

1 Q And you told the officer, "she said no," to the question, Was there
2 penetration?
3 A I didn't ask T [REDACTED] I just said she said no. I was upset.
4 Q So upset you would lie to the police?
5 A No. I didn't think it was a lie.
6 Q Okay. Did you tell the police that Tyrone was not supposed to be in
7 your house that day?
8 A I probably did.
9 Q Did you tell the police when you called 9-1-1?
10 A I don't remember.
11 Q Well, did you just –
12 A They didn't ask me.
13 Q Okay, let me back up a little bit. We just heard the whole conversation.
14 It's on tape.
15 A Um-hm.
16 Q And you heard it, too?
17 A Um-hm.
18 Q Okay. Just listening to what you said on the tape, do you recall
19 whether or not you told the police that Tyrone was not supposed to be in your
20 house?
21 A Yeah. Yes.
22 Q You said that on the tape?
23 A Yes.
24 MR. COX: Okay. Judge, if we could get a playback, I'd appreciate it.

1 MS. KOLLINS: Do you want a play it back now?

2 MR. COX: If you could just play back the 9-1-1 call.

3 MS. KOLLINS: Well –

4 MR. COX: Judge, I would ask that we play back the 9-1-1 call to refresh
5 Theresa's recollection.

6 THE COURT: Okay.

7 MR. COX: And I appreciate you guys doing it because you have it on your
8 computer.

9 (Exhibit 4, the 9-1-1 tape is played aloud)

10 BY MR. COX:

11 Q Ms. Allen, I'm going to ask you the question again. Did you tell the
12 police that Mr. James was not supposed to be in your house?

13 A Yes.

14 Q Well, we just heard the whole 9-1-1 call.

15 A Um-hm.

16 Q Do you recall hearing that on that call?

17 A Yes.

18 Q Okay. So it's your testimony that the police were not able to locate the
19 gloves in the house, but you were able to locate the gloves?

20 A Yes.

21 Q Is that true?

22 A Yes. I found them when I came back to the house looking for clothes.

23 Q Okay. And do you recall – You may not know this, but I'm going to ask
24 you. If you don't know, just let me know. If you do know, please answer. Are you

1 aware of whether or not – Well, I'm going to back up. I apologize. You were there
2 when the police officer came to look at the box?

3 A Yes. The detective. Yes.

4 Q Okay. And do you remember his name?

5 A Detective Tomaino. I think that's his name.

6 Q Okay. Do you recall whether or not the detective took prints off the
7 box?

8 A No. He took pictures of the box and then opened the box up and put
9 the gloves in an envelope.

10 Q Okay. Did he take the box and put it in a bag and take it with him?

11 A No, not the box. He took what was in the box.

12 Q So he didn't take fingerprints off the box and he didn't bag the box?

13 A No.

14 MR. COX: Court's indulgence. Judge, thank you, I'll pass the witness.

15 THE COURT: Okay.

16 REDIRECT EXAMINATION

17 BY MS. KOLLINS:

18 Q Ms. Allen, just a few more questions, if you don't mind?

19 A No.

20 Q Thank you. Why did you call Tyrone before you called the police?

21 A To see what he was going to say.

22 Q In the 9-1-1 call you told the lady about him putting his finger in her,
23 right?

24 A Yes.

1 Q And you told her about Tyrone rubbing his penis on her vagina?
2 A Yes.
3 Q And she asked you about penetration?
4 A Yes.
5 Q Now, do you know – if you know – that penetration is a legal term?
6 MR. COX: Judge, this is asked and answered.
7 MS. KOLLINS: No. I think this is –
8 THE COURT: Overruled.
9 MS. KOLLINS: – redirect.
10 BY MS. KOLLINS:
11 Q Do you know that penetration is a legal term and that there is a legal
12 definition of penetration?
13 A I just heard penetration. No.
14 Q Okay. But are you familiar – Do you know the legal definition of
15 penetration?
16 A No.
17 Q Okay. So when you gave that information to the 9-1-1 operator, was
18 there – I mean, did you know exactly what had happened, other than what you had
19 told them?
20 A No.
21 Q Okay. You weren't there?
22 A No.
23 Q Does a finger in a vagina mean penetration to you?
24 A No.

1 Q Okay. Does rubbing a penis on a vagina mean penetration to you?
2 A No.
3 Q In the 9-1-1 call, did anyone ever ask you whether or not Tyrone was
4 supposed to be at your house?
5 A I didn't hear them say that.
6 Q Okay. The Air Jordan box that was under your bed, were those adult
7 tennis shoes or kid tennis shoes?
8 A Adult.
9 Q Adult male or female?
10 A Male.
11 Q At that time, was there any other adult male that had access to your
12 house besides Mr. James?
13 A No.
14 Q The receipt for the power bill that you all were talking about on his
15 cross-examination, do you remember that?
16 A Yes.
17 Q I think you testified on direct that when Mr. James came back he
18 showed you a receipt where he had paid the power bill.
19 A Yes. He showed me the receipt.
20 Q Okay. Were you familiar with the kind of receipt that he showed you?
21 A It just had my name and my customer number on it, but Tyrone kept it.
22 Q Okay. Well, is it the kind of receipt you get when you go – like, you
23 can pay a bill at the grocery store, right?
24 A Right.

1 Q You can pay a bill at Nevada Power?

2 A Um-hm. Yes.

3 Q Was this the kind of receipt you get from Nevada Power, or was this

4 the kind of receipt you get from somewhere else?

5 A Nevada Power's.

6 Q Okay. So when you mentioned going through the drive-thru, what

7 were you talking about?

8 A When you go through the drive-thru, all you need is your name and

9 your address number, and you send your cash up.

10 Q And the drive-thru, where are we talking about?

11 A At Nevada Power.

12 Q And so this receipt was consistent with that kind of receipt you've

13 gotten –

14 A Yes.

15 Q – when you went through the drive-thru before? Okay. Did you give

16 him the bill that came from Nevada Power?

17 A No. He didn't need the bill.

18 Q Okay. And did he take the bill?

19 A No.

20 Q Did you see the bill again?

21 A Yes. The bill was still in my house.

22 Q Okay. And you mentioned you changed the locks. When did you do

23 that?

24 A The same day.

1 MS. KOLLINS: No more questions, Judge.

2 THE COURT: Mr. Cox?

3 RECROSS EXAMINATION

4 BY MR. COX:

5 Q Now, Theresa, as attorneys we have clever definitions for things.

6 We have legal definitions. Do you know what penetration is? Just without any
7 legalese or anything else?

8 A Yes.

9 Q Okay. What is it?

10 A When a woman reaches her climax.

11 Q I'm just talking penetration, general terms.

12 A When he – when a guy sticks his penis inside a woman and he –

13 Q I'm not talking about – I'm not even talking about sexually.

14 MS. KOLLINS: Judge, I'm going to object. If he's going to ask the question,
15 please let the witness finish the answer –

16 MR. COX: I'll rephrase the question, Judge, if I can.

17 MS. KOLLINS: – instead of interrupting.

18 BY MR. COX:

19 Q Aside from any sexual context either, what does penetration mean?

20 A I don't know.

21 Q Okay. What – Now, there's a boy that lives in the house also. What's
22 his name?

23 A My son's name is Dewan.

24 Q Okay. And he has the same shoe size as Mr. James, correct?

1 A He was wearing a size eight. Mr. James wears a size eight and a half.

2 Q Pretty close, aren't they?

3 A Um-hm. Yes.

4 THE COURT: Does the jury have any questions? Okay.

5 (Bench conference begins)

6 MS. KOLLINS: Didn't I just say her bed? Did it not sound like I was talking
7 about her master bedroom, maybe?

8 THE COURT: I thought it was a little unclear in the beginning and then
9 clarified, I can see where -- (indiscernible).

10 MS. KOLLINS: (Indiscernible). That's fine.

11 MR. COX: The public defender doesn't object to either question from either
12 juror -- (indiscernible).

13 THE COURT: And I'm just going to make a note on here that they crossed
14 out this question.

15 (Bench conference concluded)

16 THE COURT: Okay. I have a couple questions for you, ma'am. Why were
17 you looking under the bed for clothes or shoes?

18 THE WITNESS: That's where I kept my shoes.

19 THE COURT: And just to clarify, where were -- Which bed were the gloves
20 found under?

21 THE WITNESS: Under my bed.

22 THE COURT: Okay. Any follow up from the State?

23 MS. KOLLINS: Very briefly.

24 /////

1 FURTHER REDIRECT EXAMINATION

2 BY MS. KOLLINS:

3 Q And I apologize, Ms. Allen, I thought I clarified that.

4 A That's okay.

5 Q And when you say under your bed, that is a separate bedroom from
6 your daughter?

7 A Yes.

8 Q And again, those are nothing that you ever placed in that location?

9 A No.

10 MS. KOLLINS: Nothing else, Judge. That's it.

11 THE COURT: Mr. Cox?

12 MR. COX: No questions, Judge.

13 THE COURT: Okay. Anything else from the jurors? No.

14 Okay, thank you, ma'am. You're free to go.

15 THE WITNESS: Thank you.

16 THE COURT: State, call your next witness.

17 MR. PANDELIS: Officer Erik Meltzer.

18 OFFICER ERIK MELTZER

19 Having been called as a witness and being first duly sworn, testified as follows:

20 THE COURT: Good afternoon, sir. Could you please state your name and
21 spell it for the record.

22 THE WITNESS: Officer Erik (Easy Robert Ida King); last name is Meltzer
23 (Mary Easy Lincoln Tom Zero Easy Robert).

24 THE CLERK: Okay. We need that again just straight out.

1 THE COURT: Can you just do letters for us?

2 THE WITNESS: E-r-i-k. Last name is Meltzer, M-e-l-t-z-e-r.

3 THE COURT: Thank you.

4 DIRECT EXAMINATION

5 BY MR. PANDELIS:

6 Q Sir, how are you employed?

7 A I'm a police officer with Las Vegas Metro.

8 Q How long have you been employed with the Las Vegas –

9 A A little over two years.

10 Q Just make sure, because the recorder can't take down both things.

11 we're saying, so just make sure I finish the question. How long have you been
12 employed with Metro?

13 A A little over two years.

14 Q What's your current assignment with Metro?

15 A Patrol.

16 Q What do you do on a daily basis as a patrol officer?

17 A I enforce traffic laws and answer calls for service.

18 Q What do you mean, answer calls for service?

19 A We get dispatched from Dispatch, numerous calls to a location, and
20 then we respond to the location and take care of the call.

21 Q Okay. So oftentimes you're the first officer to arrive at a call?

22 A Yes, sir.

23 Q Were you working as a patrol officer on May 14th of 2010?

24 A Yes, sir.

1 Q And were you dispatched to a call regarding allegations of sexual
2 abuse against an individual by the name of T [REDACTED] H [REDACTED]?

3 A Yes, sir.

4 Q What information were you given when you received that call?

5 A I received a call that there is a possible sexual assault at 207 North
6 Lamb, Apartment E, where the boyfriend of the victim's mother touched her.

7 Q And immediately upon getting that information, you responded to that
8 Lamb address?

9 A Yes, sir.

10 Q Do you recall approximately what time you received that call?

11 A At 12:48 hours.

12 Q And you arrived at that Lamb address?

13 A Yes, sir.

14 Q Was it a house, an apartment?

15 A It was an apartment. It was Apartment E.

16 Q What did you do when you first arrived at the apartment?

17 A I made contact with the mother, Theresa Allen, and her daughter,
18 T [REDACTED] H [REDACTED].

19 Q You made contact with them. Did you speak either of them?

20 A I spoke with both of them.

21 Q And based on your conversations with them, what did you do next?

22 A After speaking with the victim, I contacted Sexual Assault Detective
23 Tomaino.

24 Q What was it that prompted you to contact a Sexual Assault Detective?

1 A Well, I spoke with her and she gave me the details of what happened,
2 which was she was laying in her bedroom –

3 MR. COX: Objection, hearsay.

4 THE COURT: Sustained.

5 BY MR. PANDELIS:

6 Q Did she disclose sexual abuse to you?

7 A Yes, sir.

8 Q And typically as a patrol officer when someone discloses sexual abuse
9 to you, what will you do?

10 A I will call a detective.

11 Q As a patrol officer, other than being the first responder to calls
12 oftentimes, do you investigate sexual assault cases?

13 A The detective does.

14 Q The detective does?

15 A Yes, sir.

16 Q But you have no role in the investigation?

17 A Just determining whether there is something valid to call a detective.

18 Q And is that what you did in this case?

19 A Yes, sir.

20 Q When you arrived at the apartment, you said you spoke with Theresa
21 Allen and the victim. Was there anybody else present at the apartment?

22 A There was other family members that were inside of the house.

23 Q Did you identify those individuals?

24 A No, sir, I did not.

1 Q About how many people were present at the apartment?
2 A I believe I just saw a few. I don't remember exactly how many.
3 Q Was the defendant, Mr. James, present at the apartment?
4 A No, sir, he was not.
5 Q Did you make an effort to determine whether or not he was at the
6 apartment?

7 A Yes, sir.

8 Q And you were told he was not?

9 A Correct.

10 Q After you arrived at the apartment and spoke to the victim, did you
11 receive any additional instructions from the Sexual Assault Detective?

12 A Yes, sir. He told me to transport her down to Sunrise Hospital to get
13 an exam.

14 Q And by "her," you mean the victim –

15 A The victim.

16 Q – T [REDACTED] H [REDACTED]?

17 A Yes, sir.

18 Q Did any family members accompany her?

19 A The mother.

20 MR. PANDELIS: I'll pass the witness, Your Honor.

21 THE COURT: Mr. Page.

22 CROSS-EXAMINATION

23 BY MR. PAGE:

24 Q Good afternoon, Officer Meltzer. You testified that you were the

1 responding officer?

2 A Yes, sir.

3 Q So you were the first on the scene?

4 A Yes, sir.

5 Q And you spoke to both the mother and T [REDACTED]?

6 A Yes, sir.

7 Q And you got the story that they told you, correct?

8 A I'm sorry? Can you repeat that?

9 Q They told you the events that –

10 A Yes, sir.

11 Q – allegedly occurred? Now, you wrote a report, an Incident Report

12 on this matter?

13 A Yes, sir.

14 Q And you wrote this report after speaking to both the mother and the

15 alleged victim, [REDACTED]?

16 A Yes, sir.

17 Q And when you write these reports, you try to be as thorough as

18 possible?

19 A Yes, sir.

20 Q Because this is the first time that you speak to them and you want to

21 make sure that everything that they say is in the report?

22 A Yes, sir.

23 Q Now, do you remember when speaking to both mother and T [REDACTED]

24 that they told you that he – he meaning my client, Mr. James, pulled out his penis

1 and rubbed it on the vagina but it did not go inside?

2 A That is what she said.

3 Q And that's what you put in your report?

4 A Yes, sir.

5 Q And when you spoke to her, do you remember them saying that he
6 had no permission to be inside?

7 A No, sir.

8 Q So they did not tell that to you?

9 A No, sir.

10 Q At any time – You testified that after you heard what they told you,
11 you called another officer, correct?

12 A I called the detective, sir.

13 Q The detective.

14 A Yes, sir.

15 Q I apologize. And did that detective ask you to search the home?

16 A Not that I recall, sir.

17 Q So he at that time did not ask you to search for any gloves?

18 A No, sir.

19 MR. PAGE: Court's indulgence, Your Honor. No further questions.

20 THE COURT: Okay. Anything else?

21 MR. PANDELIS: Just a few follow-up.

22 REDIRECT EXAMINATION

23 BY MR. PANDELIS:

24 Q Officer, Mr. Page asked you about the Incident Report that you

1 prepared in this case.

2 A Yes, sir.

3 Q And you prepared that after you went to the apartment on Lamb and
4 arrived and spoke to the individuals at the apartment, correct?

5 A Yes, sir.

6 Q And in that Incident Report is it true that you in fact stated that the
7 victim told you that the defendant was wearing gloves?

8 A Yes, sir.

9 Q And in that Incident Report is it also true that the victim – you stated
10 that the victim told you that the defendant pulled her down to the ground and took
11 off her panties?

12 A Yes, sir.

13 Q And is it true that the victim also told you and it's reflected in your
14 Incident Report that the defendant put one of his fingers –

15 MR. COX: Objection, hearsay, Judge.

16 MR. PAGE: Objection. Judge, this is hearsay.

17 MR. PANDELIS: Your Honor, they already got into his Incident Report and
18 I let them do it.

19 MR. PAGE: Your Honor, the –

20 THE COURT: Counsel approach.

21 (Bench conference begins)

22 THE COURT: First of all, before we get into that while I have you up here, all
23 of you – this goes to all of you, particularly you two, but all of you, don't forget that
24 you have microphones sitting on your tables, and you are some loud whisperers,

1 especially you three. I can hear everything you're saying at your tables, so just keep
2 it down.

3 MR. PAGE: Does that mean that the jury also hears it?

4 THE COURT: I don't know how good their hearing is, but just keep it in line.
5 There hasn't been much of that from the State today. There was a little yesterday,
6 but particularly, yes, just keep it in mind that --

7 MR. PANDELIS: Understood.

8 THE COURT: I hear very well, but -- so maybe they don't, but you don't want
9 them to hear everything you're saying.

10 MS. KOLLINS: I just asked -- (indiscernible) --

11 THE COURT: Okay -- (Indiscernible).

12 MR. PAGE: The reason why we say objection is because the reason -- we
13 only went into the parts for impeachment purposes. They clearly said that that didn't
14 happen, so went through it for impeachment. They're just rehashing the story at this
15 point.

16 MS. KOLLINS: Well, if they're going to use it as a prior inconsistent then we
17 can use it as prior consistent --

18 THE COURT: Right. Okay.

19 MS. KOLLINS: -- because they objected as hearsay when we went into it
20 first. It was sustained. They opened it. They can't get in one line of the report and
21 call that inconsistent and then everything else is just floating out there, It's prior
22 consistent now, the remainder of the report.

23 MR. PAGE: We didn't say that the part -- we didn't specify where the
24 inconsistency is.

1 MR. PANDELIS: I don't think they can pick and choose after that. I mean,
2 once they do that, we can – we have prior consistent statements.

3 MS. KOLLINS: (Indiscernible) -- that's a prior consistent statement, too.

4 MR. PAGE: (Indiscernible).

5 MS. KOLLINS: If you're using it to impeach mom, that's a prior inconsistent
6 statement of mom, that is prior consistent statement of -- (inaudible). He didn't lay
7 a foundation as to which one it was applicable to. He just said did they tell you.

8 THE COURT: Okay. How many more questions do you have on this?

9 MR. PANDELIS: Just two or three. It won't be much longer.

10 THE COURT: A couple? All right. I'm going to overrule the objection.

11 **(Bench conference concluded)**

12 MR. PANDELIS: Thank you, Your Honor.

13 BY MR. PANDELIS:

14 Q Officer, in your Incident Report it's reflected that T █████ told you
15 that Tyrone put one of his fingers inside of her vagina. Is that what she told you
16 that day?

17 A Yes, sir.

18 Q And did T █████ also tell you, as reflected in your Incident Report,
19 that he pulled out his penis and rubbed it on the outside of her vagina?

20 A Yes, sir.

21 Q And finally, that T █████ told you that she told Tyrone to stop and to
22 get off of her?

23 A Yes, sir.

24 MR. PANDELIS: Nothing further, Your Honor.

1 MR. PAGE: Nothing further, Judge.

2 THE COURT: Okay. Anything from the jury? No?

3 Okay. Thank you, sir, you're free to go.

4 THE WITNESS: Thank you.

5 MR. PANDELIS: Your Honor, can we approach?

6 THE COURT: Sure.

7 (Bench conference begins)

8 MR. PANDELIS: We have one fairly quick witness, Hatchett, and then we
9 have two long witnesses.

10 MS. KOLLINS: So, call the quick one?

11 THE COURT: Yeah. If you don't mind, let's call the quick one and then we
12 can take the -- because we've only been like an hour and fifteen minutes. How long
13 is your long one? What do you mean by long?

14 MR. PANDELIS: The two long ones are --

15 MS. KOLLINS: It will probably an hour at least.

16 MR. PANDELIS: Dr. Vergara.

17 MS. KOLLINS: And the prior bad acts victim is going to be long; I imagine
18 an hour and a half.

19 THE COURT: Okay. Let's do the short one and then we'll take a break and
20 then we'll do the long ones.

21 MR. PAGE: (Indiscernible).

22 MS. KOLLINS: That's why we came up here. Whatever you guys want to
23 do. If you want to take a break now and then we'll just tee it up, that's fine too.

24 THE COURT: Well, I mean --

1 MS. KOLLINS: I just -- I don't want to leave my doctor --

2 THE COURT: (Indiscernible).

3 MS. KOLLINS: I'm sorry?

4 THE COURT: We've only been here for like an hour and fifteen minutes, and
5 at this point, you know, we're going to be taking a break and they're going to have
6 like two and a half hours to go, so.

7 MS. KOLLINS: Okay.

8 THE COURT: Yes, I appreciate it. Let's call the short one.

9 (Bench conference concluded)

10 MS. KOLLINS: Judge, the State calls Detective Hatchett.

11 DETECTIVE TIMOTHY HATCHETT

12 Having been called as a witness and being first duly sworn, testified as follows:

13 THE COURT: Good afternoon, sir. Could you please state your name and
14 then spell it for the record.

15 THE WITNESS: Timothy Hatchett. T-i-m-o-t-h-y H-a-t-c-h-e-t-t.

16 THE COURT: Thank you, sir.

17 DIRECT EXAMINATION

18 BY MS. KOLLINS:

19 Q Good afternoon, sir. How are you employed?

20 A With the Las Vegas Metropolitan Police Department as a detective.

21 Q How long have you been so employed?

22 A Approximately seven years.

23 Q Seven years with Metro. How long as a detective?

24 A Currently assigned approximately a year and seven months.

1 Q To which division?
2 A Sexual Assault, Juvenile.
3 Q And prior to your assignment in Sexual Assault, where were you?
4 A Part of my assignment, I was a field training officer with the patrol
5 division.
6 Q Turning your attention to May 14th of 2010, were you assigned as a
7 Metro Sexual Assault detective?
8 A Yes, I was.
9 Q Do you know a Detective Tomaino?
10 A Yes, I do.
11 Q Do you routinely work cases with detectives when it's their case
12 primarily? You guys help each other out, I guess is the question.
13 A Yes, we do.
14 Q Did you help Detective Tomaino out back in May of 2010 on this
15 case?
16 A Yes, I did.
17 Q What is the first thing you learned about the case involving T [REDACTED]
18 on May 14th, 2005 (sic)?
19 A As far as the first – I don't know what I first learned about it. I can't
20 recall exactly what I first learned about it.
21 Q All right. Well, let's try it like this. How did you first come to be
22 involved in it?
23 A The way we have it is we have a primary person each and every day
24 who takes calls for service in regards to priority call outs. He had received a call

1 in regards to a priority call out where he had to make contact with the victim on that
2 specific time because of certain criteria. What I recall is a check was done on the
3 alleged suspect and he had some prior felony arrests –

4 Q I'm going to stop you right there.

5 A Okay.

6 Q Did you get an identification on the suspect?

7 A I believe he did.

8 Q Okay. Did you assist Detective Tomaino in locating the suspect?

9 A Yes, I did.

10 Q Do you see that person here in court today?

11 A Yes, I do. He's seated to the left of me.

12 Q And what is he wearing today in court?

13 A A purple shirt.

14 MS. KOLLINS: May the record reflect identification of the defendant, Tyrone
15 James?

16 THE COURT: The record will so reflect.

17 MS. KOLLINS: Thank you.

18 BY MS. KOLLINS:

19 Q When and where did you come into contact with him?

20 A We were located at the 7-11 at Stewart and Lamb, from my recollection.

21 Q Okay. And did you stop him and talk to him there?

22 A He actually agreed to come back to that location and speak with us.

23 Q Did he give you – Was he in a vehicle?

24 A Yes, he was.

1 Q What kind of vehicle?

2 A It was a van. I cannot – from the top of my memory I can't remember
3 the type of van.

4 Q Did he give you permission to look in that van?

5 A He did not give me permission. The driver of the vehicle gave me
6 permission to look in the van.

7 Q Okay. And at that point did you know what, if anything, you were
8 looking for?

9 A According to Detective Tomaino I was looking possibly for some type
10 of gloves that are involved in this incident.

11 Q Did you find anything like that in that van?

12 A No, I didn't.

13 Q But you looked for it anyway?

14 A Yes, I did.

15 Q Okay, thank you. Do you know what time of day that was?

16 A Off the top of my head – It was definitely after noon. I can't remember
17 exactly what specific time it was.

18 Q Mr. James agreed with you to go back down and speak with Detective
19 Tomaino, correct?

20 A Agreed with me?

21 Q Agreed to go speak to Detective Tomaino at another location other
22 than where you stopped the van?

23 A We didn't stop the van; just to make a correction. He came to the
24 location. There was a warrant for his arrest for –

1 Q You were on notice that Detective Tomaino was interested in speaking
2 with him regarding the immediate case, correct?

3 A I was on notice? Is that what you said?

4 Q Detective Tomaino is the one that told you who you were out looking
5 for, right?

6 A Right.

7 Q Okay. So at some point Mr. James agreed to go to another location,
8 correct?

9 A From once he arrived with me?

10 Q Yes.

11 A He was – He didn't agree.

12 Q What was your next involvement in this case?

13 A My next involvement was to advise the patrol officers to take him down
14 to Clark County Detention Center and to wait for contact with the detective.

15 Q Okay. Were you asked by Detective Tomaino to go to the residence
16 where this occurred?

17 A I believe we discussed it and I said that it would be a good idea if
18 I went and made contact at the residence.

19 Q So the answer to my question is yes, you went to the residence?

20 A Yes.

21 Q And what did you do when you got there?

22 A The number one thing is there had been some time elapsed, so I just
23 wanted to make contact since nobody had been there yet, and determine if anyone
24 is even there and if there was any type of crime scene.

1 Q And what, if anything, did you see while you were there?

2 A When I arrived there were several children in the household and I
3 believe the grandmother to the victim, and I asked to come in and take a quick
4 look around. Due to the children being in the household, it was hard to determine
5 whether there was any type of scene or anything of that nature. I looked in the
6 room of the alleged victim's room very quickly. Didn't find anything that rose to any
7 suspicion. I contacted Detective Tomaino and asked him how he would like me to
8 proceed. And I also during that time, I looked in one of the garbage cans that was
9 located I believe by the sink.

10 Q Looking for gloves?

11 A Yes.

12 Q Did you find any gloves there?

13 A No.

14 Q Were you ever directed to the mother's bedroom?

15 A No.

16 Q I'm not talking about the kids' bedroom, I'm talking about the mother's
17 bedroom.

18 A No.

19 Q Did you go in the mother's bedroom?

20 A Not from my recollection.

21 Q And you hadn't had any report that anything had transpired in the
22 mom's bedroom regarding this case?

23 A No.

24 MS. KOLLINS: Okay. I'll pass the witness, Judge.

1 CROSS-EXAMINATION

2 BY MR. PAGE:

3 Q Officer Hatchett, you testified that Mr. James agreed to come meet
4 with you, correct?

5 A Correct.

6 Q And so he was cooperative?

7 A Yes, he was.

8 Q And you also testified that you went around and you started to look
9 in the house for gloves?

10 A Not per se the gloves. I was just looking to – I hadn't determined –
11 nobody had made contact with the house, so I was trying to determine if, A)
12 anybody had even been there, and 2) once I noticed that were numerous children
13 in the household, the scene kind of had been compromised at that time. I did a
14 quick check in the child's room and just kind of made follow-up with the detective
15 to kind of determine where he wanted me to go from there.

16 Q When you say nobody had been at the house, wasn't there another
17 officer that went before you?

18 A I don't believe so. I believe that the victim was directed to go to
19 Sunrise Hospital and that at that time nobody had been at the residence.

20 Q When you went to the residence, you didn't meet with T [REDACTED]?

21 A No, I did not.

22 Q And when you do a search for – Well, let me backtrack. You said that
23 the detective called you and he made mention of gloves?

24 A I don't know if he called me. I knew that – I knew gloves were

1 somehow involved. I don't recall if that was reported before we even got there or
2 not. I searched the van, so I'm believing – I'm assuming that it was, but I can't be
3 for sure how I was made aware of that.

4 Q And the family members that were there present, they gave you
5 permission to search the entire house?

6 A Like I said, I did not search the entire house. It was basically I had
7 gone to the house because nobody had been there. Once I observed that there
8 were numerous children in the household and, you know, nobody in relation to the
9 house there really when this occurred, I just did a real – you know, a little bit of
10 scan of it to see if there was anything just observable, and made contact with the
11 detective to see where I should go from there. I definitely would not call it a search.

12 MR. PAGE: No further questions.

13 MS. KOLLINS: No redirect, Judge.

14 THE COURT: Okay. Anything from the jury? No? Okay.

15 Sir, you're free to go.

16 THE WITNESS: And just as a correction I'd like to make real quickly.

17 THE COURT: There is no question. Sir –

18 MS. KOLLINS: No. There's no question pending, Detective. I'm sorry,
19 you can't speak.

20 THE COURT: There is no question in front of you. You're free to go.

21 THE WITNESS: Okay.

22 THE COURT: Thank you.

23 THE WITNESS: All right.

24 THE COURT: We're going to go ahead and take a break – take a break

1 until three o'clock.

2 During this recess you are admonished not to talk or converse among
3 yourselves or with anyone else on any subject connected with this trial, or read,
4 watch or listen to any report of or commentary on the trial or any person connected
5 with this trial by any medium of information, including without limitation newspapers,
6 television, the Internet and radio, or form or express any opinion on any subject
7 connected with the trial until the case is finally submitted to you.

8 We'll see you folks back at 3:00. Thank you.

9 (Court recessed from 2:41:30 p.m. until 2:57:35 p.m.)

10 (Whereupon the following proceedings were held
11 outside the presence of the jury)

12 THE COURT: Which juror, Rick?

13 THE MARSHAL: I think it's juror number five. The one in the purple.

14 MS. KOLLINS: Judge, may we approach?

15 THE COURT: Sure. You're approaching? There's nobody –

16 MS. KOLLINS: Well, I just –

17 THE COURT: You just want to get like – up here.

18 (Bench conference begins)

19 MS. KOLLINS: All right. Well, that was a train wreck. I don't know. What
20 are you guys looking for?

21 MR. PAGE: The reason why we're deciding is we're going to have to put it
22 on the record of what was brought up, that Tomaino told him to talk to the guy that
23 has prior felony arrests, and that that came out.

