. It wasn't a stain in the underwear because  
15 Specialist Roberts testified when she opened the sexual assault kit, one of the first  
16 things that she noticed and placed in her worksheet, was that there was no staining  
17 observed on the underwear. So 1.6.1 and 1.6.2 are not stains. They were cuttings.  
18 They were slices of the material that was cut. And then the acid phosphatase test  
19 was performed by laying over a piece of this color indicative paper to test for the  
20 presence of semen. At 1.6.1, the first underwear cutting, there was a weak positive  
21 acid phosphatase result. But what do we know about that test? Other bodily fluids  
22 can yield weak or false positives. Same thing for 1.6.2, the second underwear  
23 cutting. A weak positive result. We know that vaginal fluid and other bodily fluids  
24 will render or deliver weak positive or false positive results. We told you that that's  
25 what the evidence would show in our opening statement, and low and behold, that's

1 exactly what it did show; based on their own tests, performed by their own experts.

2           Let's look at 1.6.3. I call those a UW, an underwear crotch swab. That  
3 was Item 1.6.3 where in the collection of the evidence for the sexual assault kit,  
4 Doctor Vergara or Nurse Campbell took a swabbing of the underwear that she was  
5 wearing. And in those underwear swabs, we had a positive acid phosphatase test  
6 result, but don't stop there. Later on, we have a definite three. Three contributors  
7 to -- contributors to the DNA mixture. We also know, to repeat, that vaginal fluid  
8 renders false positives in the acid phosphatase test.

9           And in Item 1.3, the rectal swabs, again, this is a supposed victim of  
10 violent and brutal anal and vaginal rape. When their own acid phosphatase test --  
11 their presumptive test with the presence of semen was performed, we have a  
12 negative result. Did Specialist Robertson stop there? No she didn't. Because the  
13 manual -- and you saw the flow chart when she was testifying, instructs them to go  
14 further. Because a presumptive test is just that, a presumptive test. A DNA analyst  
15 are commanded, instructed to do more.

16           So she moved on the P30 test. The P30 test tests for specific proteins  
17 that are commonly found in semen. Section 18.5.2.4.1 of their manual says that in  
18 certain instances, additional bodily fluids, like vaginal fluid, have been demonstrated  
19 to yield weak P30 results which may be false positives. She described her P30 test  
20 kit very similar to a home pregnancy test. There are little plastic cartridges that will  
21 show three lines for a positive test.

22           This is Item 1.2.1 and you can see it right here. This is our case. This  
23 is Item 1.2.1. What was 1.2.1? Those were the vaginal swabs. We know that  
24 under the acid phosphatase conditions, vaginal fluid has been demonstrated to  
25 deliver false positives. Other bodily fluids will give you a false positive in the acid

1 phosphatase theater. Here, we have a P30 test where it was negative for the  
2 presence of semen, when considering the acid phosphatase test, but positive for the  
3 presence of the protein that's supposed to be contained in semen -- or the protein  
4 that exists in semen from a vaginal swab. We have a positive test. Well, since the  
5 P30 test is giving us mixed up results, what do we have to do? We go further.

6           And that's when Specialist Roberts was talking about those Christmas  
7 tree slides, the microscopic examination, we called it. She testified that estimates  
8 have between 10 and 50 million sperm cells in a milliliter of ejaculate. A single  
9 sperm cell, one, microscopically small; we're not talking about specks of dust.  
10 Because specks of dust we can see. Dust mites we can't. The cells that a dust mite  
11 is composed of we certainly can't see. And that's the kind of material, the kind of  
12 matter we're talking about when we're talking about sperm cells; bodies that are  
13 microscopically small. And in describing those sperm cells, she told us that they  
14 have a head, an acrosomal cap, and a flagellating tail. Right? In the presence of  
15 this chemical known as picroindigocarmine, epithelial cells and the tails -- the  
16 flagellating tails of certain sperm cells are supposed to turn green.

17           In the presence of a second chemical known as nuclear fast red, the  
18 sperm cells themselves are supposed to turn red. However, in a Christmas tree  
19 slide, the tail of a sperm cell is typically broken away. That's what Specialist  
20 Robertson testified to and mucosal cells, as well as the nucleate covering of  
21 epithelial cells will also turn red. So what was Specialist Robertson looking for in her  
22 microscopic examination? Red splotches. That's it. And keep in mind in a milliliter,  
23 that's a very small amount, 1 /1000<sup>th</sup> of a liter. There are between 10 and 50 million  
24 sperm cells. She's looking for red splotches in a green field in her microscopic  
25 slides where the material being examined is magnified 40 times.

1                   What did she see? Section 18.13.4, the relative amount of  
2 spermatozoa present in an evidence sample to be estimated by observing the  
3 average number of sperm present in several microscopic fields at 40 times  
4 magnification. Page 172 of 484 of their own manual. What did Specialist Robertson  
5 see? After conducting her -- filtering procedure we'll call it, where she said that  
6 some of the epithelial cells are digested and then her expectation would be for the  
7 number of sperm cells present in the slide to increase, she saw the number of  
8 sperm cells, what she called sperm cells in her slides, decrease. In the vaginal  
9 swabs, she said that she saw -- she said that she saw five, what she called, sperm  
10 cells. We know they're red blotches and we also know that other kinds of cells will  
11 also stain red in the presence of nuclear fast red. But what do we remember about  
12 the vaginal swabs? They were positive for the P30. Negative in the acid  
13 phosphatase test. So we've got contradictory answers here based on her own  
14 testing procedures.

15                   What about the underwear? She noted in her worksheet that it was a  
16 plus two. Plus two means that there are some red splotches in the field. But what  
17 do we remember about the underwear? We know that vaginal fluid might deliver  
18 false positives as far as the acid phosphatase test is concerned. And that we have  
19 false positive P30 results. And later on she told you about a third contributor in the  
20 DNA mixture profile that was obtained from the underwear. No real, clear solutions  
21 there because, based on Specialist Robertson's own testimony, there could be any  
22 number of three people, with at least one being male, who contributed as a minor  
23 contributor to the DNA profiles that were obtained from the underwear. We know  
24 that Tyana's DNA is on Tyana's underwear. I believe Ms. Rhoades or Ms. Kollins  
25 make that clear. But there's also two other contributors and we don't know who they

1 are.

