

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Respondent.

Electronically Filed
Apr 10 2018 04:34 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

INDEX
JOSE AZUCENA
Case No. 74071

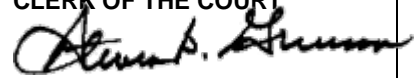
PAGE NO.

Amended Indictment filed 04/27/17.....	500-510
Court's Exhibit 4 dated 05/01/17.....	2988
Court's Exhibit 31 dated 05/08/17.....	2983-2987
Court's Exhibit 34 dated 05/08/17.....	2957-2982
Defendant's Motion in Limine to Preclude Lay Opinion Testimony that the Accusers' Behavior is Consistent with that of a Victim of Sexual Abuse Date of Hrg: 04/11/17.....	383-386
Defendant's Motion in Limine to Preclude Use of the Prejudicial Term "Victim" Date of Hrg: 04/11/17.....	336-348
Defendant's Notice of Expert Witnesses filed 03/27/17	287-332
Defendant's Notice of Witnesses filed 04/10/17	398-399
Defendant's Second Supplemental Notice of Witnesses filed 04/18/17	469-471
Defendant's Supplemental Notice of Witnesses filed 04/12/17	406-408
District Court Minutes from 02/02/17 through 08/17/17	605-649
Ex Parte Application for an Order Shortening Time Date of Hrg: 04/04/17	333-335
Ex Parte Order for Transcript filed 03/31/17.....	392
Fifth Supplemental Notice of Witnesses and/or Expert Witnesses filed 04/20/17.....	475-477
Fourth Supplemental Notice of Witnesses and/or Expert Witnesses filed 04/19/17.....	472-474
Indictment filed 02/02/17	003-014
Indictment Warrant filed 02/02/17	001-002
Indictment Warrant Return filed 02/03/17	015
Instructions to the Jury filed 05/10/17	542-586
Judgment of Conviction (Jury Trial) filed 08/24/17.....	596-600
Jury List filed 04/25/17.....	499
Jury List filed 05/08/17.....	534
Jury Notes	2955-2956

1	Media Request and Order for Camera Access to Court Proceedings filed 02/06/17.....	016-021
2		
3	Media Request and Order for Camera Access to Court Proceedings filed 02/14/17.....	022
4	Memorandum Regarding the Use of NRS 51.385 to Admit Hearsay Testimony filed 05/08/17	522-533
5		
6	Motion in Limine to Admit Scholarly Treatise on Immigration Law Date of Hrg: 04/11/17	355-369
7	Motion to Compel Production of Discovery & Brady Material filed 04/18/17	217-255
8		
9	Motion to Dismiss for Repeated and Ongoing Discovery/Brady Violations and Motion for an Evidentiary Hearing Date of Hrg: 04/24/17	478-496
10		
11	Motion to Reconsider Defendant's Motion to Compel Production of Discovery & Brady Material—Redacted filed 04/18/17	411-437
12	Notice of Appeal filed 09/18/17	601-604
13	Notice of Witnesses and/or Expert Witnesses filed 02/27/17	197-215
14	Plaintiff's Proposed Jury Instructions Not Used at Trial filed 05/08/17	535-541
15	Receipt of Copy filed 03/31/17	393
16	Receipt of Copy filed 04/07/17	397
17	Receipt of Copy filed 04/12/17	409-410
18	Second Amended Indictment filed 05/01/17	511-521
19	Second Supplemental Notice of Witnesses and/or Expert Witnesses filed 04/11/17.....	400-402
20	State's Memorandum filed 04/25/17	497-498
21	State's Opposition to Defendant's Motion in Limine to Admit Scholarly Treatise on Immigration Law	
22	Date of Hrg: 04/11/17	370-382
23	State's Opposition to Defendant's Motion in Limine to Preclude the Prejudicial Term "Victim"	
24	Date of Hrg: 04/11/17	349-354
25	State's Opposition to Defendant's Motion to Compel Production of Discovery and Brady Material	
26	Date of Hrg: 03/23/17	256-286
27	State's Opposition to Defendant's Motion to Preclude Lay Opinion Date of Hrg: 04/11/17	387-391
28		

1	State's Opposition to Defendant's Motion to Reconsider Defendant's	
2	Motion to Compel Production of Discovery and Brady Material	
2	Date of Hrg: 04/04/17	438-468
3	Supplemental Notice of Witnesses and/or Expert Witnesses filed 04/05/17	394-396
4	Third Supplemental Notice of Witnesses and/or Expert Witnesses filed 04/11/17	403-405
5	Verdict filed 05/10/17	587-595
6	<u>TRANSCRIPTS</u>	
7	Recorder's Transcript	
8	JURY TRIAL DAY 1	
8	Date of Hrg: 04/24/17	719-969
9	Recorder's Transcript	
10	JURY TRIAL DAY 2	
10	Date of Hrg: 04/25/17	970-1154
11	Recorder's Transcript	
12	JURY TRIAL DAY 3	
12	Date of Hrg: 04/27/17	1403-1496
13	Recorder's Transcript	
14	JURY TRIAL DAY 4	
14	Date of Hrg: 04/28/17	1497-1700
15	Recorder's Transcript	
16	JURY TRIAL DAY 5	
16	Date of Hrg: 05/01/17	1701-1931
17	Recorder's Transcript	
18	JURY TRIAL DAY 6	
18	Date of Hrg: 05/02/17	1932-2048
19	Recorder's Transcript	
20	JURY TRIAL DAY 7	
20	Date of Hrg: 05/03/17	2049-2241
21	Recorder's Transcript	
22	JURY TRIAL DAY 8	
22	Date of Hrg: 05/04/17	2242-2394
23	Recorder's Transcript	
24	JURY TRIAL DAY 9	
24	Date of Hrg: 05/05/17	2395-2689
25	Recorder's Transcript	
26	JURY TRIAL DAY 10	
26	Date of Hrg: 05/08/17	2690-2885
27	Recorder's Transcript	
28	JURY TRIAL DAY 11	
28	Date of Hrg: 05/09/17	2886-2900

1	Recorder's Transcript	
2	JURY TRIAL DAY 12	
	Date of Hrg: 05/10/17	2901-2917
3	Recorder's Transcript	
4	Calendar Call; Defendant's Motion in Limine to Preclude Use of the Prejudicial	
5	Term "Victim"; Defendant's Motion in Limine to Preclude Lay Opinion Testimony	
6	that the Accusers' Behavior is Consistent with that of a Victim of Sexual Abuse;	
	Motion in Limine to Admit Scholarly Treatise on Immigration Law	
	Date of Hrg: 04/11/17	694-718
7	Recorder's Transcript	
8	Defendant's Motion to Compel Production of Discovery and Brady Material	
	Date of Hrg: 03/23/17	2939-2954
9	Recorder's Transcript	
10	Defendant's Motion to Reconsider Defendant's Motion to	
	Compel Production of Discovery & Brady Materials	
	Date of Hrg: 04/04/17	665-693
11	Recorder's Transcript	
12	Grand Jury Return	
	Date of Hrg: 02/02/17	650-652
13	Recorder's Transcript	
14	Hearing	
	Date of Hrg: 04/26/17	1155-1402
15	Recorder's Transcript	
16	Initial Arraignment	
	Date of Hrg: 02/14/17	658-664
17	Recorder's Transcript	
18	Initial Arraignment; Indictment Warrant Return	
	Date of Hrg: 02/09/17	653-657
19	Recorder's Transcript	
20	Sentencing	
	Date of Hrg: 06/22/17	2918-2923
21	Recorder's Transcript	
22	Sentencing	
	Date of Hrg: 08/17/17	2924-2937
23	Reporter's Transcript	
24	Grand Jury	
	Date of Hrg: 02/01/17	023-196
25		
26		
27		
28		



TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA,)	
)	CASE NO. C-321044-1
Plaintiff,)	
)	
vs.)	DEPT. NO. II
)	
JOSE AZUCENA,)	
)	Transcript of Proceedings
Defendant.)	
)	

BEFORE THE HONORABLE RICHARD SCOTTI, DISTRICT COURT JUDGE
HEARING

WEDNESDAY, APRIL 26, 2017

APPEARANCES:

For the State: STACY KOLLINS, ESQ.
CHRISTOPHER HAMNER, ESQ.

For the Defendant: CARLI KIERNY, ESQ.
P. DAVID WESTBROOK, ESQ.

RECORDED BY: DALYNE EASLEY, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TABLE OF CONTENTS

PAGE

WITNESSES:

ELIZABETH ESPINOZA

Direct Examination by Ms. Kollins:	5
Cross-Examination by Ms. Kierny:	55
Continue Cross-Examination by Ms. Kierny:	78

YUSNAY RODRIGUEZ

Direct Examination by Ms. Kollins:	107
Cross-Examination by Ms. Kierny:	125

AMANDA MOIZA

Direct Examination by Mr. Hamner:	141
Continue Direct Examination by Mr. Hamner:	166
Cross-Examination by Ms. Kierny:	181
Redirect Examination by Mr. Hamner:	188

RICARDO RANGEL

Direct Examination by Ms. Kollins:	144
Cross-Examination by Mr. Westbrook:	148
Redirect Examination by Ms. Kollins:	162

MARIA BARAJAS

Direct Examination by Ms. Kollins:	191
Cross-Examination by Mr. Westbrook:	201

CLOSING ARGUMENTS

By Mr. Hamner:	214
By Mr. Westbrook:	219

1 WEDNESDAY, APRIL 26, 2017 AT 10:42 A.M.

2

3 THE COURT: All right. *State versus Azucena*.

4 Have a seat. *State versus Azucena*, C321044. Defendant is
5 present with his interpreter. Good morning, sir. Thank
6 you for being here.

7 All right. We need to proceed with our NRS 51.385
8 hearing. I did receive your brief. Thank you very much.

9 MR. WESTBROOK: Thank you, Your Honor.

10 THE COURT: I studied the statute and I know what
11 we're dealing with. Are we ready to proceed, counsel?

12 MS. KOLLINS: Yes, Judge.

13 THE COURT: All right. And how many witnesses did
14 you anticipate calling?

15 MS. KOLLINS: Your Honor, we have five. I will do
16 my best to get through them.

17 THE COURT: Okay.

18 MS. KOLLINS: I know what our schedule is today.

19 THE COURT: Are they English speaking or Spanish
20 speaking?

21 MS. KOLLINS: The first one is English speaking.
22 The next four are Spanish speaking.

23 THE COURT: All right. And do we have -- do we
24 need an extra interpreter for -- oh, we have an extra
25 interpreter. Okay. Very good. Thank you for being here.