24 MS. KOLLINS: So you're going to move for a mistrial?

1 MR. PAGE: So, yeah.

2 MS. KOLLINS: And I mean, our response is, you know, I cut him off. I don't
3 think it was clear what he was talking about. I obviously could tell where he was
4 going, but I don't think he finished his sentence, so I don't know that it was
5 prejudicial. I think a limiting instruction could cure it. But it's their option whether
6 they want that instruction, as it calls attention to what was said and perhaps, I mean,
7 it wasn't as clear to the jury as it was to the rest of us that routinely play in the
8 sandbox. I mean, he's a seven year cop. Why would I ever think he would do that?

9 MR. PAGE: I don't doubt that they admonished him, but obviously he had
10 his own —

11 THE COURT: I understand that. Here's the thing. I think —

12 MS. KOLLINS: I think the warrant thing probably wasn't clear, because
13 warrant and probable cause to arrest him immediately, I don't think that's clear.

14 THE COURT: I certainly think that wasn't clear with respect to the other
15 thing, since we've already got a ruling that the prior act is coming in. He said the
16 word felony arrest.

17 MS. KOLLINS: He was arrested for that.

18 THE COURT: I don't think that there is enough prejudice to warrant a mistrial
19 at this point. It certainly would have been better if he hadn't said that. So I'm
20 going to deny the motion for a mistrial. You know, the defense did not make a
21 contemporaneous objection. I certainly could have instructed the jury to disregard
22 the comments at the time. I obviously still can offer a limiting instruction if the
23 defense would like that, but that's entirely up to you.

24 MR. PAGE: The reason no contemporaneous objection was made is we

1 didn't want to highlight the fact —

2 THE COURT: I know. I understand. I mean, obviously that's your —

3 MS. KOLLINS: That was Dan Page.

4 MR. PAGE: Oh. Is it we're still on the record? Yeah, that was Dan Page for
5 the Public Defender's Office.

6 THE COURT: Yeah, I don't know why we're up here. But certainly that's the
7 defense's option. So if you do not want a limiting instruction, I will not give it. The
8 motion for a mistrial obviously is on the record. I'm denying it for those reasons.

9 Is there anything else with respect to that that you want on the record?

10 MS. KOLLINS: No. There's one juror that recognizes the other bad acts
11 victim that we might need to —

12 THE COURT: Right.

13 MR. COX: What was that?

14 MS. KOLLINS: One of the jurors recognizes Nefertia from school.

15 MR. COX: Really?

16 THE COURT: Right. So I'm going to have — Can you bring in that juror?

17 MS. KOLLINS: So — and I don't know if it's just —

18 THE COURT: Can you guys move back so we can actually make sure that
19 this is all on the record? And you know what, while we're doing this, I just want to —

20 THE CLERK: She just can't get it while you guys are up there.

21 THE COURT: It's a lot easier if you're at your places.

22 And I just wanted to make a note for the record with respect to my
23 prior ruling on the contents of the police report. The statute is NRS 47.120: "When
24 any part of a writing or recorded statement is introduced by a party, the party may

1 be required at that time to introduce any other part of it which is relevant, and any
2 party may introduce any other relevant parts." So that was the basis of my ruling
3 to allow the State to introduce other consistent statements in the police report.

4 MS. KOLLINS: Thank you, Your Honor.

5 **(Bench conference concluded)**

6 (Juror Jennifer Mills enters the courtroom)

7 THE COURT: Okay. Ms. Mills.

8 JUROR MILLS: Yes.

9 THE COURT: Hi, how are you?

10 JUROR MILLS: I'm fine.

11 THE COURT: So we understand that you recognized one of the prospective
12 witnesses who was in the hallway, and we just wanted to ask you a couple
13 questions about that.

14 JUROR MILLS: Sure.

15 THE COURT: Do you know who the person is, or you just recognize her by
16 sight?

17 JUROR MILLS: I recognize her by sight. I don't even know what her name is.

18 THE COURT: Okay. So it's not somebody you've ever had a conversation
19 with?

20 JUROR MILLS: No.

21 THE COURT: Is it going to make you feel uncomfortable or like you can't do
22 your job as a juror fairly if that person comes in and testifies as a witness?

23 JUROR MILLS: No. It's not going to make me – I was more concerned
24 actually for her, if it would make her feel uncomfortable, because I know her

1 teachers.

2 THE COURT: Okay.

3 JUROR MILLS: So it's not going to make – in my job, no.

4 THE COURT: Okay. Are there any questions? State?

5 MS. KOLLINS: As long as she maintains her ability to be fair and won't give
6 any greater weight to that witness' testimony than she would any others, then we're
7 fine with that record, Judge.

8 THE COURT: Okay. Mr. Cox?

9 MR. COX: So if I understand correctly, you just recognize her from school
10 and know who her teachers are?

11 JUROR MILLS: Yeah. Correct.

12 MR. COX: What was the context of knowing who she was?

13 JUROR MILLS: She is in a special program at school for kids that are kind of
14 more college-bound, so she is within a certain group of teachers that they – it's kind
15 of like a school within a school, and that's how I recognize her.

16 MR. COX: Okay, thank you.

17 THE COURT: Okay. Just through your work?

18 JUROR MILLS: Correct.

19 THE COURT: Okay, thank you, ma'am. Thank you. I really appreciate you
20 doing that. That's exactly what you're supposed to do, so I appreciate that.

21 JUROR MILLS: Okay.

22 THE MARSHAL: Do you want me to bring them all in?

23 THE COURT: Just bring them all in.

24 THE MARSHAL: You can stay right there.

1 (The jury enters the courtroom)

2 THE COURT: We're back on the record in Case Number C265506, State of
3 Nevada versus Tyrone James. Let the record reflect the presence of all of our
4 jurors, Mr. James with his counsel, the representatives of the D.A.'s Office, and all
5 of the court staff.

6 MS. KOLLINS: Your Honor, at this time the State would call Dr. Vergara.

7 DR. THERESA VERGARA

8 Having been called as a witness and being first duly sworn, testified as follows:

9 THE COURT: Afternoon, ma'am. Could you please state your name and
10 then spell it first and last for the record.

11 THE WITNESS: Yes. Dr. Theresa Vergara. T-h-e-r-e-s-a Vergara, V -as in
12 Victor -e-r-g-a-r-a.

13 THE COURT: Thank you, ma'am.

14 DIRECT EXAMINATION

15 BY MS. KOLLINS:

16 Q Good afternoon, Dr. Vergara. Thank you for your patience today.
17 Ma'am, how are you employed?

18 A I'm a full-time attending physician at Sunrise Children's Hospital;
19 the Pediatric Emergency Room.

20 Q How long have you worked at your profession at Sunrise Peds E.R.?

21 A Since 1999.

22 Q And prior to that, where were you working?

23 A I was in New York; Mt. Sinai Hospital. Also a full-time attending
24 physician at the Pediatric Emergency Room at Mt. Sinai.

1 Q And where did you get your education and your residency?

2 A At – Well, I'm double Boarded in both Pediatric and Pediatric
3 Emergency Medicine. So after medical school in 1986, I did my pediatric residency
4 program at St. Joseph's Hospital in Patterson, New Jersey, followed immediately by
5 a pediatric emergency medicine fellowship at Mt. Sinai Hospital. After completing
6 my training I worked as an attending physician. I stayed on at Mt. Sinai for about
7 seven years until I relocated to Sunrise.

8 Q And tell me what a pediatric E.R. physician does on a daily basis.
9 What kind of things do you do?

10 A Well, just like a pediatrician has his office, his or her office to deal with
11 patients and take care of patients' care, my office is the pediatric emergency room,
12 so any emergency that comes in via ambulance or any parent bringing their child in
13 for whatever reason, fever, trauma, needs stitches, that needs medical evaluation
14 and care.

15 Q Is a component of that practice within the Sunrise Pediatric E.R. to do
16 sexual assault examinations on children?

17 A Yes. It's what we call a SCAN program. SCAN, S-C-A-N, Suspected
18 Child Abuse and Neglect. It's either physical abuse or sexual abuse.

19 Q And what particular training do you have that qualifies you to perform
20 a SCAN exam?

21 A Well, again, after a pediatric residence, you do more training and you
22 specialize and do a pediatric emergency medicine fellowship, which is additional
23 training, and there you do critical care in an emergent basis, as well as trauma,
24 and of course sexual abuse or any abuse, physical abuse, abuse is trauma.

1 Q So, sexual abuse specifically was a component of that fellowship,
2 as well as the remainder of your practice up through the time you were working at
3 Sunrise?

4 A Absolutely.

5 Q Were you working at Sunrise in the Peds E.R. on May 14th of 2010?

6 A Yes.

7 Q And you have testified as an expert in the field of child sexual abuse
8 and the findings in this Eighth Judicial District before, correct?

9 A Yes.

10 Q So you were working at 2:00 in the afternoon on May 14th, 2010.
11 Tell me what the protocol is if a child presents to you at Sunrise and there's been
12 an allegation of sexual abuse. What's the protocol that you take there?

13 A Well, just like how any patient presents to the emergency room, they
14 come through the triage and they state their chief complaint. So it was identified
15 as a victim of sexual abuse. Once that is identified, they get placed into a special
16 room, Room 8, and the SCAN is initiated. So a designated nurse gets assigned to
17 that patient and usually, again, identified as an abuse victim, so in our case –

18 Q Okay. I'm going to –

19 A Oh, go ahead.

20 Q I'm going to – before we jump ahead to this case, I just want to ask you
21 a few questions about kind of what happens during the course of that examination.
22 You said there's a triage portion. What does that mean?

23 A Well, triage is, again, the chief complaint. You get your vital signs.
24 We identify any emergencies. If someone has breathing difficulty or active bleeding

1 they get triage quicker into the unit and appropriately so we could take care of that
2 patient promptly.

3 Q So if – my word, not your words, but when we were speaking the other
4 day, that's kind of a wellness portion of the exam; treat anything that immediately
5 needs to be taken care of; if there's a high fever, if there's a broken bone, something
6 like that, right?

7 A Right. It gets identified as such and gets treated as such. Correct.

8 Q Okay. And then there is the sexual assault component or the
9 examination of the genitalia, which is a separate component of that process, right?

10 A Correct. We examine the patient head to toe, and then when it comes
11 to the genitalia we focus and do photo documentation of that area.

12 Q Okay. And this triage portion, this initial information-seeking portion,
13 who usually does that? Do you do that or is there a nurse that does that?

14 A Oh, there's a triage nurse.

15 Q And she takes all that information?

16 A Correct.

17 Q And either provides that to you or assists you with the remainder of
18 the examination?

19 A Correct.

20 Q You mentioned Room 8. What's special about Room 8?

21 A Room 8 has a colposcope, which is an instrument that will help
22 magnify the genitalia.

23 Q Now, when the triage portion of this examination is being done with a
24 child, are they placed in a quiet room, in a different area away from the hustle-bustle

1 of the E.R.?

2 A They go directly – from triage they go directly into Room 8.

3 Q Okay. On May 14th of 2010, who accomplished your triage regarding
4 a young lady by the name of T [REDACTED] H [REDACTED]?

5 A The triage nurse and a designated nurse for T [REDACTED].

6 Q And that nurse's name?

7 A Pamela – Pamela –

8 Q Do you remember her last name? No?

9 A She was the designated – Gosh, no, I don't recall the last name.

10 Q Okay. First name Pamela, though?

11 A Yes.

12 Q Would it refresh your recollection to look at your report?

13 A Yes.

14 Q Do you have a copy of your report with you?

15 A Yes, I do.

16 Q Is it a full and accurate copy, the same as the District Attorney has
17 been provided, as well as the defense?

18 A It was a copy that was provided to me by our program, yes.

19 MS. KOLLINS: Any objection, Mr. Cox?

20 MR. COX: No. No objection.

21 THE WITNESS: Pamela Douglass.

22 BY MS. KOLLINS:

23 Q Now, there are a couple different locations here in Las Vegas where
24 kids go for sexual assault examinations, is that correct?

1 A Correct.

2 Q Sunrise being one of them?

3 A Yes.

4 Q And the other one being the Child Advocacy Center?

5 A Yes.

6 Q Is Sunrise where acute examinations take place –

7 A Yes.

8 Q – generally?

9 A Yes, generally. Correct.

10 Q Can you explain the difference to us between an acute examination

11 and an examination that would be routinely scheduled over at the Advocacy Center?

12 A If a child just happened to disclose, oh, I was abused but it was like

13 six months ago, there's no – that's not acute, okay. So acute is something that

14 happened, especially if we could forensically collect a rape kit, so within – even up

15 to five days. Three – ideally three days.

16 Q So ideally seventy-two hours –

17 A Seventy-two hours. Correct.

18 Q – is an acute examination. Okay. Now, with regard to T [REDACTED]

19 H [REDACTED], what did you know from the triage and going into Room 8, if you will?

20 A It was an acute – the event was at 9:00 a.m. and the patient presented

21 around 2:00 p.m. to the emergency room.

22 Q Okay. And what was the nature of the allegation that constituted the

23 sexual abuse and the purpose for the examination?

24 A Reportedly she was assaulted by an adult male with vaginal as well as

1 digital penetration.

2 Q When you say vaginal penetration, what do you mean?

3 A I mean penile and – I'm sorry. Penile and digital penetration of her
4 vagina.

5 Q Okay. Now, tell us just generally what the component parts are of
6 the sexual assault portion of the examination, and then we'll talk specifically about
7 this examination, okay. Generally how does that work?

8 A Well, just like any patient, a regular emergency room chart gets
9 generated. And then once it's identified as a sexual abuse, then additional
10 paperwork, specifically our SCAN paperwork, another set of paperwork gets –
11 for proper documentation. That SCAN paperwork has more pictures, so that will
12 facilitate the doctor documenting any lesions or any findings – just to help the
13 documentation. So it's additional paperwork because it's an abuse case.

14 Q Okay. Let me try to ask the question in a different way. You're
15 documenting something with paperwork. What are the activities that are being
16 documented within the paperwork that are a portion of the examination? I mean,
17 what's being documented?

18 A Well, we do the physical examination, okay, from head to toe, and
19 then specifically focusing on the genitalia.

20 Q Okay. When a patient – after the paperwork part is accomplished,
21 you mentioned a colposcope, I believe. How and when is that used?

22 A The colposcope is in Room 8. So the patient – Room 8 has a bed just
23 like a stretcher, just like any other room. The patient gets undressed into a gown,
24 just like any other patient. Sits on the bed. Gets examined head to toe, okay, by

1 me; by the physician. And then when it's time to do the GYN exam –

2 Q GYN being gynecological?

3 A Gynecological examination. They – again, a lot of this is prepped by

4 the nurses prior to the procedure, prior to my arrival, so they know to sort of lay on

5 the bed and then put their legs in the stirrups to better visualize the genitalia.

6 Q So you photograph the genitalia with the colposcope, correct?

7 A Correct.

8 Q And that's in gynecological stirrups in a prone position. That's the way

9 those exams usually go?

10 A In a supine position, yes.

11 Q And then you swab the genitalia, correct?

12 A After digital photo documentation of the genitalia, then we proceed

13 with – in this case like a rape kit or swabbing, yes. Swabbing for collection, yes.

14 Q So swabbing is part of the rape kit, correct?

15 A Correct.

16 Q And the rape kit comes to you in a sealed condition?

17 A Sealed. Yes.

18 Q And it's a series of swabs for anywhere someone may have touched,

19 right?

20 A Correct.

21 Q And those are used on a child or an adult, right?

22 A Yes.

23 Q And then you seal them up and put them away after you swab?

24 A Correct. To maintain the chain of evidence, correct.

1 Q Correct. And did you do all that in this case?
2 A Yes, with the help of the nurse. Yes.
3 Q With the assistance of the nurse?
4 A Yes.
5 Q Pamela Douglass, who we already talked about?
6 A (Shakes head affirmatively).
7 Q So she filled out your checklist for you of what had transpired, gave
8 you that information, and then you begin the examination?
9 A Correct.
10 Q Did you perform the same kind of gynecological examination on
11 T [REDACTED] H [REDACTED] that you just kind of described for us?
12 A Yes.
13 Q Okay. What, if anything, did you see?
14 A On inspection there was no bruising to the external genitalia. Upon
15 retraction of the labia majora, which is the large labia, able to see some generalized
16 swelling to the area and the vaginal area, yes.
17 Q And the labia majora are the outer lips of the female vagina, right?
18 A Yes. Outer lips.
19 Q Outer lips of the genitalia. And so when you looked inside you saw
20 generalized swelling where?
21 A To the introitus.
22 Q What are some of the reasons that – Strike that. That could be
23 caused by a penetration of some sort, correct?
24 A Generalized swelling from trauma, yes.

1 Q From trauma; trauma being penetration?
2 A Yes.
3 Q Something being inserted?
4 A Yes.
5 Q Something being rubbed?
6 A Yes.
7 Q Okay. It could also be consistent with other things?
8 A Yes.
9 Q But not inconsistent with the reason the patient was reporting,
10 correct?
11 A Correct. It's consistent with the – with her chief complaint of being
12 sexually assaulted. Yes.
13 Q Consistent with her chief complaint of being digitally penetrated and
14 having her vagina penetrated by a penis?
15 A Yes.
16 Q Okay. Or rubbed on by a penis?
17 A Yes.
18 MS. KOLLINS: Indulge me for one minute, Doctor.
19 BY MS. KOLLINS:
20 Q Did you notice any bruising? And I'm not talking about the genitalia,
21 I'm just talking about overall on her body.
22 A No. There was no bruising.
23 Q Nothing that had developed yet?
24 A No.

1 Q Okay. Did you know whether or not rubber gloves were used during
2 the assault?

3 A That was – It was reported.

4 Q I mean, in terms of going into the examination, of course you weren't
5 there so you don't know, so that was a bad question. But did you know that was
6 part of the report?

7 A Yes.

8 Q Could some of that swelling be caused by contact with latex?

9 A Well, just the friction of rubber and a moist area, correct. Yes.

10 Q The child's hymen was intact?

11 A There was no local redness or bleeding to the hymen, correct.

12 Q And would you expect to see bleeding?

13 A If it was just rubbing or just – it depends on the severity of the
14 penetration.

15 Q Well, the female introitus and the vagina are designed to take things
16 in and stretch, correct?

17 A Yes.

18 Q So every time you put something in a vagina, you don't necessarily
19 tear a hymen or cause bleeding or anything like that?

20 A Just like if a female uses tampons and inserts the tampon.

21 Q So based on what you knew, was it any surprise to you that there was
22 no tears or bleeding or anything like that?

23 A That's no surprise at all.

24 Q Okay. Now, of course there's no – Strike that. You did see swelling.

1 Did you see any other injuries, or any other sign of trauma, if you will?

2 A She was just – she complained of soreness to her lower – to her legs.

3 Q How was she emotionally during the exam? If you remember.

4 A I just remember she was cooperative.

5 Q Cooperative?

6 A Yes.

7 MS. KOLLINS: I will pass the witness, Judge.

8 THE COURT: Mr. Cox?

9 MR. COX: Thank you, Judge.

10 CROSS-EXAMINATION

11 BY MR. COX:

12 Q Good afternoon, Doctor.

13 A Hello.

14 Q Sunrise Hospital is a great place, isn't it? Great people were born
15 there, weren't they?

16 A (No response).

17 Q Now, did you have an opportunity to make a report regarding what the
18 findings were regarding the redness or – was it redness or swelling?

19 A Swelling. Yes, the SCAN paperwork, that portion.

20 Q I'm just going to grab it real quick. Now, when you go to document
21 the paperwork, you have the option of putting what you find in several different
22 categories, is that correct? Do you have your report with you?

23 A Yes. I'm flipping through it right now.

24 Q Okay. I'll refer Court, counsel and the witness to the portion where it's

1 noted "non-specific findings." And you circled swelling?

2 A Yes. Page 304 of the Child and Adolescent Sexual Abuse and Assault
3 Forensic Medical Examination Report.

4 Q Yes, ma'am. Yes. Now, on that sheet there are lots of different
5 categories to place findings.

6 A Yes.

7 Q Okay. The first category you have – actually – The first category you
8 have would be a normal exam with a normal variant. Now, what would that category
9 be? If you had a finding that you'd put in that category, what would that type of
10 finding be?

11 A Uh, my examination minus the swelling.

12 Q Okay. But if it was a normal exam, that means that – now, looking
13 at the report, does it mean the lack of physical exam findings does not exclude the
14 possibility of sex abuse?

15 A Correct.

16 Q Okay. So it could be something that quite frankly you'll find in any
17 person just normally occurring, correct?

18 A Correct.

19 Q Okay. Now, the next category is the box you checked; is that fair to
20 say?

21 A Yes.

22 Q Okay. Now, that's a non-specific finding?

23 A Correct.

24 Q And you circled swelling?

1 A Yes.

2 Q And this category, if I read the label correctly: These findings may
3 occur in sexually abused children but may be from other causes. Correct?

4 A Correct.

5 Q Okay. Now, there's two other categories as well. Well, actually three.
6 The second one is: Concern for abuse or trauma. In that category, if I'm correct:
7 These findings have been noted in children with documented sexual abuse or are
8 consistent with though not conclusive of sexual abuse. Is that correct?

9 A Yes.

10 Q Okay. So that would be a finding that is very consistent with sexual
11 abuse but it's not conclusive, even unto itself?

12 MS. KOLLINS: Objection as to the characterization of very consistent.

13 MR. COX: I'll tell you what, Judge –

14 THE COURT: Mr. Cox, could you just rephrase the question. I'm sorry,
15 I didn't really even quite –

16 MR. COX: I'll strike the question. I'm sure it was a poor one.

17 THE COURT: I'm just having a hard time following it.

18 BY MR. COX:

19 Q Doctor, what type of finding is that? What type of findings would fit
20 in that category?

21 A Well, let's just say for example a female happens to fall down and
22 straddle an edge or an object, accidentally fall and sustain some bruises. So,
23 yes, there's bruises. There could be bleeding. But there is a story that the child
24 accidentally fell and sat on a pointed toy or an object and sustained the bruising

1 and the injury or the bleeding, but it's from not an abuse or trauma.

2 Q Okay. But that's a finding that has been noted in children with
3 documented sexual abuse, is that correct? Is that correct? I'm reading -- I'm looking
4 at the report.

5 A Well, because bruising and laceration of the posterior fourchette and
6 bite marks have been found in patients that have been abused, yes.

7 Q Okay.

8 A Can be abused. Yeah.

9 Q Okay. Now, the findings you had, you did not put in that category?

10 A No, because they weren't as severe to cause any lacerations or
11 bruising.

12 Q Okay. Now, the last or the next category is a specific finding present
13 that indicates abuse.

14 A Yes. Or severe.

15 Q Yes. Now, what type of things would fit in that category?

16 A Well, you actually see some deep lacerations that's actively bleeding,
17 that you have to intervene. Some are so severe they have to go to the operating
18 room to repair.

19 Q Okay. And in that category sexual abuse is very likely. That's how
20 the category is labeled?

21 A That, plus the history of, yes, i was raped.

22 Q Okay. So we have a category for a very specific finding, sexual abuse
23 is very likely, and you do not check that section, correct?

24 A Correct.

1 Q Okay. We have another section for: These findings have been noted
2 in children with documented sexual abuse. But you didn't check that category,
3 correct?

4 A Because the injuries were not that severe. Correct.

5 Q Okay. But you didn't check -- you didn't put it in that category?

6 A Correct.

7 Q You put it in the category where these findings may occur there, but
8 they're also from other causes?

9 A Because the findings were consistent with non-specific -- it was a
10 non-specific finding; swelling.

11 Q Right. Okay. Now, what can cause swelling or redness to introitus,
12 it's basically the opening to the vagina, other than sexual abuse?

13 A A urinary tract infection.

14 Q Okay, that's one. Now, in this case did we find urinary tract infection?

15 A Yes, we did.

16 Q We did. Okay. Now, there's also something -- Now, Doctor, you have
17 to forgive me, I'm just an attorney and I don't pronounce medical things very well,
18 so please bear with me. Strep agala--

19 A It's a bacteria.

20 MS. KOLLINS: Judge, I'm going to ask that we approach.

21 MR. COX: Sure.

22 THE COURT: Sure.

23 (Bench conference begins)

24 MS. KOLLINS: Are you going into -- (indiscernible).

1 MR. COX: That's not a -- (indiscernible).

2 MS. KOLLINS: I didn't know where you were going, so I didn't know what
3 you're trying to -- (indiscernible).

4 MR. COX: This is -- I checked last night her deposition. That's (indiscernible).

5 THE COURT: What is it?

6 MR. COX: It's Strep. It's something that just happens -- (indiscernible).

7 MS. KOLLINS: (Indiscernible) -- back further into her sexual history.

8 MR. COX: Okay. (Indiscernible). Let me just give us all --

9 THE COURT: Let me see what you've got.

10 MR. COX: Strep agala--

11 THE COURT: Just let me see what you've got.

12 MR. COX: Maybe you'll recognize that. It's my understanding that it can be
13 caused by other --

14 THE COURT: Shhh.

15 MS. KOLLINS: What's the relation -- (indiscernible).

16 MR. COX: No. I'm not alleging it's an STD.

17 (Colloquy between Mr. Cox and Ms. Kollins)

18 THE COURT: Okay.

19 MR. COX: This is Bryan Cox for the record. I'm not alleging STD.

20 THE COURT: Okay. Go ahead, Mr. Cox.

21 (Bench conference concluded)

22 BY MR. COX:

23 Q Doctor, rescue me here. Strep agalactiae.

24 A That's pretty good.

1 Q What is it?

2 A It's a bacteria. Strep. Yeah.

3 Q Now, is this something that can cause swelling or redness to the
4 introitus or the opening of the vagina?

5 A Well, we have bacteria all over in our body. And I happened to swab it
6 and it grew – that particular swab in the medium that it was placed in grew strep.

7 Q Okay. So that was present in T [REDACTED] H [REDACTED]' vagina?

8 A Yes. And it can be in the normal flora of any vaginal area, yes.

9 Q Okay. It's something that just commonly can occur in women?

10 A Yes, it can.

11 Q Okay.

12 A Yes, it can.

13 Q And through just normal life you can just contract this? It's like maybe a
14 yeast infection or something like that, or a urinary tract infection?

15 A Well, we have bacteria. Like we have bacteria in our mouths, bacteria
16 under our arm pits. I mean, even after taking a shower, if you –

17 Q Okay. Now was Strep – I'm just going to call it Strep Group B –

18 A Correct.

19 Q – that's something that can cause redness at the introitus, which is the
20 opening of the vagina?

21 A Infection. Yes.

22 Q And it was present – When you sent it to the lab, this came back as
23 being present with T [REDACTED] H [REDACTED]?

24 A Well, I only swabbed. It goes to the laboratory and it grows after like

1 three days after the fact.

2 Q Did you review the results on that?

3 A I was told, yes, it was positive.

4 Q Positive. So she did have this condition that causes swelling at introitus
5 or the opening of the vagina?

6 A Well, I knew that just the other day.

7 Q Okay. So that – so in this case we have two – you documented two
8 causes that had nothing to do with sexual assault that would cause redness at
9 introitus or the opening of the vagina?

10 A At the time of the exam I only documented one –

11 Q Okay. Well –

12 A – the urinary tract infection. And I collected cultures.

13 Q And so – okay. And then later on when you got the lab results, you
14 realized there was a second cause, a second thing that could cause the same thing?

15 A The chart – yes. The medical records indicated that it grew.

16 Q Okay. Thank you very much.

17 MR. COX: I'll pass the witness.

18 THE COURT: Okay. Ms. Kollins?

19 REDIRECT EXAMINATION

20 BY MS. KOLLINS:

21 Q Notwithstanding that, the redness to the introitus was still consistent
22 with the history, correct?

23 A Yes.

24 Q Okay. Mr. Cox went through a couple pages of your report with you, or

1 a page, and what your available options are when you're documenting sexual assault
2 cases?

3 A Yes.

4 Q When you document these cases, do you document them keeping in
5 mind the history, what you've been told happened, as well as what you physically
6 observe?

7 A It's actually what the physical – medical exam findings. So it's the
8 physical findings.

9 Q Right. But like in the other category where there's a concern for abuse
10 or trauma and there's an inconsistent history, you don't attribute it to sexual abuse
11 because you haven't got that history. Do you see what I'm –

12 A Yes, yes. It requires a history and the examination.

13 MS. KOLLINS: Judge, I'm going to ask the Court for permission just to put
14 this page up that Mr. Cox went through. I think it's easier if we can see it rather
15 than –

16 THE COURT: Any objection to that, Mr. Cox?

17 MR. COX: No objection. No objection.

18 THE COURT: That's fine.

19 BY MS. KOLLINS:

20 Q Is that too small to read over there? I'm going to do it line by line.
21 Can you see that on your screen, Doctor? I'm sure you have the same one.

22 A Yes, yes.

23 Q Let me move it up. You come to your ultimate conclusion at the end
24 of an examination. You can never conclusively say that there is sexual abuse.

1 You can say that there's trauma, but you can never say that it's the product of
2 sexual abuse. Correct?

3 A It's only suspected. Yes.

4 Q Okay. So category number one, a normal exam. Normal hymenal
5 tissue. And we're just talking about a female right now. The lack of physical
6 examination findings, that does not preclude a conclusion that a child was sexually
7 abused, does it?

8 A Correct.

9 Q You can have an absolutely unmarked opening and you could still
10 have sexual abuse; right?

11 A Correct.

12 Q Okay. And does that have something to do with the healing properties
13 of the genitalia in general? I mean, you could have sexual abuse six months ago
14 and see nothing today; right?

15 A Correct.

16 Q The vagina opening has a lot of healing properties, the same as the
17 inside of your mouth; right?

18 A Correct.

19 Q It's a mucus membrane and it heals very quickly?

20 A Correct. And it also depends on the severe of trauma. If someone
21 has a five-year-old and an adult decides to lick and kiss and protrude – stick their
22 tongue, the adult tongue into the five-year-old, the child's vaginal area, what
23 evidence would you see from that?