2           And the rectal swabs. In her worksheet, her case file, she noticed  
3 that -- or noted that the rectal swab number of cells, estimation of spermatozoa was  
4 a point one. According to their manual, that point one means there's one to a few  
5 what the specialist calls sperm cells; but we know are red splotches, in the field.  
6 And that one is difficult to locate. And this is the tough one. I know that allele peaks  
7 and the 17 loci, and amelogenin, which is indicative of gender, and relative  
8 florescence units, and peak ratios; here's what you need to know about the actual  
9 tests for DNA. Not the presumptive tests for the presence of enzymes or proteins or  
10 whether or not semen is present. Because if you base your decisions on those,  
11 you'll be jumping from one foot to another without knowing anything more than what  
12 the State told you when you were sworn in as jurors.

13           Here's the important one. This is where all those 1 on 700 billion  
14 numbers and those random match probabilities and likelihood ratios come from.  
15 And this is what you need to know. First, sperm and the sperm fraction, you'll see it  
16 in Specialist Roberts' three page report, are not the same thing. All right, two. The  
17 sperm fraction from Tyana's vaginal swab, Item 1.2.1, was consistent with her own  
18 genetic profile. Not because her epithelial cells overrode the sperm, that was  
19 Specialist Robert's answer in direct examination, but because a sperm cell and the  
20 sperm fraction that results from a differential extraction process are not the same  
21 thing. It is possible for a female's DNA profile to be obtained from the sperm fraction  
22 if a differential extraction procedure. And that's what happened here. Three,  
23 sometimes cells from the epithelial fraction may spill over into the sperm fraction  
24 during a differential extraction process and vice versa. They don't jump from test  
25 tube to test tube and I didn't assume that. But it is possible and it happens where

1 epithelial cells that are expected to be found in the epithelial fraction exclusively,  
2 travel over into what I called and what Specialist Robertson agreed with me, as the  
3 pellet fraction; the more dense material that rests at the bottom after centrifugation  
4 in a differential extraction process. Four, the so-called full male profile, consistent  
5 with Greg, obtained from the sperm fraction of Item 1.3, the rectal swab, was pieced  
6 together using genetic markers that were below her interpretive threshold.

7 I was standing right here when I asked her those questions and you'll  
8 see the chart that she prepared and placed in her worksheet, in her case file, but not  
9 in her final report. And you'll see more than half, the majority of the numbers that  
10 they use to match the genetic markers and the DNA profile obtained from the sperm  
11 fraction of the rectal swabs to Greg Williams, fell below her own interpretive  
12 threshold. If it's not good enough for you, and it's not good enough for your  
13 supervisors at the lab, so poorly so, that you're instructed to note all of those figures  
14 in red font so people who know what they're looking at can look and say, hmm,  
15 these must be results in which she can't have the greatest of confidence. If it's not  
16 good enough for you, ladies and gentlemen, it can't be good enough for all of you. If  
17 it's not good enough for them, it can't be good enough for all of you. If it falls below  
18 their standards, their threshold, then it has to fall below yours as well. And that's all  
19 you need to know about the differential extraction process, these sperm fractions  
20 and epithelial fractions.

21 Keep those points in mind and you'll be fine in making a decision about  
22 how to weigh and how much you should rely on the State's DNA evidence. It failed  
23 to provide the level of certainty that was advertised and it left more unanswered  
24 questions than it provided solutions and answers. It was exposed for its  
25 shortcomings in cross-examination because they're tests that rely on color changes.

1 They're tests that rely on people to use their discretion in differentiating what is the  
2 nucleus of an epithelial cell versus what is a sperm cell. They're given that choice,  
3 they have that luxury. We don't. And we don't have that information. You won't  
4 have that information when you retire to deliberate. Specialist Robertson knows it,  
5 but she's not making the decision that's most important to Greg Williams. You are.

6 Finally, the three page report that the State provides might sound nice,  
7 might sound really nice, but it's replete with weak positives, possible false positives,  
8 one microscopic cellular body that was difficult to locate in her second confirmatory  
9 test, and numerous contradicting results. If the second leg of the case against Greg  
10 is the reliability of the DNA evidence, then someone better call the doctor because  
11 that leg is wobbly. It is wobbly.

12 Finally, credibility. That's our third leg, credibility. And what did we talk  
13 about during jury selection? How families close ranks to protect their own. I can do  
14 something bad to my sister because she's my sister. And we heard the girls talk  
15 about that. I hit my sister. And she talked about it as nonchalantly as a teenage girl  
16 with a girl sibling would. I hit my sister. I got in trouble for it, that's fine. But if  
17 somebody else, an outsider is to -- was to make a difference between all of us, or do  
18 something that insulted me then we have to close ranks. We heard that, you saw  
19 that in this case. Excuse me for just a moment.

20 You heard from the matriarch, the mother of the family, Aneesah  
21 Hasan. And Aneesah was the -- the herald. She told us what happened to her  
22 family on the evening of September 6<sup>th</sup> into the morning of September 7<sup>th</sup>.  
23 Aneesah's testimony was that James, James Wayne, her -- I believe he's her  
24 second, her youngest came to her and said about 6 months before September of  
25 2013, March or sometime there around, he came to her and told her that something



1 was happening. Aneesah testified that she spoke to each of the children separately  
2 but because no one could tell her anything happened, she didn't do anything. She  
3 testified that she went on with life as usual and at that time, when James came to  
4 her about 6 months before September, remember, Amia hadn't said a word.

5 Now, the State wants you to believe that there's this -- this fear of  
6 abuse, this -- this oval where all of this abuse was supposed to have occurred right  
7 under Aneesah's nose. In her house that she shares with her five children and her  
8 boyfriend, her significant other. When little James came to Aneesah, six months  
9 before, nothing from Amia. September 7<sup>th</sup>, 2013, she says that all the children came  
10 to me. All right? That's mom's story. She says that the children came to her  
11 together. The testimony that was consistent throughout everyone in the family's  
12 versions was that she was always at home. And we heard Aneesah say that as  
13 soon as the children told her about what was going on with Tyana, after breakfast on  
14 September 7<sup>th</sup>, she called the police in the bathroom, remember that point. That  
15 same hour, that same minute, that same second. After the policemen came, they all  
16 went to the hospital in the same car.