1 THE INTERPRETER: Thank you, Your Honor.

2 THE COURT: All right.

3 MS. KOLLINS: Court's indulgence for just one
4 moment.

5 MR. WESTBROOK: And, Your Honor, before we start,
6 I just want to note my three objections for the record.
7 Obviously, the Memorandum can also operate as my
8 objections. The objections I noted in the Memorandum
9 should be repeated here to be contemporaneous.

10 THE COURT: The Court will note those as
11 incorporated by reference as objections today. Thank you.

12 MR. WESTBROOK: Thank you, Your Honor. So, just
13 to summarize, I am objecting to this hearing going forward
14 at all because of lack of notice as to exactly what we are
15 going to see and exactly which statements they intend to
16 introduce.

17 THE COURT: Okay.

18 MR. WESTBROOK: The rest of the objections, I
19 believe, are noted in the Memorandum and we'll also be
20 giving an objection that this is nothing more than
21 bolstering. Thank you, Your Honor.

22 THE COURT: All right. Very good. All right.
23 Your record is made.

24 MS. KOLLINS: Thank you.

25 THE COURT: Let's -- so the -- we're now

1 proceeding with the hearing under NRS 51.385. The State
2 may call its first witness.

3 MS. KOLLINS: Your Honor, the State calls
4 Elizabeth Espinoza.

5 THE COURT: Elizabeth Espinoza.

6 THE MARSHAL: Face to your right. Raise your
7 right hand.

8 **ELIZABETH ESPINOZA**

9 [having been first duly sworn, testifies as follows:]

10 THE CLERK: Thank you. Please be seated.

11 **DIRECT EXAMINATION OF ELIZABETH ESPINOZA**

12 BY MS. KOLLINS:

13 Q Good morning, ma'am. Could you state your name
14 and spell your full name for the record?

15 A Yes. It's Elizabeth Espinoza, E-L-I-Z-A-B-E-T-H
16 E-S-P-I-N-O-Z-A.

17 Q And can you tell the Court how you're employed?

18 A I'm employed as a Forensic Interview Specialist
19 with the Department of Family Services.

20 Q For the record, what does a Forensic Interview
21 Specialist do?

22 A We interview children who have been referred to
23 the Southern Nevada Children Assessment Center due to
24 allegations of abuse or exposure to violence. We use a
25 protocol called National Children's Advocacy Center to

1 interview the children. It's a very non-leading way of
2 asking questions, a very natural conversation that's
3 structured.

4 Q Okay. Is your purpose investigative?

5 A No.

6 Q Okay. What is your purpose -- what is the posture
7 you take in these interviews?

8 A We are very neutral in our conversation with the
9 children. The protocol is used to find out if something
10 did or did not happen.

11 Q I'm going to turn your attention to a series of
12 four interviews you did regarding this case, specifically,
13 first turning your attention to November 2nd of 2016. Did
14 you have occasion to interview a young lady by the name of
15 Mirabel?

16 A Yes. I did.

17 Q And how old was Mirabel on that date?

18 A I believe she was approximately 8 years old.

19 Q Okay. How did you begin that interview with
20 Maribel?

21 A I started with rapport building.

22 Q And what does that entail?

23 A Just talking to the child to get her to be
24 comfortable, to talk to her about her day or things that
25 are of interest to her, likes or dislikes.

1 Q And nothing case specific?

2 A No.

3 Q Correct?

4 And are you briefed on the facts of the cases
5 before you interview?

6 A We are given some information, yes.

7 Q Okay. So, you met Elizabeth -- or, excuse me.
8 You met Mirabel when she was 8 years old. Was that at the
9 Southern Nevada Child Advocacy Center?

10 A Yes.

11 Q And the environment of that interview room, what
12 is that like?

13 A We have a round table. She chose to sit at the
14 round table, two chairs. There are video cameras. There's
15 a recorder and we tell the child about the recorder and the
16 video cameras. We have colors and paper to help them, you
17 know, keep themselves busy, if that's what they want to do
18 when they engage in conversation.

19 Q Was Mirabel, at the beginning of that interview,
20 appropriately responsive to you? And, by that, I mean able
21 to answer your basic rapport building questions?

22 A Yes.

23 Q Okay. Did she tell you things she liked to do?

24 A Yes.

25 Q Do you remember what any of those things were?

1 A I believe she said she was -- and we're talking
2 about Mirabel. Is that right?

3 Q Yes, ma'am.

4 A Okay. I don't remember with certainty what she
5 said her likes were.

6 Q Okay. Was she able to tell you why she was there?

7 A Yes.

8 Q What did she tell you why she was there?

9 A She stated that an individual was -- who she
10 referred to as Abuelo, Grandfather, was bothering or
11 touching her.

12 Q Was bothering or touching her?

13 A Yes.

14 Q What word did she use for touching? Do you
15 remember?

16 Would it refresh your recollection to look at a
17 copy of the translation of your interview?

18 A Yes, please.

19 Q Was your -- and I guess I should ask you this.
20 Was your interview with Mirabel in Spanish?

21 A Yes.

22 Q Okay. And are you fluent in the Spanish language?

23 A Yes.

24 Q Did you bring a copy of that interview with you?

25 A I did.

1 Q Okay. Contained in your binder?

2 A Yes.

3 Q Regarding this case?

4 MS. KOLLINS: May I approach, Your Honor? Do you
5 have a copy of the statement?

6 MS. KIERNY: Yes.

7 MS. KOLLINS: Mirabel's? Okay.

8 BY MS. KOLLINS

9 Q Okay. If you could just read at or near --

10 MS. KIERNY: Just -- I apologize. A brief point
11 of clarification. When you're saying Mirabel's statements.
12 There's two labeled Mirabel.

13 MS. KOLLINS: We're talking about the one with
14 Mirabel and Yusnay because Mar -- remember we told you
15 there was a mistranscription. So, Maridel's interview, she
16 stands by herself.

17 MS. KIERNY: Okay.

18 MS. KOLLINS: Even though it's labeled Mirabel.

19 MS. KIERNY: Okay.

20 MS. KOLLINS: And Mirabel is with -- is the same
21 transcript with Yezlene.

22 MS. KIERNY: I don't --

23 MS. KOLLINS: Yatziri. I'm sorry.

24 MS. KIERNY: Yes.

25 MS. KOLLINS: Okay.

1 THE COURT: Are those two different dates, those
2 two transcripts?

3 MS. KOLLINS: No. And probably should have given
4 the Court a family tree because it is just a bit confusing.
5 There are two twins. Mirabel and Maridel. When the
6 transcriptions were done by who transcribes them, they
7 labeled both transcripts Mirabel.

8 THE COURT: Okay. So, you've handed this witness
9 the transcript that was appropriately designated for
10 Mirabel.

11 MS. KOLLINS: That is correct.

12 THE COURT: Go ahead and proceed.

13 MR. WESTBROOK: Your Honor, before we actually
14 proceed, I just have a suggestion. This might make the
15 transcriptionist's job a little bit easier. At this point,
16 could we actually get full spellings of all the children
17 here because you have two Y sounds, a Mirabel and a
18 Maridel, and it would be a shame to have a transcript
19 that's unclear because we're not sure exactly who we're
20 talking about because of what would be completely
21 understandable, misspellings or confusions.

22 THE COURT: Yep. I'll let Ms. Kollins proceed how
23 she deems appropriate, but I think your suggestion makes
24 some sense. But, anyway, --

25 MR. WESTBROOK: Thank you, Your Honor.

1 THE COURT: -- go ahead and proceed.

2 MS. KOLLINS: Okay.

3 BY MS. KOLLINS:

4 Q Referring you to page 6 of the transcript, if it
5 would refresh your recollection. I asked you what word she
6 used to describe touching.

7 A Yes.

8 Q Does that help refresh your recollection?

9 A Yes.

10 Q What word did she use?

11 A Molestando, which means -- in English, means
12 molesting.

13 Q Okay. And she referred to the person as
14 Grandfather?

15 A Yes. She did.

16 Q Okay. What other conduct when she was describing
17 early on while she was present in the interview did she
18 talk about regarding Grandfather?

19 A That he would show his thing.

20 Q Would she tell you what he would do with his thing
21 besides show it?

22 A She said that he moved it up and down with his
23 hand and she used the word, jugando, which means play.

24 Q Did she say what she did when he would show his
25 thing?

1 A She stated she would try to look the other way or
2 sometimes she was on her scooter when he would do that.

3 Q Did -- when she was saying thing, did she use the
4 word, Spanish word, cosa?

5 A Yes.

6 Q Okay. And what did you take that to mean in
7 translation?

8 A His penis.

9 Q His penis? Okay.

10 And was she able to describe his penis for you?

11 A I believe she described it as cafecito, which was
12 brown in color.

13 Q Could you spell that word for the court reporter?

14 A Yes.

15 Q Thank you.

16 A Cafecito, I believe, is spelled C-A-F-E-C-I-T-O.

17 Q Did she tell you where this happened?

18 A She stated it was while she was outside of the
19 apartment complex, outside near his apartment.

20 Q Did she use the word apartment or house?

21 A House.

22 Q Okay. Did she tell you early on in that
23 conversation whether or not she felt safe telling her
24 mother?

25 A No. She did not.

1 Q What did she tell you about if it was okay to
2 tell?

3 A I can't remember the exact wording she used but
4 she explained there was -- in her own words, there was a
5 threat made about what would happen to their mothers.

6 Q You said you didn't remember what she said. Would
7 it refresh your recollection to review the transcript of
8 her interview?

9 A Yes. Please.

10 Q I'm referring you to page 8. Just read that to
11 yourself and then I'll ask you some questions.

12 [Pause in proceedings]

13 BY MS. KOLLINS:

14 Q Did that help you out?

15 A Yes.

16 Q And what did she say about telling?

17 A She stated that if they told, their mothers would
18 be killed.

19 Q Did she mention being taken away to a faraway
20 place?

21 A Yes. She did.

22 Q Okay. Did she have a name for the person that had
23 told her he would kill moms and he would take her to a
24 faraway place?

25 A Yes.

1 Q What did she call him?

2 A Don David.

3 Q Don David.

4 A Yes.

5 Q Okay. When she had described to you previously
6 him pulling his thing out, which you took to mean penis.
7 Correct?

8 A Yes.

9 Q Okay. Did she -- you mentioned before that she
10 said that happened outside the apartment. Did she ever say
11 anything to you about that happening inside the apartment?