24 Q Right.

1 A What evidence -- When I did my examination where I retracted the
2 labia, sustained in that -- while I photo documented the examination, I guess it was
3 a little red because I kind of pinched it open for exposure. And then an hour from
4 now if someone asks me did the doctor touch you, well, of course I touched my
5 patient during the examination of the genitalia, but there would be no evidence of
6 what I just did to that patient.

7 Q So it depends on the nature of the abuse?

8 A And the severity of the trauma. Correct.

9 Q And the severity of the trauma.

10 A The contact. Yes.

11 Q And despite any of these findings that you went through with Mr. Cox,
12 it still doesn't preclude the fact that a child could have been sexually abused; right?

13 A Correct.

14 Q I mean, in any of these categories?

15 A Correct.

16 Q Okay. So when we talk about the non-specific findings, which could
17 be swelling, which is what you saw here of the introitus; erythema, which is what?

18 A Erythema. Redness.

19 Q Okay. Labial adhesion, which is?

20 A Well, because of the constant friction it could actually cause sort of
21 secretions and it sort of adheres some tissue. The mucus membranes kind of get
22 stuck together.

23 Q And while those are non-specific, they could be attributable to sexual
24 abuse or another explanation; right?

1 A Correct.

2 Q But in this case consistent with the history that you received?

3 A Yes.

4 Q Despite the fact that there was a diagnosis of UTI, urinary tract

5 infection?

6 A Correct.

7 Q Okay. Now again, we're talking about levels of trauma and levels of

8 contact, right, when we go through these categories. When you get down to the

9 specific physical findings that are present, those are some pretty horrific acute

10 physical findings, are they not, in that category?

11 A Yes.

12 Q Okay. And we're talking about things like transected hymens, which

13 means you have a tear from the edge of the hymen to the base of the hymen; right?

14 Things like that. Active bleeding.

15 A Correct. Sometimes that needs to go to the O.R. for repair.

16 Q Okay. And again, even if those – those injuries could be present for

17 reasons other than sexual abuse?

18 A Yes. If you –

19 Q Even if you found that category?

20 A Yes.

21 Q Even if you found a specific finding, there could be an alternate

22 explanation?

23 A Yes.

24 Q So the point being, you can – despite what the level of injury, there is

1 no way to conclusively testify there was sexual abuse – ever. Right?

2 A Correct.

3 Q Okay. And there's another page of your report that Mr. Cox I don't

4 believe spoke about on cross-examination where you draw conclusions about

5 abuse. And I believe that would be your page 4 of 4.

6 A Correct.

7 Q Did you come to a conclusion on page 4 of 4?

8 A Yes. Page 4 of 4 has the overall impression.

9 Q And what goes into that overall impression? Before you give us that

10 conclusion.

11 A The overall is based on the history and the physical examination.

12 Q And what was your overall conclusion in this case?

13 A That it was probable abuse.

14 Q And why is that?

15 A Because the child has given a spontaneous, clear, detailed description

16 of the events.

17 Q To a neutral fact-finder?

18 A Correct.

19 Q And who was the neutral fact-finder in this case?

20 A A family member. I think she initially said it to her – disclosed that to

21 her sister.

22 Q And that abuse coupled with your – that report of abuse coupled with

23 your examination, with or without specific findings; correct?

24 A It's consistent with probable abuse. Yes.

1 Q Okay, thank you.

2 MS. KOLLINS: No more questions, Judge.

3 THE COURT: Mr. Cox?

4 MR. COX: Just a couple, Judge.

5 RECROSS EXAMINATION

6 BY MR. COX:

7 Q Now, you mentioned that someone can have direct contact with
8 genitalia with – you mentioned the example of a tongue, and it would never leave
9 any evidence. Did I understand that correctly?

10 A On physical examination by the physician, yes.

11 Q Okay. Now what about –

12 A Inspection.

13 Q I'm sorry I interrupted you. You mentioned as part of the kit you do
14 swabbing. What is that?

15 A A rape kit was done.

16 Q Okay.

17 A It's a sealed box with envelopes and swabs. Each envelope has
18 instructions on the area to swab, and the swab gets placed into that envelope.
19 And once all the envelopes and swabs are collected, it's sealed.

20 Q Now, are you aware whether or not some of those swabs would go
21 for DNA testing?

22 MS. KOLLINS: Objection. Calls for speculation beyond the scope of her
23 professional capacity.

24 THE COURT: Sustained.

1 MR. COX: Judge, I asked if she was aware as to whether or not any of those
2 collections were for that purpose. I think she is in a position to answer that question.

3 MS. KOLLINS: Objection. The same objection. Whether some in this case,
4 some in any case ever? That's speculative. She doesn't know.

5 MR. COX: Maybe I can lay a foundation, Judge.

6 THE COURT: Okay.

7 BY MR. COX:

8 Q Okay. is it a uniform kit that you use with these examinations?

9 A Yes, it's a standard kit.

10 Q Okay. And when you're doing the collection, is there any markings or
11 indication of whether or not anything is being collected for purposes of DNA?

12 A What specific envelopes? No, I don't know.

13 Q You don't know?

14 A No.

15 Q So it goes in – you do these swabs –

16 A It has like seven – there's like seven envelopes with the instructions,
17 swab here, swab here. And I swab, we collect, and then it gets sealed and then
18 the police picks up the – picks up the box and they deal with it forensically.

19 Q In what way would they deal with it forensically? Are you aware?

20 A Like, we don't – like for example, that Strep –

21 Q Okay.

22 A – our lab, Sunrise labs grew that. So that swab went to Sunrise,
23 versus all the kit – all the swabs from the kit. The rape kit goes to the police.

24 Q Okay. Now, the police wouldn't do any cultures or lab –

1 MS. KOLLINS: Objection. Calls for speculation as to what Metro lab does.

2 MR. COX: Fair enough.

3 THE COURT: Sustained.

4 MR. COX: I'll withdraw the question.

5 BY MR. COX:

6 Q But there are swabs done that are given to Metro that you're aware of?

7 A That gets processed by the police. Yes.

8 Q Okay. Now, as a doctor are you aware that those swabs can pick up
9 epithelial cells or skin cells left by another individual?

10 A Yes.

11 Q Okay. So if those types of cells were found, that would be consistent
12 with somebody else was there?

13 MS. KOLLINS: Objection. Calls for speculation. She's not a DNA expert.

14 MR. COX: It was a general question, Judge. I think she —

15 THE COURT: If she knows she can answer.

16 MR. COX: Okay.

17 THE WITNESS: It depends on the proper collection. If I was able to get a
18 good swab.

19 BY MR. COX:

20 Q Okay, fair enough. Now, you also mentioned bruising, that sometimes
21 bruising takes time to develop, so right away it may not show up. Is that correct?

22 A Well, first initially you get redness.

23 Q Okay.

24 A And it depends on the severity of the trauma. It can cause bruising.

1 For example, when I said that I pinched the labia to expose the introitus and
2 sustained that during the documentation and I let go, you could probably see a little
3 bit of redness, but I certainly did not cause any bruising.

4 Q Okay. Now, I'll give you a hypothetical. If somebody had received
5 bruising between let's say nine and ten o'clock in the morning and you see them
6 at two o'clock in the afternoon, would that be sufficient time for bruising to develop
7 and perhaps be observable?

8 A It depends on the location, because there's different thickness of
9 the skin.

10 Q Okay, fair enough. And again, in this case you did not observe
11 bruising on the body?

12 A Correct.

13 Q You just observed a redness at the introitus, correct?

14 A The general swelling to the introitus. Yes.

15 Q General swelling. I'm sorry. Now, for a urinary tract infection or Strep
16 B, if it's present when you checked her at two o'clock on May 15th (sic), how long
17 would it take for that type of swelling to appear?

18 A A concurrent infection can cause additional swelling. How much of the
19 swelling is due to what, I don't know. I just know that there's swelling.

20 Q Okay. For example, that day you recognized there was a urinary tract
21 infection?

22 A Correct.

23 Q Okay. That could – She could have had that for a number of days;
24 is it possible?

1 A Correct.

2 Q Okay. So the swelling could have been present days previous, and
3 it just –

4 MS. KOLLINS: Objection. Calls for speculation to attribute it to a UTI days
5 previous.

6 THE COURT: I'm going to overrule. If you can answer, Doctor.

7 THE WITNESS: Generalized swelling can be from anything. From a urinary
8 tract infection, from poor hygiene, from – It's a non-specific finding.

9 BY MR. COX:

10 Q Okay. Do we know – Do you know based on what you observed how
11 long she'd had the urinary tract infection?

12 A No.

13 Q Okay. So she could have had it for any number of days or weeks.
14 We don't know?

15 A Correct.

16 Q Okay. And the Strep B, the Strep Group B, is that the same situation?

17 A Correct.

18 Q Okay. So she could have had that for any number of days and we
19 don't know, based on –

20 A Well, if it's prolonged then you start having complaints of urinary tract
21 infection, like it burns when I urinate. And she did not have any complaints of it
22 hurts when I pee.

23 Q Okay. But it was present nonetheless?

24 A Well, we tested her urine and it was positive for a urinary tract infection.

1 Q Thank you, Doctor.

2 MR. COX: I'll pass the witness, Judge.

3 MS. KOLLINS: Judge, just based on a couple questions, may I please?

4 THE COURT: Go ahead.

5 MS. KOLLINS: Thank you.

6 FURTHER REDIRECT EXAMINATION

7 BY MS. KOLLINS:

8 Q The complaint of urinary tract infection symptoms was not in her
9 history, correct?

10 A Correct. She had no complaints of it.

11 Q Was she running a fever?

12 A No.

13 Q No burning during urination?

14 A Correct.

15 Q So she may not even have known she had one?

16 A Correct.

17 Q Okay. Mr. Cox asked you some questions about DNA and its recovery
18 from the human body. There's a lot of variables that go into the ability to collect
19 DNA off the human body, is that correct?

20 A Correct.

21 Q If you bathe?

22 A Yes.

23 Q If you use the restroom?

24 A Um-hm.

1 Q Is that a yes?

2 A Yes.

3 Q If it's hot outside?

4 A Yes.

5 Q Sweating. The contact – In other words, if the contact was made with
6 a gloved finger, you would not expect to find a transfer of epithelial cells from a
7 hand, would you?

8 A No.

9 MR. COX: Objection. Calls for speculation.

10 THE COURT: Overruled.

11 BY MS. KOLLINS:

12 Q If a person showered or washed off? Any of those things, right?

13 A Correct.

14 Q The passage of time?

15 A Yes.

16 Q The intensity of the contact that was alleged, correct?

17 A Correct.

18 Q So all those things go into whether or not DNA is recoverable?

19 A Correct.

20 Q Okay. Because I could touch this desk right now and you may or may
21 not be able to recover DNA from it two minutes from now or three days from now?

22 A Correct.

23 Q You just don't know, right? Okay. Thank you.

24 MS. KOLLINS: No more questions.

1 THE COURT: Okay.

2 MR. COX: No, Judge, I don't have any further questions.

3 THE COURT: Thank you. Does the jury have any questions? Okay.

4 Counsel approach.

5 (Bench conference begins)

6 MS. KOLLINS: That was -- (indiscernible).

7 MR. COX: The defendant doesn't object.

8 THE COURT: Okay.

9 (Bench conference concluded)

10 THE COURT: Doctor, was there any bruising or redness on T [REDACTED]'s legs?

11 THE WITNESS: No.

12 THE COURT: Any follow-up from the State?

13 MS. KOLLINS: Very briefly.

14 FURTHER REDIRECT EXAMINATION

15 BY MS. KOLLINS:

16 Q In your history there was never an allegation that the person that did
17 this to her did it using any force, was there? There was no allegation that it was
18 forceful?

19 A Well, it wasn't consensual.

20 MR. COX: Judge, I would object. I think that mis-states the evidence we've
21 heard.

22 BY MS. KOLLINS:

23 Q Well, consent and force are two different things, would you agree?

24 THE COURT: Overruled.

1 MS. KOLLINS: I'm sorry.

2 THE WITNESS: So there's force, yes, because there was no consent.

3 BY MS. KOLLINS:

4 Q Okay. Well, consent and force are two different things, would you

5 agree with me there?

6 A Yes.

7 Q Okay. In the history does it indicate whether or not force was used to

8 pry this girl's legs apart? Is there any of that indicated in the history on this victim?

9 A Yes. It was reported that her clothing was ripped open, and choked

10 and placed down on the floor.

11 Q Would you expect to see bruising on her legs just because clothing

12 was ripped off?

13 A No.

14 MR. COX: Objection. Calling for spec— I'm sorry.

15 THE COURT: Go ahead.

16 MS. KOLLINS: No more questions.

17 THE COURT: Any follow-up from the defense?

18 MR. COX: No, Judge.

19 THE COURT: Any additional questions from the jury? No? Okay.

20 Doctor, you're free to go. Thank you.

21 THE WITNESS: Thank you.

22 THE COURT: Mr. Pandelis.

23 MR. PANDELIS: The State's next witness is Nefertia Charles.

24 Your Honor, may we approach?

1 THE COURT: Sure.

2 (Bench conference begins)

3 MR. PANDELIS: Chris Pandelis from the D.A.'s Office. At this point I think
4 you need to read the limiting instruction before she testifies.

5 THE COURT: Oh. Um-hm.

6 MR. COX: The instruction that I submitted did not include the last line that
7 the State did.

8 THE COURT: Let me find it.

9 MR. COX: That's the only alteration I would make.

10 MR. PANDELIS: And I took the reasons Judge Glass stated straight out of
11 the transcript:

12 THE COURT: Yeah, they just have their -- This was the jury instruction -- just
13 the same -- weigh this evidence in the same manner. Obviously we don't need that
14 at this point anyhow, so.

15 MR. COX: I think my position is that last line is -- defeats the limiting
16 instruction for this. This isn't limited -- evidence that's treated like everything else.
17 The limiting instruction is intended --

18 THE COURT: We don't need to argue about that right now because I don't
19 think that part of it anyway is relevant at this point.

20 MR. COX: Okay. It's not going to be read -- (indiscernible).

21 THE COURT: So we can deal with that when we're -- Okay.

22 (Bench conference concluded)

23 NEFERTIA CHARLES

24 Having been called as a witness and being first duly sworn, testified as follows:

1 THE COURT: Good afternoon, ma'am. Could you please state your name
2 and then spell it, first and last, for the record.

3 THE WITNESS: Nefertia Charles. N-e-f-e-r-t-i-a C-h-a-r-l-e-s.

4 THE COURT: Okay. And ladies and gentlemen, before Ms. Charles'
5 testimony begins, I'm going to read you an instruction with regard to her testimony.

6 Evidence which tends to show that the defendant committed offenses
7 other than that for which he is on trial, if believed, was not received and may not be
8 considered by you to prove that he is a person of bad character or to prove that he
9 has a disposition to commit crimes. Such evidence is being received and may be
10 considered only by you for the limited purpose of proving the defendant's intent,
11 motive, opportunity, or the absence of mistake or accident.

12 Mr. Pandelis.

13 MR. PANDELIS: Thank you.

14 DIRECT EXAMINATION

15 BY MR. PANDELIS:

16 Q Nefertia, how old are you?

17 A Seventeen.

18 Q When is your birthday?

19 A December 7th, 1992.

20 Q Do you go to school right now?

21 A Yes.

22 Q Where do you go to school?

23 A I attend Las Vegas High School.

24 Q What year are you at Las Vegas High School?

1 A 2012.

2 Q Are you in a special type of program at Las Vegas High School?

3 A Yes.

4 Q What program is that?

5 A I'm in PAL.

6 Q What was that?

7 A PAL.

8 Q What is that? Does that stand for something?

9 A Partnership of Las Vegas.

10 Q And what is that program?

11 A It -- every -- like, it's just to help us like with the business life and how

12 it is, and like every Wednesday we go to a job site.

13 Q So you have some classes geared towards business?

14 A Yes.

15 Q Do you have an interest in business after you're done with school?

16 A Yes.

17 Q What are your plans after you're done with high school?

18 A I plan to go to college and then I plan to go to a cooking school, and

19 then I plan to go to a school for being a doctor.

20 Q So one day -- You have a lot of plans. One day you'd like to become

21 a doctor?

22 A Yes.

23 Q Where do you live, Nefertia?

24 A Do you want my address?

1 Q Well, no. Do you live here in Las Vegas?
2 A Oh, yes.
3 Q Who do you live with?
4 A I live with my mom, my brother and my two younger sisters.
5 Q What is your mom's name?
6 A Tahisha Scott.
7 Q Tahisha Scott. And you said you had two younger -- your siblings.
8 What siblings do you have?
9 A I have two sisters and one brother.
10 Q You're -- Are you the oldest?
11 A Yes.
12 Q Tell me about your oldest sister. What's her name?
13 A Katia Henry.
14 Q Katia Henry?
15 A Yes.
16 Q And how old is Katia?
17 A She's fourteen.
18 Q And you have another sister. What's her name?
19 A Tyronica (phonetic) James.
20 Q Tyronica James?
21 A Yes.
22 Q How old is Tyronica?
23 A She's nine.
24 Q And then you said you have a brother as well?

1 A Yes.

2 Q What's your brother's name?

3 A Tyrone James, Jr.

4 Q How old is Tyrone, Jr.?

5 A Eleven.

6 Q And you live with all your siblings right now?

7 A Yes.

8 Q Do you know somebody named -- somebody else named Tyrone

9 James, other than your brother?

10 A Yes.

11 Q Do you see that person here in the courtroom today?

12 A Yes.

13 Q Can you please point to him and describe something that he's wearing?

14 A Right there (pointing) in the purple.

15 MR. PANDELIS: Your Honor, may the record reflect she's identified the

16 defendant, Tyrone James?

17 THE COURT: The record will so reflect.

18 BY MR. PANDELIS:

19 Q How do you know Tyrone James?

20 A He was married to my mom.

21 Q When was Tyrone -- Is he married to your mom anymore?

22 A No.

23 Q How old were you when you first met Tyrone?

24 A Um, I can only remember since I was seven, but I believe it was before

1 then, also. I just don't remember how old I was.

2 Q But you've had contact with Tyrone since at least the time you were
3 seven years old?

4 A Yes.

5 Q What was it like -- What was it like when you first met Tyrone? Would
6 you do things together?

7 A Yes. He used to be a maintenance man, and he'll take us, like me and
8 my little sister with him to his job site and help him out and stuff.

9 Q Did you enjoy doing that?

10 A Yes.

11 Q And did you do that with your sister -- was it Katia?

12 A Yes.

13 Q What other types of things would you do with Tyrone?

14 A We'll go swimming, we'll go play tennis, box and stuff like that;
15 basketball.

16 Q Are those all things you enjoyed doing?

17 A Yes.

18 Q Did Tyrone eventually live with you?

19 A Yes.

20 Q How old were you when he started to live with you?

21 A Um, well, we moved with him first on Donna Street, and then after that
22 he started living with us. I don't remember the age.

23 Q Okay. But you said first you moved in with him, and that was on
24 Donna Street, you said?

1 A Yes.

2 Q And then eventually you moved and he moved in with you?

3 A Yes.

4 Q Do you remember how old -- I know you don't remember how old you
5 were when you moved with him, but do you remember how old you were when he
6 moved in with you?

7 A Um, well, I believe I was in like second grade, so I was probably like
8 seven.

9 Q So it was early on, some of your earliest memories of him was when
10 you were living with him?

11 A Yes.

12 Q Okay. Nefertia, do you know if your mom and Tyrone have any
13 children together?

14 A Yes.

15 Q Who are they?

16 A Tyronica James and Tyrone James, Jr.

17 Q So one of your sisters, Tyronica, and Tyrone James, Jr. are Tyrone's
18 children?

19 A Yes.

20 Q Did your mom eventually split up with Tyrone?

21 A Yes.

22 Q How old were you when they split up?

23 A I was twelve.

24 Q What happened that caused them to split up?

1 A Um, it was -- what was it -- molestation charges; something like that.

2 Q Related to who?

3 A Me.

4 Q So did something happen to you about the time your mom split up

5 with Tyrone?

6 A Yes.

7 Q And when these things happened to you, did you stop living with

8 Tyrone at that point?

9 A Yes.

10 Q Did he find somewhere else to live or did you move?

11 A Um, we moved and he moved also.

12 Q Now, you said there were some things that happened with Tyrone that

13 caused your mom to split up with him and then you to move. What's the first thing

14 you remember happening with Tyrone?

15 A I remember him coming in my room and taking me to the room next

16 door and telling me that he felt someone was touching me, and so he told me to

17 lay down and he checked. And that's when he put his fingers in my vagina.

18 Q Who were you -- Were you living with your mom and your siblings

19 and everyone at that point?

20 A Yes.

21 Q Do you remember how old you were when he did that?

22 A Twelve.

23 Q About how long before --

24 (Witness is crying)

1 MR. PANDELIS: T [REDACTED], do you need a tissue or anything? Or Nefertia.

2 I'm sorry.

3 THE WITNESS: No, I'm fine.

4 THE COURT: Do you want to get her a glass of water?

5 MR. PANDELIS: Do you need a minute?

6 (Mr. Pandelis and Ms. Kollins talk quietly to the witness)

7 MR. COX: Your Honor, I object. If there's conversation, I would like to know
8 about the conversation.

9 THE COURT: They're just trying to make sure she's okay.

10 MS. KOLLINS: May we approach the microphone?

11 THE COURT: It's not necessary.

12 MR. PANDELIS: T [REDACTED], if at any point you need to take a break, just let
13 me know -- or Nefertia. I'm sorry. If at any point you need to take a break, just tell
14 me okay?

15 THE WITNESS: (Nods head affirmatively).

16 BY MR. PANDELIS:

17 Q You told me about some things that happened when Tyrone came into
18 your room. About how long was that before you stopped living with Tyrone?

19 A Um, I don't know. I didn't keep track on no calendar or anything, so
20 I don't know.

21 Q Was it a day before, a month before, a year before? Approximately.

22 A I'd have to say a month before.

23 Q Do you remember -- And you said earlier you were twelve years old,
24 correct?

1 A (Nods head affirmatively).

2 Q When you stopped living with Tyrone?

3 A (Nods head affirmatively).

4 Q Nefertia, when he came into your bedroom, do you remember what
5 time of day it was that first time?

6 A It had to be like midnight.

7 Q Did you share a room with anybody else at that time?

8 A Yes.

9 Q Who did you share a room with?

10 A I shared a room with my siblings, Katia, Tyronica and T.J.

11 Q Did each of you have a separate bed? What were the sleeping
12 arrangements?

13 A We had a bunk bed. I slept on top. The two girls slept on the bottom.
14 And then T.J. had a race car bed -- well, Tyrone, Jr.

15 Q So when Tyrone came into your room, what were your brother and
16 your sisters doing?

17 A They were asleep.

18 Q And what did Tyrone say to you when he came into your room that
19 time?

20 A He didn't say anything. The only time he said something was when
21 we entered the next room.

22 Q Okay. So when he came into your room, he told you you needed to
23 go into another room?

24 A (No audible response).

1 Q How did he -- How did you know you had to go to another room?
2 A Because he was like behind me and we were walking towards the
3 other room.
4 Q Where was this other room?
5 A Right next door. Like, it was -- my room was right here (motioning with
6 hands) and the next room was like right there. It was close.
7 Q What was in that other room?
8 A It was a frontage room. It had a bed, closet, TV, everything.
9 Q So it was just an extra room --
10 A Yes.
11 Q -- that was sometimes used? Was anybody other -- Was anybody
12 else in that room other than you and Tyrone once you got there?
13 A No.
14 Q Nefertia, once you got to that room with Tyrone, what did he say?
15 A He told me that he felt someone was touching me. And then he told
16 me to lay down, and then that's when he put his finger in my vagina.
17 Q When he brought you into that room, did you have any clothes on?
18 A Yes.
19 Q Did your clothes ever come off while you were in that room?
20 A Just my pants and my underwear.
21 Q How did your pants and your underwear come off?
22 A He moved -- he removed them.
23 Q Did he remove them after he asked you if somebody was touching
24 you?

1 A Yes.

2 Q And then you said after he asked you that and removed your pants --
3 Or what did he do after he did that?

4 A He just kept going and then I asked him to stop and he stopped. And
5 that's when he let me go back to my room.

6 Q Did you -- You said you went back to your room that night. Did you
7 go back to sleep?

8 A Yes.

9 Q Did you tell anybody after it happened that time?

10 A No.

11 Q Why not?

12 A Because I thought like -- I thought it was like my mom and his idea to
13 do that, but then I started to think it wasn't. And I didn't think it was going to happen
14 again, so I just let it go.

15 Q After that happened, did you have any more contact with Tyrone that
16 made you uncomfortable?

17 A Yes.

18 Q When was that?

19 A Um, it was a school day and I was in the fifth grade. My mom left for
20 work and she took T.J., Tyrone Jr., and Tyronica with her because I think they were
21 in daycare. So they went with her and it was just me and my younger sister, Katia.
22 He came in my room -- No, he didn't come in my room. I don't remember.

23 Q Well, let me ask you this. You just told us about the first thing you
24 remembered?

1 A Yes.

2 Q Do you remember -- was there something -- What's the next thing
3 you remember happening after that event?

4 A It was -- it was the shower time. And during that shower time -- well,
5 before that shower time we were -- there was two ways to going into the kitchen.
6 He was ironing his shirt, and I had went through one way, then he went through the
7 other way, and then it was like -- he was like chasing me around. Then that's when
8 we both ended up in the living room.

9 Q What happened once you got into the living room?

10 A Um, we were -- I want to say wrestling, but it was like -- it wasn't
11 wrestling, it was more aggressive. Like, we weren't playing around. Like, every
12 time I tried to get up, he'll pull me back down.

13 Q So you were trying to get away?

14 A Yes.

15 Q Were you able to?

16 A No.

17 Q What happened after you were wrestling in the living room?

18 A I kept telling him to leave me alone, leave me alone. Then he finally
19 let me alone and told me to go get in the shower. I was like, no, I don't want to,
20 I don't want to. And he was like, Girl, go get into the shower, I'm not going to do
21 anything to you. And then I said okay, and then that's when I went into the shower.

22 Q You went into the bathroom. Was there a door to the bathroom?

23 A Yes.

24 Q Did you lock that door?

1 A He locked it. He said, see, I'm not going to do anything to you. He
2 locked it. Then a couple minutes later he went in his room, I guess, and got a wire
3 hanger and popped it back open.

4 Q When you were in the shower, did you hear something on the door?

5 A Yes.

6 Q What did you hear?

7 A I heard a pop.

8 Q And after you heard that pop, did you see anything?

9 A Yes.

10 Q What did you see?

11 A Tyrone.

12 Q Did he -- After you saw him, did he come into the bathroom?

13 A Yes.

14 Q What happened after he came into the bathroom?

15 A He came in and told me to put my foot on top of the -- around the tub,
16 and I told him no. And then that's when he kept telling me, and then that's when
17 I finally did it, and that's when he put his finger in my vagina.

18 Q So he had to tell you to do that a couple times?

19 A Yes.

20 Q Why did you finally put your foot up?

21 A I don't know. Because I didn't want him to like hit me or anything.

22 Q After you put your foot up, what did Tyrone do?

23 A He put his finger in my vagina.

24 Q Did anything else happen in the bathroom after he put his finger in

1 your vagina?

2 A Yeah. When he was done doing that, he told me to get out of the
3 shower. And I sat on the toilet seat and, then he picked me up and then he put
4 me on the floor. And then on the floor he was on top of me and I was on my back,
5 and I was trying to push him off of me, but he wouldn't get up. And at the same time
6 he was trying to put his penis in my vagina.

7 Q Was he able to?

8 A No.

9 Q Now, what do you mean by "trying"? What was he doing?

10 A Well, like, it was -- it was on my vagina, but it wouldn't go in.

11 Q So his penis touched your vagina?

12 A Yes.

13 Q Was anybody home when you went to the bathroom and took a
14 shower, other than you and Tyrone?

15 A Yes.

16 Q Who else was home?

17 A My younger sister, Katia.

18 Q Were you able to get Katia's attention at all when this happened?

19 A No.

20 Q Why not?

21 A She wouldn't wake up, because the shower was going and everything
22 and she's a heavy sleeper. She wouldn't wake up.

23 Q Were you trying to get her attention?

24 A Yes. I screamed for Katia. I was like, Katia, Katia, help. And I was

1 just screaming.

2 Q Was Tyrone there when you were screaming for Katia?

3 A He was in the -- he was in the bathroom.

4 Q What did Tyrone do when you started screaming for your sister?

5 A He wouldn't get up.

6 Q So was he on top of you --

7 A Yes.

8 Q -- when you did this?

9 MR. PANDELIS: One moment, Your Honor.

10 (Mr. Pandelis confers with co-counsel)

11 BY MR. PANDELIS:

12 Q Nefertia, when he was on top of you in the bathroom, you told us about
13 -- well, when you were in the shower his finger touched your vagina?

14 A Yes.

15 Q And then he tried to put his penis in your vagina. When he was on
16 top of you, did any other part of his body touch any other part of your body?

17 A Well, just like his chest. That's about it. But he had a tank top on.

18 Q Do you remember a couple weeks ago testifying in court about this?

19 A Yes.

20 Q Do you remember talking about his hand being on another part of
21 your body?

22 A Yes.

23 Q What do you remember telling the judge at that time?

24 A That he had his hand around my throat.

1 Q He had his hand on your neck?

2 A (Nods head affirmatively).

3 Q When was his hand on your neck?

4 A During the shower time.

5 Q How did that happen?

6 A Like, I was calling for Katia and like I guess finally he got fed up with it

7 or whatever and tried to get me to shut up, so he put his hand around my throat.

8 Q So when you were trying to get Katia's attention, he put his hand on

9 your neck?

10 A Yes.

11 Q Did he say anything to you when he had his hand on your neck?

12 A No.

13 Q How did it feel when his hand was on your neck?

14 A It wasn't like he was trying to choke me, but it was just like a firm grip.

15 Q You told us about two things that happened -- Or you told us about the

16 first thing that ever happened between you and Tyrone and then you told us about

17 something else. Is there anything else you can remember that happened with you

18 and Tyrone between the first time and the time you moved out?