17 What did we hear from James? James was the person who was  
18 supposed to have gone to Amia -- to Aneesah six months prior in September -- or in  
19 March of 2013. James says he saw footsteps under the door. And this is  
20 concerning the night before, September 6<sup>th</sup>, but that's all. James says he talked to  
21 the officer, Officer Burgess, who arrived at the house, Detective Flink, at the  
22 hospital, but didn't say anything about seeing Tony kissing Tyana in his underwear  
23 on the sofa with no shirt on and Tyana facing him until last Wednesday when he  
24 testified about it in court. James also says he saw Tony take Tyana out of bed and  
25 take her elsewhere. But later he said that the boys slept in the boy's room and the

1 girls slept in the girl's room. James testified that he didn't feel so good about what  
2 he thought was going on. Why? Because James is a little boy and he thought that  
3 there was difference being made between the children in the family. Why didn't  
4 James feel so good? Because Tyana got more time on the computer, more snacks,  
5 and less time in the corner. To us, that's nothing. To the youngest boy in the family,  
6 that's a big deal. That's why James didn't feel so good about what he thought was  
7 going on.

8           We heard from Kayla. Kayla says that she would be in the room and  
9 the room that Kayla was talking about was the bedroom, the girl's bedroom that she  
10 shared with Amia and Tyana. She would be in the room when Tony and Tyana  
11 were in the living room alone. Kayla says that she never saw Tony kiss Tyana. All  
12 these times when Tyana and Tony were supposed to be sitting on the sofa, him with  
13 no shirt on and just his underwear with Tyana facing him and the two of them  
14 kissing. Kayla, the youngest baby girl, didn't see any of that. And we saw Kayla  
15 testify. Kayla says that on the morning of September 7<sup>th</sup>, everyone went into mom's  
16 room to talk about what the kids thought was happening between Tyana and Tony.  
17 Then Kayla says after everything started happening and the snowball started rolling,  
18 that Uncle Kareem came to the house and drove everyone to the hospital. Kayla  
19 wasn't nervous. She wasn't -- she didn't appear to be traumatized about talking  
20 about these things. She was asked, are you nervous? She said no. And smiled the  
21 whole time she talked about these things that were happening between Tony and  
22 her sisters. Well, keep that Uncle Kareem point in mind and consider how the family  
23 is closing ranks in a story of sexual abuse involving the two girls. Because next you  
24 heard from Tyana.

25           Tyana tells her mother that something happened. And remember,

1 Aneesah said she called to police that same hour, that same minute, that same  
2 second. She says something to Officer Burgess when he came to the house and  
3 we heard the patrolman testify that he talked to the kids for a few minutes, but not  
4 very long. She says something else to Doctor Vergara and Nurse Campbell at  
5 Sunrise Hospital. She's made to undergo the checkup, the sexual assault kit. She  
6 says something else to Detective Flink. The detective wasn't in the room, remember  
7 Nurse Campbell told us that she wasn't there while the rape kit was being collected  
8 and the examination was being performed. While Doctor Vergara and she were  
9 conducting the triage, the head to toe, the verbal examination. Detective Flink  
10 wasn't there then but she arrive sometime later and Tyana said something else.  
11 Then, and Ms. Rhoades pointed this out, when I spoke to Tyana with my  
12 investigator and the assistant principle, Ms. Mandy Lebkowicz of Roy Martin Middle  
13 School, present, in the room with me, she said something completely different.  
14 Particularly about whether Tony did anything to her butt. And she testified to that.  
15 When I ask you if Tony did anything to your butt, you said no, didn't you? Yes.  
16 Finally, after speaking with Ms. Kollins last Monday, she testified to this too. On  
17 Thursday, we heard about something else.

18           Then we heard from the leader of the pack, big sister Amia. Amia says  
19 that they went to the boy's room to tell mom Aneesah that something happened to  
20 Tyana. Not mom's room, not in the hallway, Amia says we all went to the boy's  
21 room. And after the officer arrived, she talks to Officer Burgess as well. She says  
22 something else to the staff at Sunrise Hospital, it was revealed that she did not have  
23 to undergo the same checkup, there was no sexual assault collected for Tyana -- or  
24 for Amia, I'm sorry. But she says something to the staff at Sunrise. She says  
25 something else to Detective Flink, who also talks to her. She says something else in

1 the interview at Roy Martin Middle School with me and my investigator and her  
2 assistant principle. And after speaking to Ms. Kollins last Monday, by Thursday, we  
3 heard something else. But here's what you have to remember when we're  
4 assessing the credibility of the family's story. Big sister says mom called 9-1-1 out  
5 on the porch. Mom says she called 9-1-1 in the bathroom.

6 Finally we heard from big brother Damarius. In court Damarius says  
7 that he saw Tony sitting on the couch in the living room with no shirt on with Tyana  
8 on his lap facing Tony and the two of them kissing. But he never told a soul about  
9 seeing that before last Thursday when he said it to all of you. Ladies and  
10 gentlemen, Damarius is upset because he thinks all the kids should be treated the  
11 same and he testified to that.

12 Family is first. These kids think everyone is supposed to be treated the  
13 same. To us, that's not a big deal. To prepubescent and adolescent children, little  
14 boys and girls who live in a small apartment, who have to depend on a mother and a  
15 mother's boyfriend for every scrap of food, every stitch of clothing, a difference -- a  
16 little difference from one of us to the next when we're all supposed to be equal here,  
17 is a big deal to children. They believe everyone should be treated the same, and on  
18 September 7<sup>th</sup>, when the five kids are at the breakfast table, Tyana's testimony was  
19 that she was already in the room, playing on the computer and doing other things.  
20 The night before, James said that he saw Tony take Tyana out of the bedroom.  
21 These are the events that were supposed to have been the precipitating events to  
22 Aneesah calling the police on the morning of the 7<sup>th</sup> -- the afternoon of the 7<sup>th</sup>-- on  
23 September 7<sup>th</sup>.

24 Tyana, in the room already. James, I saw Tony take Tyana out. When  
25 the five kids are at the breakfast table, and the discussion is going on, remember,

1 Tony was supposed to be on the sofa because he got his food first. Aneesah says I  
2 don't really eat that much, I made the food for the kids and -- and I went off to my  
3 bedroom. So a card table was how Tyana described it. We're all at that card table  
4 in the kitchen and it's going on. I think I saw something last night. You were in the  
5 computer, you got to play on the computer, we didn't. I think something's going on  
6 between you and Tony and if you don't tell momma, I'm going tell. Well, nothing's  
7 going on. I think something's going on, I saw y'all leave the bedroom last night. No  
8 I wasn't, I was already in the room, I was playing on the computer. All right. If you  
9 don't tell her what happened, if you don't tell her something's going on, I'm going to.  
10 And after they finished eating, that's what happened.