12 A Yes.

13 Q Okay. Did she tell you who would be around when
14 that would happen?

15 A Yes. She did.

16 Q Who did she tell you?

17 A She named other children, Yezlene, Yatziri,
18 Mirabel, and, at some point, she named three boys also
19 being present when he would show his thing.

20 Q You said that she mentioned Mirabel. Do you mean
21 she mentioned her twin, Maridel?

22 A Yes.

23 THE COURT: Okay. Why don't you spell that?

24 MS. KOLLINS: Can you spell Maridel for the
25 record?

1 THE WITNESS: I remember it being spelled as M-A-
2 R-I-B-E-L [sic], B as in boy.

3 BY MS. KOLLINS

4 Q Okay. We're interviewing Mirabel, with a B.
5 Correct? B as in boy.

6 A The one we're referring to right now I'm
7 understanding as Mirabel.

8 Q Correct. And when she is referring to her sister
9 in her statement, who is she referring to?

10 A Maribel [sic].

11 Q Maridel, her sister? Not referring to -- she's
12 not referring to herself?

13 A She's referring to her sister, but the way I
14 remember listening to that name was Maribel [sic], with a B
15 as in boy, not D.

16 Q Okay. Just the enunciation. Okay. So, that's
17 what your recollection is what she said, but it was --
18 still your understanding she was referring to her twin
19 sister?

20 A Correct.

21 Q Okay. She mentioned some boys that were around.
22 Do you remember those boys' names?

23 A Yes.

24 Q Could you just put those on the record for us?

25 A Orlando, Juanito, and Leo.

1 Q Thank you. Did she mention anything to you in
2 this conversation about candy?

3 A Yes.

4 Q What did she tell you about candy?

5 A In her own words, she stated something about he
6 would ask them if they wanted candy or would give them
7 candy.

8 Q Did she say whether or not she took the candy?

9 A I don't recall if she took it.

10 Q Did she tell you what he did with the candy before
11 he gave it to them?

12 A I don't recall what she stated about what he did
13 with the candy.

14 Q Okay. Did Mirabel tell you anything about
15 Yeziene?

16 A I remember one of them telling me something about
17 Yeziene.

18 Q Okay. Would it refresh your recollection to
19 review the transcript of Mirabel?

20 A Yes.

21 Q Okay. And while she's doing that, I'll just make
22 a record so everyone is clear. Mirabel is M-A-R-I-B-E-L
23 [sic], B as in boy. Maridel is M-A-R-I-D-E-L, D as in dog.

24 THE COURT: All right. What are you basing that
25 on?

1 MS. KOLLINS: I was just making a record while she
2 was reviewing the transcript. Just --

3 THE COURT: Oh. All right.

4 MS. KOLLINS: -- trying to move along.

5 BY MS. KOLLINS

6 Q What did Mirabel tell you about Yezlene?

7 A Am I able to refer to that transcript?

8 Q If it will refresh your recollection.

9 I'm looking at page 15, if that helps. I know
10 it's a long transcript.

11 A And you're asking me to review Mirabel's or
12 Maribel's [sic]?

13 Q The same interview we're on. Mirabel's. And I'm
14 asking you to tell us what Mirabel said about Yezlene.

15 A What Mirabel indicated to me was that Don David
16 grabbed Yezlene by the hand, put her in a room, put tape on
17 her mouth and on her feet, and was kissing her body.

18 Q Kissing or touching or both? Maybe I didn't write
19 it --

20 A I have kissing.

21 Q Now you actually interviewed three of these young
22 ladies in the same day. Correct?

23 A Four.

24 Q Four? Interviewed four total, but three were the
25 same day and one was another day?

1 A I believe four were the same day and another one
2 was another day.

3 Q Okay. All right. My mistake. Four and one.

4 Now, right after you interviewed Mirabel, you
5 interviewed Yez -- Yatziri. Correct?

6 A After I interviewed Mirabel, I interviewed
7 Yatziri.

8 Q And in the transcription of that, both of those
9 kids were never in the same room. Correct?

10 A Correct.

11 Q Okay. Just the transcript was put on one CD and
12 issued by the transcriptionist as one transcript?

13 A Correct.

14 Q And how do you spell Yatziri?

15 A Yatziri, I have it spelled at Y-A-T-Z-I-R-I.

16 Q Did anyone ever tell you it was spelled with a J?
17 J-A-T-Z-I-R-I?

18 A I don't recall.

19 Q And on November 2nd of 2016, Yatziri was 9 years
20 old. Is that correct?

21 A Yes.

22 Q And the same questions I asked you regarding the
23 room and the environment. Same room at the Child Advocacy
24 Center?

25 A Yes.

1 Q Okay. Nobody else present?

2 A No.

3 Q Go through the same stages of the interview
4 process with Yatziri?

5 A Yes.

6 Q Okay. She's a little bit older than the previous
7 child you interviewed. Correct?

8 A Yes.

9 Q Okay. What was her demeanor like?

10 A Her demeanor was, I remember, was appropriate,
11 humble.

12 Q Was she appropriately responsive to you? And, by
13 that, I mean able to lend context to your questions. Like,
14 if you asked her, what her name was, she didn't say:
15 Purple?

16 A Correct.

17 Q So, she could under -- follow your questions. And
18 you -- did you speak to her in Spanish?

19 A Yes.

20 Q Okay. Did you go through the rapport building
21 process with her?

22 A Yes. I did.

23 Q Okay. Did she know the reason she was there to
24 speak to you?

25 A Yes.

1 Q And what did she tell you about that?

2 A She stated that a man was touching them and I
3 believe she called him Abuelo.

4 Q And Abuelo is A-B-U-E-L-O?

5 A Yes.

6 Q And what is the English translation for Abuelo?

7 A Grandfather.

8 Q Okay. And she said: He's touching us.

9 A Yes.

10 Q Did she say where that she was being touched?

11 A She said she was being touched on her cola,
12 referring to her vagina.

13 Q Did she talk to you about any threats that Abuelo
14 made?

15 A Yes. She did. And I can't remember exactly what
16 her words were, but she did express a threat.

17 Q Okay. Would it refresh your recollection to
18 review the transcript?

19 A Yes, please.

20 Q I'm referring you to page 37 of the dual
21 transcript.

22 [Pause in proceedings]

23 BY MS. KOLLINS:

24 Q Have you located that, ma'am?

25 A I see page 36 of Yatziri's interview, but I don't

1 see --

2 Q I'm sorry. 37.

3 A 37. Thank you.

4 [Pause in proceedings]

5 BY MS. KOLLINS:

6 Q Did you --

7 A Okay.

8 Q Were you able to locate that?

9 A Yes.

10 Q What did Yatziri indicate to you that Don David
11 had said or that Abuelo had said to her?

12 A That if -- they were not -- if they did not allow
13 themselves to be touched, that their moms would be killed
14 or something would happen to them.

15 Q Did she also tell you that he did a lot of things
16 for them?

17 A Yes. She did.

18 Q Did she indicate to you a name that Abuelo had for
19 them, like a pet name?

20 A Yes.

21 Q What was that pet name?

22 A My Queens or Princesses.

23 Q Okay. Did she give him another name besides
24 Abuelo?

25 A Don David.

1 Q Did she tell you who this was happening to?

2 A Yes.

3 Q Who did Yatziri indicate to you things were
4 happening to?

5 A To both her sisters, Mirabel, Maribel [sic],
6 Yezlene.

7 Q Did she indicate to you where on her body she had
8 been touched?

9 A Yes.

10 Q Where did she indicate to you?

11 A On her cola, referring to her vagina.

12 Q Okay. Did -- and she indicated to her the cola is
13 where she peed from?

14 A Correct.

15 Q Okay. In the translation it says butt, in the
16 written transcript, but did you understand her to mean
17 vagina, just based on what she was indicating to you at
18 least visually?

19 A The function of it is what allowed us to determine
20 it was the vagina she was referring to.

21 Q Did she indicate what part of grandpa's body he
22 used to touch her?

23 A Yes.

24 Q What did she say?

25 A She said his hand and his fingers.

1 Q Did she indicate to you whether or not there was
2 any movement by his hand?

3 A Yes.

4 Q What did she say?

5 A She described -- I believe the word she used was
6 sicurlos, circular motions.

7 Q Okay. Did she indicate whether it happened over
8 or under his clothes -- under --

9 A She said --

10 Q -- her clothes?

11 A She said both. On top and under.

12 Q Okay. Did she discuss with you grandpa paying for
13 things and why that meant it was okay to touch? Those are
14 my words, not necessarily her words.

15 A I believe she did.

16 Q I'm specifically referring to what's outlined on
17 page 40. Would it refresh your recollection to review that
18 because --

19 A Yes, please.

20 Q -- that could be a bad question by me. I just
21 don't know how else to ask it.

22 [Pause in proceedings]

23 BY MS. KOLLINS:

24 Q Were you ale to review that?

25 A Yes.

1 Q I'm sorry.

2 What did she tell you that grandpa said about
3 paying for things?

4 A He said he paid for everything for parties, for
5 trampolines, so that they could be touched.

6 Q Did she tell you how old she was when this
7 happened?

8 A I believe she said 8 years old and, at the time,
9 she was 9 when I interviewed her.

10 Q Did she also indicate to you that it happened when
11 she was 9? I'm looking at page 41, if that would refresh
12 your recollection?

13 A Yes, please.

14 [Pause in proceedings]

15 MS. KIERNY: I'm sorry. Was that 41 or 49?

16 MS. KOLLINS: 41.

17 BY MS. KOLLINS:

18 Q Were you able to review that?

19 A Yes.

20 Q Okay. Did she also indicate to you she was 9
21 years old?

22 A Yes.

23 Q Okay. And she indicate that she was 9 years old -
24 - 7 or 8 and 9 a couple of times in this interview. Is
25 that correct?