19 A Yes. Before the shower, the one I just told you, there was one when

20 he came in my room. And it was like -- like he jerked me out of my bed and we

21 rushed to the other room, the next room. And he pulled my pants down, but like,

22 it was kind of like a struggle because I was still having a grip on them. And like he

23 was trying to pull them down. Then he finally got it down, and then that's when he

24 tried to put his penis inside me again, but it didn't touch me that day. It just went

1 inside my butt.

2 Q I just want to back up for a second. You said he came into your room
3 again?

4 A Yes.

5 Q What time of day was it?

6 A It was midnight. Around midnight.

7 Q So, night time?

8 A Yes.

9 Q Were you sleeping when he came in?

10 A Yes. Everybody was asleep besides him.

11 Q How did he wake you up?

12 A He jerked me out of my bed. Like, it wasn't like, come on, let's go,
13 it was like, hurry up, let's go. Like that.

14 Q Did you make any noise?

15 A No.

16 Q And so he just moved you?

17 A Yes.

18 Q Did you notice if either of your sisters or your brother woke up?

19 A No.

20 Q And he took you back to another room?

21 A Yes.

22 Q Was it the same room you were at the first time?

23 A Yes.

24 Q And then once you got into that other room, did he put you somewhere

1 in that room?

2 A Um, we were on the bed, the futon bed.

3 Q And what happened -- Now, when you came into that room, did you
4 have clothes on?

5 A Yes.

6 Q Did your clothes stay on?

7 A No, not my pants.

8 Q How did your pants come off, Nefertia?

9 A He yanked them off.

10 Q He yanked them off?

11 A Yeah, like pulled them.

12 Q And after he pulled them off, what happened next?

13 A Well, his penis was out because I felt it hit my leg. And then I was like,
14 stop, stop, stop.

15 Q So you were asking him to stop?

16 A Yes.

17 Q Did you try to yell out for anybody?

18 A Yes. He told me not to. He said -- He told me, don't, and if I did he
19 was going to kill my family.

20 Q How did that make you feel when he told you that?

21 A I just -- I didn't say anything.

22 Q Did you yell out for anyone, your mom or any of your brothers -- or
23 your brother or any of your sisters after that?

24 A No.

1 Q And you said he had his penis out and he tried to put it in your vagina?
2 A Yes.
3 Q What happened after he tried to put it in your vagina?
4 A Like, he tried to put it in my vagina but it wouldn't go. And so he tried
5 again and I guess it slipped. It slipped and then it went into my butt.
6 Q Did you say anything when that happened?
7 A No. I just said stop.
8 Q What happened when you said stop?
9 A He stopped.
10 Q Were you able to go back to your room that night?
11 A Yes.
12 Q How did it feel when he was doing that?
13 A It was hurting me.
14 Q Did you tell him it was hurting?
15 A (Nods head affirmatively).
16 Q And what did he say when you told him it hurt?
17 A Nothing.
18 Q You talked — How long after the first time did that happen?
19 A Um, it was — it was spread out, because I remember some of them
20 happened over spring break, and then like there was one in April the day like I went
21 to the UMC and everything. That day was like a school day, so there was like two
22 that happened during school days and then like two that happened over spring
23 break.
24 Q The last time we were just talking about where Tyrone's penis went

1 in your butt, did you end up telling your mom or anybody else immediately after
2 that time?

3 A No.

4 Q Did you ever end up talking to your mom about this?

5 A After everything.

6 Q After when?

7 A After his mom found out.

8 Q So was there an incident that caused her to find out?

9 A Yes. It was the last night.

10 Q Was that the incident that caused you guys to move out?

11 A Yes.

12 Q What happened that night?

13 A Um, the TV -- the TV was on, because we slept with the TV on. It was
14 "SpongeBob," the movie.

15 Q It was -- pardon me, what movie?

16 A It was "SpongeBob," the movie.

17 Q Okay.

18 A And he came in there and I had on a black shirt and long sweats,
19 'cause I felt like I was safe in that. And I tightened -- I always tightened the strap.
20 And so he came in there, and like he couldn't like take me to another room or
21 anything because that's when -- because his mom was staying with us. And so
22 he came on top of the bed and like, he kept trying to pull down my pants. And at
23 this time I had my closet doors behind my bunk bed so that the -- like if you -- if
24 anything like rocked the bed or anything, it will hit the wall. So after that, after he

1 started trying to pull my pants down, he got them down but he didn't touch me that
2 night. And I guess his mom heard the closet doors hit against the wall.

3 MR. COX: Objection, calls for speculation.

4 THE COURT: Sustained.

5 BY MR. PANDELIS:

6 Q Let me ask you this. Did somebody come into the room?

7 A Yes.

8 Q Who came into the room?

9 A His mom.

10 Q Do you know her name?

11 A Yes.

12 Q What's her name?

13 A Carol.

14 Q Was there -- When he was in the room, was he making a lot of noise?

15 A No. It wasn't a lot of noise.

16 Q Was there any noise being made in the room?

17 A Yes, just the -- my bunk bed hitting against the closet doors that was
18 hitting the wall.

19 Q What was causing the bunk bed to hit the closet doors?

20 A The movement of me -- of him trying to get my pants down and the
21 movement of me trying to keep them up.

22 Q And you said this time he wasn't able to get your pants off?

23 A No, he did get them off.

24 Q Oh, he did?

1 A Yes.

2 Q Okay. After his mom came into the room, what happened?

3 A Um, he jumped off the bed and he hid in the closet. And then she was
4 screaming to my mom.

5 MR. COX: Objection, hearsay.

6 THE WITNESS: She was screaming to my mom that he's touching her.

7 MR. PAGE: Objection.

8 MR. COX: Ruling, please.

9 THE COURT: (Speaking to the witness) Hold on just a second, okay.

10 Sustained. If you could just ask a new question, an additional
11 question, Mr. Pandelis.

12 (Speaking to the witness) Just wait and he'll ask you another question.

13 BY MR. PANDELIS:

14 Q How did -- Without telling me what your grand-- or what his mom said,
15 what was her tone of voice like when she was saying it?

16 A Like, she was yelling.

17 Q She was yelling?

18 A Yes.

19 Q And when did she say this? Immediately when she walked in the room
20 or sometime later?

21 A She said, Tyrone, what are you doing? That's it.

22 Q Well, without telling me what she said, was it like immediately when
23 she walked into the room that she said this?

24 A Yes.

1 MR. PANDELIS: And Your Honor, at this time I'd offer it for present sense
2 impression and excited utterance on behalf of the speaker.

3 MR. COX: Judge, I wouldn't object, only that this is a witness --

4 THE COURT: Do you need to approach? Counsel approach.

5 MR. COX: Okay.

6 (Bench conference begins)

7 MR. COX: I object to asking her --

8 THE COURT: Okay. What's the basis of the objection?

9 MR. COX: That they -- a further basis, Judge, this is a witness that is
10 available but the State chooses not to call and available in the community. This
11 person was present at the last hearing. She just wasn't called.

12 MR. PANDELIS: And has been uncooperative.

13 THE COURT: Okay. Well --

14 MS. KOLLINS: It's a present sense impression -- (indiscernible) -- excited
15 utterance, but it's obviously -- (indiscernible). She's still under the --

16 MR. PANDELIS: The effect of -- the observation.

17 MS. KOLLINS: The effect of that startling event.

18 THE COURT: Okay. I'll overrule the objection, but again, obviously weren't
19 not going to have -- (indiscernible).

20 MR. PANDELIS: Just the one quick statement.

21 THE COURT: Okay.

22 (Bench conference concludes)

23 BY MR. PANDELIS:

24 Q Nefertia, so when Tyrone's mom came into the room, her voice --

1 and said something, her voice was loud?

2 A Yes.

3 Q And she immediately said something. What was it that she said?

4 A Tyrone, what are you doing?

5 Q Did he say anything?

6 A (Shakes head negatively).

7 Q What did he do?

8 A After that he didn't do anything. We both just went into my mom's
9 room.

10 Q And at that point did you talk to your mom about some of this?

11 A She just said, Tyrone, what did you do to her? He was like, I didn't
12 do anything. And then I was like, Yes, you did, you touched me. And then my mom
13 said, Get your stuff, let's go. And she told him to get out of her house.

14 Q Where did you go?

15 A We went to Southwest Medical.

16 Q Did you eventually go and talk to the police?

17 A Yes.

18 Q Did you want to talk to the police?

19 A No.

20 Q Why not?

21 A Because I knew that my mom and him had kids together, and I didn't
22 want them to grow without their father.

23 Q Were your brother and sister -- were Tyronica and Tyrone, Jr., were
24 they close with Tyrone?

1 A Yes.

2 Q And you were worried -- What were you worried would happen to your

3 brother and sister?

4 A That they'll hate me.

5 MR. COX: I'm sorry, Judge, I didn't hear that.

6 (Mr. Page confers with Mr. Cox)

7 MR. COX: Oh, okay.

8 THE COURT: Nefertia, are you okay or do you need a break?

9 THE WITNESS: I'm fine.

10 THE COURT: Okay.

11 BY MR. PANDELIS:

12 Q So is it fair to say on April 20th of 2005 when you met with the police,

13 you didn't really want to talk to them about what happened?

14 A No.

15 Q And it's because of your brother and sister?

16 A Yes.

17 Q And because of that, did you really share a lot of details with the

18 police?

19 A No. I only told them about one incident.

20 Q And after you told them about that, is it true that you really didn't agree

21 to talk to them much more after that?

22 A Yes.

23 MR. PANDELIS: Nothing further, Your Honor.

24 THE COURT: Okay. Mr. Cox or Mr. Page?

1 CROSS-EXAMINATION

2 BY MR. PAGE:

3 Q Nefertia Charles, correct?

4 A Yes.

5 Q Can I call you by Nefertia?

6 A Yes.

7 Q Thank you. Now, today you testified about four separate instances,
8 correct?

9 A Yes.

10 Q Back in 2005, you testified that these things occurred, your mom took
11 you to UMC, correct?

12 A No, it was Southwest Medical.

13 Q I'm sorry. Southwest Medical. Thank you.

14 A Yes.

15 Q And after going to Southwest Medical, you spoke to an officer, correct?

16 A Yes.

17 Q And at that time you had an opportunity to tell the officer about the four
18 instances you spoke about today, correct?

19 A Yes.

20 Q But you didn't?

21 A No.

22 Q You only spoke about what you testified was the last incident today?

23 A Yes.

24 Q And that incident, you testified today that there was no touching?

1 A No.

2 Q Now, you testified that you were uncooperative with the officers?

3 A Yes.

4 Q And that you didn't want to proceed against these allegations that

5 you made?

6 A Yes.

7 Q And the reason that you said that was that you didn't want your brother

8 and sister to be -- to grow up without a father?

9 A Yes.

10 Q Now, you testified that as soon as you mentioned this allegation to

11 your mom, that Mr. James and your mom separated?

12 A Yes.

13 Q And they're living out of the house?

14 A Yes.

15 Q And they eventually got divorced?

16 A Yes.

17 Q And you testified that you have three other brothers and sisters?

18 A Yes. Two sisters and one brother.

19 Q Two sisters, one brother. The youngest two -- the sister, Tyronica,

20 you said?

21 A Yes.

22 Q And Tyrone?

23 A Yes.

24 Q They are the actual son -- the children of Mr. James?

1 A Yes.

2 Q And they were your concern?

3 A Yes.

4 Q Now, it's been five years since these allegations that you're making

5 when you testified today. You've had continued contact with Mr. James?

6 A No, not after.

7 Q You haven't?

8 A No.

9 Q You've never seen Mr. James since this time?

10 A Oh, yes, I have seen him after.

11 Q What are the situations that you saw Mr. James?

12 A When he came to get the kids for the weekend and for their birthdays.

13 Q So you saw him several times coming to pick up his children?

14 A Yes.

15 Q And there were some family events?

16 A Yes.

17 Q Was this on a weekly basis?

18 A Um, only sometimes. Like, they wouldn't go over there, every, every

19 weekend. Every other weekend they would go over there.

20 Q And did your mom still have -- still speak to Mr. James?

21 A Yes, only because of the kids.

22 MR. COX: Objection, calls for speculation.

23 (Ms. Kollins confers with Mr. Cox)

24 MR. PAGE: Court's indulgence.

1 THE COURT: Sure.

2 (Mr. Page confers with Mr. Cox)

3 BY MR. PAGE:

4 Q But it's safe to say that he had contact with his children?

5 A Yes.

6 Q Now, you testified about some horrible things today.

7 A Yes.

8 Q And I can imagine that it's affected you greatly.

9 A Yes.

10 Q You've -- You're embarrassed?

11 A No.

12 Q Have you gone through counseling for this?

13 A Yes.

14 Q And you wouldn't want -- you wouldn't wish this upon anybody, would
15 you?

16 A What was that?

17 Q You wouldn't wish that this -- the same things happened that
18 happened to you occurred to anybody else?

19 A No.

20 Q And that's because it could have a life-long effect, correct?

21 A Yes.

22 Q Now, did you -- But you knew that Mr. James was taking care of his
23 children, correct?

24 A Yes.

1 Q And that he was spending time with them alone, correct?

2 A Yes.

3 Q That didn't concern you?

4 A No.

5 Q You weren't afraid for their safety?

6 A No. They uh -- they love him. They like to go over there and stuff.

7 MR. PAGE: Court's indulgence.

8 (Mr. Page confers with Mr. Cox)

9 BY MR. PAGE:

10 Q Now, you testified about -- in a hearing similar to this a couple weeks
11 ago, correct?

12 A Yes.

13 Q And at that hearing, was your grandma present?

14 A My who?

15 Q Your grandma?

16 A No. She had to leave.

17 Q But was she present?

18 A Yes.

19 Q Now, having testified about these events and the seriousness of them,
20 wouldn't you have wanted to protect other children from being harmed?

21 A Yes.

22 Q And isn't that counter-intuitive to your desire to have them, your
23 brother and sister to be with --

24 MR. PANDELIS: Your Honor, I'm going to object. This is argumentative.

1 THE COURT: Sustained.

2 MR. PAGE: No further questions, Your Honor.

3 THE COURT: Okay.

4 MR. PANDELIS: Just a few brief follow-up.

5 REDIRECT EXAMINATION

6 BY MR. PANDELIS:

7 Q Nefertia, you're seventeen years old now?

8 A Yes.

9 Q It's 2010, so back in 2005 you were twelve years old?

10 A Yes.

11 Q And you said your brother Tyrone James, Jr. is eleven years old now,
12 right?

13 A Yes.

14 Q So five years ago he was six years old, right?

15 A Yes.

16 Q And your sister Tyronica James, she's nine years old now?

17 A Yes.

18 Q So five years ago she was four years old?

19 A Yes.

20 Q And you were worried about your brother and sister, Tyrone James'
21 son and daughter, back when these things were happening to you, right?

22 A Yes.

23 MR. PANDELIS: Nothing further.

24 THE COURT: Mr. Page, anything else?

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1 MR. COX: Okay.

2 (Bench conference concluded)

3 THE COURT: Ladies and gentlemen, we're going to go ahead and break for
4 the day.

5 During this recess you are admonished not to talk or converse among
6 yourselves or with anyone else on any subject connected with this trial, or read,
7 watch or listen to any report of or commentary on the trial or any person connected
8 with this trial by any medium of information, including without limitation newspapers,
9 television, the Internet and radio, or form or express any opinion on any subject
10 connected with the trial until the case is finally submitted to you.

11 We'll see you folks back here at 9:30 tomorrow morning.

12 (The jury exits the courtroom)

13 THE COURT: Okay. First of all, I would like to make a record. When
14 Nefertia Charles was testifying, she became very emotional at one point and
15 Ms. Kollins approached her simply to ask her -- and I could hear everything that
16 Ms. Kollins was saying -- simply to ask her if she was all right, if she was able to
17 continue and if she needed to take a break, and to just suggest that she try to get --
18 keep going.

19 MS. KOLLINS: The only other thing I said to her, to my recollection, is she
20 had her shirt up over her face and she was starting to --

21 THE COURT: And you told her to take her shirt away from her face.

22 MS. KOLLINS: -- breathe kind of, you know, in a gasping manner, so I asked
23 her to take her shirt down and we'd get her a Kleenex.

24 MR. COX: And Judge, you know --

1 THE COURT: So there was no conversation, and obviously I would have
2 stopped any conversation relative to, you know, anything with respect to testimony.

3 MR. COX: In fairness, Judge, I didn't realize that you could hear, and I didn't
4 -- you know, on one hand I know they're trying to console and she's breaking down
5 in front of the jury, on the other hand as a defense attorney --

6 THE COURT: I understand.

7 MR. COX: -- I wanted to at least hear, even though it was just --

8 THE COURT: I understand, Mr. Cox.

9 MR. COX: Okay. That's all.

10 THE COURT: I understand. You just lodged an objection. I just wanted
11 to make sure the record was clear about what was going on, so there wasn't any
12 question that there was anything inappropriate going on. I figured it would actually
13 probably draw more attention to it if we hauled the whole jury out, and she seemed
14 like she wanted to pull herself back together.

15 MS. KOLLINS: And that's part of the reason I went up there was to preserve
16 the defense position in that if that -- her emotional upset became protracted, we
17 could get them out and let her have her breakdown without everyone sitting here
18 watching her cry with the defendant sitting in here, so.

19 THE COURT: Okay. I want to go through the waiver with Mr. James, and
20 then we'll talk about jury instructions.

21 Sir, I need to just go through some information with you about your
22 right to testify. So, under the Constitution of the United States and under the
23 Constitution of the State of Nevada you cannot be compelled --

24 You know what, sir, you can sit if you'd like. However you like.

1 MR. PAGE: Oh, he can? I apologize, Judge.

2 THE COURT: Let me start again. Under the Constitution of the United
3 States and under the Constitution of the State of Nevada, you cannot be compelled
4 to testify in this case. Do you understand that?

5 THE DEFENDANT: You say I cannot?

6 THE COURT: You can't -- Nobody can force you to get up here and testify.
7 Do you understand that?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: Okay. You may at your own request give up this right
10 and take the witness stand and testify. If you do, you will be subject to cross-
11 examination by the deputy district attorney, and everything that you say, either on
12 direct examination from your own attorneys or on cross-examination from the district
13 attorneys would be the subject of fair comment when the deputy district attorney
14 speaks to the jury in his or her closing. So when they get up and talk to the jury
15 at the end, they would be able to talk about anything that you said or did while you
16 were up on the stand. Do you understand that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: If you choose not to testify, I will not permit the deputy district
19 attorneys to make any comments to the jury because you did not testify. Do you
20 understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: And if you elect not to testify, I will instruct the jury, but only
23 if your attorney specifically requests, as follows: The law does not compel a
24 defendant in a criminal case to take the stand and testify, and no presumption may

1 be raised and no inference of any kind may be drawn from the failure of a defendant
2 to testify. So you can have that instruction, but only if your lawyers ask for it.

3 Do you have any questions about these rights?

4 THE DEFENDANT: No, I don't.

5 THE COURT: You are also further advised if you have a felony conviction
6 and more than ten years has not elapsed from the date you have been convicted or
7 discharged from prison, parole or probation, whichever is later, and the defense has
8 not sought to preclude that from coming before the jury and you elect to take the
9 stand and testify -- Let me break that down a little bit because that's kind of a lot.

10 If you decide that you're going to testify and you have had a felony
11 conviction in the past, they count ten years and it's ten years from when you're
12 completely done with the case, whether it's getting off of parole, whether you were
13 on probation, or whether you expired and were released from prison, but that's the
14 date that the ten years goes from is the very end of it.

15 If it's not been ten years since that date, then the deputy district
16 attorney would be able to ask you in front of the jury, have you been convicted of
17 a felony, what was the felony, and when did it happen. However, they would not
18 be able to go into any details with regard to any conviction.

19 Okay. Do you have any questions at all about that, sir?

20 THE DEFENDANT: No.

21 THE COURT: Okay. With respect to the jury instructions, I have only
22 received one proposed instruction from the defense, which was the limiting
23 instruction. Were there any additional defense instructions?

24 MR. COX: Judge, that's the one instruction I had objection with. I believe it

1 was the second to the last one the State submitted.

2 THE COURT: Okay.

3 MR. COX: I submitted you mine. It just didn't have -- My secretary was out
4 that day, so it's not in the same format. But my instruction does not have that last
5 line.

6 THE COURT: This instruction. Right.

7 MR. COX: Yes.

8 THE COURT: Okay. There wasn't any other instructions, though; I'm not
9 missing anything?

10 MR. COX: That's the one, Judge.

11 THE COURT: Okay. So there was no -- And you have no objections to any
12 of the State's --

13 MR. COX: No, Judge.

14 THE COURT: You looked through their proposed instructions. Okay.

15 MR. COX: I have looked through them.

16 THE COURT: Let's --

17 MS. KOLLINS: Either -- There was an additional instruction that Mr. Pandelis
18 and I talked about today, and because of the length of the day we did not get it to
19 the Court. It's an instruction that talks about being unanimous as to your verdict
20 but not to your theory. And I think we'll submit that to the Court in the morning.
21 If Mr. Cox has an objection to it, that's fine. But it goes to the sexual assault on
22 Count 3, I believe it is.

23 And the proposed defense instruction today is the limiting instruction
24 that was actually read before witness Nefertia Charles testified, correct?

1 THE COURT: And the question was just -- Right. And the question was just
2 whether the last sentence would be included or no.

3 MS. KOLLINS: My belief is that comes out of a case. I do not have the case
4 law with me this afternoon. I would be happy to give it to the Court tomorrow if that
5 sheds any --

6 THE COURT: Let's just --

7 MS. KOLLINS: It's really not that big of a difference.

8 THE COURT: Okay. Let's just take a minute and go through what we do
9 have, and then with the couple exceptions; that way we can have everything
10 together.

11 We have instructions to the jury. Instruction No. 1 is: It is now my
12 duty as judge to instruct. Instruction No. 2 would be: If in these instructions any
13 rule, direction or idea is repeated. Instruction No. 3 is: An Information is but a
14 formal method of accusing. Instruction No. 4 is: To constitute the crime charged.
15 Instruction No. 5 is: The defendant is presumed innocent. Instruction No. 6 is:
16 You are here to determine the guilt or innocence.

17 MR. COX: That's No. 6?

18 THE COURT: Yes.

19 MR. COX: Thank you.

20 THE COURT: Instruction No. 7 is: The evidence which you are to consider.
21 Instruction No. 8 is the credibility instruction. The instruction submitted by the State
22 is a not gender neutral instruction, so I have one that just simply replaces "his" with
23 "the witness," so I will substitute that instruction for this one. It's otherwise identical.
24 That just makes it gender neutral. And the same thing for instruction No. 9.

1 MS. KOLLINS: I don't know why in 2010 those are not all changed in the
2 bank, but they're not.

3 THE COURT: We're working on it.

4 Instruction No. 10 is: Although you are to consider only the evidence
5 in this case. Then the State submitted instruction is minor under fourteen. I think
6 that should properly read -- This would be Instruction No. 11, but I think it should
7 properly read minor under sixteen, both in line 2 and in line 5, because that reflects
8 the accurate state of the law at this time.

9 MR. COX: Okay. Hold on one second. I'm out of order somehow.

10 MS. KOLLINS: Where is --

11 MR. PANDELIS: Yeah, it's after the verdict form.

12 MS. KOLLINS: I don't have that instruction.

13 THE COURT: It's: A person who subjects a minor under --

14 MR. COX: Is that after the verdict form, Judge?

15 THE COURT: What?

16 MR. COX: Yeah, okay. That's the one after the verdict form.

17 THE COURT: It's after "Although you are to consider."

18 MR. PANDELIS: Would you like us to get that prepared?

19 THE COURT: No, it's just two changes.

20 MS. KOLLINS: Well, for whatever reason, there's not a copy of that in my
21 stack.

22 MR. COX: No, there is. It's after the verdict forms.

23 THE COURT: It's after --

24 MS. KOLLINS: I realize that.

1 MR. COX: Oh, you did? Oh, okay.

2 MS. KOLLINS: There's not a copy of it in my stack.

3 THE COURT: "Although you are to consider only the evidence," and then the
4 next instruction is: A person who subjects a minor. And it just says under fourteen.
5 I think that should read sixteen.

6 MR. COX: Agreed, Judge.

7 THE COURT: Both in line 2 and in line 5. I don't think there's anything else
8 that needs to be changed in that one.

9 And then Instruction No. 12 is: Where multiple sexual acts occur.
10 This instruction No. 12 is a little bit of a mess. It says: "Where multiple sexual acts
11 occur as part of a single criminal encounter, a defendant may be found guilty for
12 each separate or different act of sexual assault and/or open or gross lewdness."
13 That part is fine. Then: "Where a defendant commits a specific type of act
14 constituting sexual assault and/or" -- and it just says lewdness. I think it should be
15 open or gross, and then there should be a comma, "he may be found guilty of more"
16 -- and it says "that"; it should say "than" -- "one count of that specific type of act of
17 sexual assault." And it should say and/or --

18 MS. KOLLINS: One count of a specific type of sexual assault?

19 THE COURT: -- open or -- That specific type --

20 MS. KOLLINS: How about just get rid of -- more than one count of sexual
21 assault or open and gross lewdness.

22 THE COURT: Yeah, that's better. Okay. One count of -- I'm not sure if we
23 can fit more prepositions in a sentence. Okay. Open or gross lewdness.

24 So that sentence would read: "Where a defendant commits a specific

1 type of act constituting sexual assault and/or open or gross lewdness (comma),
2 he may be found guilty of more than one count of sexual assault and/or open or
3 gross lewdness if. And then there's some punctuation missing here. "There is an
4 interruption between the acts which are of the same specific type." That should be
5 a semi-colon. I think that should be a semi-colon, or. And then two, I think we'll just
6 start that with: "Acts of the same specific type are interrupted by a different specific"
7 -- I didn't meant to say specific -- "a different type" --

8 MS. KOLLINS: Yeah, a different type of sexual assault.

9 THE COURT: -- "of sexual assault" and then a semi-colon, or. And then
10 three --

11 MS. KOLLINS: Or a separate object.

12 THE COURT: Does this --

13 MS. KOLLINS: What do you think about this, Judge? Semi-colon, or -- strike
14 for each, and then put a separate object is manipulated or inserted, blah, blah, blah.

15 THE COURT: Okay. "A separate object is manipulated or inserted into the
16 genital or anal opening of another." Can we just strike the "or anal" part, because
17 there's no allegation of that in this, right?

18 MS. KOLLINS: Yes.

19 THE COURT: It's kind of complicated enough without. "Only one sexual
20 assault occurs where a defendant's actions were of one specific type of sexual
21 assault and those acts were continuous and did not stop between the acts of that
22 specific type."

23 Do we need to add the open or gross lewdness there, too, as well?
24 How about if we do this: Only one sexual assault or open or -- and/or open or gross

1 lewdness occurs when a defendant's actions were of one specific type and those
2 acts were continuous and did not stop between the acts of that specific type.

3 MS. KOLLINS: Perfect.

4 THE COURT: Okay. Mr. Cox, any objection to that?

5 MR. COX: No, Judge.

6 THE COURT: Instruction No. 13 is: Physical force is not necessary.

7 Instruction No. 14 is: A person is not required. Instruction No. 15 is: There is no
8 requirement that the testimony. Instruction No. 16 is: Open and gross lewdness.

9 Instruction No. 17 is: Any person who willfully and unlawfully uses force or violence.

10 Instruction No. 18 is: Any person who commits battery upon another.

11 MR. COX: Okay, I've got those reversed then. So 17 is any person who
12 willfully and unlawfully.

13 THE COURT: Uh-huh.

14 MR. COX: Okay. And 18 is any person who commits a battery.

15 THE COURT: Right.

16 MR. COX: Okay, I'm sorry.

17 THE COURT: And then -- Okay, then at this point we would have as 19
18 a limiting instruction.

19 Mr. Cox, could you just for the record, I know you have an objection to
20 line 7 and 8 of the limiting instruction.

21 MR. COX: Your Honor, I think that last line effectively nullifies the intent of
22 giving the instruction. On the one hand they're only to consider that evidence for
23 limited purposes, but then the very last line says you weigh it the same as anything
24 else. But that's not actually true because it's limited to very specific -- for very

1 specific purposes.

2 MS. KOLLINS: And I think the intent of the line is really such that they
3 receive it as any other testimony they would. They look at somebody's manner,
4 their motivations to lie or tell the truth. You know, they're to assess it for credibility
5 like any other evidence. So I don't know, without putting the whole --

6 THE COURT: How about if instead of the word "weigh" we use the word --

7 MS. KOLLINS: Evaluate?

8 THE COURT: -- "assess." Does that --

9 MS. KOLLINS: That's fine.

10 THE COURT: -- address your concern, Mr. Cox? Because then we're not
11 asking them --

12 MR. COX: That's fine.

13 THE COURT: Okay. Or do you like "evaluate" better? I mean, I understand
14 what you're saying, Mr. Cox, but I think that would probably address that.

15 MS. KOLLINS: Either one is fine with the State, Judge. The less words the
16 better.

17 THE COURT: So that would be Instruction No. 19. And then the State is
18 proposing -- You know what instruction they're talking about, right, Mr. Cox?

19 MR. COX: Uh, I haven't seen it yet.

20 THE COURT: Do you have a general idea what they're talking about?

21 MR. COX: Yes, I do.

22 THE COURT: Okay. And do you have a general objection to the general
23 idea of their instruction?

24 MR. COX: I think their instructions are pretty specific that you don't have to --

1 you know, motive is not an element.

2 THE COURT: No. The instruction that they're talking about is saying that
3 it doesn't have to be unanimous as to theory, so -- and I can't remember now the
4 particulars, but there's one count that's charged like finger or penis or something.

5 MS. KOLLINS: Charged penis and/or finger and/or unknown object.

6 THE COURT: Right. So they're saying you don't have to agree as to the
7 specific mechanism.

8 MR. COX: I would argue it would have to be unanimous.

9 MS. KOLLINS: Then what would be the point of the and/or in the pleadings?
10 I mean, you've been on notice since the beginning that we've -- you know, the
11 allegation is she couldn't see his penis, she could feel the head of it, but there was
12 some suggestion on cross-examination at the Prelim that she didn't know what it
13 was. So in an abundance of caution it was pled in the alternative. I don't know.
14 We'll come with the full instruction tomorrow and --

15 THE COURT: Okay. Well, we'll deal with that tomorrow. I'm going to
16 leave a --

17 MR. COX: Leave the remaining blank?

18 MS. KOLLINS: Do you want to leave a space for that?

19 THE COURT: I will leave a space for that, because I think it looks less weird
20 to have a skip in numbers than it does to have an "A." So we'll leave a space for 20.