11               And how is it that with all these inconsistencies, through all these  
12 inconsistencies and the competing answers and the answers where two and two is  
13 four sometimes and two and two is five other times and Uncle Kareem is here  
14 sometimes and we all got in mom's car other times. And sometimes we get in a  
15 police SUV and sometimes -- how do you keep a story like this going? Remember  
16 what we're talking about, ladies and gentlemen. It's an allegation, child molesting.  
17 What do have to do when you're protecting children and a child makes an allegation  
18 like this? What are adults commanded to do in this kind of a situation when a child  
19 goes to them and says I need help. That's why we have mandatory reporters in  
20 schools and in hospitals and in churches. That's why we do what we do, to protect  
21 children.

22               So if all of these stories and all of these details are inconsistent, but yet  
23 and still we're here, how does a 12 year old and a ten year old or an 11 year old and  
24 10 year old keep something like this going for this long? You expound. If you're  
25 challenged about a detail, you say I don't know. If you're challenged about how

1 something may or may not have taken place, you say, I don't remember. If you're  
2 challenged about where someone else was or -- or what you were wearing, you add  
3 another detail, like I was wearing a school shirt with my name on it. A peripheral  
4 detail that rings of truth, where a prosecutor can say, it's reasonable for a child to  
5 say this in this situation. But it's impossible for someone to disprove. And  
6 remember, when we were talking to you about a policeman saying, I know you ran  
7 that stop sign. What can you do other than, I didn't do it? Same thing with a child.  
8 If a child says this happened to me, that's all that's needed.

9           If all else fails and you find yourself in a court of law where you've taken  
10 an oath, and there is no children's oath, just like there is no child standard. There's  
11 a right and wrong standard and a truth and an untruth standard. But if you find  
12 yourself in court having to talk about these details that people need in order to  
13 determine whether a person is guilty of a crime, if you're challenged about it, if  
14 you're not really sure, if you think this is the right answer, you can look at Ms.  
15 Kollins. Like Ms. Kollins asked Tyana to do, and pick the answer before or  
16 something different. Were you standing up or sitting down or something different? I  
17 was sitting down. Were your clothes on or off or something different? My clothes  
18 were off. Did you take your shorts off or did he take them off or something different?  
19 He took them off. That's how you keep a story of child molesting going. People  
20 who are intent upon protecting children aren't looking for those details. The police  
21 aren't looking for those kinds of supporting details. The specialist at the DNA lab  
22 isn't looking for those kinds of supporting details. But ladies and gentlemen, you  
23 have to be. You have to look for those when assessing how strong the third leg of  
24 the State's case against Greg Williams is. And that third leg is credibility.

25           What did the police tell us? What did we hear from the other

1 witnesses? We heard from Officer Burgess, he was the first responder. Did his job,  
2 he escorted the family to the hospital. But what's important to remember is that  
3 Officer Burgess did not transport anyone to the hospital in his car. Not in his Crown  
4 Vic. He escorted them to the hospital; he didn't transport them to the hospital in his  
5 car. And certainly, he wasn't operating a police SUV into which all five children piled  
6 into the back. That was the testimony that we heard from Tyana. Officer Burgess  
7 said, no I was driving a Crown Vic; it was a standard police cruiser. I escorted the  
8 family to the hospital. No, I didn't transport anyone.

9           What about Detective Flink? What could she tell us? We know that the  
10 Detective conducted six interviews with Aneesah and her children at Sunrise  
11 Hospital. And about 12 days later she collected a buccal swab from Greg. Ladies  
12 and gentlemen, that was it. Detective Flink didn't even go back to the apartment.  
13 She didn't go back to the house.

14           We also heard from the staff at Sunrise Hospital, Doctor Vergara and  
15 Nurse Campbell. And what did Doctor Vergara tell you? The findings that she  
16 observed after examining Tyana were normal. No injuries indicative of the kind of  
17 sexual trauma that she described. Not to her vagina, not to her anal area. She had  
18 -- exhibited adequate hymenal tissue. There was no evidence of trauma to the area,  
19 no bleeding, no tearing, no gross vaginal discharge. She was a normal  
20 premenarchal patient. Non-specific features regarding her rectal area. Certainly no  
21 injuries indicative of the kind of repeated sexual assault, anal rape that she  
22 described to all of us. Her findings were normal, non-specific. The doctor  
23 diagnosed a possible urinary tract infection, advised Aneesah to help Tyana with her  
24 hygiene, they sent them home.

25           So after all of that, friends, what has the State left you with? Two

1 alleged victims who tell an unbelievable set of stories. DNA evidence that is  
2 supposed to provide you with a level of assurance and consistency and certainty  
3 that failed to perform as advertised. Unreliable science and too many unanswered  
4 questions. And when those things are all that you're left with, this is what you have.  
5 It is one based on reason. It's not mere possible doubt but is such a doubt as would  
6 govern or control a person in the more weighty affairs of life. This is it.

7           If the minds, if your minds, after the entire comparison and  
8 consideration of all of the evidence, the three legs of the case, against my client are  
9 currently standing on are in such a condition that they can say that they feel an  
10 abiding conviction of the truth of the charge, there is not a reasonable doubt. If you  
11 feel an abiding conviction of the truth of the charge. It can't change tomorrow. It  
12 can't change next week. You can't go home and -- and maybe learn something  
13 after your services here and think, wow, had I known that I would've done this. Your  
14 belief in what Tyana and Amia are saying has to survive. It has to be something that  
15 you take with you forever. It has to live with you forever because the decision that  
16 you make today is going to live with him forever.