1 A Yes.

2 Q Okay. Indicated to you it had been going on for a
3 little while?

4 A Yes.

5 Q Okay. Did she talk to you about showing his --
6 her word, thing?

7 A Yes.

8 Q Okay. Did she use the Spanish word, cosa?

9 A Yes.

10 Q Okay. And what did she tell you about that?

11 A She described it -- I believe she was the one that
12 described it as looking like a weenie.

13 Q Okay. And did she indicate to you where that
14 happened? Was she able to tell you that?

15 A I believe she stated it happened in -- either
16 outside or inside or both.

17 Q Is that your recollection or --

18 A That's my recollection.

19 Q Okay. Did she ever indicate to you it happened
20 inside his house as well?

21 A Yes.

22 Q Okay. Did she describe for you what the weenie
23 looked like?

24 A I don't recall. I would have to look at the
25 transcript.

1 Q Would it refresh your recollection to review page
2 42?

3 A Yes.

4 Q Thank you.

5 [Pause in proceedings]

6 BY MS. KOLLINS:

7 Q Do you see anything on page 42 that indicates that
8 she gave you some descriptors of the weenie?

9 A She told me it looked brown.

10 Q Okay. Did she tell you where it came from?

11 A From his front area.

12 Q I want to jump ahead just a little bit. Did she
13 talk to you about candy or chocolate or anything like that?

14 A She did.

15 Q What did she tell you about chocolate or candy?

16 A That that was offered to them when this was
17 happening.

18 Q And what do you -- when you say this, what do you
19 mean?

20 A The candy. That candy was offered to them.

21 Q You said candy was offered to them when this was
22 happening.

23 A When the touching or the molesting was going on.

24 Q Okay. Now, yatziri had not used the Spanish word
25 for molest, had she? To you?

1 A I don't remember the --

2 Q You don't remember?

3 A -- specific word, but --

4 Q Okay.

5 A -- she described as seeing his thing and having
6 her cola being touched.

7 Q Okay. Did she describe for you who she went to
8 Abuelo's house with?

9 A Yes.

10 Q And who was that?

11 A Her sisters and Yezlene.

12 Q Did she indicate whether or not she had seen
13 anybody else being touched?

14 A Yes.

15 Q And who did she indicate to you that she had seen
16 being touched?

17 A Her two sisters, Mirabel and Maribel [sic].

18 Q And I apologize.

19 [Pause in proceedings]

20 BY MS. KOLLINS

21 Q Okay. I did not ask you that.

22 Did she indicate to you during this interview what
23 parts of her body were being touched?

24 A Her cola.

25 Q And did you take cola to mean vagina?

1 A Yes.

2 Q Okay. Did she say where that happened?

3 A Yes.

4 Q Where did she indicate to you that it happened?

5 A Inside his house.

6 Q His, being Abuelo's or Grandpa's?

7 A Yes.

8 Q I apologize. Did I ask you whether or not she

9 indicated to you she saw her sisters being touched?

10 A Yes.

11 Q Yes, she said that and that's accurate?

12 A Correct.

13 Q Okay. Was Yatziri able to tell you whether or not

14 Abuelo touched her over or under the clothes?

15 A Yes.

16 Q What did she tell you?

17 A She said it happened both.

18 Q Okay.

19 A Over and under.

20 Q Okay. And did she indicate to you what body part

21 that grandpa used?

22 A Yes.

23 Q What did she say?

24 A His hand; specifically, the fingers.

25 Q Okay. Was she able to describe for you the

1 movement, if any, of his hands?

2 A She used the word circular and desesperado, like
3 desperately moving with his fingers.

4 Q And desesperado, that's desperately in Spanish?

5 A Yes.

6 Q Can you spell that for the court reporter?

7 A Yes. Desesperado, D-E-S-E-S-E -- I'm sorry. I
8 have to write it to spell it.

9 Q Do you need a pen, ma'am?

10 A Yes, please. I don't want to give the incorrect
11 spelling.

12 It's D-E-S-E-S-P-E-R-A-D-O.

13 Q Did she tell you whether or not el guapo was
14 giving -- or, Abuelo, excuse me, was giving them candy?

15 A Yes.

16 Q What kind of candy did she indicate they were
17 getting?

18 A Kit Kat.

19 Q Okay. Did she indicate what other part of her
20 body was being touched other than what we've talked about?

21 A I don't believe she named any other body part
22 other than her cola being touched.

23 Q Okay. Did she indicate whether or not she was
24 being kissed?

25 A I do -- if I refer to the transcript I can tell

1 you.

2 Q Would it refresh your recollection to do so?

3 A Yes, please.

4 Q Specifically, I'm looking at page 54.

5 A Thank you.

6 Q Does that refresh your recollection?

7 A Yes.

8 Q And what, if anything, did she tell you about
9 kissing?

10 A He -- Abuelo, Don David, kissed her on the mouth.

11 Q OkDid she tell you how old she was the last time
12 something happened?

13 A I don't recall how old she was.

14 Q Would it refresh your recollection to review the
15 transcript?

16 A Yes, please.

17 Q Specifically, I'm referring to page 55.

18 A She stated she was 9 years old.

19 Q Okay. Did she indicate, if anything, what Grandpa
20 would do with the chocolate before he gave it to them?

21 A I don't recall.

22 Q Would it refresh your recollection to review the
23 transcript?

24 A Yes, please.

25 Q Referring your attention to pages 55 and 56, if

1 you could -- actually, and 57. If you could just read
2 those to yourself and see if that refreshes your
3 recollection regarding what action Abuelo took with the
4 chocolate.

5 [Pause in proceedings]

6 MS. KIERNY: Your Honor, I know we didn't do it
7 before, but I would like to exclude -- invoke the
8 exclusionary rule if there's anybody related to this case,
9 I don't want them to be in and out for this hearing.

10 THE COURT: That seems appropriate. Are there
11 witnesses that are in the courtroom for this proceeding?

12 MS. KOLLINS: Not that I know of, Your Honor.
13 That's what I was checking on.

14 MR. HAMNER: She's just an intern with our Victim
15 Witness Office.

16 MS. KIERNY: Okay.

17 MS. KOLLINS: Okay.

18 MS. KIERNY: That's fine, Your Honor. I
19 apologize.

20 THE COURT: No problem.

21 BY MS. KOLLINS

22 Q Does that reflect -- refresh your recollection,
23 Ms. Espinoza?

24 A Yes.

25 Q What did she tell you that Abuelo did with the

1 chocolate before he turned it over?

2 A She explained that the chocolate was already
3 opened, that there was something wrong about it, and she
4 described something being very red and that it smelled.

5 Q Did she indicate to you that he put the chocolate
6 inside?

7 A I don't remember specifically in this page, but,
8 at some point, the child described that the chocolate was
9 put in Yezlene's vagina.

10 Q Okay. And I'm looking at page 55 and 56. Perhaps
11 I misinterpreted what it said. If you could just review
12 that for me?

13 [Pause in proceedings]

14 BY MS. KOLLINS:

15 Q Does that refresh your recollection?

16 A Yes. It does.

17 Q Okay. So, when I read that, literally, the
18 translation said: He put -- and I'm not trying to testify
19 here. I'm just trying to clarify and there's no jury here.
20 So, he put it -- he put inside and then another time she
21 says: He put it inside.

22 So, did you -- was that in reference to Abuelo
23 putting the chocolate inside somewhere on his person or is
24 that a reference to something else that was lost in the
25 translation and I'm reading it incorrectly?

1 A It's a reference to the child stating that a
2 chocolate was placed inside her part, inside her --

3 Q Okay.

4 A -- vagina.

5 Q Okay. Did she talk to you about seeing things on
6 a telephone?

7 A Yes.

8 Q What did she tell you about seeing things on a
9 telephone?

10 A She stated she saw on Mr. Don David's phone two
11 individuals touching -- or not touching. Kissing their
12 things.

13 Q Did she indicate to you whether or not those
14 people in that video had clothes on?

15 A I'd have to look at her transcript to remember
16 what she specifically said about it.

17 Q Would it refresh your recollection to do so?

18 A Yes, please.

19 Q I'm looking at page 61.

20 A She stated that the people looked beachy and she
21 described that word as no clothes on.

22 Q Okay. Did she talk to you about Don David saying:
23 Don't tell your grandmother, referring to Don David's wife?
24 Did she talk to you about that?

25 A I don't recall her talking about Abuela.

1 Q Okay. Would it refresh your recollection to
2 review the transcript?

3 A Yes, please.

4 Q I'm referring you to page 63.

5 A I recall. Thank you.

6 Q What does -- what did she tell you that Don David
7 said about grandmother?

8 A Don't tell grandmother or your mother because they
9 can take me to jail, is what she said.

10 Q Did she tell -- did Yatziri tell you why she was
11 afraid to talk about this?

12 A She did, but I don't remember what she referenced
13 to.

14 Q Would it refresh your recollection to review the
15 transcript?

16 A Yes, please.

17 Q I'm referring you to page 67.

18 [Pause in proceedings]

19 BY MS. KOLLINS:

20 Q Did that refresh your recollection?

21 A Yes.

22 Q What did she tell you about being afraid to tell?

23 A She said she was afraid they would hit her or hurt
24 her or not let her go out again and that her father would
25 kill him if she told.

1 Q Okay. Afraid she'd be in trouble, essentially?

2 A Yes.

3 Q Okay. That is Yatziri.

4 Now, there is a second twin that you interviewed

5 that day as well. Correct?

6 A Yes.

7 Q All right. And I spelled it wrong before. So

8 we're going to spell it again. Her name is Maridel, M-A-R-

9 I-D, as in dog, -E-L. She looks the same or similar to the

10 other sister. Correct?

11 A Yes.

12 Q Okay. Obviously both the same age?

13 A Yes.

14 Q Okay. Interviewed her, again, in the same

15 facility?

16 A Yes.

17 Q Did you go through the same stages we discussed

18 earlier, about forensic interviewing, the rapport building,

19 the open-ended questions?

20 A Yes.

21 Q Did Maridel know why she was there?

22 A Maribel [sic] knew why she was there, yes.

23 Q Okay. You're calling -- for the record, you're

24 calling her Maribel because that is the trans -- that is

25 how you understood her name to be but you are not confusing

1 her with the prior child that we are talking about.

2 Correct?

3 A Correct.

4 Q Would it be too onerous to call her Maridel for
5 purposes of this portion of the hearing so that we don't
6 get confused when people try to read this later? I
7 understand what you heard the name to be, but the
8 transcript is incorrect. So, can we do that?

9 A Yes.

10 Q Okay. Thank you.

11 A Mm-hmm.

12 Q What did Maridel tell you the reason was for her
13 coming to see you?

14 A Because a -- Abuelo, who she also referred to as
15 Don David, was doing stuff to them and she described how
16 her cola was being touched.