21 Did that make sense? Mr. Pandelis, did that make sense? You were
22 giving me --

23 MR. PANDELIS: That does.

24 THE COURT: You were giving me a look.

1 MR. PANDELIS: No.

2 THE COURT: Okay. And then 21 would be: In your deliberations you may
3 not discuss or consider.

4 Oh, you know what, are we giving a testifying instruction, Mr. Cox,
5 because I don't have that either.

6 MR. COX: A testifying instruction. You mean, that he's not testifying?

7 THE COURT: That if your client chooses not to testify, that the jury is not to
8 consider that.

9 MR. COX: I believe he is testifying, Judge, so.

10 THE COURT: Okay. So we won't need to do that. If for some reason he
11 were to change his mind overnight, would you anticipate giving that instruction
12 regardless?

13 MR. COX: Yes, I would.

14 THE COURT: Okay.

15 MR. COX: In fact, we could make that -- well --

16 MS. KOLLINS: Will you come with a copy of that then?

17 MR. COX: I will.

18 THE COURT: Since you're anticipating him testifying, I'm not -- I won't leave
19 a space here, but we'll find a place for it if we need to.

20 Okay. Then 21 is: You may not discuss or consider the subject of
21 punishment.

22 MR. COX: Okay. I've got 21 as: In your deliberation.

23 THE COURT: Oh, right. In your deliberation. I just started in the middle
24 there.

1 MR. COX: Okay.

2 THE COURT: Twenty-two is: When you retire to consider your verdict.

3 Twenty-three is: If during your deliberation. And I am going to modify this
4 instruction just to make it: The defendant and his counsel. And the court recorder
5 can arrange her notes.

6 And then Instruction No. 24 will be the final instruction.

7 MR. COX: Twenty-four is "If in your deliberation"?

8 THE COURT: No, that's 23.

9 MR. COX: Okay, I've got a duplicate. I'm sorry.

10 MR. PANDELIS: Well, one is read-back, one is play-backs.

11 THE COURT: Oh, right.

12 MR. COX: Oh.

13 THE COURT: I don't have that in my set.

14 MR. COX: I've got read-back and play-backs.

15 THE COURT: Right. Take out the read-back.

16 MR. PANDELIS: Okay. So this is 23.

17 THE COURT: And then I'm going to fix the play-back instruction so it says
18 "his" in line 6 and "her" in line 9. And the last one is 24.

19 So I think that's it until tomorrow. Anything else?

20 MR. COX: We left off with 23, and we have "Now you will listen." Okay.

21 THE COURT: Twenty-four is: "Now you will listen."

22 MR. COX: Oh, 24. Okay, got it. Okay, thank you.

23 THE COURT: Okay? And has everybody had a chance to look at the
24 verdict form? It's here if you don't have one.

1 MS. KOLLINS: I'm sorry, I did something wrong. Can somebody tell me
2 where the common sense instruction goes?

3 THE COURT: I'm not sure I have that.

4 MR. PANDELIS: Oh, 10. It's in-between the expert witness and --

5 THE COURT: Ten.

6 MR. PANDELIS: Yeah.

7 MS. KOLLINS: Okay, so it is in there. Thank you. Sorry. Sorry about that.

8 THE COURT: Okay. Verdict form. Everybody look at it?

9 MR. PANDELIS: No problems.

10 MR. COX: No, Judge.

11 THE COURT: Okay. You didn't look at it, or you're fine with it?

12 MR. COX: No, I've looked at it. If I have objection, I'll -- I don't anticipate one
13 now, but I'll review it some more.

14 THE COURT: Okay, great. If there's nothing else, everyone have a good
15 evening.

16 (Court recessed at 5:05:45 p.m. until the following day,

17 Thursday, September 23, 2010 at 9:30 a.m.)

18 * * * * *

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my ability.

23 Liz Garcia
24 Liz Garcia, Transcriber
LGM Transcription Service

Date 4/28/11

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

2
3 TYRONE JAMES SR.,

4 Appellant,

5 vs.

6
7 THE STATE OF NEVADA,

8 Respondent.

Electronically Filed
May 18 2017 09:23 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 71935

9
10 **APPELLANT'S APPENDIX VOLUME II**

11 Appeal from Eighth Judicial District Court, Clark County

12 The Honorable Elizabeth Gonzalez, District Judge

13 District Court Case No. 10C265506

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19 MCLEATCHIE SHELL LLC

20 Margaret A. McLetchie (Bar No. 10931)

21 701 East Bridger Ave., Suite 520

22 Las Vegas, Nevada 89101

23 *Counsel for Appellant, Tyrone James, Sr.*

INDEX TO APPELLANT'S APPENDIX

<u>VOL</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>BATES NUMBERS</u>
IV	Appendix of Exhibits to Supplement to Supplemental Petition for Writ of Habeas Corpus	01/15/2016	PA712 – PA768
IV	Minute Order: In Camera Review	11/2/2015	PA698
IV	Minute Order: In Camera Review	03/29/2016	PA769
IV	Minutes of Hearing on Petition for Writ of Habeas Corpus	10/03/2016	PA806 – PA807
IV	Notice of Appeal	12/08/2016	PA865 – PA866
IV	Notice of Entry of Findings of Fact and Conclusions of Law and Order	11/09/2016	PA847 – PA862
IV	Order Appointing Margaret A. McLetchie as Court-Appointed Counsel	11/10/2016	PA863 – PA864
IV	Petitioner's Reply to State's Response to Supplemental Petition for Writ of Habeas Corpus and Supplement	05/31/2016	PA791 – PA805
IV	Recorder's Transcript of Hearing on Petition for Writ of Habeas Corpus	10/03/2016	PA808 – PA846
IV	Register of Actions (District Court Case No. 10C265506)	05/12/2017	PA867 – PA873
I	Second Amended Appendix of Exhibits to Supplement to Petition for Writ of Habeas Corpus (including Exhibits 1-11)	11/02/2015	PA022 – PA178
II	Second Amended Appendix of Exhibits to Supplement to Petition for Writ of Habeas Corpus (Exhibit 12)	11/02/2015	PA179 – PA407
III	Second Amended Appendix of Exhibits to Supplement to Petition for Writ of Habeas Corpus (Exhibits 13-24)	11/02/2015	PA408 – PA624

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<u>VOL</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>BATES NUMBERS</u>
IV	Second Amended Appendix of Exhibits to Supplement to Petition for Writ of Habeas Corpus (Exhibit 25)	11/02/2015	PA625 – PA697
IV	State’s Response to Supplemental Petition for Writ of Habeas Corpus and Supplement to Supplemental Petition for Writ of Habeas Corpus	04/21/2016	PA770 – PA790
I	Supplemental Petition for Writ of Habeas Corpus	09/04/2015	PA001 – PA021
IV	Supplement to Supplemental Petition for Writ of Habeas Corpus	01/15/2016	PA699 – PA711

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List as follows:

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Indian Springs, NV 89070
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/s/ Pharan Burchfield
Employee, McLetchie Shell LLC

EXHIBIT 12

ORIGINAL

FILED

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TRAN

EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA

Ann L. Leary
CLERK OF THE COURT

STATE OF NEVADA,

Plaintiff,

vs.

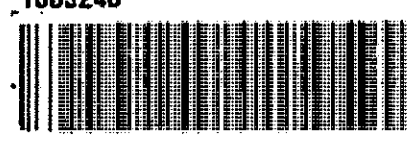
TYRONE D. JAMES,

Defendant.

CASE NO. C265506

DEPT. NO. VII

10C265506
TRAN
Reporters Transcript
1383248



BEFORE THE HONORABLE LINDA M. BELL, DISTRICT COURT JUDGE

WEDNESDAY, SEPTEMBER 22, 2010

TRANSCRIPT RE:
TRIAL BY JURY
DAY 2 - VOLUME II

APPEARANCES:

For the State: STACY L. KOLLINS, ESQ.
CHRISTOPHER P. PANDELIS, ESQ.
Deputy District Attorneys

For the Defendant: BRYAN A. COX, ESQ.
DANIEL R. PAGE, ESQ.
Deputy Public Defenders

RECORDED BY: Renee Vincent, Court Recorder

JAMES0143

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INDEX OF WITNESSES

Direct Cross Redirect Recross

STATE'S WITNESSES:

T [REDACTED] H [REDACTED]	4	39/58	51/57	--
Denise Jordan	61	71	--	--
Theresa Allen	75	112	120/126	124
Officer Erik Meltzer	127	130	132	--
Detective Timothy Hatchett	137	143	--	--
Dr. Theresa Vergara	150	161	168/179/181	174
Nefertia Charles	184	209	214	215

DEFENDANT'S WITNESSES:

None

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INDEX OF EXHIBITS

		<u>Identified</u>	<u>Admitted</u>
<u>STATE'S EXHIBITS:</u>			
3	Photo of Tyrone James	12	13
4	CD of 9-1-1 call	103	103

DEFENDANT'S EXHIBITS:
None

1 CLARK COUNTY, NEVADA

WEDNESDAY, SEPTEMBER 22, 2010

2 PROCEEDINGS

3 (PROCEEDINGS BEGAN AT 10:13:25 A.M.)

4 (Whereupon the following proceedings were held

5 in the presence of the jury)

6 THE COURT: Back on the record in Case Number C265506, State of
7 Nevada versus Tyrone James. Let the record reflect the presence of all of our
8 jurors, Mr. James with his counsel, the representatives of the District Attorney's
9 Office, and all of the court staff.

10 Good morning, everyone.

11 JURORS IN UNISON: Good morning.

12 THE COURT: Mr. Pandelis, whenever you're ready.

13 MR. PANDELIS: The State calls T [REDACTED] H [REDACTED].

14 T [REDACTED] H [REDACTED]

15 Having been called as a witness and being first duly sworn, testified as follows:

16 THE COURT: Good morning, ma'am. Could you please say your name
17 and then spell it, first and last, for the record.

18 THE WITNESS: T [REDACTED] H [REDACTED]. T- [REDACTED].

19 MR. PANDELIS: May I proceed, Your Honor?

20 THE COURT: Go ahead. Thank you.

21 DIRECT EXAMINATION

22 BY MR. PANDELIS:

23 Q T [REDACTED], how old are you?

24 A Fifteen.

1 Q When is your birthday?
2 A April 25th.
3 Q Of what year?
4 A 1995.
5 Q Where do you live?
6 A Lamb and Stewart.
7 Q Is that here in Las Vegas?
8 A Yes.
9 Q How long have you lived there?
10 A Fifteen years.
11 Q So you've lived in that same neighborhood for the last fifteen years?
12 A No.
13 Q Okay. Where do you live now?
14 A Lamb and Stewart.
15 Q How long have you lived at that address, near Lamb and Stewart?
16 A I think probably a year.
17 Q Who do you live – So about a year?
18 A Yeah.
19 Q Who do you live there with?
20 A My mom, my brother and my sister.
21 Q What's your mom's name?
22 A Theresa.
23 Q And you said you have a brother and a sister also?
24 A Yeah.

1 Q What's your brother's name?
2 A Dewan (phonetic).
3 Q Dewan?
4 A Dewan.
5 Q How old is Dewan?
6 A He's twelve.
7 Q He's twelve years old?
8 A Yeah.
9 Q And your sister, what is her name?
10 A Denise.
11 Q How old is Denise?
12 A Fourteen.
13 Q What's the name of your school?
14 A I go to Mojave now.
15 Q Pardon?
16 A I go to Mojave now.
17 Q Is that a high school?
18 A Yes.
19 Q What year are you in at Mojave?
20 A 2013; like the year I graduate.
21 Q Pardon?
22 A The year I graduate.
23 Q No. What year — Are you a freshman or —
24 A Oh, I'm a sophomore.

1 Q You're a sophomore in high school. Did you go to Mojave High School
2 last year?

3 A No.

4 Q Where did you go to school last year?

5 A Desert Pines.

6 Q So you just started at Mojave High School this year?

7 A Yes.

8 Q I just want to take you back to when you were at Desert Pines High
9 School. What time did school start during the day?

10 A Ten.

11 Q Ten o'clock. How would you usually get to school when you were at
12 Desert Pines?

13 A Sometimes I walked and sometimes my mom would take me when
14 she's off.

15 Q And if your mom couldn't take you, you would walk?

16 A Yeah.

17 Q Sometimes would you get rides from people?

18 A My best friend.

19 Q If you had to walk to school, what time would you typically leave your
20 house?

21 A Like around 9:15.

22 Q And if someone was giving you a ride, what time would you usually
23 leave your house?

24 A 9:40.

1 Q T [REDACTED] do you know somebody by the name of Tyrone James?
2 A Yes.
3 Q How do you know him?
4 A He was my mom's friend.
5 Q What exactly do you mean by friend?
6 A Like a boyfriend.
7 Q It was someone she was dating?
8 A Yeah.
9 Q Do you see Tyrone here in the courtroom today?
10 A Yes.
11 Q Could you please point to him and describe something that he's
12 wearing?
13 A A purple shirt. A purple long sleeve shirt.
14 MR. PANDELIS: Your Honor, may the record reflect she's identified the
15 defendant?
16 THE COURT: The record will so reflect.
17 BY MR. PANDELIS:
18 Q When did you first meet Tyrone?
19 A I'm not sure, but I know it was over a summer.
20 Q Pardon?
21 A I'm not sure, but I know it was over a summer.
22 Q It wasn't just – It wasn't this summer, was it?
23 A No.
24 Q Do you remember how old you were when you met him?

1 A I think I was fourteen.
2 Q Pardon?
3 A I think I was fourteen.
4 Q So you've known him for at least a year?
5 A Yes.
6 Q When you first met Tyrone, what did you think about him?
7 A Just as my mom's friend.
8 Q You need to speak up just a little bit because it's hard for me to hear
9 you, T [REDACTED].
10 A Just as my mom's friend.
11 Q Okay. Did you get along with him when you first met him?
12 A Yeah.
13 Q What types of things would you do with him when you first met him?
14 A Go swimming.
15 Q You would go swimming?
16 A Not a lot, but just sometimes.
17 Q Where would you go swimming?
18 A It was at his auntie's house like one time, and then where we moved,
19 like there one time.
20 Q Did there ever come a point in time when Tyrone lived with you or
21 moved into your apartment?
22 A Yeah.
23 Q When was that?
24 A I'm not sure. Like, he would be there like a lot of nights but sometimes

1 he would go to his grandma's or auntie's house.

2 Q So he would come and go?

3 A Yeah.

4 Q When was it that he would start coming and going from your

5 apartment?

6 A That was like all the time.

7 Q So early when you first met him, right around the time you first met

8 him is when he started staying at your apartment?

9 A We lived in a house when we first met him.

10 Q So you said you've lived at your apartment for about a year. You were

11 living somewhere else prior to that?

12 A Yeah.

13 Q Okay. And your mother knew him when you were living in that prior

14 house?

15 A Yeah.

16 Q And was he staying with you at times when you were living in that

17 other house?

18 A Yeah.

19 Q Where was that house? Do you remember?

20 A It was on Lone Oak.

21 Q Lone Oak. Do you know what part of town that's on?

22 A I think North Town. I'm not sure.

23 Q Okay. And when he was coming and going like that, how did that

24 make you feel? Did you like having him living in your home?

1 A Sometimes I did, sometimes I didn't.

2 Q What did you like about it?

3 A That he helped out sometimes.

4 Q What kind of things would he help out with?

5 A Bills.

6 Q Whose bills?

7 A My mom's.

8 Q Do you know what bills he would help with?

9 A I'm not sure. Probably like power or sometimes rent.

10 Q How do you know he would help out with the bills?

11 A My mom told me.

12 Q Your mom would tell you?

13 A (Nods head affirmatively).

14 Q You said you didn't like some things about him living with you. What

15 are some things you didn't like?

16 A Just -- I felt weird because I have a stepdad.

17 Q You have a stepdad?

18 A (Nods head affirmatively).

19 Q Is that someone your mom was married to?

20 A Yeah.

21 Q And why did you feel weird?

22 A Because like he's in jail right now, but like, she's with him still.

23 Q So was there anything else that was bothering you about Tyrone living

24 with you?

1 A He just stared a lot.

2 Q When you would get in trouble, T [REDACTED], who was it that would

3 discipline you, your mom or somebody else?

4 A My mom.

5 Q Was anybody else responsible for that?

6 A Sometimes he was.

7 Q When Tyrone would discipline you, what kind of things would he do?

8 A Just – he doesn't do anything. He just told me to like wash the dishes

9 if my mom told him to tell me or something.

10 Q So it was nothing very harsh?

11 A No.

12 MR. PANDELIS: May I approach the witness, Your Honor?

13 THE COURT: You may.

14 BY MR. PANDELIS:

15 Q T [REDACTED], I'm showing you what's been marked for purpose of

16 identification as State's Proposed Exhibit No. 3. Can you tell us what's depicted

17 in that picture?

18 A What?

19 Q What is that a picture of?

20 A Tyrone.

21 Q And is that how Tyrone appeared in May of 2010?

22 A He had a black shirt on, but I can't see the –

23 THE COURT: Mr. Pandelis, can she go like a little bit further that way so the

24 jury can see? Thank you.

1 MR. PANDELIS: Pardon?

2 THE WITNESS: He had on a black shirt.

3 BY MR. PANDELIS:

4 Q But the picture there, that is how Tyrone appeared back earlier this
5 year in 2010?

6 A Yeah.

7 MR. PANDELIS: Okay. Your Honor, at this point I'd move for the admission
8 of State's Proposed Exhibit 3.

9 MR. COX: No objection, Judge.

10 THE COURT: State's 3 will be admitted.

11 MR. PANDELIS: Thank you. And I'd ask permission to publish.

12 THE COURT: Permission is granted.

13 BY MR. PANDELIS:

14 Q And you were mentioning a black shirt. When did he have a black
15 shirt on?

16 A When he came in my room.

17 Q Okay. I'd like to direct your attention then to May 14th of 2010. Were
18 you home that morning?

19 A Yes.

20 Q Who was home with you that morning?

21 A My puppy and Tyrone, I guess.

22 Q T [REDACTED] again, I'm having a little bit of trouble hearing you. That's a
23 microphone in front of you. If you need to move it just a little closer to you. So who
24 was home with you that morning?

1 A My puppy and Tyrone.
2 Q What's your -- Your puppy?
3 A Yeah.
4 Q What's your puppy's name?
5 A Cocoa.
6 Q Cocoa. And Tyrone was home as well?
7 A Yeah.
8 Q Was Tyrone living with you at that time?
9 A Yeah, but he was like coming and going.
10 Q Where was your mom that morning?
11 A Work.
12 Q What time did she leave for work that day?
13 A She had to leave around like seven something, because she had to
14 take my brother and sister to school.
15 Q So did you see her that morning?
16 A My mom?
17 MR. COX: Your Honor, I apologize to interrupt. May we approach briefly?
18 THE COURT: Sure.
19 (Bench conference begins)
20 MR. COX: I don't think she's identified -- (indiscernible) -- his picture on the
21 screen. It's a dark picture. He's here in the courtroom.
22 THE COURT: If you're done, you can take it off. Thank you.
23 MR. PANDELIS: I don't have a problem taking it off.
24 (Bench conference concluded)

1 BY MR. PANDELIS:

2 Q So your mom had left for work at about seven o'clock that morning?

3 A Around seven something.

4 Q And T [REDACTED], again, it's real, real hard to hear you. This is a big, big
5 room, so I need you just to speak up a little louder. I know these are tough things
6 for you to talk about, but can you just speak up a little bit louder for me?

7 A Yes.

8 Q Okay. Did you see your mom before she left that morning?

9 A Yeah.

10 Q When did you see her?

11 A When she came in my room.

12 Q What did she come in your room for?

13 A To wake my sister up for school.

14 Q Do you and your sister share a room?

15 A Yes.

16 Q What are the sleeping – Do you share a room with anyone else or just
17 your sister?

18 A Just my sister.

19 Q And do you have separate beds?

20 A Yeah.

21 Q What time did your mom come in your room to wake up your sister?

22 A I think around 6:30.

23 Q And did your mom take your sister to school as well?

24 A Yeah.

1 Q Was your brother at home on the morning of May 14th, 2010?
2 A Yes.
3 Q Did he ever leave the house that morning?
4 A Yeah.
5 Q When did he leave?
6 A When my mom left.
7 Q So she took him to school as well?
8 A Yeah.
9 Q When your mom left the house that morning, did you know if anybody
10 was home when she had left the house?
11 A When she left the house, nobody was there.
12 Q Okay. Did – Once she left the house, did something happen that
13 morning –
14 A Yes.
15 Q – that caused you some concern?
16 A Yes.
17 Q What was that?
18 A Tyrone came in my room.
19 Q Were you expecting Tyrone to be at the house that morning?
20 A No.
21 Q Did he stay over the night before?
22 A No.
23 Q When did you first seen Tyrone in your room? What were you doing?
24 A I was like waking up because I heard a noise.

1 Q You were what?

2 A I was waking up because I heard a noise.

3 Q What did you hear?

4 A Like, I heard like something moving. Just something moving.

5 Q So something caught your attention and woke you up?

6 A Yeah.

7 Q What time do you usually – Were you planning on walking to school

8 that day or driving to school?

9 A I was planning on getting picked up, but my best friend called and said

10 she wasn't going to school no more, so I had to walk.

11 Q Okay. So you were planning on getting picked up and getting a ride to

12 school. If you were getting a ride to school, what time would you usually sleep until?

13 A Probably about 9:20.

14 Q Based on that, do you know about what time it was that Tyrone walked

15 into your room?

16 A I'm not sure.

17 Q Was it –

18 A It was around – it was nine something.

19 Q Was it before 9:20 when you planned on waking up?

20 A Yeah.

21 Q When you first noticed Tyrone in your room, where was he?

22 A He was like hiding. Like – it was like he was hiding.

23 Q Where –

24 A When you first walk in, it's like the wall. There's a wall.

1 Q What do you mean? When you walk in the door there's a wall in front
2 of the door?

3 A Yeah, like you turn in the room, like there's a wall when you first
4 walk in.

5 Q So there's a little entryway?

6 A Yeah.

7 Q And when you first saw him, he was standing just past the door in that
8 entryway?

9 A He was like by the wall, but he was trying to hide.

10 Q You say he was trying to hide. What was he doing –

11 A Just –

12 Q – that made you think he was trying to hide?

13 A Standing there like this and peeking around the corner.

14 Q So you saw him peeking around the corner?

15 A Yes. (Shakes head affirmatively).

16 Q When you saw him peeking around the corner, what did you do?
17 Or when you saw him hiding?

18 A I said, You have five seconds to get out of my room or I'm going to
19 call my mom.

20 Q And did he say anything when you said that?

21 A He just started coming towards me.

22 MR. COX: Judge, I can't – I'm sorry, I can't –

23 MR. PANDELIS: T [REDACTED], again, I need you to speak up just a little louder,
24 okay?

1 THE WITNESS: Okay.

2 MR. PANDELIS: You have a real soft voice. So if you need to, you can just

3 lean up into that microphone a little bit more, okay? Try to raise your voice.

4 THE WITNESS: Okay.

5 BY MR. PANDELIS:

6 Q So you told him he had five seconds to get out of your room. What did

7 – Did he say anything when you said that?

8 A No. He just started walking up towards me.

9 Q He started walking up towards you?

10 A Yeah.

11 Q Once he walked up towards you, what happened next?

12 A He jumped on my bed, but I was trying to call my mom, but my phone

13 fell and he took it.

14 Q How did you try – What did you use to try to call your mom?

15 A My cell phone.

16 Q So you have your own cell phone?

17 A Yeah.

18 Q Where do you usually keep that cell phone when you're sleeping?

19 A Under my pillow.

20 Q When you tried to call your mom, what happened next?

21 A He jumped on –

22 Q He took the phone. What happened after he took the phone? I'm

23 sorry.

24 A I guess he put it in his pocket.

1 Q Okay. Did he leave the room once he put the phone in his pocket?
2 A No.
3 Q What happened then?
4 A I ran to my sister's bed.
5 Q What did he do once you ran to your sister's bed?
6 A He jumped on top of me and had his hand around my neck.
7 Q While you were on your sister's bed?
8 A Yes.
9 Q You said he jumped on top of you and – He jumped on top of you and
10 put his hand around your neck. Did he say anything when he did that?
11 A He told me, Shut the fuck up or he'd snap my neck.
12 Q He told you to shut the fuck up. Were you saying anything to him
13 when he jumped on you?
14 A I was just screaming and yelling, saying get off of me.
15 Q So when you were on your sister's bed, he jumped on top of you and
16 you told him to get off of you. That's when you said that?
17 A Yes.
18 Q And he put his hand around your neck?
19 A Yes.
20 Q After you were on your sister's bed and he had his hand around your
21 neck, can you tell us what happened next, T[REDACTED]?
22 A Yeah. He pulled my chest down my shirt (sic) and took off my panties.
23 And he pulled me to – He said come on, and he pulled me to the living room.
24 MR. PANDELIS: T[REDACTED], again, can you – will you speak just a little bit

1 more into the microphone. If you need to lean down, can you do that?

2 THE WITNESS: Yes.

3 MR. PANDELIS: Because it's very hard for us to hear you, okay?

4 THE COURT: T [REDACTED], if you'd maybe pull it just all the way to the edge
5 as close to you as you can get it, maybe that will help a little bit.

6 THE WITNESS: Right there?

7 THE COURT: Um-hm.

8 MR. PANDELIS: And maybe just lean down a little bit if you need to.

9 BY MR. PANDELIS:

10 Q So you said he was pulling you into the living room?

11 A Yes.

12 Q Okay. And I just want to backtrack a minute because we got a little
13 distracted. After you were on the bed, how did – and he told you to shut up, you
14 said he was taking some of your clothes off?

15 A Just my panties.

16 Q Okay. How did he do that?

17 A He had one arm around my neck and then pulled my panties off with
18 the other arm.

19 Q Did you say anything to him when he was taking your panties off?

20 A I was just crying.

21 Q How did he pull you into the living room?

22 A By my arm.

23 Q Once you got to the living room, T [REDACTED] what happened?

24 A He lay me on the floor and he was on top of me, and he had his hands

1 around my neck.

2 Q Was he saying anything to you when he had his hands around your
3 neck in the living room?

4 A No.

5 Q What happened once – what happened after that?

6 A Then he stuck his finger in me.

7 Q He stuck his finger where?

8 A In my vagina.

9 Q Did that happen in the living room?

10 A Yes.

11 Q Where in the living room were you, T [REDACTED]?

12 A Like in front of the TV and the table.

13 Q Were you on a couch, on a chair?

14 A The floor.

15 Q On the floor. How were you positioned? Were you sitting, were you –

16 A Laying.

17 Q Did he say anything to you when his finger went in your vagina?

18 A No.

19 Q What did it feel like when his finger was in your vagina?

20 A Weird.

21 Q What do you mean, weird?

22 A Because he had on gloves.

23 Q What kind of gloves did you –

24 A Like lubricating or – It looked like a balloon type.

1 Q What did – Now, what did the glove look like?
2 A It was like a balloon type.
3 Q So they were –
4 A It looked like a balloon type of glove.
5 Q Are you saying balloon or – ?
6 A Like, you know how balloons are.
7 Q Balloons?
8 A Yeah.
9 Q Okay, I didn't hear you. What color was the glove, T[REDACTED]?
10 A Like white.
11 Q Was it like the type of glove you sometimes use for cleaning –
12 A Cleaning.
13 Q – things like that?
14 A Yes.
15 Q Now, when he had that glove on, did he put anything on it?
16 A No.
17 Q Do you remember at a Preliminary Hearing in this case I asked you
18 what type of glove he had on? Do you remember what you said?
19 A Lubricating.
20 Q What did you mean by that, T[REDACTED]?
21 A I thought lubricating was like a balloon type.
22 Q So that was your description of the –
23 A Glove.
24 Q – material the glove was made out of?

1 A Yeah.

2 Q But again, did you ever see him putting anything on the glove that

3 day?

4 A No.

5 Q Did he have any bottles of anything with him?

6 A No.

7 Q How long was his finger in your vagina, T [REDACTED]?

8 A Just for seconds.

9 Q Did he say anything to you when he did that?

10 A No.

11 Q Did you say anything to him when he was doing that?

12 A Just crying.

13 Q How did he react to you crying?

14 A He was just telling me to shut up.

15 Q Did he leave you alone at that point?

16 A No.

17 Q What happened after that?

18 A He still had his hand around my neck and he pulled out his penis and

19 rubbed it inside of my vagina like between the lips.

20 Q While this was going on, did you try to get away?

21 A Yeah.

22 Q Were you able to?

23 A No.

24 Q Why not?

1 A Because he's stronger than me.

2 Q How tall are you, T [REDACTED]?

3 A I'm not sure. Like five foot, five foot one.

4 Q And you said after he put his finger in you, he did something else with

5 his penis. What exactly was that?

6 A Rub it in the inside of my vagina lips.

7 Q How were you positioned when he did that?

8 A Still laying down.

9 Q Did he move you at all after he took his finger out of your vagina?

10 A No.

11 Q Did you see his penis in your vagina?

12 A No.

13 Q Did you feel something?

14 A Yeah.

15 Q What did you feel?

16 A The tip of his head going in.

17 Q The tip of what?

18 A His head on his penis.

19 Q Okay. Again, T [REDACTED], I know I keep reminding you, but I need you to

20 speak up. I'm having a real hard time hearing you. Okay? Where did you feel that?

21 A Just the inside of my lips, just rubbing up and down.

22 Q And you said inside of your lips. Do you know how your vagina has

23 two -- or a fold or two sides or lips?

24 A Yeah.

1 Q You said between those?
2 A Yeah.
3 Q So it was in-between those two lips?
4 A Yes.
5 Q And you said you felt something rubbing up and down?
6 A Yes.
7 Q How long was he doing that for?
8 A Just for seconds.
9 Q How did that end?
10 A He told me to sit down on the couch.
11 Q I want to back up just a second. Again, how was he positioned when
12 he was doing that?
13 A Between my legs.
14 Q So you were laying down still?
15 A Yes.
16 Q And he was on top of you in-between your legs?
17 A Yes.
18 Q And so how did it – Once he stopped doing that, what happened?
19 A He told me to get up and sit on the couch.
20 Q And did you do that?
21 A Yes.
22 Q Why did you go sit on the couch?
23 A Because I didn't want him to hurt me if I didn't listen.
24 Q And once you got on the couch, what happened?