17           Must be actual. You've seen it, not mere possibility or speculation. If  
18 you take away the believability and you say that that leg is somehow weak, it's been  
19 compromised, I don't believe these girls' story, you still have the DNA. You still  
20 have the credibility of the family that has done it's best to protect two of its own. If  
21 you take away the credibility, if you discount that, if you believe that family members  
22 are going to -- the way some of you described, do everything that they can to protect  
23 their own, then we still have the DNA. If you believe that the DNA the evidence that  
24 was shown to you that was put together in a three page report that doesn't give you  
25 all the answers to the questions that remain unanswered, all three legs of the case



1 against Greg Williams are broken. Ladies and gentlemen, the case against my  
2 client won't have a leg to stand on if all of you follow the law. And we're asking you  
3 to do that.

4 Unbelievable victims, unreliable science, unanswered questions. One  
5 right answer. To Counts 1 through 15, not guilty. On every charge against Greg,  
6 not guilty. With respect to both girls, Tyana and Amia, not guilty. This story is not to  
7 be believed beyond a reasonable doubt, not today, not tomorrow, not any time. Not  
8 guilty. When you come in here and you expect people to make a decision about  
9 something that was supposed to have happened to you, when you finish telling us  
10 about it, you sit back in your chair and open mouth yawn, just like that. And you're  
11 talking about having been molested as a 10 year old girl, and expect us to believe  
12 the story you're telling. There's one right answer. Not guilty. Follow the law. Do  
13 what we expected you, that we asked you to do -- what we ask you to do. With the  
14 soul fixed in steadfast purpose of delivering equal justice to Greg Williams. Thank  
15 you all.

16 THE COURT: You guys need a break? Take a five minute recess and then  
17 you can have your rebuttal. During the recess you're admonished not to talk or  
18 converse among -- admonished not to converse among yourselves or with anyone  
19 else on any subject connected with this trial. Or read or watch or listen to any report  
20 of or commentary on the trial or anyone connected with this trial by any medium of  
21 information including, without limitation, newspapers, television, the radio, or the  
22 internet. Or form or express an opinion on any subject connected with the trial until  
23 the case is finally submitted to you. Take five minutes, please.

24 Tom, don't let them out.

25 [Outside the presence of the jury]

1 THE COURT: While jury's using the restroom, they are not allowed to go into  
2 the restrooms. They go to a different floor and you watch them, the minute  
3 somebody goes into a restroom where my jury is, they are to be kicked out of the  
4 building, do you understand?

5 [Recess taken at 12:55 p.m.]

6 [Trial resumed at 1:03]

7 [In the presence of the jury]

8 THE MARSHAL: All rise, please.

9 And be seated.

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

11 MS. KOLLINS: Yes, Your Honor.

12 MR. SPEED: Yes, Your Honor.

13 THE COURT: All right, go ahead.

14 **REBUTTAL CLOSING ARGUMENT BY THE STATE**

15 BY MS. KOLLINS:

16 Good afternoon ladies and gentlemen. Again, on behalf of the Clark  
17 County D.A.'s office and Ms. Rhoades, I would like to thank you for this week. That  
18 is always my preference when we get to this stage in the proceedings. This is my  
19 opportunity just to comment very briefly on what Mr. Speed had to say today.

20 First of all I want to talk to you about the concept of reasonable doubt.  
21 Reasonable doubt is the standard used in every criminal case, in every criminal  
22 courtroom across this country, to secure convictions. Don't be afraid of it. It is not  
23 insurmountable. It is a doubt based on reason, not a doubt based on speculation.

24 I agree with one of Mr. Speed's promises and that is that this case does  
25 rely on believability and credibility and reliability. And there's been a lot of talk about

1 the DNA evidence in this case and why it's unreliable. All of those tests that Mr.  
2 Speed has you focused on, the P30 test, the presumptive test for semen, you know  
3 what, we don't ask you to make your decision about this Defendant on those tests.  
4 Those are intra-laboratory tests. We ask you to base your conclusions from the  
5 DNA evidence on the science, on the profiles that were extracted that match the  
6 Defendant. We don't ask you to make a decision on whether or not the presumptive  
7 test came back for semen. Because you know what, the analyst went to the next  
8 level. And she found profiles.

9 Mr. Speed wants you to concentrate on the DNA profiles that were  
10 below the reporting threshold. And I want to talk about that for a moment. If you  
11 remember when Cassandra Robertson said that she had a profile that matched the  
12 Defendant, 1 in 700 billion, and there -- there were numbers that were under her  
13 reporting threshold. But she could make her statement of identification because that  
14 DNA profile was from a single source. A sperm cell profile. A single source. Not a  
15 mixture. So if there had been a mixture of multiple fluids, and the DNA profile was  
16 taken from both epithelial and sperm cells at the same time, she could not make that  
17 statement of identification. So even though you're going to see on those charts  
18 numbers that fall below that reporting threshold, that profile that she got where the  
19 numbers are at all the locations, that is from a single source. That is from  
20 Defendant's sperm cell. That is -- otherwise, Cassandra Robertson, in her expertise  
21 and her training and a forensic analyst could not make a statement of identification.

22 And her report that what we're hearing is only that three page report,  
23 that three page report would not make it through a technical review. And it would  
24 not be distributed, and it would not be testified to here in court. So that below the  
25 reporting threshold, to try to lure you into somehow we've falsely identified the

1 Defendant and linked him to this evidence sample, don't be distracted by that.  
2 Follow the science. Follow the science. Every single place where Mr. Speed  
3 attacked that presumptive testing was where we found Defendant's DNA. Save and  
4 except a vaginal swab where you had a sperm fraction, as Cassandra Roberts  
5 testified, that was so intermixed with skin cells from the inside of the wall of her  
6 vagina, that they could not separate them. But the Defendant could not be  
7 excluded.

8           So follow -- don't be lured into, you have to know the Christmas tree  
9 results and you have to know the P30 results and you have to know the acid  
10 phosphatase test. Because that is not true. Those are all preliminary tests to get  
11 her to the DNA profile. And ultimately, that's what she got. From a single source,  
12 from that Defendant, from his sperm samples in that child's underwear and in the  
13 rectal swabs. So don't get mixed around with the P30 test, the Christmas tree.  
14 There is no false positive for a profile. There's no false positive for the Defendant's  
15 full DNA profile. Please do not be confused with false positive means we have  
16 falsely placed Defendant's profile in a report. False positive about a presumptive  
17 test, a preliminary test, has nothing to do with identifying his full DNA profile.