17 Q Okay. Did she tell you where he lived?

18 A She -- I can't remember what word she used, so I
19 would have to refer to the transcript.

20 Q Would it refresh your recollection to do so?

21 A Yes, please.

22 Q Page 13.

23 [Pause in proceedings]

24 THE WITNESS: She stated: He lived in the back.

25 BY MS. KOLLINS:

1 Q Okay. Did she indicate to you early on whether he
2 gave them candy?

3 A Yes.

4 Q What did she tell you about that?

5 A She stated that he gave them Kit Kats.

6 Q Okay. Did he [sic] indicate to you what part of
7 his body -- or did she indicate what part of his body he
8 used to touch her?

9 A Yes.

10 Q What did she say?

11 A His hand.

12 Q Okay. And you said that she used the word, cola,
13 as the part being touched?

14 A Yes.

15 Q Is the translation -- and this is a translation
16 issue, too. In the transcript it says butt. Is that cola?

17 A Correct.

18 Q Okay. And did she indicate to you what she used
19 her butt for?

20 A Yes.

21 Q What did she say?

22 A The correct word -- I would have to refer but she
23 stated it was to poop.

24 Q Did she --

25 A I'm sorry. Rephrase the question, please.

1 Q I'm sorry. Okay. When she said, my cola was
2 getting touched, the translation is thing or butt. Is that
3 correct?

4 A Mm-hmm.

5 Q Okay. Did you ask her what her butt was used for?

6 A Yes.

7 Q And you're saying now that she told you poop?

8 A I'm sorry. Because I'm thinking in Spanish. So,
9 when you ask me cola, I'm thinking another term. So, the
10 function she described for cola is urinate.

11 Q Okay.

12 A So, miar [phonetic] is what she used.

13 Q Okay. And you indicate -- you told me that she
14 said touched with his hand.

15 A Yes.

16 Q Did she tell you over or under the clothes?

17 A It was over her clothes.

18 Q Okay. Did she tell you who was around when this
19 happened?

20 A Yes.

21 Q Who did she indicate to you was around?

22 A Her sisters, Yatziri, and Yezlene, and I believe
23 she may have mentioned Litzi [phonetic] as well.

24 Q Okay. So, her twin sister and Yatziri and
25 Yezlene?

1 A Correct.

2 Q And Yezlene is not a sister. Correct?

3 A Correct.

4 Q Okay. Did she tell you how old she was when it
5 happened?

6 A She did.

7 Q Do you recall what she said to you?

8 A Seven or eight.

9 Q Okay. Did she tell you how many times it
10 happened?

11 A She stated: It happened more than once.

12 Q Okay. Did she indicate whether or not she saw
13 video on a phone?

14 A Yes.

15 Q Could she remember what was on the phone?

16 A She stated that it was individuals and she used a
17 word for it, but I can't remember the exact word, were
18 kissing each other down there or something like that.

19 Q Okay. Did she tell you whether or not other girls
20 were there when she got touched?

21 A When they got touched?

22 Q When she was touched, did she indicate to you
23 whether or not there were other girls present, if you
24 remember?

25 A She did.

1 Q Would it refresh your recollection to review the
2 transcript?

3 A Yes, please.

4 Q Referring you to page 42.

5 A She named her sister, Yatziri, Yezlene, and
6 Mirabel.

7 Q Okay. Now, I just -- in this last interview that
8 we discussed, and I don't know if I asked you this question
9 at the beginning or not, so I apologize. Did this child --
10 was she contextually appropriate with you? Was she able --

11 A Yes.

12 Q -- to respond to your questions?

13 A Yes.

14 Q Okay. Did she use language that you're familiar
15 with of a child of that age?

16 A Yes.

17 Q Okay. And I'm going to pose the same questions
18 about the prior two interviews that we discussed.

19 How many kids have you interviewed over the course
20 of your career?

21 A Close to 1,000.

22 Q Okay. So, in looking at those interviews and
23 interacting with those children, was Yatziri age
24 appropriate with you?

25 A Yes.

1 Q Okay. And what about the first twin, Mirabel?

2 A Age appropriate as well.

3 Q You also interviewed a child by the name of
4 Yezlene. Is that correct?

5 A Yes.

6 Q And that was also on November 2nd of 2016?

7 A Yes.

8 Q Same venue at the Child's Advocacy Center?

9 A Yes.

10 Q Okay. And did you also conduct this interview in
11 Spanish?

12 A Yes.

13 Q Was Yezlene age appropriate with you?

14 A Yes.

15 Q Was she contextually appropriate? In other words,
16 in a state of mind where she could respond to the question
17 you were asking?

18 A Yes.

19 Q Okay. Appropriately responsive.

20 What -- do you know how old Yezlene was on that
21 day?

22 A I don't recall her age.

23 Q Okay. We'll get back to that --

24 A But --

25 Q Go ahead.

1 A Eight years old.

2 Q Eight years old? Okay.

3 Did Yezlene know why she was there?

4 A Yes.

5 Q What did she tell you why she was there?

6 A Because an individual by the name of Don David was

7 doing stuff to them.

8 Q Okay. Did she indicate to you what stuff he was

9 doing?

10 A That he was touching her thing.

11 Q Okay.

12 A And she referred to it as cosa.

13 THE COURT: Okay. Who are we talking about now?

14 MS. KOLLINS: Yezlene.

15 THE COURT: Yezlene. Spell that one.

16 MS. KOLLINS: Y-A-Z-L-I-N-E [sic].

17 THE COURT: All right. Thank you.

18 BY MS. KOLLINS

19 Q That he was touching her thing?

20 A Yes.

21 Q And she used the word cosa?

22 A Yes.

23 Q And what did you understand that to mean from your

24 conversation?

25 A Vagina.

1 Q Okay. Did she -- in the early part of the
2 interview, did she indicate to you whether or not she was
3 being kissed?

4 A Yes.

5 Q What did she tell you about that?

6 A That she was kissed on the mouth.

7 Q Okay. Did she talk to you, the early part of the
8 interview, about candy?

9 A Yes.

10 Q What did she tell you about that?

11 A That they were given candy or that Don David gave
12 them candy.

13 Q Okay. Did she discuss in the early part of the
14 interview seeing Don David's thing? And I'm -- would it
15 refresh your recollection to take a look at that?

16 A Yes. I was actually looking at it.

17 Q Page 2. That's what I'm referring to.

18 A She stated that he showed them their -- his thing.

19 Q Okay. Did she indicate -- and you said she called
20 him Don David?

21 A Yes.

22 Q And did she tell you where he lived?

23 A I don't recall if she specifically told me where
24 he lived.

25 Q Okay. Would it refresh your recollection to

1 review the transcript?

2 A Yes, please.

3 Q I'm referring you to page 3.

4 A She stated: He lives around the corner from them.

5 Q Now you mentioned previously that she said he
6 touches me on my thing?

7 A Yes.

8 Q Okay. And did you -- what did you take that part
9 of her body to mean from what she was telling you because
10 it was a little -- the way I read it, it was a little
11 confusing, the -- when it's translated.

12 A She is referring to her vagina when she's calling
13 it her thing.

14 Q Okay. Did she talk to you about tape?

15 A Yes. She did.

16 Q What did she tell you about tape?

17 A She stated Don David put tape on her mouth, on her
18 hands, and on her legs, and that the tape was white.

19 Q Did she tell you where that happened?

20 A Yes. She did.

21 Q What did she tell you?

22 A She stated it happened in his bedroom, in his
23 house.

24 Q Okay. Did she say what happened to her while the
25 tape was on?

1 A Yes.

2 Q What did she tell you?

3 A She stated he took off her pants, her underwear,
4 and touched her thing with his hand and he touched her
5 nalgas [phonetic]. I believe she was, at the time,
6 referring to the buttocks and that he touched her over her
7 shirt on her breast area.

8 Q Okay. Did she say what happened to the clothes
9 that did come off?

10 A They were on the ground.

11 Q Okay. Did she say who took the clothes off?

12 A Yes.

13 Q Who did she tell you took the clothes off of her?

14 A Don David.

15 Q Okay. Did she say what part of her clothes came
16 off?

17 A She did.

18 Q What did she tell you?

19 A Her pants and her underwear.

20 Q Okay. Did she talk to you about what -- any of
21 the sensations that her body felt when she was being
22 touched?

23 A She stated that when he touched her thing, he
24 moved it in a circular motion and, at one point, I think
25 she said she felt something warm when he touched her

1 buttocks area.

2 Q Did she indicate other than the tape day whether
3 anything like this had ever happened another time?

4 A She indicated it happened more than once and I
5 believe she said, like, it happened like five days or
6 something to that effect.

7 Q Did she -- I know I'm jumping around a little bit.
8 I'm trying to speed it up a little. I apologize.

9 Did she talk to you about seeing anything on a
10 cell phone?

11 A Yes.

12 Q What did she tell you about a cell phone?

13 A That he had put on videos of individuals touching
14 their cosa, their thing.

15 Q Did she -- and just let me know if this is a
16 translation issue. Did she tell you that, in the video,
17 there was a girl eating the guy's thing?

18 A That's correct.

19 Q Okay. Did she tell you at all about seeing
20 grandpa's thing?

21 A I don't recall.

22 Q Did she talk to you about candy at all?

23 A Yes.

24 Q What did she tell you about candy?

25 A That candy was given by Don David.

1 Q And I'm sorry. The response to the question about
2 whether she ever saw his thing, you said you didn't
3 remember?

4 A I don't recall.

5 Q Would it refresh your recollection to review the
6 transcript?

7 A Yes, please.

8 Q I'm referring you to page 20. I'm sorry
9 [indiscernible].

10 A She described it as being a little bit -- it looks
11 brown and it looks a little bit black.

12 Q Okay. But she indicated to you prior to that
13 description that he pulls out his thing? Is that accurate?

14 A Yes.

15 Q Okay. And, then, she follows up about: He pulled
16 out his thing and left in the black car. Do you recall
17 that?

18 A Yes.

19 Q Okay. And just one last question about her
20 interview. Did she tell you how the tape came off of her
21 from the previous incident?

22 A She stated that she took it off and then she came
23 out of his room.

24 Q We have one more. Scarlett Rangel. Give me just
25 a moment. I apologize.

1 [Pause in proceedings]

2 BY MS. KOLLINS:

3 Q You also interviewed a young lady by the name of
4 Scarlett Rangel. Is that correct?

5 A Yes.

6 Q And her interview was on November 16th of 2016. It
7 was not done at the same time these other children were
8 spoke to. Is that correct?