1 A He asked me why didn't I like him.

2 Q What did you tell him?

3 A I told him it's nothing like that, it's just I felt that he was trying to take
4 my stepdad's place.

5 Q After you had that discussion with him on the couch, did you have any
6 more contact with him that morning?

7 A Yeah.

8 Q Pardon?

9 A Yes.

10 Q Okay. What else did you guys do?

11 A Well, I got dressed for school, and then after I got dressed he gave me
12 my phone and then he took me to school.

13 Q Why did you let him drive you to school, T [REDACTED]?

14 A Because I felt like if I – I thought like he would think if I was to walk to
15 school he'd think I walked to somebody else's house and tell, because he asked me
16 who was I going to tell.

17 MR. COX: Objection, Calls for speculation.

18 THE COURT: Sustained. Maybe if you could focus the question a little
19 differently, Mr. Pandelis.

20 MR. PANDELIS: I'll rephrase.

21 BY MR. PANDELIS:

22 Q T [REDACTED], were there some things that you were worried about when
23 you decided to let him drive you to school?

24 A Yes.

1 Q What were those things?

2 A I thought like he would try to kill me if I told.

3 Q So you were scared?

4 A Yes.

5 Q And is part of the reason you were scared some of the things he told

6 you while this was happening?

7 A Yes.

8 Q What were some of the things again that he told you while this was

9 happening?

10 A Just shut the fuck up before I snap your neck, and then he asked who

11 was I going to tell, but I said nobody.

12 Q When he drove you to school, did the two of you talk at all?

13 A Yeah.

14 Q What did you talk – What was the conversation on the way to school?

15 A Who was I going to tell, and did I want a new phone case.

16 Q Who were you going to tell and what?

17 A Did I want a new phone case.

18 Q What happened to your phone case?

19 A It got chipped at the top.

20 Q When he asked you who you were going to tell, what did you tell him?

21 A Nobody.

22 Q On that day on May 14th, did you eventually tell somebody?

23 A Yes.

24 Q Who did you tell first?

1 A My sister Denise.

2 Q How did you tell Denise?

3 A I texted her.

4 Q Where were you when you texted her?

5 A In class.

6 Q Do you remember about how long after you got to school you texted
7 Denise?

8 A Probably like two minutes. Like, when I got into class I had texted her
9 as soon as I got in my class.

10 Q Do you know what happened after you texted Denise?

11 A She told my mom. Or she forwarded the message to my mom.

12 Q How do you know that?

13 A She told me.

14 Q Okay. So after the fact Denise told you that she told your mom?

15 A Yeah.

16 Q Now, T [REDACTED], early on you said that when he first came into your
17 room he put his (sic) phone in your pocket – or into his pocket, correct?

18 A Yeah.

19 Q How did you get your phone back?

20 A He gave it back to me.

21 MR. COX: Judge, I object. Leading question.

22 MR. PANDELIS: Well, my question is how did you get your phone back.

23 THE COURT: Overruled. It's okay.

24 THE WITNESS: He gave it back to me.

1 BY MR. PANDELIS:

2 Q Did you have – Did you talk to him at all before he gave you your
3 phone back?

4 A Yeah.

5 Q What did you guys talk about before he gave you your phone back?

6 A Do you want me to take – Do he want me to take me to school. I can't
7 say it right. Did he want me to take – Did – I can't say it right. He asked, Do you
8 want me to take you to school?

9 Q Okay. Was he worried at all when he agreed to give you your phone
10 back, or before he gave you –

11 MR. COX: Objection, calls for speculation.

12 THE WITNESS: Yes.

13 MR. COX: Judge –

14 THE COURT: Sustained.

15 Hang on just a second. Let him ask you another question.

16 BY MR. PANDELIS:

17 Q Where were you when he gave you your phone back?

18 A In the bathroom.

19 Q In the bathroom?

20 A Yeah.

21 Q Was that after the incident in the living room?

22 A Yeah.

23 Q What were you doing in the bathroom when he gave it back to you?

24 A Brushing my teeth.

1 Q Did you ask for the phone back?
2 A No.
3 Q He just gave it back to you?
4 A Yeah.
5 Q Did he say anything to you when he gave it back to you?
6 A Who are you going to tell?
7 Q So right when he gave you the phone back he was asking you who
8 you were going to tell?
9 A Yeah.
10 MR. PANDELIS: I'll pass the witness, Your Honor.
11 MR. COX: Judge, may we approach briefly?
12 THE COURT: Sure. And if everybody wants to take a second and stand up,
13 this would be a good time.
14 (Bench conference begins)
15 THE COURT: Yes?
16 MR. COX: Brian Cox, Public Defender. The State has alleged a penetrating
17 injury. I think based on that the Rape Shield Law is not in effect on this case. I
18 believe I am in a position to ask her if she was sexually active prior to the allegation.
19 because they're claiming my client left a penetrating injury.
20 THE COURT: Let's take a break.
21 MS. KOLLINS: Obviously -- (indiscernible) --
22 THE COURT: Okay.
23 MS. KOLLINS: -- discovery that supports that -- (indiscernible) -- if she was
24 sexually active -- (inaudible).

1 THE COURT: Let's let the jury go out and we'll talk about this, okay?

2 (Bench conference concluded)

3 THE COURT: Ladies and gentlemen, we're going to need to take a really
4 short break.

5 During this recess you are admonished not to talk or converse among
6 yourselves or with anyone else on any subject connected with this trial, or read,
7 watch or listen to any report of or commentary on the trial or any person connected
8 with this trial by any medium of information, including without limitation newspapers,
9 television, the Internet and radio, or form or express any opinion on any subject
10 connected with the trial until the case is finally submitted to you.

11 We'll see you folks back here at 11:00. Thank you.

12 (The jury exits the courtroom)

13 MR. PANDELIS: Your Honor, can we have someone from VWAC take
14 T [REDACTED] into the waiting room?

15 THE COURT: That would be fine. T [REDACTED] we're going to have you just go
16 into the conference room that's right at the front there and we'll be just a minute.

17 (The witness exits the courtroom)

18 MR. COX: Your Honor, I do have a base for the question, It is supported by
19 what was reported during the exam at the hospital, that she had been sexually –

20 THE COURT: Okay. What's your case?

21 MR. COX: Excuse me?

22 THE COURT: You said you have a case.

23 MR. COX: No. It's my understanding of the Rape Shield Law, I'm precluded
24 from going into any sexual history. However, if the State is making an allegation

1 that there is a penetrating injury or a sexual injury caused by my client, I do have the
2 opportunity to ask and see if in fact there is an explanation, provide an explanation
3 for the injury they're arguing. In this case, reading the SANE exam, she does report
4 that she had been sexually active with her boyfriend. So I'm not – It's not a fishing
5 expedition, it's something that was reported during the SANE exam.

6 MS. KOLLINS: Well, but not sexually active within the 72 hour period. So
7 you can't –

8 MR. COX: Well –

9 MS. KOLLINS: I mean, that's pure Rape Shield.

10 THE COURT: Do you know – Anybody know the statute number off-hand?

11 MR. COX: Judge, you know, I've read it. I've read it, I've read it. I don't have
12 it with me. Honestly I didn't think it was going to be an issue, especially when the
13 State is claiming that there's a penetrating injury.

14 MS. KOLLINS: Well, again, the subject of a pretrial motion or a hearing.
15 That should have been answered before cross-examination.

16 MR. COX: Well, so then if I'm surprised during trial, I would be precluded?
17 I don't think so.

18 THE COURT: Mr. Cox, what part of her testimony was a surprise?

19 MR. COX: Well, I was surprised in opening, Judge. It was my understanding
20 they weren't claiming that there was a specific finding of a penetrating injury. Ms.
21 Kollins in opening – Because the SANE exam indicates a non-specific finding. In
22 opening statement Ms. Kollins argued that there was swelling at the introitus, which
23 is the opening of the vagina. Now, granted, there's a myriad of reasons why a young
24 woman has that during an exam, but she argued it was caused by my client. So,

1 you know, when that happens, you know, I need to react and defend my client.

2 MS. KOLLINS: Well, and I don't know how Mr. Cox thinks that he's going
3 to stand up in opening statement and say there was absolutely no evidence, when
4 contained within the report is swelling and redness to the opening of the genital area.
5 Am I supposed to just gloss over that? It is consistent with a penetrating injury or
6 blunt force trauma. So I don't know why this comes as a surprise. If he wants to
7 cross-examine the nurse, the doctor is going to say not after 72 hours. She's going
8 to say that that is within the acute period. So --

9 MR. PANDELIS: And Your Honor, it's Chapter 50.090.

10 MS. KOLLINS: Yeah.

11 THE COURT: Thank you. Okay, so this is what it says: "In any prosecution
12 for sexual assault the accused may not present evidence of any previous sexual
13 conduct of the victim of the crime to challenge the victim's credibility as a witness
14 unless the prosecutor has presented evidence or the victim has testified concerning
15 such conduct or the absence of such conduct, in which case the scope of the
16 accused's cross-examination of the victim or rebuttal must be limited to the evidence
17 presented by the prosecutor or victim."

18 MS. KOLLINS: And obviously our position is we have not opened the door
19 on that. I mean, if what Mr. Cox said was the state of the law, every time we had
20 any type of finding you'd be able to go into sexual history of a victim. And that's
21 just not the way it is.

22 MR. COX: Well, if it was qualified -- I would submit if it was qualified with
23 there was redness, it's non-specific. You know, you look at the report --

24 MS. KOLLINS: But that's -- that's what it is.

1 MR. COX: I'm sorry, let me say what I want to say. Let me say what I want
2 to say real quick. You limit it to what, you know, the report says, a non-specific
3 finding. In other words, there's other reasons that cause this. But she specifically
4 argued to the jury that it was caused by my client. So I believe, Judge, that
5 completely opens the door. Now, I'm not fishing because in the SANE report she
6 reports being sexually active with her boyfriend. And in all honesty, Judge, I don't
7 intend to question beyond, you know, probably one or two very simple questions
8 along those lines.

9 THE COURT: Okay. But it says: "The prosecutor has presented evidence
10 or the victim has testified concerning such conduct." I mean, at this point I don't
11 think there's --

12 MR. COX: Well, what's going to happen, Judge, is that, you know, I guess
13 there's -- we have to make a decision because, you know, based on the order of the
14 witnesses. Then what's going to happen is they're going to call the SANE nurse or
15 Dr. Vergara to say, well, you know -- Dr. Vergara, she may deviate beyond -- may
16 now say, well, now it's not a non-specific finding, now I think it's a specific finding;
17 I disagree with the report here. And now I don't have an opportunity to ask her if
18 she's been sexually active. And they're going to argue that my client inflicted a
19 penetrating injury on T[REDACTED].

20 MS. KOLLINS: First of all, the doctor is not going to come in here and
21 change her testimony from what is contained within her report. Second of all, this is
22 all cross-examination. Dr. Vergara, there are other explanations for this non-specific
23 finding, is that correct? Can you tell me what they are? They can be a myriad of
24 reasons. They can be something -- a piece of clothing that was irritating. They

1 can be a – it could be from other sexual activity. She may even say that. But what
2 she can say is it's not inconsistent with what's alleged here. So that's all for cross-
3 examination. That doesn't mean we get into this kid's background about being
4 sexually active. And there's certainly nothing in that report that indicates that she
5 was sexually active within an acute period wherein the redness is attributable to
6 other sexual contact or conduct.

7 MR. COX: Well, Judge, that's up to them to argue.

8 THE COURT: Okay. Mr. Cox, do you have any authority, though, for what –

9 MR. COX: I'm arguing based on the statutes. My position, Judge, the State
10 has opened the door arguing a penetrating injury. Also, Judge, it's not – you know,
11 we're aware that she did make such a report to the SANE nurse that she had been
12 sexually active. I intend to ask T [REDACTED] H [REDACTED] if she's been sexually active with
13 her boyfriend, and that's the extent really of what I want to ask. Do I have a specific
14 allegation or incident of multiple liaisons and all? No. Judge, she reported to the
15 SANE nurse that she had been sexually active.

16 THE COURT: You know, I think if T [REDACTED] had gotten up here and said –

17 MR. KOLLINS: I've never had sex before.

18 THE COURT: Exactly. I think the cases support your position, but I think
19 absent something to that effect I just am not seeing it.

20 MR. COX: But the problem is is that the jury will be left with that impression
21 that she'd never had sex before because I won't be able to ask the question. That
22 is the problem. They are left with the opinion that, well, there has to be something
23 because she's red and she's never had sex before. I cannot –

24 MS. KOLLINS: That's –

1 MR. COX: I cannot ask one question, have you had sex before?

2 THE COURT: Right. I mean, that's what –

3 MR. COX: And they're left with the opinion that she is a virgin, and that is
4 not the case.

5 THE COURT: That's what the Rape Shield Law is, is that we don't go into
6 the prior sexual activities of people in these cases unless there are some very
7 limited exceptions, one of which is when there's some testimony by the victim that –
8 about prior activity, which there wasn't. So –

9 MR. COX: Which prior activity? I'm sorry?

10 THE COURT: There wasn't. That's what I'm saying. There wasn't any
11 testimony about that. And the statute really requires that there is something to
12 open the door, which I don't think –

13 MS. KOLLINS: And again –

14 MR. COX: I think that interpretation, I would never be allowed to ask – When
15 somebody is alleging a penetrating injury, I'll never be allowed to ask the question.

16 THE COURT: Well, I mean, Mr. Cox, by your – by your interpretation there
17 frankly would be no Rape Shield Law.

18 MR. COX: Well, there would, Judge, because I have had cases where
19 they're not claiming there's a penetrating injury, they're not claiming they have
20 specific findings indicating my client obviously sexually assaulted her because,
21 look, his penis caused that mark, okay.

22 That's what they're claiming here. They're claiming my client did
23 make that mark. And now if I'm precluded from asking that question, that she's
24 been sexually active, the jury will be left with the impression that she is a virgin –

1 THE COURT: Okay. Well –
2 MR. COX: – she's never had sex before and there's no way that anybody
3 else's penis could have been there. That's the problem.
4 MS. KOLLINS: Well, and let's not –
5 THE COURT: Ms. Kollins, it's not necessary.
6 MS. KOLLINS: Okay.
7 THE COURT: I understand your position, Mr. Cox, but I just don't think that
8 we have anything at this point that would allow those types of questions under the
9 statute.
10 So let's bring T [REDACTED] back in, and the jury.
11 THE MARSHAL: Ready, Judge?
12 THE COURT: Yeah. Let's bring T [REDACTED] in first and then we can bring in
13 the jury.
14 THE MARSHAL: Okay.
15 (The witness enters the courtroom)
16 THE COURT: Okay, T [REDACTED] come back on up here and have a seat. Do
17 you want to get a drink of water before everybody comes in or are you doing okay?
18 THE WITNESS: No, thank you.
19 THE COURT: Okay.
20 THE MARSHAL: Judge, ready for the jury?
21 THE COURT: We are.
22 THE MARSHAL: The jury is in the courtroom.
23 (The jury enters the courtroom)
24 THE COURT: Back on the record in Case Number C265506, State of Nevada

1 versus Tyrone James. Let the record reflect the presence of all of our jurors, Mr.
2 James with his counsel, the representatives of the District Attorney's Office, and all
3 of the court staff.

4 Mr. Cox.

5 MR. COX: Thank you, Judge.

6 CROSS-EXAMINATION

7 BY MR. COX:

8 Q Good morning, T [REDACTED].

9 A Good morning.

10 Q You do know Nefertia Charles, correct?

11 A No.

12 Q Do you know of her?

13 A Yes.

14 Q Now, prior to the police being called on the case, you texted your
15 friend or your sister and you talked to your mother about what you testified today,
16 about today?

17 A Yes.

18 Q Is that true?

19 A Yes.

20 Q Were you truthful with your mother?

21 A Yes.

22 Q Did you tell your mother that you were not penetrated?

23 A Can you ask that in a different way?

24 Q Excuse me?

1 A Can you ask that in a different way?

2 Q Did you tell your mother whether or not your vagina was penetrated?

3 A Yes.

4 Q Okay. And what did you tell your mother?

5 A That he stuck his finger in there.

6 Q Okay. Now, you also went to the hospital for an exam after lunchtime.

7 would you say?

8 A I don't know if it was after lunchtime, but I know I went to the hospital.

9 Q It was kind of during the middle of the day, would you say?

10 A Yeah.

11 Q Okay. Were they nice to you at the hospital?

12 A Yes.

13 Q Did they make you feel comfortable?

14 A Yes.

15 Q Were you honest with the people that you talked to at the hospital?

16 A Yes.

17 Q Do you remember talking to a nurse? You probably talked to several

18 people. Do you recall talking to someone, whether or not they were a nurse?

19 A Yeah.

20 Q Okay. Do you remember what her name was?

21 A No.

22 Q Could it have been Pamela Douglass?

23 MR. PANDELIS: Objection, calls for speculation.

24 THE WITNESS: I'm not sure.

1 BY MR. COX:

2 Q You don't remember?

3 A No.

4 THE COURT: It's overruled. She answered.

5 BY MR. COX:

6 Q When you were talking with people at the hospital, you said that you

7 were – you mentioned that you were honest with them?

8 A Yes.

9 Q Did you tell them that you had been penetrated?

10 A Yes.

11 Q Are you sure about that? I'm going to give you the opportunity to think

12 about it.

13 A I told her that he stuck his finger in me.

14 Q I'm sorry?

15 A I told her that he stuck his finger in me.

16 Q Anything else?

17 A Just rubbed his penis.

18 Q Okay. Now, there was – You had a stepfather that was – would you

19 characterize him more the man of the house?

20 A Yeah.

21 Q Would you say you had a close relationship with your stepfather?

22 A Yes.

23 Q Okay. And he was not in the home?

24 A No.

1 Q So right around there?

2 A Like, walking out of the house probably.

3 Q Okay. So you would want to be on your way right around 9:10, but

4 I mean, we're not talking about something exact?

5 A Yeah.

6 Q Okay, fair enough. Now, the reality is is that you told the police that

7 this happened at nine o'clock, correct?

8 A Yeah.

9 Q Okay. And you knew you didn't have a ride to school?

10 A No.

11 Q Now, didn't you testify earlier that you had contacted your friend and

12 you did not have a ride to school?

13 A Yeah. Well, she texted me. She didn't call, she texted.

14 Q And said what?

15 A That she's not –

16 Q And she indicated what to you?

17 A – going to school. She's not going to school because her mouth hurts.

18 Q Okay. So you didn't have a ride to school?

19 A No.

20 Q So in all fairness, when Mr. James showed up, you were ironing your

21 clothes when he showed up. Is that true?

22 A No.

23 Q And he offered you a ride to school so you wouldn't be late?

24 A I don't know if he said so I wouldn't be late.

1 Q Well, would you have been late if he didn't offer you a ride to school?
2 A Yeah.
3 Q Now, you testified that horrific things happened to you in your house
4 caused by Mr. James?
5 A Yes.
6 Q As soon as you got outside the house, did you run and let your
7 neighbors know that you had just been assaulted?
8 A No.
9 Q You didn't. So you got into the van with Mr. James?
10 A It wasn't a van.
11 Q His vehicle?
12 A Yes.
13 Q Okay. I apologize. Now, when you got to school, did you immediately
14 tell the campus police officer –
15 A No.
16 Q – that something terrible had happened to you?
17 A No.
18 Q No. Did you – When you got to class there was a teacher there?
19 A Yes.
20 Q Did you tell your teacher?
21 A No.
22 Q Now, you could have pulled your teacher aside and said, you know,
23 I just had a horrific thing happen to me. It's possible you could have done that,
24 is that true?

1 A Yeah, but I didn't.

2 Q You didn't?

3 A No.

4 Q Okay. Now, your school also has counselors. Are you familiar if your

5 school has counselors?

6 A Yes.

7 Q Okay. You could have gone directly to the Counselor's Office when

8 you got to school.

9 A Yeah.

10 Q Did you do that?

11 A No.

12 Q Okay. Instead you went to class and you texted friends?

13 A My sister.

14 Q Your sister and a friend?

15 A No, my sister and my best friend.

16 Q Okay. You texted a couple people?

17 A Yeah.

18 Q Including your sister?

19 A Yeah.

20 Q Now, you testified today that Mr. James was hiding in your room?

21 A Like, coming in the door like that; hiding like right there.

22 Q You know, I recall you mentioned he was behind a wall. Did I hear that

23 incorrectly?

24 A Like, it was by the wall. It was hiding behind the wall, but it's like when

1 you first walk in, there's the wall.

2 Q Okay. Now, in all fairness, T [REDACTED], you didn't mention that to the
3 police when they talked to you, right?

4 A Yes.

5 Q You did mention that to them?

6 A Yes.

7 Q Okay. So that would have been in that statement?

8 A Yeah.

9 Q Okay. And if it's not there – Well, did you testify about that at the
10 Preliminary Hearing, that he was hiding in your room?

11 A I didn't say he was hiding. I said he was like by the wall peeking
12 around the corner.

13 Q So you didn't say he was hiding? Is that true?

14 A Yeah.

15 Q Okay. Now, you claim he came in your room and pulled your panties
16 off. Were you wearing anything else?

17 A A tank – a spaghetti strap.

18 Q Anything else on your bottom?

19 A No, just panties.

20 Q Okay. And then he grabbed you by the neck and your arm?

21 A No, he had his hand around my neck. He didn't like grab me by it,
22 he just had his hand around it.

23 Q Okay. And you testified that he had your arms as well?

24 A Yeah.

1 Q And that's the way he pulled you into the living room?
2 A No, he just pulled me by my arm.
3 Q Pulled you with one of his hands?
4 A One of his hands.
5 Q Okay. Would you characterize that as forceful?
6 A Yes.
7 Q And you resisted?
8 A Excuse me?
9 Q You tried to get free?
10 A Yes.
11 Q Okay. And he had your wrist tight?
12 A He didn't have my wrist, he had my arm like right here.
13 Q Your arm. And he grabbed it forcefully?
14 A Yeah.
15 Q Now, did you – Now, when you talked to the police, did you tell them
16 that he sat on top of you and forced your legs apart?
17 A No.
18 Q You don't remember saying that?
19 A I just said he was on top of me. I didn't say he forced my legs apart.
20 MR. COX: Court's indulgence.
21 BY MR. COX:
22 Q Did you testify that he forced your legs open?
23 A That he forced my legs open? I said he opened my legs.
24 Q Okay. And was that – That was against your will? That was against

1 your will?

2 A Excuse me?

3 Q Is that true?

4 A What do you mean?

5 Q Did you want him to force your legs apart?

6 A No.

7 Q Okay. And he was sitting on top of you when this happened?

8 A When he opened my legs he wasn't sitting on top of me.

9 Q Okay. Do you remember saying – characterizing it in that way when

10 you talked to the police?

11 A What do you mean?

12 Q Is that what you told the police, that he was sitting on top of you when

13 that happened?

14 A I said he was on top of me.

15 Q Okay. Well, was he facing forward or facing backwards?

16 A Forward, like towards me.

17 Q Now, you testified that he grabbed – grabbed you by your neck in the

18 room and pulled you, and grabbed you by your arm and pulled you. And so later on

19 a glove appeared on his hand?

20 A No. When he came in from the start he had a glove on.

21 Q Did you tell that to anyone?

22 A Yeah.

23 Q Did you tell that to the police?

24 A Yeah, he had gloves on.

1 Q Did you tell that during – Did you testify about that during the
2 Preliminary Hearing?
3 A Yeah.
4 Q That he had gloves on in the very beginning?
5 A Yes.
6 Q Now, Mr. Pandelis talked to you about lubricant.
7 A Yeah.
8 Q And you had mentioned that you believed that lubricant meant glove?
9 A I thought it was like the type of material the glove was.
10 Q Help me understand that a little bit better if you could.
11 A Like what the glove is made out of.
12 Q Is what?
13 A I thought it was lubricated or something like that.
14 Q Lubricated in what way?
15 A Like the type it was made out of. How the glove was made, the
16 material.
17 Q So that it already had like a lubrication on it?
18 A No. I thought it was – the glove was made like lubricated.
19 Q You mean like a condom?
20 A No.
21 Q Help me understand a little bit better, because I don't.
22 A Like the glove, how it's made, I thought it was made out of lubrication
23 or something like that.
24 Q Made a glove out of lubrication?

1 A Yeah. I thought that lubricated like was the glove type.

2 Q Okay.

3 MR. COX: Court's indulgence. I apologize for the delay, Judge. I'll be quick.

4 THE COURT: No problem.

5 MR. COX: Judge, I apologize for the delay, and I pass the witness.

6 THE COURT: Thank you. Mr. Pandelis?

7 REDIRECT EXAMINATION

8 BY MR. PANDELIS:

9 Q T [REDACTED], just a minute ago Mr. Cox was asking you some questions
10 about what Tyrone was doing with your legs when you were in the living room.

11 A Yeah.

12 Q And do you remember at the Prelim when you were testifying about
13 what he did to your legs, and your testimony was that he opened your legs?

14 A Yeah.

15 Q Do you ever remember saying that he forced your legs open?

16 A No.

17 Q T [REDACTED], in your mind is there a difference between somebody being
18 on top of you or sitting on top of you?

19 A They're different?

20 Q Yeah. Or is it the same thing in your mind?

21 A No, it's not the same 'cause if you want somebody on top of you then
22 you want them, and if you don't then you don't.

23 Q So in this case how was Tyrone positioned when he was doing this
24 to you?

1 A When he opened my legs?

2 Q Yeah.

3 A Like, I can't explain it; like on the floor. Like, you know how when

4 somebody opens your legs, they're on the floor.

5 Q But you were laying down on the floor?

6 A Yeah.

7 Q Was he over you?

8 A Yes.

9 Q T [REDACTED] from the time Tyrone walked into your room, you said you

10 noticed a glove at some point when this was happening, correct?

11 A Yes.

12 Q From the time he walked into your room until you got to the living room

13 and this ended, were you ever away from Tyrone?

14 A No.

15 Q Did you ever seen Tyrone stop and put a glove on?

16 A No.

17 Q Now, when I was asking you some questions earlier and Mr. Cox

18 followed up on them, you testified that you were in your room and you heard a noise

19 and then you said something about him having five sec- or you said you have five

20 seconds to get out?

21 A Yes.

22 Q When you heard that noise, did you immediately see him or did it take

23 a few seconds before you saw him?

24 A I seen him.

1 Q You what?
2 A I seen him.
3 Q Okay. Again, where was he?
4 A Peeking around the corner, like in front of the wall. Like when you first
5 walk in there's a wall, and he was peeking around that wall.
6 Q But that's what you saw him doing, peeking around the corner?
7 A Yeah.
8 Q Okay. Triaunna, how well do you know your counselor at school?
9 A Not very well.
10 Q How well do you know the police officer at school, the school police
11 officer?
12 A I don't know them.
13 Q Are you real comfortable talking to your teacher about sex and things
14 like that?
15 A No.
16 Q You're probably closer to your sister than you are those people?
17 A Yeah, very close.
18 Q Are you closer to your best friend than you are those people?
19 A Yeah.
20 Q Are those part of the – or are those the reasons that you talked to
21 your sister and your best friend about this before anybody else?
22 A Yeah.
23 Q T [REDACTED] when you went to the hospital you had a – Mr. Cox asked
24 you some questions – you had an exam, correct?

1 A Yeah.

2 Q Now, prior to that exam, do you remember talking to a nurse about
3 what had happened that day?

4 A Yes.

5 Q So did you tell the nurse everything that happened?

6 A I just – She just asked a little bit, not a lot, about what happened.

7 Q But you gave her a general rundown of what happened earlier in the
8 day at the house with Tyrone?

9 A Yeah.

10 Q And in fact, you did tell her that his finger penetrated your vagina,
11 right?

12 A Yeah.

13 Q And in fact, you did tell her that his penis penetrated your vagina,
14 right?

15 A Yes.

16 Q And specifically do you remember telling the nurse that he put his
17 fingers inside of you?

18 A Just one finger.

19 Q Okay. But you remember telling her that?

20 A Yeah.

21 Q And do you remember telling the nurse that he rubbed his penis on
22 the lips of your vagina?

23 A Yeah.

24 Q From the time Tyrone came into your room until the time he told you

1 to – or until the time you started getting dressed for school, how long did this whole
2 thing last, T [REDACTED]?

3 A I'm not sure.

4 Q You don't know for sure?

5 A No.

6 Q Did you get to school on time?

7 A No.

8 Q How late were you?

9 A About I believe six minutes late.

10 Q So you weren't that late?

11 A (Shakes head negatively).

12 Q What was Tyrone wearing that morning? Do you remember?

13 A I remember a long sleeve black shirt.

14 Q Do you remember what he had on on the bottom before he took his
15 clothes off?

16 A Huh?

17 Q Do you remember what he had – what kind of pants he had on before
18 he took them off?

19 A No. I think it was basketball shorts, black basketball shorts. I know it
20 was all black.

21 Q Okay. But what you remember for sure is the top?

22 A I remember the black top.

23 Q Okay. Was Tyrone living with you in May of 2010?

24 A Yeah, but it was like back and forth, back and forth.

1 Q But he didn't stay the night with you prior to this, did he?
2 A Like the day before that?
3 Q Well, that night, did he stay over? Was he there that night?
4 A No.
5 Q Were you expecting him there that morning?
6 A No.
7 Q Were you expecting to get a ride to school from him that morning?
8 A No.
9 MR. PANDELIS: Pass, Your Honor.
10 THE COURT: Thank you. Mr. Cox?
11 MR. COX: Judge, I don't have further questions. Thank you.
12 THE COURT: Are there any questions from the jury? Okay.
13 Counsel approach.
14 (Bench conference begins)
15 THE COURT: Any objection to any of the questions?
16 MS. KOLLINS: I don't have a problem asking them. That would be
17 speculative -- (indiscernible).
18 THE COURT: Right. (Indiscernible) -- she would be able to tell you --
19 MS. KOLLINS: She would know about that -- (indiscernible).
20 THE COURT: Right.
21 MR. COX: Number twelve, I'm not -- I don't object to. This is Bryan Cox for
22 the record. The question from juror twelve I don't object to. The question from juror
23 seven, I don't object to. Question six, I don't object to that one, either.
24 THE COURT: Okay.