18           The science submitted to you by Cassandra Roberts, I submit to you is  
19 reliable, I submit to you it went through technical review. The testing protocols are  
20 followed. Mr. Speed wants to have you believe that because she did not annotate at  
21 the bottom of a report the presumptive test language that he discussed, that that  
22 means you've got to throw the whole thing out. That protocol came to light after this  
23 DNA was tested. And what does it really tell you? Because there's no presumptive  
24 finding, that there can't be DNA? We know that's not true. We know that's not true.  
25 Just because there's no presumptive positive test for semen, that does not mean we

1 are precluded from finding a sperm cell with a full DNA profile. You'll have all the  
2 charts; you can look at all those. I just want to reiterate, again, we are not asking  
3 you to look at the results of a P30 test or the results of an acid phosphatase test and  
4 discern whether or not Defendant's DNA was present. Because that's not how  
5 these results are reported. They are reported from finding a sperm cell or a sperm  
6 fraction, drawing a profile, and matching it to its source.

7 I want to talk to you -- and let me -- I guess just couch that -- this with  
8 one more comment. You have no evidence in this case of how that DNA got in that  
9 child's underwear, rectal swab, the sperm fraction from the vaginal swab, other than  
10 the testimony of that child. Anything else would be speculation on your part.  
11 There's no allegation of anything else that is consistent with the evidence. Any  
12 other source -- you have no evidence of that. You have no evidence other than  
13 what that child told you that happened, which is his penis in her vagina within 24  
14 hours of her being swabbed. And you having the fortunate enough circumstance  
15 that you had DNA to corroborate that kit, it's not always the case. And I ask you not  
16 speculate where that DNA came from and I submit to you the evidence and the  
17 testimony and the testing procedures and the technical review by Metro is reliable.  
18 And you should trust that evidence.

19 Mr. Speed talked about believability and reliability and memory of these  
20 kids. And -- and you know, it's -- it's never a perfect circumstance. I mean,  
21 obviously, if the State had its' preference, we wish that they could tell us everything  
22 the same, every time. Sometimes it doesn't happen that way. This is court, this is  
23 real life. This isn't -- no case is perfect. And we can't make it perfect. But what we  
24 can do is give you suggestions or reasons or ways to view the evidence that make  
25 you understand the reliability or credibility of those kids. As to Tyana, I'd ask you to

1 think about Tyana's demeanor and compare her to other kids. I mean, victims are  
2 victims for a reason. When you think about how Tyana communicated, compared to  
3 her brother and sisters, was she as forthcoming? Was she as linear in her  
4 communication? Was she as smart as her brothers and sisters? I ask you think  
5 about that. When you decide on her credibility.

6 I would also ask you to take this example, and this is just one that I've  
7 come up with over the years, because it kind of makes sense to me. Say there's  
8 something that you do, every single day. Every single day on your way to work, you  
9 go to Starbucks. And you go to the same Starbucks and you drive through the  
10 window, every day. And you've been keeping that routine up for a couple years.  
11 One day, you get the wrong change. One day, your favorite cashier's not there.  
12 Another day, you spill your coffee on you. Another day you decide to park and go  
13 in. One day, they're closed for repairs. One day, it takes 25 minutes and it usually  
14 only takes 10. Okay, all those things happen. And you know they happen because  
15 they happen -- you go to Starbucks every day. But you can't remember which one  
16 happened first, which one happened last. Did I get the wrong change first? Did I  
17 spill my coffee on me first? Was my favorite coffee person not there that day? You  
18 know all those things happened, you have a memory of them, but you don't know  
19 what order they happened.

20 And I submit to you that's kind of the way to look at what Tyana has to  
21 say. I mean, she's just now 12. He was arrested in 2013. She's just now coming to  
22 you some years later, I submit to you, in discussing what happened.

23 Thought he was talking to me. I'm like, is he whispering to me back  
24 there?

25 She just now is having the opportunity to have her voice. So when you

1 think about consistency, and time, and memory, keep those things in the back of  
2 your mind. Did she receive anything? Did she gain anything; did she get any benefit  
3 by coming here? Did any of those kids get any benefit? I listen to Mr. Speed talk  
4 and James was the orchestrator of the event. James was the -- the kid behind  
5 everything. He's going to mom because Tyana gets treated better. And I'm telling  
6 mom. Seven-year old in 2013, seven-year old James got the ball rolling. That is  
7 just incredible. Those kids could not contrive, calculate, or figure out how this would  
8 play out. I suggest that when you go back and you deliberate and you really think  
9 about what the motivation to lie was; certainly wasn't circle in the family like Mr.  
10 Speed said. There is no motivation to lie. They did not receive anything.

11           Made a couple notes to myself here. Mr. Speed kept referring to the  
12 sexual assault as -- as violent and torturous and why wasn't this kid -- specifically  
13 I'm speaking to Tyana -- you know, more distressed up here. We talked about this a  
14 lot in jury selection. Talked it about a lot. I -- I asked many of you, do you think  
15 every victim acts the same? Do you think every victim communicates the same?  
16 Do you think the -- a kid communicates the same as an adult? Do you think that  
17 time and space away from her offender and away from that trauma makes her  
18 communicate the way she does? Some kids might cry. Some kids might just have  
19 a flat affect and be shut off.

20           I submit to you there's not one component of her demeanor that you  
21 can say makes her absolutely incredible on these facts. Nobody ever suggested  
22 that she was -- that it was forceful or violent. And her reaction is her reaction and  
23 it's hers to own. And I submit to you, it's up to you to judge her credibility and her  
24 believability when she found her voice and she came up here and told you what  
25 happened to her. Not every kid is going to be the same.

1 I wrote down a comment, Mr. Speed said that the girls are depending  
2 on you and buying it wholesale. You know, it's our job, you know, what -- what  
3 attorneys say, this is in evidence. You know, we come in here and we give you the  
4 case that we have, what I said isn't evidence, what Mr. Speed says is not evidence.  
5 We don't, I mean it was suggested that after the kids came to visit me that somehow  
6 stories got bigger or changed or whatever. Kids find their voice when they find their  
7 voice. I mean, any suggestion left with you that somehow or another the State  
8 talked to them and the story got bigger, I submit to you, that's just not the case. I  
9 would not be doing my job if I did not talk to a child before they came to court.  
10 Period. Period. I don't just call a child witness and just have them jump up on the  
11 stand. We -- we meet with them and that is the job, okay? So any suggestion that  
12 somehow after meeting with us the story got bigger, I submit to you that's not the  
13 case.