9 A That's correct.

10 Q And she was neither -- she was not a relative of
11 those kids. Right?

12 A Correct.

13 Q Okay. So, same questions as before. We're
14 talking about the same venue, the Child Advocacy Center?

15 A Yes.

16 Q Interview's recorded and it's done you, by
17 yourself, nobody else is present. Correct?

18 A Yes.

19 Q And the same forensic stages that we discussed
20 earlier were applied in this interview?

21 A Correct.

22 Q Okay. Scarlett was a little bit younger. She was
23 seven years old on November 16th of 2016. Correct?

24 A Yes.

25 Q Did you go through the rapport building stage with

1 her?

2 A Yes.

3 Q Okay. Was she appropriately responsive to you --
4 I mean, contextually responsive?

5 A Yes.

6 Q Did she use words and phrases that you, in your
7 experience with your 1,000 interviews, felt were consistent
8 with that of a seven year old?

9 A Yes.

10 Q Able to identify people in her family and things
11 like that?

12 A Yes.

13 Q Okay. Did she know why she was there to see you?

14 A Yes.

15 Q What is the first thing she told you about being
16 there to see you?

17 A That she was scared.

18 Q Okay. Scared of what?

19 A Scared to talk.

20 Q Scared to talk?

21 A Scared to tell me what she was there for.

22 Q Okay. Did you do anything to try to alleviate
23 that?

24 A I recall I said something about it's a safe room.

25 Q Okay. And how did you follow-up on that to

1 attempt to get her to speak to you?

2 A I don't recall the exact words I used.

3 Q Okay. Would it refresh your recollection to look
4 at the inception of her interview?

5 A Yes, please.

6 Q And that's contained in her transcript. I'm
7 referring to page 9. If you could review that to yourself?

8 [Pause in proceedings]

9 THE WITNESS: I asked her if something happened to
10 her.

11 BY MS. KOLLINS:

12 Q And what did --

13 A And she said: Yes.

14 Q Okay. And, then, after she said yes, how did she
15 follow-up with that?

16 A She stated: A viejito, an old man, showed her his
17 part, referring to his penis.

18 Q You said viejito?

19 A Viejito.

20 Q Is that V-I-E-J-I-T-O?

21 A Yes.

22 Q And what is the translation of that?

23 A Old man.

24 Q Okay. She said he showed her his part?

25 A Correct.

1 Q And what was she referring to?

2 A His penis.

3 Q Okay. And did she also indicate to you that her
4 hair and arm had been touched?

5 A Yes.

6 Q Okay. But she said her parts had not been touched
7 by him?

8 A Correct.

9 Q Okay. And did she also tell you whether -- did
10 she also speak to you about whether or not about -- whether
11 the old man gave them candy?

12 A Yes.

13 Q What did she tell you about that?

14 A That she [sic] gave candy to her and other girls.

15 Q Okay. Did she name any of the other girls?

16 A She named Yezlene and I believe she may have named
17 Yatziri as well.

18 Q Did she say what -- where she was when she was
19 offered the candy -- or, I'm sorry. Did she say where she
20 was when she saw his part?

21 A I don't recall where she said it happened, whether
22 inside or outside of his house.

23 Q Would it refresh your recollection to review the
24 transcript?

25 A Yes, please.

1 Q I'm looking at page 18.

2 [Pause in proceedings]

3 THE WITNESS: She stated that they went inside to
4 get candy, inside his house.

5 BY MS. KOLLINS:

6 Q Okay. And, then, did she also indicate to you she
7 went outside quickly?

8 A Yes.

9 Q Is there a portion in there -- and I'm looking
10 between pages 18 and 20. She's describing being inside the
11 house but being outside the house and kind of explaining
12 the transition to you of kind of the sequence of those
13 events. Do you remember that?

14 A Yes.

15 Q I'm going to tell you the way I read it and tell
16 me if that's the way you remember it or not and the -- that
17 she went inside to get the candy, she saw his part, and she
18 went outside.

19 A Correct.

20 Q Is that what you gleaned from that exchange
21 between the pages of 18, 19, 20?

22 A I didn't get that far, but I recall that. Yes.

23 Q Okay. Did she tell you how old she was when that
24 happened?

25 A I believe she said she was -- she gave three ages.

1 I don't recall how old she was when it happened.

2 Q Would it refresh your recollection to review page
3 24?

4 A Yes, please.

5 [Pause in proceedings]

6 THE WITNESS: She said she was six years old.

7 BY MS. KOLLINS:

8 Q Okay.

9 A And she was seven at the time of the interview.

10 Q Okay. So, before when you said she was three
11 ages, she doesn't indicate to you this happened when she
12 was seven, six, five?

13 A Correct.

14 Q Just -- okay.

15 She talked about being touched and she used the
16 word caressed. Is that -- that was the translation. Is
17 that accurate?

18 A Yes.

19 Q Okay. And she was only talking about her arm and
20 her hair, correct, no place else on her body?

21 A Her arm, her hair, her back.

22 Q And her back?

23 A And, I believe, her cheek.

24 Q Okay.

25 A Her neck.

1 Q Okay. But not any private parts? She didn't
2 indicate to you that she was touched in the genital area or
3 on the breast or on the buttocks. Correct?

4 A Correct.

5 MS. COLLINS: Okay. All right. Your Honor, I'm
6 going to pass Ms. Espinoza.

7 THE COURT: All right. Thank you. Mr. Westbrook,
8 do you have cross-examination, sir?

9 MR. WESTBROOK: I do not, Your Honor, but Ms.
10 Kierny does.

11 THE COURT: Okay. That's very good. You may
12 proceed Ms. Kierny.

13 MS. KIERNY: Court's brief indulgence. Let me
14 find -- I got my notes a little bit tangled.

15 THE COURT: Okay.

16 Have you testified before in court? So you know
17 how this goes?

18 THE WITNESS: I do, Your Honor.

19 THE COURT: Okay. So, the --

20 THE WITNESS: Thank you.

21 THE COURT: -- one side gets to ask questions and
22 then the other side gets to ask questions.

23 THE WITNESS: I do. Thank you.

24 THE COURT: Okay. Very good. All right. Thank
25 you.

1 MS. KIERNY: Thank you, Judge Scotti. Do you mind
2 if I question from here because I have all my materials
3 everywhere?

4 THE COURT: Feel free.

5 MS. KIERNY: Thank you.

6 THE COURT: Not a problem.

7 **CROSS-EXAMINATION OF ELIZABETH ESPINOZA**

8 BY MS. KIERNY:

9 Q You indicated that you're a Forensic Interview
10 Specialist. Correct?

11 A Correct.

12 Q What does forensic mean?

13 A Forensic is -- I can give you the definition
14 according to National Children's Advocacy Center.

15 Q That would be acceptable.

16 A Which is: A developmentally sensitive and legal
17 way of asking a child questions regarding allegations
18 of abuse or exposure to violence. It's conducted by a
19 neutral professional using research based practice.

20 That's the definition.

21 Q And you have to have training to become a Forensic
22 Interviewer?

23 A Correct.

24 Q All right. And what does the term specialist
25 mean? When you say you're a Forensic Interview Specialist,

1 what do you mean by that?

2 A I conduct forensic interviews. That's what it
3 translates to.

4 Q So does that mean that that's pretty much all you
5 do?

6 A Yes.

7 Q Okay. And that's what you are -- you know, your
8 field of expertise, if you would?

9 A That's what I'm doing now. Yes.

10 Q Okay. And when you're interviewing a child, you
11 are trying to gather information. Correct?

12 A Correct.

13 Q And it's from, generally, a witness to some event?

14 A A witness or an allegation, yes.

15 Q Okay. So, something that happened to somebody or
16 something that somebody saw?

17 A Correct.

18 Q All right. And it's usually involving a criminal
19 case?

20 A Not necessarily, no.

21 Q Okay. What percentages of interviews do you think
22 you do that aren't related to a criminal case?

23 A I can't give you a percentage.

24 Q Okay. You said you've done about 1,000
25 interviews. Correct?

1 A Close to 1,000.

2 Q Okay. How many of those do you think were brought
3 to you by -- brought to your attention by Metro?

4 A Again, I can't give you a specific amount.

5 Q Can you give me an estimate?

6 A No.

7 Q Would it be half?

8 A We work with several law enforcement agencies.

9 Q Okay.

10 A Not just Metro.

11 Q All right. So that would include Henderson Police
12 Department, Boulder City, all those outers?

13 A Correct.

14 Q Okay. And as well as North Las Vegas?

15 A Correct.

16 Q But always through law enforcement?

17 A Not necessarily. CPS, also permanency workers
18 that work in the field of physical abuse or neglect.

19 Q Okay. Would you say that less than half or more
20 than half of your referrals come from law enforcement
21 agencies?

22 MS. KOLLINS: And I'm going to object because she
23 said she didn't know the number and this is kind of far
24 array of -- this is a very limited hearing --

25 MS. KIERNY: It is not. It is --

1 MS. KOLLINS: I wasn't done.

2 MS. KIERNY: Okay.

3 MS. KOLLINS: -- speaking.

4 MS. KIERNY: All right.

5 THE COURT: Were you done speaking?

6 MS. KOLLINS: I wasn't. Thank you. She's already
7 said she doesn't know how -- the percentage of referrals
8 that she gets from any one law enforcement agency. She's
9 explained the gamut of places that those referrals come
10 from that include CPS and hospitals and law enforcement,
11 etcetera.

12 Moreover, this is a very limited hearing.

13 THE COURT: I understand that, but I think it's
14 relevant on the issue of whether there's overall
15 circumstantial guarantees of trustworthiness on this side.
16 I don't find the question offensive or difficult to answer.
17 So, go ahead.

18 MS. KIERNY: Thank you, Your Honor.

19 BY MS. KIERNY:

20 Q Did you need me to repeat the question or do you
21 remember it?

22 A Please.

23 Q Would you say that more -- that less than half or
24 more than half of your referrals for interviews come from
25 law enforcement?

1 A If you're asking me to guess, I would say half --
2 Q Okay.
3 A -- comes from law enforcement.
4 Q All right. In this case, who set up these
5 interviews?
6 A Our front desk receives the referral --
7 Q Okay.
8 A -- and then they forward it to one of the Forensic
9 Interviewers.
10 Q And do you know who the referral was from in this
11 case?
12 A Yes.
13 Q Is that from a Detective Campbell of the -- of
14 Metro?
15 A Yes.
16 Q All right. And when I say Metro, I'm talking
17 about the LVMPD of course, the --
18 A Correct.
19 Q -- Metro Police Department. Okay.
20 You said you were briefed on the case?
21 A Yes.
22 Q What did you review, generally?
23 A It entails a report. Sometimes it's one page,
24 sometimes it's two pages, sometimes you don't get any
25 document, depending on when the case comes in.