1 (Bench conference concluded)

2 THE COURT: T [REDACTED], I have a couple questions for you. How far is the
3 school from your house?

4 THE WITNESS: I'm not sure.

5 THE COURT: Did Mr. James have a key to get into your house?

6 THE WITNESS: Yes.

7 THE COURT: And where was your dog at that point?

8 THE WITNESS: In my room.

9 THE COURT: Why did you start school then back at ten o'clock?

10 THE WITNESS: That's how it was for freshmen and sophomores at Desert
11 Pines.

12 THE COURT: Don't most schools start around 7:00?

13 THE WITNESS: Yeah.

14 THE COURT: Do you know why that was?

15 THE WITNESS: No.

16 THE COURT: Will the teacher take your phone if you're texting during
17 school?

18 THE WITNESS: Yeah, but if they don't see you, like, they don't. If they don't
19 see you, they won't take it, or they'll warn you.

20 THE COURT: Okay. Any follow-up questions or follow-up from the State?

21 MR. PANDELIS: Just a few.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. PANDELIS:

24 Q T [REDACTED], how long would it take you to walk to school?

1 A I believe like twenty minutes.

2 Q How long would it take you to drive to school if you got a ride?

3 A Probably under ten minutes.

4 Q You said you can text so long as the teacher doesn't see you doing it.

5 How were you feeling on May 14th when you got to school?

6 A Sad.

7 Q Was there something you wanted to let out or tell somebody?

8 A Yeah.

9 MR. PANDELIS: Nothing further, Your Honor. Oh – (confers with Ms. Kollins)

10 BY MR. PANDELIS:

11 Q Did you text your sister that day, despite the fact you knew you could
12 get in trouble potentially?

13 A Yeah.

14 THE COURT: Okay. Anything from the defense?

15 FURTHER CROSS-EXAMINATION

16 BY MR. COX:

17 Q Now, the people you texted, that was your sister and friends?

18 A Yeah.

19 Q Where were they?

20 A At school.

21 Q They were all at school?

22 A Yeah.

23 Q Okay. So everybody is texting in school?

24 A Yeah.

1 MR. COX: Okay.

2 THE COURT: Okay. Any additional questions from the jurors?

3 **(Bench conference begins)**

4 MS. KOLLINS: The second question is speculation.

5 THE COURT: Let me number them so we can talk about them.

6 MS. KOLLINS: Sure. I think this is -- (indiscernible).

7 MR. COX: I think you're right on number two. I didn't -- I can't read number
8 three, though.

9 MS. KOLLINS: Well, that's your gamble, because I don't know what she
10 knows about his DV history, so that's --

11 MR. COX: Which one?

12 MS. KOLLINS: Number three. Was she ever --

13 MR. COX: I haven't read it. Yeah, I would oppose two, not three. Number
14 one, the Public Defender has no objection.

15 MS. KOLLINS: I don't have a problem with number one. Number two is
16 probably speculative. And I think three is going to open the door that we don't know
17 what the answer is.

18 MR. COX: Okay.

19 THE COURT: Okay.

20 **(Bench conference concluded)**

21 THE COURT: T [REDACTED], did Mr. James ever talk to you in a sexual way
22 before?

23 THE WITNESS: No.

24 THE COURT: Any follow-up from the State?

1 MR. PANDELIS: No, Your Honor.

2 THE COURT: Any follow-up from the defense?

3 MR. COX: No, Judge.

4 THE COURT: Any additional questions from the jurors? (No response).

5 Okay. T [REDACTED], you are free to go. Thank you.

6 THE WITNESS: Okay.

7 THE COURT: Counsel approach.

8 (Bench conference begins)

9 THE COURT: How many minutes direct on the next witness?

10 MR. PANDELIS: I can call the sister and she will be very quick.

11 THE COURT: Why don't we just do her, because I've got about fifteen
12 minutes, so if we can –

13 MR. PANDELIS: Yeah. She'll be short.

14 THE COURT: Okay.

15 (Bench conference concluded)

16 THE COURT: State, please call your next witness.

17 MR. PANDELIS: Your Honor, the State calls Denise Jordan.

18 DENISE JORDAN

19 Having been called as a witness and being first duly sworn, testified as follows:

20 THE COURT: And could you please say your name and then spell the whole
21 thing for the record, okay?

22 THE WITNESS: My whole name?

23 THE COURT: So say your name and then spell your first name and spell
24 your last name.

1 THE WITNESS: Denise Jordan. D-e-n-i-s-e J-o-r-d-a-n.

2 MR. PANDELIS: Thank you.

3 DIRECT EXAMINATION

4 BY MR. PANDELIS:

5 Q Denise, how old are you?

6 A Fourteen.

7 Q When is your birthday?

8 A June 21st.

9 Q What year?

10 A 1996.

11 Q What school do you go to?

12 A Jerome Mack.

13 Q Pardon?

14 A Jerome Mack.

15 Q Mack? Is that a junior high school?

16 A Middle, yeah.

17 Q Middle school. What grade are you in, Denise?

18 A Eighth.

19 Q What's your teacher's name?

20 A All of them?

21 Q This year, what's your teacher's name? Or your favorite teacher's
22 name? I don't want to incriminate you.

23 A I don't have one.

24 Q Okay. What's your favorite class at Mack this year?

1 A Math.

2 Q Math. What math class are you taking? What are you learning about

3 in math?

4 A Um, I forgot.

5 Q Okay, but you like your math class. Are you a little nervous in court

6 today?

7 A Um-hm.

8 Q Okay. Denise, do you know the difference between telling the truth

9 and telling a lie?

10 A (No audible response).

11 Q You have to answer out loud.

12 A Oh. Yeah.

13 Q Okay. Is it a good thing to tell the truth?

14 A Yeah.

15 Q Is it a bad thing to tell a lie?

16 A Yeah.

17 Q If I told you I had a red tie on today, would I be telling you the truth or

18 would I be telling you a lie?

19 A A lie.

20 Q Why is that?

21 A Because it's yellow.

22 Q Okay. So today can you agree just to tell the truth?

23 A Yeah.

24 Q Do you live here in Las Vegas?

1 A Yeah.

2 Q Who do you live with?

3 A My mom.

4 Q What's your mom's name?

5 A Theresa.

6 Q Do you have any brothers or sisters?

7 A Yeah.

8 Q What are their names?

9 A T [REDACTED] and Dewan.

10 Q T [REDACTED]? How old is T [REDACTED]?

11 A Fifteen.

12 Q And you said you have a brother?

13 A Dewan.

14 Q What's your brother's name?

15 A Dewan.

16 Q Dewan. How old is Dewan?

17 A Twelve.

18 Q Do you know somebody named Tyrone James?

19 A Um-hm. Yeah.

20 Q Do you see Tyrone here in the courtroom today?

21 A Yeah.

22 Q Could you point to him and describe something that he's wearing?

23 A Purple. (pointing)

24 MR. PANDELIS: Your Honor, may the record reflect she's identified the

1 defendant?

2 THE COURT: The record will so reflect.

3 BY MR. PANDELIS:

4 Q Denise, how do you know Tyrone?

5 A My mom.

6 Q How does your mom – Well, what do you mean, your mom? He's a
7 friend of your mom's?

8 A Yeah.

9 Q How long has your mom been friends with him?

10 A I don't know.

11 Q But at some point he started hanging out with your mom?

12 A Yeah.

13 Q Would you do anything with him and your mom?

14 A What do you mean? Like –

15 Q Like would you do things together with Tyrone and your mom?

16 A Sometimes.

17 Q Like what types of things would you do?

18 A Just go swimming.

19 Q Where would you go swimming at?

20 A Like in our apartments.

21 Q At your apartments or someone else's apartments?

22 A Our apartments.

23 Q Would he ever stay over at your house?

24 A Yeah.

1 Q Was he living there or did he just stay sometimes?
2 A He lived there.
3 Q So he had some of his things there?
4 A Yeah.
5 Q How long did he live there for?
6 A I don't know.
7 Q Do you know when he stopped living at your house?
8 A Like -- it was like a couple of days before that thing had happened.
9 Q Okay, and we'll get to that thing in a second. Do you know Tyrone?
10 Or excuse me, do you like Tyrone?
11 A No.
12 Q Why don't you like Tyrone?
13 A Because.
14 Q Because why?
15 A Because my mom already had a boyfriend before.
16 Q So how did that make you feel, that she was hanging out with Tyrone?
17 A I was mad about it.
18 Q You were mad about it. Did you ever talk to your mom about it?
19 A Sometimes.
20 Q What would you tell your mom?
21 A That I just don't like him.
22 Q Did you ever talk to your sister about it?
23 A Yeah.
24 Q What did you tell your sister?

1 A That I don't like him and I don't like him staying there.

2 Q You didn't like him staying there?

3 A No.

4 Q Did you – When you got in trouble at the house, who would – Would

5 your mom get mad at you if you did something wrong?

6 A Yeah.

7 Q Would Tyrone ever be in charge of disciplining you or anything like

8 that?

9 A No.

10 Q So that was your mom's job?

11 A Yeah.

12 Q When Tyrone was staying at your house, did he ever tell you to do

13 chores and things like that?

14 A Sometimes.

15 Q Did your mom tell you to do stuff like that, chores around the house?

16 A Yeah.

17 Q Who would order you to do chores most of the time, your mom or

18 Tyrone?

19 A My mom.

20 Q On May 14th of this year, 2010, did you learn that something

21 happened to your sister T [REDACTED] and Tyrone?

22 A Yeah.

23 Q What did you learn, or what were you told?

24 A Like, what she told me.

1 MR. COX: I'm sorry, I didn't hear. I apologize, I didn't hear the question or
2 the answer.

3 THE COURT: Could you repeat the question, Mr. Pandelis?

4 MR. COX: I'd appreciate it. I'm sorry.

5 BY MR. PANDELIS:

6 Q So T [REDACTED] – on the morning of May 14th, T [REDACTED] contacted you?

7 A Yeah.

8 Q How did she contact you?

9 A She texted me.

10 Q Where were you when she texted you?

11 A In class.

12 Q Are you allowed to use your cell phone in class?

13 A No.

14 Q Okay. Did you bring your cell phone to class and it was on?

15 A Yeah.

16 Q Do you usually do that?

17 A Um-hm.

18 Q Okay. If the teacher sees you texting in class, what happens?

19 A She would give me a warning or take it.

20 Q Okay. Have you ever gotten caught doing that before?

21 A Yeah.

22 Q So that morning you had your cell phone on?

23 A Yeah.

24 Q And you got a message from your sister, T [REDACTED]?

1 A Yeah.

2 Q What did T [REDACTED] tell you?

3 A She told me that he came in our room and he grabbed her, and then
4 her phone or something had fell, and then he took –

5 MR. COX: Judge, I'm sorry, I'm having trouble hearing. I apologize. Maybe
6 I should move closer.

7 THE COURT: That's fine, Mr. Cox.

8 MR. PANDELIS: Well, just speak up a little bit, Denise.

9 BY MR. PANDELIS:

10 Q What did T [REDACTED] tell you?

11 A She told me that he came in our room and he grabbed her and that
12 her phone fell or something, and then her pants was down or something like that.
13 And he – they went – he took her to the living room and then he put his finger in her
14 and he had his penis over or something.

15 Q Did she tell you to do anything after she told you this?

16 A No, she didn't text me back.

17 Q How did this make you feel when you got this message?

18 A I was mad about it.

19 Q Did she tell you all of that in the text message or did you talk to her
20 afterwards about it?

21 A I talked to her after, but the text messages told me that he had choked
22 her and then like some more stuff.

23 Q Okay. So he didn't tell – T [REDACTED] didn't tell you all of that in the text
24 message, she just told you something had happened?

1 A Like, she told me half of the stuff that I said.

2 Q She told you what?

3 A Half of the stuff I said.

4 Q Half of the stuff. Okay. And then afterwards you had another

5 conversation with her where she told you more?

6 A Yeah.

7 Q Okay. But after you got this text message, how did you feel?

8 A I was mad.

9 Q So what did you do once you got the message from your sister?

10 A I walked out of class.

11 Q Did you talk to the teacher when you walked out of class?

12 A No.

13 Q What did you tell your teacher?

14 A I didn't tell nothing.

15 Q You just walked out of class?

16 A Yeah.

17 Q Did anyone try to come get you from class?

18 A No. It was the school police that took me back to the school.

19 Q Where did you go when you walked out of class?

20 A I walked to the front of the school 'cause I was going to walk back

21 home.

22 Q Okay. And at that point you got stopped by the school police?

23 A Um-hm.

24 Q What did they tell you?

1 A He just took me. He asked me what I was doing, and I was like, I'm
2 going home. And then he took me back to class – or the Dean's.
3 Q So did you end up staying at school the rest of the day?
4 A Um-hm.
5 Q But when you were at school, did you contact anybody, based on what
6 T [REDACTED] had told you?
7 A My mom.
8 Q What did you tell your mom?
9 A I just told her that – I said I knew he was a rapist. And then she's like,
10 what are you talking about? And then I said I heard it.
11 Q So you – Did you talk to your mom about what T [REDACTED] had told you?
12 A Um-hm.
13 Q Okay. And you stayed at school the rest of the day?
14 A Yeah, 'cause they all went to the hospital or something.
15 Q Okay. So you had no one to come pick you up early?
16 A Yeah, my – No.
17 Q How did – Did you walk home from school that day?
18 A No, my grandma picked me up.
19 Q Okay. What time did you get out of school that day?
20 A At like 2:21.
21 Q T [REDACTED] do you remember what – Or excuse me. Denise, do you
22 remember what class you were in when T [REDACTED] sent you that text message?
23 A I was in History.
24 Q What period is History?

1 A Third.

2 Q Do you know about what time you start school in the morning?

3 A At –

4 Q Or last year what time did you start school in the morning?

5 A I think eight.

6 Q Do you know what time third period started?

7 A It was like at ten something.

8 Q So was it ten something when T ██████ texted you?

9 A Yeah. It was like at – almost like the end of third period.

10 MR. PANDELIS: Okay. Pass the witness.

11 THE COURT: Mr. Cox.

12 MR. COX: Thank you.

13 CROSS-EXAMINATION

14 BY MR. COX:

15 Q Good morning, Denise. Now, you mentioned when Mr. Pandelis was

16 asking you questions that you received a text from T ██████?

17 A Yeah.

18 Q Now, text messages are very short, correct?

19 A Yeah. She sent me two of them.

20 Q Okay. But it's difficult to put a long message on a text, isn't it?

21 A Yeah.

22 Q Is that true?

23 A Yeah.

24 Q Okay. Now, when you got that message, did you call the police?

1 A No.

2 Q Did you tell your teacher?

3 A No.

4 Q Okay. Now, just after that you ran into a police officer?

5 A Yeah.

6 Q The police officer wears a badge?

7 A Yeah.

8 Q And he has a gun?

9 A The school police doesn't have a gun.

10 Q They don't have guns?

11 A No.

12 Q I apologize, that's my mistake. But they're still police officers and

13 they're there to help you if you need help, would you say?

14 A Yeah.

15 Q Okay. Did you tell the police officer that something had happened to

16 your sister?

17 A No.

18 MR. COX: Pass the witness, Judge.

19 MR. PANDELIS: Nothing further.

20 THE COURT: Anything from the jury? No? Okay.

21 Thank you, Denise. You can step down.

22 THE WITNESS: Okay.

23 THE COURT: You'll need to talk to Mr. Page there, Mr. James.

24 Counsel approach.

1 **(Bench conference begins)**

2 THE COURT: They had a problem getting some of the case numbers for the
3 grand jury. If you have another short witness, we could do that now. If you don't,
4 we can go ahead and break for lunch and we'll just figure out --

5 MS. KOLLINS: It's probably going to be awhile because she's like all the time
6 when we -- (indiscernible).

7 THE COURT: Okay, that's fine. I was just checking. If we could put
8 somebody on then we'd do it, but we're just going to go ahead and break for lunch.

9 **(Bench conference concluded)**

10 THE COURT: Okay, folks, we're going to go ahead and take a break for
11 lunch until one o'clock.

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

18 Have a good lunch. We'll see you back at 1:00.

19 **(The jury exits the courtroom)**

20 THE COURT: Okay. Do we have anything we need to take care of outside
21 the presence of the jury?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Yes, sir?

24 THE DEFENDANT: Your Honor, I had specific questions that I had wrote

1 down that I wanted to get addressed across to the jury, and anything I'm asking
2 he's not asking the questions that I wanted to get asked. I feel if I have questions
3 and I write them down, he should address the questions that I have so the jury
4 could hear them.

5 THE COURT: Okay. I am going to let you talk to Mr. Cox about that while
6 we are having this break, and see if you two can work that out. Okay?

7 Anything else?

8 MR. PANDELIS: No, Your Honor.

9 THE COURT: Okay, great.

10 MR. PANDELIS: What time are we coming back?

11 THE COURT: One o'clock.

12 MR. PANDELIS: One o'clock.

13 (Court recessed from 11:42:15 a.m. until 1:01:05 p.m.)

14 THE MARSHAL: The jury is in the courtroom.

15 (Whereupon the following proceedings were held
16 in the presence of the jury)

17 THE COURT: Back on the record in Case Number C265506, State of
18 Nevada versus Tyrone James. Let the record reflect the presence of all of our
19 jurors, Mr. James with his counsel, the representatives of the District Attorney's
20 Office, and the court staff.

21 Okay. Ms. Kollins, call your next witness, please.

22 MS. KOLLINS: Theresa Allen, please.

23 THERESA ALLEN

24 Having been called as a witness and being first duly sworn, testified as follows:

1 THE COURT: Good afternoon, ma'am. Could you please say your whole
2 name and then spell it first and last for the record.

3 THE WITNESS: Theresa Denise Allen. T-h-e-r-e-s-a A-l-l-e-n.

4 THE COURT: Thank you, ma'am. Ms. Kollins.

5 DIRECT EXAMINATION

6 BY MS. KOLLINS:

7 Q Good afternoon, Ms. Allen. How are you?

8 A I'm fine.

9 Q Good. Where do you live?

10 A 207 North Lamb.

11 Q How long have you lived at 207 North Lamb?

12 A Almost two years.

13 Q Is that here in Las Vegas –

14 A Yes.

15 Q – Clark County, Nevada?

16 A (Shakes head affirmatively).

17 Q This nice lady here is taking down everything you say, so it's real
18 important we don't talk at the same time.

19 A Oh, okay.

20 Q Okay. And I'm going to ask you just to speak right into the microphone
21 so everybody can hear you. Is that a house or an apartment?

22 A Apartment.

23 Q And who lives there with you?

24 A Me and my three kids.

1 Q And what are the names and ages of your three children?
2 A T [REDACTED] 15; Denise, 14; Dewan 12.
3 Q And T [REDACTED]'s birthday is when?
4 A [REDACTED]
5 Q And what about Denise?
6 A Denise, [REDACTED]
7 Q Where does T [REDACTED] go to school now?
8 A Desert Pines.
9 Q And where did she go to school last year?
10 A Desert Pines.
11 Q Where does Denise go to school?
12 A Jerome D. Mack.
13 Q And where did Denise go to school last year?
14 A Jerome D. Mack.
15 Q Okay. How far do you live from Desert Pines?
16 A Um, they said 1.4 miles or something like that.
17 Q Close enough for T [REDACTED] to walk to school?
18 A Yes.
19 Q Would she get rides, walk to school? How would she get to school
20 last school year?
21 A She would sometimes walk or she'd stay at her friend's house and her
22 mom takes her, or on my off days I take her.
23 Q In May of 2010, where were you working?
24 A Caesars Palace.

1 Q What was your regular work schedule at Caesars Palace?
2 A Nine to five.
3 Q Did you have a second job during that time?
4 A No, not in May.
5 Q At a routine school day getting T [REDACTED] – and I'm talking about last
6 year, getting T [REDACTED] to school, Denise to school and your son to school, what
7 would you do?
8 A They would get up for school. I'd drop Denise and Dewan off at
9 school, and T [REDACTED] would walk to school or, like I said, be at her friend's house.
10 Q Was T [REDACTED] on the same schedule that Denise and your son
11 were on?
12 A No.
13 Q What was her school schedule?
14 A 9:55 to 4:55.
15 Q Was that a typical school schedule at Desert Pines last year?
16 A Yes, for the freshmen.
17 Q Now, are you married?
18 A Yes.
19 Q And to whom are you married?
20 A Montry Ledford (phonetic).
21 Q And where is Mr. Ledford?
22 A In Casa Grande.
23 Q Incarcerated?
24 A Yes.

1 Q How long has he been incarcerated?
2 A In February it will be three years.
3 Q February of 2011 it will be three years?
4 A Yes.
5 Q And what was his relationship to your children before his incarceration?
6 A He was their father figure.
7 Q And for how many years had he been their father figure?
8 A Nine.
9 Q Do you know a Tyrone James?
10 A Yes.
11 Q Do you see Tyrone James in the courtroom today?
12 A Yes. With the purple shirt on.
13 Q I'm sorry?
14 A Yes. With the purple shirt on.
15 MS. KOLLINS: May the record reflect identification of the defendant,
16 Tyrone James?
17 THE COURT: The record will so reflect.
18 BY MS. KOLLINS:
19 Q How is it that you know Tyrone?
20 A I knew him in the summer when we were twelve years old.
21 Q In the summer when you were twelve years old, where did you meet
22 him?
23 A On San Marcos Street. His uncle stayed down the street from us.
24 Q Is that here in Las Vegas?

1 A Yes.

2 Q So you met him when you were about twelve. Did you continue to

3 see him through – I guess you would have been in junior high school at twelve?

4 A It was high school. Well, it was the summer going into high school.

5 Q Okay. Did you continue to see him going into high school?

6 A I seen him a couple of times around school, but that's it.

7 Q And where was that in high school?

8 A Rancho.

9 Q And what year was the last year you would have seen him at Rancho?

10 A Probably before our freshman year was up. I didn't see him after, like

11 going into tenth grade I didn't see him.

12 Q Okay. Well, can you tell me what year that is, because I don't know

13 how old you are and I don't know when you were at Rancho.

14 A I'd say about in '91.

15 Q So around 1991?

16 A Yes.

17 Q Now, after high school did you maintain a friendship with him or –

18 A No, he went his way and I went my way.

19 Q Okay. And when did you marry your husband – marry your husband?

20 A November 15th, 2008.

21 Q Okay. But he had been in your life previous to that?

22 A Who?

23 Q Your husband.

24 A Yes.

1 Q Your current husband?

2 A Yes.

3 Q So who did you meet in 2008?

4 A Tyrone.

5 Q Okay. So you ran back into him in 2008?

6 A It was about in the end of 2008, I think.

7 Q And tell me about the circumstances where you ran back into him

8 and how you got to see him in 2008?

9 A I was going to my son's godmother's house, which is his auntie, and

10 he was over there. And Tyrone was –

11 Q Your son's?

12 A My son, who is Dewan, his – Tyrone's auntie is my son's godmother.

13 Q And her name is what?

14 A Twanda Beatty (phonetic).

15 Q So you were going to Twanda Beatty's house and Tyrone was there?

16 A Yes.

17 Q And is that the first time you had seen him since high school?

18 A Yes.

19 Q Tell me about your interaction at his auntie's house that day.

20 A We were just talking. I was talking to Twanda and I said I remember

21 Tyrone from when we stayed on San Marcos Street, and that was it.

22 Q After that meeting, did you have occasion to kind of reconnect?

23 A Yes. Twanda asked could she give Tyrone my number and I said yes,

24 and we'd talk on the phone.

1 Q When you say we talked on the phone, you're referring to Tyrone?
2 A Me and Tyrone talked on the phone.
3 Q Okay. And about when in 2008 was that?
4 A It was the beginning of May.
5 Q Of 2008?
6 A I think, yeah.
7 Q Did your relationship progress or change or turn into something
8 different?
9 A It progressed. We talked more on the phone and then he came to my
10 house and visited and stuff like that.
11 Q He would come to your house and visit?
12 A Yes.
13 Q Did it progress to where it was a romantic relationship, like a dating
14 relationship?
15 A Yes.
16 Q And then when did it turn romantic or turn into a dating relationship?
17 A I'll say about the end of July; August.
18 Q Now, we're still talking about 2008?
19 A Yes.
20 Q Now, in August of 2008, where were you working?
21 A Caesars Palace.
22 Q Were you working anyplace else?
23 A K-Mart.
24 Q K-Mart here in Las Vegas?

1 A Yes.

2 Q When your relationship began to change in 2008, did Tyrone spend
3 the night at your house or was he still –

4 A Yes. He would spending the night there. He would take me to work,
5 pick me up and take me to my other job, and be there with my kids.

6 Q Okay. At the beginning of this part of your relationship in 2008,
7 how did he get along with the kids?

8 A There was no problems.

9 Q Now, was he working in August of 2008?

10 A He – I guess some landscaping or something. I know he said he was
11 working somewhere, but then he stopped working there.

12 Q He stopped working there?

13 A Yeah. I don't know what happened.

14 Q When did he stop working there?

15 A It was probably in August, I guess. It wasn't that long into –

16 Q So it wasn't that long after you started dating that he stopped working?

17 A Yes.

18 Q And did he continue to do the stuff for you that we talked about,
19 running you back and forth to work?

20 A Yes.

21 Q Okay. Now, when you were working these two jobs, was he assisting
22 you in child care for your kids?

23 A Yes.

24 Q Tell me what he would do to help you with the kids.

1 A He would be there with the kids while I'm at work. And like I said, he
2 would bring my kids up to the job with me and then he'll take me to K-Mart, and then
3 I'd get off work and then I'd come home, but on my off days me and him spent day –
4 I mean, my off days together. And the kids – his kids would come over to my house
5 with my kids.

6 Q A typical work day for you back in 2008, if you were working both at
7 Caesars Palace and K-Mart in one day, what would the schedule be like?

8 A I would work at K-Mart in the morning time about 9:00 and get off there
9 about 2:00, 2:30, sometimes 3:00, and be at Caesars Palace at midnight to eight
10 in the morning.

11 Q So did you sleep in the middle of there?

12 A I slept on my breaks.

13 Q Now, other than the landscape, did he have any other employment
14 right around that time?

15 A No. He was – He just fixed cars and stuff like that.

16 Q Okay. When you say he fixed cars and stuff like that, was that steady
17 employment –

18 A No.

19 Q – working for an employer, or was that just working sporadically?

20 A Sporadically.

21 Q Okay. Did there come a point where your relationship started to
22 change a little bit?

23 A Yes.

24 Q When was that?

1 A In January.

2 Q Of what year?

3 A Of 2010.

4 Q 2010?

5 A Yes.

6 Q Now, prior – between August of 2008 and January of 2010, was there

7 a time when the defendant maintained a permanent residence within your home,

8 or was he always back and forth?

9 A He was in my home.

10 Q He was in your home?

11 A Yes.

12 Q From when to when?

13 A He was in my home from the beginning of August until I moved out in

14 May, and then I moved into the apartment 207 on May the 20th.

15 Q Okay. So from August of 2008 until you said you moved out in May?

16 A Yes.

17 Q Is that of 2009?

18 A Yes.

19 Q Okay. And so when you moved out of that – Where was that

20 residence at?

21 A That was 3615 Lone Oak Street.

22 Q Again, here in Las Vegas?

23 A Yes.

24 Q And all your kids still living with you?

1 A Yes.

2 Q So when you moved out in May of 2009, did he go with you or no?

3 A Yes. He helped me move.

4 Q And where – Is that when you moved into the 207 address you gave

5 us previously?

6 A Yes.

7 Q Did he move into that residence with you?

8 A Yes.

9 Q And stayed there consistently through when?

10 A Until, like I said before, things started getting rocky in January.

11 Q Of 2010?

12 A In 2010.

13 Q Okay. Now, did things getting rocky cause him to change his

14 residence?

15 A He stayed – he said he was at his grandmother's house.

16 Q Okay. And his grandmother's name is?

17 A Miss Verlene (phonetic).

18 Q And when did he start to stay at his grandmother's house?

19 A In January.

20 Q Right in January?

21 A Yes. February early. Late January, the beginning of February.

22 Q Did you consider yourself broken up at that point?

23 A I just – He stayed at his grandma's house and I was at home.

24 Q Did you continue to see him?

1 A We'd talk on the phone. He'd come over occasionally.

2 Q Did something happen in – And when you say occasionally, would he

3 spend the night occasionally, or would he just come over occasionally?

4 A Spend the night and just stop by.

5 Q What, if anything, happened in April of 2010 that caused you to have

6 renewed contact with him?

7 A I was in a car accident.

8 Q And did he offer you any assistance when you were in that car

9 accident?

10 A Yes. He came to the scene of the accident.

11 Q Did he do anything else for you to help you follow up from having that

12 accident?

13 A Yes. He drove me to my lawyer's office and a couple of times to my

14 chiropractor.

15 Q So being a good guy to you?

16 A Yes.

17 Q Okay. You said to your lawyer's office and where else?

18 A To the chiropractor.

19 Q Now, up to this point did you have any impression from T [REDACTED] or

20 Denise what they felt about Tyrone being around the house?

21 MR. COX: Objection, calls for speculation.

22 MS. KOLLINS: Well, she's their mother.

23 THE COURT: Overruled.

24 THE WITNESS: What was the question?

1 BY MS. KOLLINS:

2 Q Did you -- Did the girls like Tyrone being around the house?

3 A No.

4 Q Are there specific things that they didn't like or --

5 A A couple of times they said he had came in their room, but he said he --

6 MR. COX: Objection, hearsay.

7 THE COURT: Sustained.

8 BY MS. KOLLINS:

9 Q Did Tyrone have a dog?

10 A Yes.

11 Q What kind of dog did he have?

12 A A Pitbull.

13 Q And in April/May, 2010, how old was that Pitbull?

14 A I don't know.

15 Q Was that a dog that was routinely kept at your house?

16 A No.

17 Q Had the dog been to your house?

18 A Yes.

19 Q Was he supposed to leave the dog at your house unattended?

20 A No.

21 Q Did you guys have your own dog in May of 2010?

22 A Yes.

23 Q During any of the time between January 2010 through May of 2010,
24 did you give him permission to take the Pitbull over there and leave it unattended?