14 Mr. Speed had a lot to say about Amia changing her story from  
15 speaking with the Doctor Vergara and the nurse. Amia never met with Doctor  
16 Vergara. So she never gave the statement to them. Amia has been consistent all  
17 along. Defendant sucked her breast once and tried to a second time, period. She  
18 did finally say that she was laying down on the couch, but that isn't -- does that  
19 mean it didn't happen? Nobody ever asked her whether she was lying on the  
20 couch. Nobody ever asked her that. I mean, does that component make her  
21 incredible, unbelievable?

22 And there were -- I just want to jump back to Tyana for a second. We  
23 did tell you in opening statement she would give you four separate incidents.  
24 Obviously I would not come in here and put evidence out there that we didn't think  
25 we were going to have. The voice she found is the voice she had in here. I can't



1 lead her; I can't suggest to her what to say. I can ask her what she remembers.  
2 And what she remembered in here is what she remembered. But she still told us it  
3 happened all the time. She told Mr. Speed it happened all the time. So that was not  
4 in any effort to be deceptive or not forthcoming, that's just -- that's the voice she  
5 found and that's the only voice we have to give you in here.

6 I am tempted, as I stand here today to go back over the DNA evidence,  
7 but I -- I really, I mean, I think if you focus on what I -- what I said earlier, that you  
8 should be able to wade your way through that and not be lured into believing that  
9 those presumptive tests mean that we have no profile on the Defendant, because  
10 that isn't the case. I do want you to keep in mind that we do have medical evidence  
11 to support this child's disclosure, to support her outcry. That rubbing, that redness,  
12 is consistent with friction. It's from broken blood capillaries, if you will. It's  
13 consistent with friction, consistent with a penis and a vagina. We have the DNA. So  
14 we have corroborated her. In her kid voice she told you it hurt. That's a feeling,  
15 that's a sensory impression. I submit to you, that shows credibility. How would she  
16 know that a penis in her vagina hurt unless she felt it? That's something she would  
17 make up? When you think about her credibility, think about those components as  
18 well.

19 I'm just -- I'm just going through my notes very briefly from what Mr.  
20 Speed said because this isn't something we create ahead of time. This is just  
21 commentary; I'm the last person to argue. Mr. Speed put a slide up there that I -- I  
22 want to at least comment on. I told you I wouldn't go back to the DNA, but I at least  
23 want to comment on. His slide said that the full male profile was pieced together  
24 from below threshold interpretations. That is absolutely not the case. We've talked  
25 about that. There's no piecing together of profiles. Profiles are derived from a

1 single source, here, being a sperm cell. Period. Period. So to say that they were  
2 pieced together makes it sound like they came from multiple pieces of evidence and  
3 there is something covert and conspiratorial going on here and that is not the case.  
4 The bottom line is a 10 year old disclosed that the night before this man put his  
5 penis in her vagina and the semen ended up in her underwear and her rectum and  
6 at least as to a sperm fraction in her vaginal swab, period. That is the evidence as it  
7 came out in here. I would ask you not to speculate, not to get lured into what -ifs.

8           Understandably, there are probably things that you would like to know.  
9 How did this happen under mom's nose? We understand that. We don't have the  
10 answer. We don't have the answer. We wish we did, but we don't. So don't  
11 speculate about mom and about what the kids remember about mom. Because all  
12 you know today, as you sit here today, is that mom was in the room. Mom was in  
13 the room and that's all the kids can tell you. That doesn't mean it didn't happen.  
14 We're not asking you to make her mom of the year. That doesn't mean that Tyana  
15 did not use her voice and tell you the truth. That doesn't mean that Amia didn't use  
16 her voice and tell you the truth. Whatever mom was doing, whatever she was doing  
17 in that other room, that doesn't mean James was lying and didn't tell you the truth.  
18 Doesn't mean Damarius was lying and didn't tell you the truth. Did mom do what  
19 she should have when she should have? It's not -- it's not for our decision making  
20 tonight. The decision making's defined -- confined to whether Greg Williams sexually  
21 violated that child, and previously Amia.

22           I'm going to close because I know that you guys have been in here for  
23 many days. I know there -- people talk about, you know, there's been talk about  
24 well nobody saw anything, and all James saw under the door was kissing, and mom  
25 didn't see anything. We talked about this in jury selection. These crimes happen in

1 secret. These crimes happen in secret, when people are going to touch kids, when  
2 people are going to sexually abuse kids, they are not going to do it when they think  
3 that they're going to get caught. Now whether mom was in the room or not,  
4 Defendant obviously felt safe enough, and that he wasn't going to get caught to  
5 molest that kid.

6 Mr. Speed said we didn't look for any of the supporting details in this  
7 case, that we didn't do our job. That somehow this District Attorney's office or the  
8 prosecutor, we let you down because we didn't look for the supporting details. I  
9 submit to you we have looked for, found, and delivered the supporting details that  
10 were -- were within our power to deliver to you. And we have given them to you  
11 such that you can find Defendant guilty beyond a reasonable doubt. You have the  
12 corroborated testimony of the child, with both DNA and medical findings. You have  
13 a timely disclosure by her. You have at least the three incidents that that child could  
14 talk about with separation, as succinctly as she could for her age and developmental  
15 level. And then you have the two other counts from Amia.

16 I submit to you we did follow up on the details. We gave you everything  
17 that we could. We give you the case that we have not our best case scenario,  
18 okay? So, thank you again.

19 THE COURT: All right. Will you swear in the officers of the court, please?

20 [The Clerk swore in the officers to take charge of jury during deliberations]

21 THE COURT: All right, the alternates are 13 and 14. If you'll take your  
22 property with you and go to -- with Susanne.

23 THE MARSHAL: Take your notebooks, everything.

24 THE COURT: And the rest of you will get your -- all your property together  
25 and go with Tom.

1 [The jury retired to deliberate at 1:31 p.m.]

2 [Outside the presence of the jury]

3 THE COURT: The door is closed, thank you. My -- my intent is to let  
4 them -- we're going to feed them lunch right now, and they'll be back -- they'll leave  
5 at 4:30. So they'll stay till 4:30, I don't keep them late.