1 Q What did you review in this case?

2 A I believe it was just the referral form that is
3 given to me from the front desk.

4 Q Okay.

5 A And what it states, I can't recall.

6 Q All right. Do you have that referral form with
7 you?

8 A No. We're not allowed to keep any documents or
9 copies of any documents.

10 Q I see.

11 Did you discuss this case with Detective Campbell
12 at all before interviewing the children?

13 A I don't recall what we discussed, but he was
14 present for the interviews.

15 Q Was he the one who brought the children to you?
16 Transported them, I guess, is the way to --

17 A I don't recall who transported or how they got
18 there.

19 Q Okay.

20 A They weren't at the lot -- in the lobby when I
21 went to go introduce myself to the children.

22 Q And when you were starting this interview, you
23 were aware that this was for a possible criminal case.
24 Correct?

25 A Correct.

1 Q And when you're done with the interviews, you know
2 that the recordings would be going to Metro. Correct?

3 A Correct.

4 Q Detective Campbell specifically?

5 A Yes.

6 Q And that is --

7 THE COURT: I'm sorry. Did you said --

8 MS. KIERNY: Oh, I'm sorry.

9 THE COURT: -- the detective was present during
10 the interviews that you said?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Sitting there right there with the --

13 THE WITNESS: No, Your Honor.

14 THE COURT: Or at the table?

15 THE WITNESS: No. Observing from the observation
16 room, which is a separate room.

17 THE COURT: Okay.

18 THE WITNESS: They can see the child and myself on
19 the computer monitor.

20 THE COURT: Could the child see the detective?

21 THE WITNESS: No.

22 THE COURT: Okay. All right. Thank you.

23 BY MS. KIERNY:

24 Q All right. Do the children know that the
25 detective is still there? Is he like, you know, I'll be

1 right outside, or anything like that, if you recall?

2 MS. KOLLINS: Objection. Speculation, foundation.

3 MS. KIERNY: I asked if she recalled and --

4 THE COURT: If you know. So, we don't want you to
5 guess or speculate. Okay?

6 THE WITNESS: I usually tell the children when
7 we're doing the interviews that there are cameras and that
8 somebody is watching me or watching us or listening to what
9 we're saying.

10 BY MS. KIERNY:

11 Q Okay. And you work for the Children's Assessment
12 Center. Correct?

13 A For the Southern Nevada Children's Assessment
14 Center. Yes.

15 Q Okay. And that's a government organization.
16 Correct?

17 A It's through the Department of Family Services.

18 Q Okay. Which is a governmental agency?

19 A Yes.

20 Q Okay. And, in this case, when -- or in -- when
21 you generally get your cases, the children have already
22 disclosed to someone by the time you get the -- to start
23 the interviews?

24 A In some cases. In some cases there's an outcry
25 and some there's not.

1 Q Okay. There -- or there has to be abuse suspected
2 at least for them to get to you?

3 A Correct.

4 Q People aren't just bringing their children in off
5 the street, there has to be some sort of outcry or
6 allegation?

7 A Correct.

8 Q All right. In this case, -- actually, I'll do
9 that individually for each.

10 I'm going to start with Mirabel and just for
11 clarification I'm referring to the first twin, I guess,
12 that Ms. Kollins talked to you about. I know that they're
13 both pronounced very similarly, but just --

14 A Correct.

15 Q -- so we're on the same page.

16 When you spoke with her, she had already disclosed
17 abuse to someone else. Correct?

18 A Correct.

19 Q She had disclosed to a neighbor?

20 A I don't know who she disclosed to specifically.

21 Q Okay. Do you know if she had disclosed -- do you
22 know if she'd disclosed to her mother?

23 A Yes.

24 Q Okay. Do you know if she had disclosed to a
25 friend's mother?

1 A I don't know.

2 Q Okay. When she started, she said -- you testified
3 that she said that she was there because a man was
4 molesting her.

5 A Yes.

6 Q That's kind of a big word for a seven year old to
7 use.

8 A No. It's not. Not in Spanish.

9 Q Okay.

10 A There's different meanings to molestando.

11 Q All right. And is that used typically by Spanish
12 speakers to describe anything else?

13 A It -- it's just how you -- the context that
14 they're presenting it in.

15 Q Okay.

16 MS. KOLLINS: And --

17 MS. KIERNY: Now that --

18 MS. KOLLINS: I'm sorry to interject. She
19 referred to this child as being seven. She was actually
20 eight. I just wanted the record to be clear.

21 THE COURT: Yeah. Okay.

22 MS. KIERNY: All right.

23 THE COURT: Eight. All right. Great. Thank you.
24 Thank you for clarifying that.

25 So, I thought the word molestando could mean like

1 bothering.

2 THE WITNESS: Correct, Your Honor. Bothering or -
3 -

4 THE COURT: Okay. Which -- so you kind of helped
5 us understand the context.

6 THE WITNESS: Correct.

7 THE COURT: So, all right. All right. Thank you.

8 BY MS. KIERNY:

9 Q There also -- you know, while we're on the subject
10 of interpretation, I mean, you kept using the word cola.

11 A Yes.

12 Q What does that mean in Spanish or in English, I
13 guess?

14 A It just depends on the child and the person using
15 the word. That's not a word I typically use, but, for her,
16 cola meant her vagina.

17 Q Okay.

18 A And those are the terms I'm supposed to use.

19 Q I see. When you say that's not a term that you
20 typically use, is that a slang phrase or is it a more
21 childish phrase? I'm just trying to see what you mean
22 that.

23 A It -- it's a developmental issue really what word
24 she's spoken to in her home or what word she learns.

25 Q Okay.

1 A That's the word she used.

2 Q Throughout this transcript there's cola being
3 translated into butt. Is that the more typical meaning for
4 cola?

5 A I'm not a Spanish major, so I don't know how to
6 answer that question.

7 Q Okay. In other -- in the other 1,000 interviews
8 that you've done, I imagine some of them were in Spanish?

9 A Correct.

10 Q Was cola generally referring to vagina or was it
11 referring to butt in those situations?

12 A To both.

13 Q It can refer to both?

14 A Hmm-mm.

15 Q Okay. And what does cosa mean?

16 A Cosa is thing.

17 Q Okay.

18 A And some kids do refer to it as vagina.

19 Q All right. So, we're at Mirabel. Okay? Mirabel
20 indicated that this man, Don David, would show her his
21 thing in the apartment and outside the apartment. Correct?

22 A Correct.

23 Q All right. And there were three boys around when
24 this happened?

25 A Correct.

1 Q One of those boys were named Leo?

2 A Yes.

3 Q You later interviewed Leo. Correct?

4 A I interviewed a boy. I can't remember what the
5 name was.

6 Q Do you recall interviewing Leonardo DeSantiago
7 [phonetic]?

8 A Yes.

9 Q Okay. And that was in connection with this case?

10 A Yes.

11 Q Okay. If you recall, did Leo disclose seeing --
12 in his interview, did Leo disclose seeing Don David's part
13 or thing while around the girls?

14 MS. KOLLINS: Well, I'm going to object because
15 Leo is not being called in this case. I don't know how
16 that's relevant to Mirabel's interview. They're trying to
17 discredit those kids on who was or wasn't there. That's
18 for cross-examination of those children, not to get hearsay
19 statements from another kid's interview into this
20 proceeding. It's --

21 THE COURT: Well, isn't the point of this whole
22 hearing is to find out if there's trustworthiness to what
23 was told to this interviewer?

24 MS. KOLLINS: From this child, not from Leo.

25 THE COURT: Yeah. No, but if this child said Leo

1 was there and saw touching and Leo told her, no, he wasn't,
2 doesn't that go to credibility of the witness?

3 MS. KOLLINS: Not without being able to cross-
4 examine Leo.

5 THE COURT: I disagree. It goes directly to the
6 issue. So, please don't --

7 MS. KIERNY: Did you want me to repeat the
8 question or did you -- do you remember it?

9 THE WITNESS: I don't recall.

10 MS. KIERNY: That's fine.

11 THE COURT: But just because other judges
12 routinely let things in without a good faith hearing
13 provided to the defense doesn't mean that I'm going to do
14 that. Do you understand that? We're going to have a good
15 faith hearing and I'm going to let the defense put on their
16 evidence and try to convince me that there might have been
17 something improper in gathering these statements. We're
18 not just going to rubberstamp this.

19 MS. KOLLINS: And, Your Honor, I'm not asking you
20 to rubberstamp it. I'm just making my objection that I
21 thought that --

22 THE COURT: But if you keep with these objections
23 and don't let them --

24 MS. KOLLINS: -- I thought was appropriate.

25 THE COURT: -- have their proper day in court, I'm

1 just going to strike all of this and then we're not going
2 to have any of this evidence. What do you want? Do you
3 want the -- can they have a fair hearing?

4 MS. KOLLINS: Yes, Your Honor.

5 THE COURT: All right. Then let's keep going.

6 MS. KIERNY: All right. So, --

7 THE COURT: You know what?

8 MS. KIERNY: I'm sorry.

9 THE COURT: It's 12:10. We need to take a lunch
10 break. Is this going to be convenient for you to take a
11 lunch break?

12 MS. KIERNY: That's --

13 MR. WESTBROOK: Absolutely.

14 MS. KIERNY: -- fine, Your Honor.

15 THE COURT: All right. We're going to take an
16 hour lunch break and then we're going to continue with this
17 good faith hearing. All right?

18 MS. KIERNY: All right. Thank you, Your Honor.

19 THE COURT: All right. Thank you. One hour lunch
20 break. You're ordered to come back in one hour. Do you
21 understand?

22 THE WITNESS: Yes.

23 THE COURT: All right.

24 [Recess taken at 12:09 p.m.]

25 [Hearing resumed at 1:19 p.m.]

1 THE COURT: All right. Please be seated
2 everybody. All right. So, we're back on the record in
3 case C321044, *State versus Azucena*.