1 A No.

2 Q Okay. On May 14th of 2010, do you recall if you kept your same
3 routine in terms of getting the kids to school?

4 A Yes.

5 Q What did you do on the morning of May 14th, 2010?

6 A I got up for work, got my kids ready, and I dropped Denise and Dewan
7 off at school and I went to work. I called T [REDACTED] at 8:30 to see if she was up
8 getting ready for school. She said she was going to get up in a little bit, and I hung
9 up the phone.

10 Q When you called her, what phone did you call her on?

11 A Her cell phone.

12 Q Okay. And the evening previous to May 14th of 2010, did Tyrone
13 James spend the night in the house?

14 A No.

15 Q Now, there was some discussion – Well, strike that. Did you have an
16 arrangement to borrow some money from Mr. James right around May 14th of 2010?

17 A Yes. He was going to pay my power bill.

18 Q Was that something that he had done before?

19 A Yes.

20 Q And what was your arrangement?

21 A He was going to pawn his laptop to pay my power bill, and when I got
22 paid I was going to pay it back to get his laptop out.

23 Q Okay. So how many days are we talking about that you would have
24 been paying him back?

1 A Um, that Thursday. That happened on a Friday. That Thursday.

2 Q What was your arrangement in terms of him getting you the money
3 to pay the power bill?

4 A He wasn't going to give me the money. He was taking it down to the
5 power company.

6 Q Was there any reason on May 14th of 2005 (sic) for him to go to your
7 residence, either A), to leave his dog there, or B) to go leave the cash for the power
8 bill there?

9 A No.

10 Q Was that any – Was that part – Well, sorry, I guess I drank too much
11 coffee. Did you talk to him, Go leave the money at the house?

12 A No.

13 Q Did you have a discussion that he had any permission from you to
14 leave his Pitbull at your house?

15 A No.

16 Q So what would he be doing at your house in-between you taking the
17 kids to school and – you taking the little two to school and T [REDACTED] getting up and
18 going to school?

19 A There was no reason.

20 Q Did you have any communication with him that morning that he was
21 going to go by the house?

22 A He said he was going to pay the power bill and then he was taking his
23 grandmother fishing.

24 Q Was that in a phone conversation?

1 A Yes.

2 Q And what time was that phone conversation?

3 A That was about seven something when I was getting ready for work.

4 Q During that phone conversation, did he give any indication to you that

5 he had the intent to go over to your residence?

6 A No.

7 Q Did he have a key to your house?

8 A Yes.

9 Q How long had he had a key to 207?

10 A He had it when I first moved in.

11 Q If you know, did he routinely go there or did he ever go there during

12 the day when everyone was gone?

13 A He probably did. I don't know.

14 Q You don't know, though?

15 A No.

16 Q Was it anything you ever talked about?

17 A No.

18 Q Would it be unusual for him to do that?

19 A No. He had his stuff in my – his clothes in my storage by my house.

20 Q So did he have just blanket permission to go to your house?

21 A Yeah.

22 Q Okay. But not to leave the dog?

23 A No. He took the dog and that was – I thought I wouldn't see the dog

24 again. He said the dog was with him at his grandmother's house.

1 Q Prior to May 14th of 2005 (sic), did you ever tell him it was okay, go
2 ahead and go leave your dog at my house?

3 A No.

4 Q Did you – Tell me the very next thing that happened after you dropped
5 the two little ones at school.

6 A I talked to T [REDACTED], and then I hung up the phone with her and I was
7 getting ready for work. About – I'd say about eleven – No, about 10:30 or something
8 like that I had received a text.

9 Q And from who –

10 A Well, before I received the text, I had talked to Tyrone about ten
11 o'clock.

12 Q So around ten o'clock you talked to Tyrone. We're talking about
13 Tyrone James, right?

14 A Yes.

15 Q And did you call him or did he call you?

16 A He called me.

17 Q On a work phone or a cell phone or –

18 A Cell phone.

19 Q And what did he have to say at ten o'clock?

20 A He said he paid the power bill. He was going to take his grandmother
21 fishing, but he dropped T [REDACTED] off at school. And I said okay, because he
22 dropped her off a couple of times – a few times before he picked her up from
23 school. So – and then I thought about it, I said, wait, I thought her friend was going
24 to take her to school. And he said T [REDACTED] told me that they weren't going –

1 MR. COX: Objection, hearsay.

2 THE COURT: Sustained.

3 MS. KOLLINS: Well, what the defendant –

4 THE COURT: Sustained. Maybe you could just ask a follow-up question.

5 MS. KOLLINS: Okay.

6 BY MS. KOLLINS:

7 Q What did Tyrone say to you?

8 A He said he paid the power bill and he took – he seen T [REDACTED] walking
9 and he took her to – dropped her off at school.

10 Q He seen her walking, meaning he saw her on the street or he saw her
11 – he picked her up at the house?

12 A She was getting ready to leave out of the house, or something like that.

13 Q I'm sorry? Dropped off –

14 A She was getting ready to leave out of the house.

15 Q Okay. So was it clear to you whether he had picked her up at the
16 house or saw her walking on her way to school?

17 A Yeah. He just –

18 Q Which was it?

19 A – saw her walking.

20 Q Okay. So already out of your home?

21 A Yes.

22 Q Did he tell you at during that conversation that he had been to your
23 house?

24 A He just said he paid the power bill and he saw her walking. He didn't

1 say he had dropped the dog off or anything.

2 Q Did he mention the dog at all?

3 A No.

4 Q So the conversation he had with you, was that supposedly after he
5 had already dropped her off?

6 A Yes.

7 Q Okay. You said at about 10:30, to the best of your recollection, you
8 received a text message. From whom did you receive that text message?

9 A From Denise.

10 Q Denise, your –

11 A My daughter.

12 Q – younger daughter? Okay. And without telling us what that text
13 message said, did it cause you some concern?

14 A Yes. I hung up with – I mean, I deleted – I mean, I got off my phone
15 from the text. I called T [REDACTED] because I was like, what? But I just called
16 T [REDACTED]'s phone. She was in class, and I asked her what happened. She was
17 crying and she was trying to tell me. Her teacher told her to hang up the phone.
18 I told her –

19 MR. COX: Objection, hearsay.

20 MS. KOLLINS: Effect on the listener. It's not offered for the truth.

21 THE COURT: Overruled.

22 BY MS. KOLLINS:

23 Q Her teacher told her to hang up the phone?

24 A Hang up the phone. I told her to put her teacher on the phone. Her

1 teacher got on the phone. I told her to send her to the office; something happened
2 to my daughter this morning and I'm going to get to the bottom of it.

3 Q Okay. I'm going to stop you right there because I want to ask you
4 a few questions. You said your daughter was crying?

5 A Yes.

6 Q She's your kid, you've been around her for however many years?

7 A Yes.

8 Q When you heard her crying, what did you think? I mean, how upset
9 was she? Was she like – I mean, there's a difference between I fell down and I hurt
10 my knee crying and something that's happened –

11 A A scared cry.

12 MR. COX: Object. Calls for speculation, Judge.

13 THE COURT: Overruled.

14 THE WITNESS: It was a scared cry.

15 BY MS. KOLLINS:

16 Q Had you heard that kind of scared cry from her before?

17 A No.

18 Q Did her and her teacher do as you had requested and send her to the
19 office?

20 A Yes.

21 Q And did you talk to her anymore on the phone while she was crying?

22 A No. She was getting her stuff and going to the office.

23 Q Did she tell you what was causing her that emotion?

24 A She didn't tell me that until I got to the school and I signed her out.

1 Q While you were talking to her on the phone, do you know if she was
2 still in class or was she going on her way to the principal? Do you know where she
3 was going?

4 A When I talked to her?

5 Q Yeah.

6 A She was already – she was in class.

7 Q In class. Did she hang up in class and then –

8 A The teacher hung up.

9 Q Okay. So you didn't have her very long on the phone?

10 A No.

11 Q What were her words to you?

12 A She said Tyrone tried to hurt her.

13 MR. COX: Objection, hearsay.

14 MS. KOLLINS: Judge, I think we've laid an adequate foundation for excited
15 utterance. It's within a couple hours of the assault. It's a traumatic event.

16 THE COURT: Overruled.

17 THE WITNESS: She said Tyrone tried to hurt her.

18 BY MS. KOLLINS:

19 Q Did she tell you in what way?

20 A No, because she was in class.

21 Q Okay. How long – Do you leave work?

22 A Yes.

23 Q How long does it take you to leave work?

24 A I left about eleven o'clock.

1 Q And how long – Are you at Caesars or K-Mart?
2 A Caesars.
3 Q How long did it take you to get over to Desert Pines?
4 A Twenty-five minutes.
5 Q And Desert Pines is on what street? I'm sorry if I asked you that
6 earlier.
7 A Harris and Sandhill.
8 Q What and Sandhill?
9 A I think Harris and Sandhill.
10 Q Harris and Sandhill. Okay. So it took you about twenty-five minutes,
11 half an hour to get over there?
12 A Yes.
13 Q Did you see T [REDACTED] when you got there?
14 A Yes.
15 Q Where was she?
16 A In the Dean's Office.
17 Q Okay. In the Dean's Office out in the lobby, in a secluded area?
18 What kind of –
19 A She was in a back room.
20 Q Was anybody with her in the back room?
21 A The Dean's assistant.
22 Q And without telling me what she said, what was the condition of your
23 daughter when you got there?
24 A She was still crying.

1 Q Again, being her mom, is this the kind of I fell down and hurt my knee
2 cry, or were you –

3 A No. She was scared.

4 Q Was she crying to the point that she couldn't talk, or could she
5 verbalize?

6 A She was gasping for air.

7 Q Had you ever seen your daughter like that before?

8 A No.

9 Q What did you do when you got there?

10 A I signed her out of school and I took her out of the Dean's Office and
11 we walked to my car. And that's when she told me what happened.

12 Q Was she still crying?

13 A Yes.

14 Q In your car?

15 A Yes.

16 Q Was anybody else in the car but you and her?

17 A Just me and her.

18 Q What did she tell you in the car?

19 A She said she was in her room laying down and –

20 MR. COX: Objection, hearsay.

21 MS. KOLLINS: Excited utterance, Your Honor.

22 THE COURT: Counsel approach.

23 (Bench conference begins)

24 MS. KOLLINS: She's assaulted at 8:30 in the morning. She's a 14-year-old

1 girl. She's still crying, she's still upset. She's just been raped and she has her first
2 opportunity to give any detailed account of what happened. I mean, I understand
3 that we generally admit excited utterances on a temporal basis, but I think in this
4 kind of circumstance -- and I think I briefed it before -- a child remains under that
5 stress for quite a period of time until they get to a point of safety. And she's still
6 scared, she's still upset by it, which is obvious by her reaction that her mom's
7 described. So I mean, it's our position she's still under the influence of the excited
8 event and she should be able to tell her mom what happened.

9 THE COURT: Mr. Cox?

10 MR. COX: (Indiscernible) -- conversations. I think it would just be telling the
11 same -- I think it's telling T [REDACTED]'s story again through somebody else.

12 MS. KOLLINS: I don't believe there's been any conversations because the
13 first disclosure from her is in a text message to a 14-year-old who can do absolutely
14 nothing about it. So then she gets on the phone with her mom, Tyrone tried to hurt
15 me, and she's precluded by her teacher from finishing the events, nor does she
16 want to because I'm sure she's going to stand in her eighth grade class and say my
17 mom's boyfriend put his finger and his penis inside her. She said I couldn't say that
18 there. She's going to wait until she gets a moment of privacy. But it doesn't mean
19 that the trauma or the excitement of the event is concluded.

20 MR. PANDELIS: Chris Pandelis for the State. If you'll recall T [REDACTED]'s
21 testimony, too, there was really no one she could talk to. She didn't want to talk to
22 the police officer, the teacher --

23 THE COURT: I'm going to allow it, but --

24 MS. KOLLINS: I'm not going to go over it -- (inaudible).

1 THE COURT: -- not go over the whole thing.

2 MS. KOLLINS: One general statement.

3 THE COURT: (Indiscernible). Thank you.

4 (Bench conference concluded)

5 BY MS. KOLLINS:

6 Q Pardon me, Ms. Allen.

7 A Um-hm.

8 Q Can you tell us what T [REDACTED] told you when you got in the car?

9 A She said she was in her room laying down and Tyrone came in her
10 room and threw her onto the other bed, and she tried to grab for her phone. He
11 threw it, breaking her case. He told her he would snap her neck if she screamed
12 or say anything. Then she said he ripped off her panties and drug her into the --
13 well, took her into the living room, threw her on the floor, where he took his finger
14 and inserted it in her vagina. And then he took it out and rubbed his penis across
15 her vagina.

16 Q I assume that information caused you some concern?

17 A Yes.

18 Q What was your first reaction?

19 A I was hurt.

20 Q Hurt for your child, hurt for yourself? What do you mean?

21 A I was just hurt for my child. I couldn't be there for her.

22 Q Did that information cause you to take any action?

23 A Yes. I would drive -- After she told me that in the car, I was on my way
24 to the house and I called Tyrone on his cell phone.

1 Q Were you able to reach him on his cell phone?

2 A Yes.

3 Q Did you talk to him?

4 A Yes. I told him what T [REDACTED] had told me, and he said she was lying

5 and that he would meet me. He said, Where can I meet you? And I told him meet

6 me at the house.

7 Q Did he meet you at the house?

8 A Yes, him and his grandmother.

9 Q His grandmother's name again is?

10 A Miss Verlene.

11 Q Miss Verlene. Do you know her last name?

12 A No.

13 Q Okay. How long did it take before you got to your house and he

14 brought his grandmother to the house?

15 A I pulled in and he was like probably five minutes away.

16 Q And you had T [REDACTED] with you?

17 A Yes.

18 Q What happened when you all met at your house?

19 A I got out of the car. He pulled up and he got out of the car. He

20 showed me that – He had the paper that he paid my power bill, but I was talking to

21 him about what happened. And he said T [REDACTED] was lying, and T [REDACTED] looked

22 him dead in his face and told him exactly what she had told me.

23 Q Without telling me exactly what anybody said at this point, what was

24 Mr. James' reaction to the information that you confronted him with?

1 A He was like, basically like she's lying, why would I do that? Why would
2 I tell my grandma where I'm going?

3 Q Well, did it make him happy, did it make him sad, did it make him
4 angry, did it —

5 MR. COX: Objection. Calls for speculation.

6 MS. KOLLINS: She's known him for how many years. That's a lay person's
7 opinion.

8 THE COURT: Okay. If you know, ma'am.

9 THE WITNESS: What was that?

10 BY MS. KOLLINS:

11 Q Was he happy, sad, angry?

12 A He was just like, I don't know. He just was biting his jaw, looking like
13 he was kind of getting upset.

14 Q Okay. Did this conversation take place outside?

15 A Yes.

16 Q After reiterating to you that he (sic) was lying, any other observations
17 of what you saw him doing physically?

18 A He was pacing.

19 Q What do you mean pacing?

20 A Walking back and forth.

21 Q Was that inside or outside your home?

22 A Outside. We never went inside.

23 Q Did [REDACTED] stay outside with him?

24 A No. T [REDACTED] went in the house, 'cause his grandmother said let her

1 talk to me. T [REDACTED] went in the house and locked all doors.

2 Q And so he's pacing and he's pacing, what, in your driveway, in your
3 yard?

4 A In the parking lot.

5 Q And is he saying anything while he's pacing?

6 A He was probably talking under his breath. I don't know.

7 Q Did his demeanor kind of stay that way?

8 A Uh, yeah.

9 Q How long did he stay at your house?

10 A It wasn't that long 'cause I was talking to the grandmother.

11 Q And just generally, what did the conversation with the grandmother
12 have to do with?

13 A She told Tyrone to —

14 Q Without telling me what she said, just generally what were you talking
15 to her about? The same subject matter about your daughter?

16 A Yes.

17 Q Did you make a decision to do something with all this information?

18 A Yes. I called the police.

19 Q And where did you call the police from?

20 A My cell phone.

21 Q Did you have occasion to come into our office the other day and be
22 able to listen to that 9-1-1 call?

23 A Yes.

24 MS. KOLLINS: Your Honor, may I approach the witness?

1 THE WITNESS: You may.

2 BY MS. KOLLINS:

3 Q Ms. Allen, I'm going to show you what's been marked as State's
4 Exhibit 4 for purposes of identification. It's previously been shown to defense
5 counsel. Do you recognize State's Exhibit 4?

6 A Yes.

7 Q What is that?

8 A That's my 9-1-1 call.

9 Q Okay. And how is it that you know that that particular disk contains
10 your 9-1-1 call?

11 A My initials right here.

12 Q Your initials, and you dated it the 15th of September, 2010?

13 A Yes.

14 Q Okay. And you listened to it previously for accuracy, correct?

15 A Yes.

16 MS. KOLLINS: Move for the admission of 4 and permission to publish,
17 please.

18 MR. COX: No objection to admission or publication.

19 MS. KOLLINS: Thank you.

20 THE COURT: Four will be admitted, and go ahead and publish.

21 (Exhibit 4, the 9-1-1 call is played aloud)

22 BY MS. KOLLINS:

23 Q Ms. Allen, in your conversation with the dispatcher she asked you
24 about penetration and you told her, no, there was no penetration. unless I

1 misunderstood you –

2 A I said no.

3 Q – but then you told me that the first conversation with your daughter
4 there was penetration. So can you explain the difference?

5 A Well, when he stuck his finger in her, I really don't know. I'm not a
6 doctor, I don't know.

7 Q Okay. So that wasn't because of anything your daughter told you,
8 that was because –

9 A I didn't know.

10 Q – you didn't know. Okay. There were some voices in the background.
11 Who all was at your house when you made that call?

12 A My mother, my father, and my brother.

13 Q And were they at your house because this happened?

14 A Yes.

15 Q Did you contact them all?

16 A No. They were there – they were on their way there when I was talking
17 to T [REDACTED] after I talked to Tyrone.

18 Q After Tyrone left your house that day and after you made the 9-1-1
19 call, what happened next?

20 A The officers came to my house and they took a report, and then we
21 went to the hospital.

22 Q And when you say "we," who are you talking about?

23 A Me and T [REDACTED]

24 Q And how did you get to the hospital?

1 A The officer drove us.
2 Q A Metro police officer?
3 A Yes.
4 Q In a uniform?
5 A Yes.
6 Q In a patrol car?
7 A Yes.
8 Q Okay. And what happened when you got to the hospital?
9 A We were waiting for them to examine T[REDACTED].
10 Q Did some other police officers show up?
11 A Yes.
12 Q Not somebody in uniform, somebody in plain clothes?
13 A Yes.
14 Q Okay. And did they talk to T[REDACTED] there?
15 A The CPS lady talked to T[REDACTED] and Detective Tomaino talked to
16 T[REDACTED].
17 Q And you were not present for that conversation?
18 A No. I was in the room where they were going to examine her.
19 Q How long – Which hospital did you go to?
20 A Sunrise Hospital.
21 Q How long were you there?
22 A Oh, for some hours. I don't remember how long.
23 Q Quite awhile?
24 A Yes.

1 Q By the time you got T [REDACTED] to the hospital, had she calmed down
2 any or –
3 A She was just distance – distant; wouldn't talk or anything
4 Q Is she normally a very expressive child? Is she –
5 A Yes. She's very outgoing. Always talks a lot.
6 Q But did she talk a lot about this topic?
7 A No, only when she had to talk about it.
8 Q Some days later after her examination, did you have occasion to talk
9 to police officers again?
10 A Yes.
11 Q And why did you do that?
12 A Because I found some gloves in a Jordan box.
13 Q Where did you find those gloves?
14 A Under my bed.
15 Q In a what box?
16 A A Michael Jordan shoe box.
17 Q Okay. What kind of gloves were they?
18 A Latex gloves.
19 Q Did you put latex gloves in a Michael Jordan shoe box under your
20 own bed?
21 A No.
22 Q Had you ever seen that before?
23 A No.
24 Q Had you seen the shoe box before?

1 A Yes.

2 Q Where did the shoe box come from?

3 A Tyrone bought him some Jordans.

4 Q Is that someplace where – I mean, do you use those type of gloves
5 in your house for anything?

6 A Not in my house.

7 Q Are those gloves that you had seen in your home before?

8 A Yes. Tyrone had them – had the gloves.

9 Q When did he have them before?

10 A When he was working at Caesars Palace in December.

11 Q As part of his job?

12 A Yes.

13 Q But those are nothing you purchased and brought into your home?

14 A No.

15 Q And that was not a place where you kept them?

16 A No.

17 Q What caused you to be looking under the bed such that you found
18 them that day? Do you remember?

19 A We were – I went back to the house to get us some clothes and shoes
20 because we – T [REDACTED] didn't want to stay at the house. So I went to go get our
21 clothes and everything, and that's when I saw the box.

22 Q So from the day you left the hospital, did you all stay at your house
23 that night?

24 A Yes.

1 Q When did you first learn that T [REDACTED] didn't want to stay at the
2 house?
3 A She didn't want to stay there that night.
4 Q Did you make her?
5 A We – we were there, yes.
6 Q Where did she sleep that night?
7 A In my bed.
8 Q Is that something she routinely did?
9 A No.
10 Q Something that was not routine for her at 15?
11 A No.
12 Q What finally made you make the decision to not make her stay in the
13 house?
14 A When we got up that morning, because all through the night she
15 wouldn't sleep. She was crying.
16 Q So where did you take her?
17 A We went to my mother-in-law's house.
18 Q And your mother-in-law's name is?
19 A Helen Jones.
20 Q How long did you stay there?
21 A We stayed there for a couple of weeks.
22 Q Okay. Now, when you went back to get some clothes and you said
23 you were looking for some shoes is when you came across these rubber gloves?
24 A Yes.

1 Q Do you remember how many days after May 14th that was?

2 A It was probably a week after.

3 Q And what did you do when you found them?

4 A I called Detective Tomaino.

5 Q And what, if anything, did they do?

6 A He said –

7 Q Without telling me what he said.

8 A Oh, I'm sorry.

9 Q That's okay. Did he come to your house?

10 A Yes.

11 Q And what did he do when he came to your house?

12 A He took pictures and he took the gloves and put them in an envelope.

13 Q By May of 2005 (sic), how long had you been living at the 207

14 address?

15 A It was almost a year. May 20th would have made a year; six days

16 later.

17 Q In the year prior to May 14th of 2005 (sic), had T [REDACTED] ever not

18 wanted to stay at home for an extended period of time?

19 A Yes. She would go over her friend's house or a relative's house.

20 They always go on the weekends over there to different houses.

21 Q Okay. I guess my question is, was she – Was it because she was

22 upset like she was this –

23 MR. COX: Objection. Calls for speculation.

24 MS. KOLLINS: I think, again, the same response as before. It's her mom.

1 She knows what the catalyst to her actions are.

2 THE COURT: Overruled.

3 THE WITNESS: What was that?

4 BY MS. KOLLINS:

5 Q Okay. This time she was upset and didn't want to stay at the house,
6 is what you testified to a few minutes ago, right?

7 A Yes.

8 Q Okay. These other times she would go stay with friends or whatever,
9 was she upset the same as this time?

10 A No.

11 Q Okay. What reasons would she want to go do those things?

12 A That's something they did on the weekends, go spend the night over
13 at a family member's house or a friend's house.

14 Q Okay. So was that social?

15 A Yes.

16 Q And not the same as what we're talking about when you stayed at your
17 mother-in-law's for two weeks?

18 A No.

19 Q At the end of the two weeks, how was she about going home?

20 A She didn't still want to go home.

21 Q And did there come a point in time when you just made her go home?

22 A Yeah, we went home.

23 Q Did she continue to sleep in your room or did she sleep by herself?

24 A We slept on the couch.

1 Q The couch where?

2 A In my living room.

3 Q And would you be sleeping in the same room with her then?

4 A I would sleep on the couch that's across from her.

5 Q Okay. And how long did that go on?

6 A That – for another couple of weeks.

7 Q Was that anything that had been part of your routine at home before?

8 A No.

9 MS. KOLLINS: Court's indulgence.

10 BY MS. KOLLINS:

11 Q Prior to May of 2005 – or – Why do I keep saying 2005? I'm so sorry.
12 It's stuck in my head for some reason. Prior to May of 2010, prior to this incident,
13 did T [REDACTED] go to counseling?

14 A No.

15 Q Has she subsequently been to counseling?

16 A Yes.

17 Q And how many times subsequent to May of 2010 did she go to
18 counseling?

19 A She was going to counseling every week.

20 Q Does she continue to do so?

21 A Yes.

22 MS. KOLLINS: I'll pass the witness, Judge.

23 THE COURT: Mr. Cox?

24 MR. COX: Yes, Judge. Thank you.

1 CROSS-EXAMINATION

2 BY MR. COX:

3 Q Good afternoon, Ms. Allen.

4 A Good afternoon.

5 Q Now, prior to May 14th, did you request the key back from Mr. James?

6 A No.

7 Q Did you have your locks changed?

8 A On the day of May 14th.

9 Q Did you change the locks before May 14th?

10 A No.

11 Q So he had a key and you knew he had a key?

12 A Yes.

13 Q Now, when Ms. Kollins was talking to you earlier, there was some
14 question about whether or not you were aware of whether or not Mr. James gave
15 her a ride to school from the house or saw her walking?

16 A Um-hm.

17 Q Are you aware you gave both answers?

18 A No.

19 Q On one hand you said that, well, he saw her walking, and on the other
20 hand she was ready to go from the house.

21 A He had three different stories.

22 Q And you gave two different —

23 A What he had told me.

24 Q — it would be two different versions of your recollection, correct?

1 A Yes.

2 Q Okay. Now, as you already testified, you made arrangements with

3 Mr. James to pay a bill for you?

4 A Yes.

5 Q Now, you've been the head of the household for a number of years?

6 A Yes.

7 Q And you're responsible for bills?

8 A Yes.

9 Q When you send a bill in, whether it's a water bill or a power bill, what

10 do you send with the check?

11 A We didn't pay with a check.

12 Q I'm asking you a question, okay?

13 A Okay.

14 Q When you send bills in to – whether it's the power company or the

15 cable bill, what do you send with your check in the mail?

16 A The bill.

17 Q Yes. If you're mailing a bill in –

18 A Um-hm.

19 Q – what do you send with the check?

20 A A money order.

21 Q Okay.

22 A I don't understand what you're saying.

23 Q Okay. We'll use the example of a money order.

24 A Um-hm.

1 Q Let's say you're going to pay Cox Cable for a month's service and
2 you're going to pay with a money order.

3 A Um-hm.

4 Q Do you simply send in a money order to Cox Cable with nothing else
5 with it?

6 A No, you send your bill.

7 Q And what's that? What's the bill? What does it look like?

8 A The bill that they send you with my address and everything on it;
9 name on it.

10 Q It has your address on it. What else does it have on it?

11 A My name.

12 Q And is there also like customer identification information?

13 A Customer number.

14 Q Yeah, okay. So in this case we're talking about a power bill.

15 A Um-hm.

16 Q Now, you've paid bills in person before, have you not?

17 A Yes.

18 Q Okay. When you go pay your bill in person, what do you take with you?

19 A My address. I take my bill, but I write my name and address on a piece
20 of paper and pay it through the drive-thru.

21 Q Okay. Now, do you take your bill with you?

22 A Sometimes. Sometimes I don't.

23 Q Okay. Now, when you – If you're going by yourself, you know all your
24 identi– you know your information to provide it to the people you're paying the bill to,

1 correct?

2 A Correct.

3 Q Okay. That's at a window?

4 A No. I went through a drive-thru. I'll go through the drive-thru.

5 Q The drive-thru. Okay.

6 A Yes.

7 Q Now, on the day in question, you knew Mr. James was going to pay

8 your bill?

9 A Yes.

10 Q Where was he going to get the bill from?

11 A He didn't need the bill to go take to the power company.

12 Q Where was the bill located?

13 A The bill was in my house.

14 Q Okay. The bill was in your house. Thank you. Now, you testified that

15 you got communication from – Who was it first? Was it Denise or T [REDACTED]?

16 A Denise.

17 Q Okay. Did you call the police immediately?

18 A No.

19 Q Instead you went and you got her from school, and you testified that

20 she got into the car with you and you two were alone?

21 A Yes.

22 Q And you had a chance to hear, according to your testimony, everything

23 that T [REDACTED] says happened?

24 A Yes.

1 Q Did you call the police then?
2 A No.
3 Q Instead, you call Mr. James?
4 A Yes.
5 Q Does he take your call?
6 A Yes.
7 Q Does he agree to meet with you?
8 A Yes.
9 Q And in fact, he does meet with you with his grandmother?
10 A Yes.
11 Q Okay. Now, you had an opportunity to talk to her alone and you had
12 a chance to talk to her at your house?
13 A Yes.
14 Q And then you called 9-1-1?
15 A Yes.
16 Q Now, you didn't tell the police, I think maybe there wasn't penetration.
17 That's not what you told them, did you?
18 A I didn't tell them about a penetration. I don't know if he penetrated her.
19 Q But you did, didn't you?
20 A I didn't know if he penetrated her. I said he stuck his finger in her.
21 Q No. The operator asked you a question.
22 MS. KOLLINS: Objection, argumentative. She said what she – As to the
23 form of the question.
24 THE COURT: Sustained. Mr. Cox, if you'd like to clarify –

1 MR. COX: Okay.

2 THE COURT: – what time period you're asking about, maybe that will help.

3 MR. COX: Okay.

4 BY MR. COX:

5 Q When you called 9-1-1, the operator asked you a question. The
6 question was, Are you aware of whether or not there was penetration? Do you
7 recall that?

8 A And I said no, because I didn't know.

9 Q No. What did you – Do you remember what you said?

10 A I said no.

11 MS. KOLLINS: Objection.

12 THE COURT: Sustained.

13 BY MR. COX:

14 Q Okay. Do you recall saying: She said no?

15 A Yes.

16 Q Okay. So you didn't say, I think there wasn't penetration, you said
17 "she said no."

18 A At the time, yes.

19 Q And who is she?

20 A T [REDACTED].

21 Q Okay. So after getting the full version in the car, having the meeting
22 at your house with Mr. James and T [REDACTED], when you got on the 9-1-1 call were
23 you being deceptive with them or were you being honest with them?

24 A I was being honest to what I've heard.