6 MS. KOLLINS: I --

7 THE COURT: Give your cell numbers.

8 MS. KOLLINS: I'd given Tom my cell number last week, but I don't know if it  
9 made its way to somewhere. So do I need to --

10 THE COURT: Bring it to the Clerk. Make sure we have your cell numbers so  
11 you're available.

12 [Recess taken at 1:31 p.m.]

13 [Trial resumed at 3:55 p.m.]

14 [Judge Villani Presiding]

15 MS. RHOADES: Hi, Judge.

16 THE COURT: Good afternoon.

17 MR. SPEED: Good afternoon, Judge, how are you?

18 THE COURT: Just fine.

19 MS. KOLLINS: Good afternoon, Your Honor.

20 THE COURT: This seems so small compared to mine because mine's raised  
21 up. Now, so I'm just going to direct them to the third floor, we have a kiosk where  
22 they get paid, so if you want to talk to them, just have it down there.

23 MR. SPEED: Thank you.

24 MS. RHOADES: Thank you.

25 THE COURT: Normally, I would take them to the back and personally thank them,

1 but I haven't been here so --

2 [In the presence of the jury]

3 THE MARSHAL: All rise, please.

4 And be seated.

5 THE COURT: Now, ladies and gentlemen, you're probably asking where's  
6 Judge Smith, okay. He was called away from the Courthouse, we were trying to get  
7 him back in time, but we didn't want you to wait any longer. I'm Judge Villani, I'm  
8 just down the hall and I -- I told him I'd be more than happy to sit in at this part of the  
9 proceedings. I understand we have a verdict? Who is our foreperson?

10 THE FOREPERSON: I am.

11 THE COURT: All right, ma'am would you please hand the verdict form to the  
12 Marshal? The Clerk will now read the verdict and inquire from the jury as to whether  
13 or not this is, in fact, your verdict.

14 THE CLERK: District Court, Clark County, Nevada. The State of Nevada,  
15 Plaintiff, versus Greg Williams, Defendant. Case number C294607. Department  
16 number VIII.

17 Verdict: We, the jury, in the above titled case find the Defendant Gregory Anthony  
18 Williams, as follows:

19 Count 1, lewdness with a child under the age of 14, guilty.

20 Count 2, lewdness with a child under the age of 14, guilty.

21 Count 3, lewdness with a child under the age of 14, guilty.

22 Count 4, sexual assault with a minor under 14 years of age, guilty.

23 Count 5, lewdness with a child under the age of 14, guilty.

24 Count 6, sexual assault with a minor under 14 years of age, guilty.

25 Count 7, lewdness with a child under the age of 14, guilty.

1 Count 8, sexual assault with a minor under 14 years of age, guilty.  
2 Count 9, lewdness with a child under the age of 14, guilty.  
3 Count 10, sexual assault with a minor under 14 years of age, not guilty.  
4 Count 11, lewdness with a child under the age of 14, not guilty.  
5 Count 12, sexual assault with a minor under 14 years of age, not guilty.  
6 Count 13, lewdness with a child under the age of 14, not guilty.  
7 Count 14, sexual assault with a minor under 14 years of age, not guilty.  
8 Count 15, lewdness with a child under the age of 14, not guilty.  
9 Dated this 4<sup>th</sup> day of April, 2016. Sarah Newton, foreperson.  
10 THE CLERK: Ladies and gentlemen of the jury, is this your verdict as read?  
11 THE JURY: Yes, it is.  
12 THE CLERK: So say you one, so say you all?  
13 THE JURY: Yes.  
14 THE COURT: Does either side wish to have the jury polled?  
15 MR. SPEED: We would, Your Honor.  
16 THE COURT: All right.  
17 THE CLERK: Juror Number 1, is that your verdict as read?  
18 JUROR NUMBER 1: Yes.  
19 THE CLERK: Juror Number 2, is that your verdict as read?  
20 JUROR NUMBER 2: Yes.  
21 THE CLERK: Juror Number 3, is this your verdict as read?  
22 JUROR NUMBER 3: Yes.  
23 THE CLERK: Juror Number 4, is that your verdict as read?  
24 JUROR NUMBER 4: Yes.  
25 THE CLERK: Juror Number 5, is that your verdict as read?

1 JUROR NUMBER 5: Yes.

2 THE CLERK: Juror Number 6, is that your verdict as read?

3 JUROR NUMBER 6: Yes.

4 THE CLERK: Juror Number 7, is that your verdict as read?

5 JUROR NUMBER 7: Yes.

6 THE CLERK: Juror Number 8, is that your verdict as read?

7 JUROR NUMBER 8: Yes.

8 THE CLERK: Juror Number 9, is that your verdict as read?

9 JUROR NUMBER 9: Yes.

10 THE CLERK: Juror Number 10, is that your verdict as read?

11 JUROR NUMBER 10: Yes.

12 THE CLERK: Juror Number 11, is that your verdict as read?

13 JUROR NUMBER 11: Yes.

14 THE CLERK: Juror Number 12, is that your verdict as read?

15 JUROR NUMBER 12: Yes.

16 THE COURT: All right, the Clerk will record the verdict and record minutes.

17 Set a sentencing day as follows.

18 THE CLERK: The sentencing will take place on May 23<sup>rd</sup>, at 8:00 a.m.

19 THE COURT: The Defendant is remanded in custody, held without bail.

20 Ladies and gentlemen, if Judge Smith was here, he would thank you personally for

21 your service. I know you were here last week, and so on behalf of Judge Smith and

22 the entire Regional Justice Center, we appreciate your service today. The Marshal

23 will escort you out this afternoon and take care of your -- your pay for your service.

24 Thank you very much.

25 MS. KOLLINS: Thank you, Your Honor.

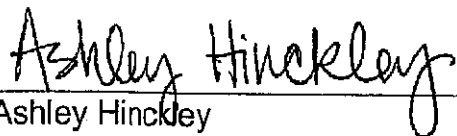
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MS. RHOADES: Thank you.

THE COURT: All right, thank you.

[Trial concluded at 4:00 p.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual recording in the above-entitled case.

  
\_\_\_\_\_  
Ashley Hinckley  
Independent Transcriber



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GREGORY WILLIAMS, ) No. 70868  
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 Appellant, )  
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 )  
 THE STATE OF NEVADA, )  
 )  
 Respondent. )

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## CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 21<sup>st</sup> day of Feb, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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

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BY [Signature]  
Employee, Clark County Public Defender's Office