4 All right. So, we had a discussion conference
5 call and --

6 MS. KIERNY: Yes.

7 THE COURT: -- we were discussing some of the
8 logistical problems given that this hearing is going to
9 take longer than anticipated, which is fine. I indicated
10 that in order to have some reasonable constraint on time,
11 I'm going to limit the defense cross to the amount of time
12 that the State takes on direct. All right? I think that's
13 the fairest way to do it. Everybody gets equal amount of
14 time.

15 MS. KIERNY: Okay.

16 THE COURT: All right? One of the issues raised
17 is the defense wants a transcript. Right?

18 MS. KIERNY: Yes, Your Honor. We would like a
19 transcript of this hearing to possibly impeach, if
20 necessary, the parents who testify today if they change
21 their stories down the road.

22 THE COURT: So, you know, one of the things I've
23 got to consider is there a confrontation clause issue if we
24 don't provide that and we're trying to resolve that issue.
25 You know, I looked at several cases. There's about 60

1 cases that cite NRS 51.385. Most of the cases don't
2 discuss when the hearing is held. Some cases clearly
3 indicate that it's a pretrial evidentiary hearing. You
4 know, the Ninth Circuit, 2012, Westlaw, 3929515, Judge Reid
5 [phonetic] in a District Court Order indicated it's a --
6 you know, federal -- pretrial hearing.

7 There's another case -- I found -- you know, I found
8 cases that discuss pretrial evidentiary hearing in which
9 case there would have been time for you to have a
10 transcript, you know, but then there's -- there are some
11 Nevada cases, without discussing how it happened, that
12 there is the -- the issue is raised during trial and the
13 judge ruled based on whatever record was before him that
14 the hearsay statements could come in. Although there is no
15 Supreme Court case that I could find that discusses whether
16 there's any constitutional affirmity in doing that.

17 I -- in looking at the plain language of the
18 statute, you know, there is a 10-day notice requirement if
19 the statements are going to be offered without the witness
20 available, but the *Bratican* [phonetic] *versus State* case,
21 2015, says that, you know, of course notice is not required
22 when the victim is going to testify. So that suggests that
23 the State could, on the day that trial starts, indicate
24 they want to bring in -- wants to try to get in this
25 hearsay evidence and then the Court has to have a hearing.

1 At least that's one reasonable interpretation of the
2 statute, in which case I think it's contemplated that there
3 wouldn't be a transcript available of that Court's decision
4 for the State.

5 I don't think it's a *Crawford* or a confrontation
6 clause issue here. I did check -- by the way, I checked
7 with the Chief Criminal Judge and explained the situation
8 and he says that there's simply no way under the
9 circumstances that we have that we could have a transcript
10 available for the defense. All right? It's just simply
11 not possible.

12 MS. KIERNY: Okay.

13 THE COURT: And he completely agrees with the
14 course in which I'm going to proceed here.

15 MS. KIERNY: Okay. Just for the record, Your
16 Honor, we did speak about this on the phone. My concern
17 was that without these transcripts I would not be
18 adequately -- be able to adequately cross-examine the
19 witnesses and impeach them. Logistically, I would have to
20 stop the trial, listen to what was said on the disc, queue
21 that up, and then play it again. So, a transcript would
22 obviously be much easier. So, I think it's not really a
23 confrontation clause issue. It's more of a Sixth Amendment
24 issue.

25 THE COURT: Well, I understand.

1 MS. KIERNY: And I would analogize this to, you
2 know, when we do *Petrocellis* or *Jackson v. Dennos* on the
3 first day of trial and then, you know, proceed and we
4 generally do have transcripts at that time. I understand
5 that there's some sort of logistical issue.

6 I would put out that we did bring this up at the
7 calendar call, that this needed to be done. The State said
8 that they regularly do it in between and I think --

9 THE COURT: Right.

10 MS. KIERNY: -- why -- you know, that's where
11 we're at.

12 THE COURT: We just can't get the transcript. So,
13 --

14 MS. KIERNY: Okay.

15 THE COURT: -- we've got to work around it. I'm
16 not going to continue trial based on that. I'm not going
17 to, you know, -- based upon that limited unavailability of
18 the transcript strike the evidence. We're going to
19 continue with the hearing and, if I determine the evidence
20 comes in, then we were burn a JAVS DVD for you. Mr. Hamner
21 graciously acknowledged that he's not going to object to
22 that transcript or to you being able to play portions of
23 the JAVS to the witness if you need to cross-examine.
24 They'll have to wear a headset so that the jury can't hear
25 what's being played on that -- on the video.

1 MR. HAMNER: Right. And I would just also note
2 one other further thing just for the record. I mean, --

3 THE COURT: Yeah.

4 MR. HAMNER: -- if a JAVS is provided, the defense
5 can, with that JAVS, send that out to a transcription
6 service if they'd like to do that in light of the kind of
7 the issues that we're having with the Court. I just want
8 to at least for the record point out that is something that
9 is technically available. It may be a cost, but that's
10 still something that is available.

11 THE COURT: All right.

12 MS. KIERNY: For the record, we would be using --

13 THE COURT: We're all making our record.

14 MS. KIERNY: -- the same exact Court transcribers
15 that the Court uses. We don't have additional resources or
16 transcribers in our office.

17 THE COURT: I understand that.

18 MS. KIERNY: So, we are not able to get a
19 transcript done in one day either.

20 THE COURT: But, ultimately, the witness is going
21 to be here to testify. You can cross-examine. What my
22 goal -- my objective here is to listen to the evidence in
23 this hearing, you know, I'm guided very carefully by *Felix*
24 *versus State* before I make my decision. So, we're kind of
25 getting ahead of ourselves on whether the evidence is going

1 to come in. I mean, the standard is what I said it is.
2 You know, there has to be a certain sufficient guarantee of
3 trustworthiness.

4 In *Felix versus State*, the Nevada Supreme Court
5 said that these are -- there are several factors that the
6 Court has to pay attention to. So, I've got to pay careful
7 attention to all of this.

8 MS. KIERNY: Right.

9 THE COURT: It says that there are several types -
10 - this is -- I'm quoting now.

11 This Court lists several types of contamination
12 errors which occur in children's interviews and
13 diminish the reliability of the children's statements.
14 These errors include systems contamination, outside
15 information gained from police or other sources, cross
16 contamination, using the information gained from other
17 children during therapy with another child,
18 concertizing, repetitive leading discussions creating
19 false memories of the child, assuming incidents
20 occurred, and following a preconceived agenda, course
21 of questioning, ignoring or discounting a child's
22 denials.

23 And then it said: Almost all of the above
24 interview errors were -- existed in that case, the *Felix*
25 case.

1 So, the Supreme Court obviously wants the District
2 Court Judges to do a pretty careful -- this isn't like your
3 typical hearsay objection and I've got to rule like on the
4 cuff.

5 One of the things I just do -- while you are continuing
6 your questioning so it does -- so that we don't go too far
7 astray, the Supreme Court has said that inconsistency in
8 the child's statements is not a factor. All right? I do
9 want to know whether, you know, these other factors are --
10 I want to know what evidence relates to these other
11 factors, but I don't want you to waste time getting into
12 whether the child was inconsistent in it -- in his or her
13 testimony to the victim. All right? Because it says right
14 here, you know, consistency is not a factor for
15 admissibility under NRS 51.385 subpart 2. So maybe that
16 could cut through some of the -- all right? Not --
17 consistency in one interview.

18 Now, --

19 MS. KIERNY: So, --

20 THE COURT: -- in assessing reliability, though,
21 you know, the Court should look at earlier statements
22 compared to more recent statements.

23 MS. KIERNY: Okay.

24 THE COURT: So, you want to see consistency over
25 time, but inconsistency in one interview is not something

1 that I want to waste time on. You understand. Right?

2 MS. KIERNY: Yes. I understand that.

3 THE COURT: All right. Very good. Let's proceed.

4 MS. KIERNY: Oh, Ms. Espinoza.

5 THE COURT: All right. Ms. Espinoza, please
6 retake the stand.

7 How much time does she have left? You're the time
8 keeper? She used about 20 -- 15 minutes?

9 MS. KIERNY: Fifteen maybe.

10 THE COURT: Fifteen. She started -- what time --
11 Ms. -- 1:47?

12 THE COURT RECORDER: 10:46.

13 THE COURT: 10:47 is when the State started and
14 she finished at?

15 UNIDENTIFIED SPEAKER: [Inaudible].

16 THE CLERK: Defense cross started at 11:53.

17 THE COURT: All right. So, she had about an hour
18 and five minutes. So, you get --

19 MS. KIERNY: Okay.

20 THE COURT: -- an hour and five minutes, if you
21 need that long. All right? You've already used 15
22 minutes. Please keep track of the time. She has an hour
23 and five minutes, minus 15 minutes, left. All right.
24 Please proceed.

25 MS. KIERNY: Thank you, Your Honor. Just to

1 clarify, did we answer any questions regarding Leo because
2 I was objected to. I don't remember where we left off.

3 MR. WESTBROOK: We didn't.

4 MS. KIERNY: We did not.

5 THE COURT: I'm going to allow you to ask
6 questions about what the alleged victims said to this
7 interviewer about Leo. All right?

8 MS. KIERNY: All right. And then what Leo said to
9 her --

10 THE COURT: Since I believe it does go to these
11 these factors. All right?

12 MS. KIERNY: Okay. All right.

13 **CONTINUE CROSS-EXAMINATION OF ELIZABETH ESPINOZA**

14 BY MS. KIERNY:

15 Q Ms. Espinoza, you did a forensic interviewer --
16 interview of a child called Leonardo DeSantiago. Correct?

17 A Yes.

18 Q And that was in connection with this case?

19 A Correct.

20 Q And that was because -- well, specifically, we're
21 on Mirabel right now. Mirabel had said he was present when
22 Don David would show his thing to her?

23 A Correct.

24 Q During that forensic interview of Leo, Leo did not
25 disclose that he saw Don David's thing. Correct?

1 A Correct.

2 Q Mirabel also indicated that she saw Yezlene pulled
3 into the apartment with tape on her -- pulled into the
4 apartment. Correct?

5 A Correct.

6 Q And Yezlene was screaming?

7 A Yes.

8 Q Do you recall -- and she indicated that her mouth
9 -- mouth and legs were covered with grey tape. Correct?

10 A Yes.

11 Q Okay. If, at any point, you need to refresh your
12 -- recollection refreshed, I will do my best where I
13 believe --

14 A Thank you.

15 Q Okay. Mirabel also told you that she then told
16 Yezlene's mother about Yezlene being taken?

17 A Correct.

18 Q And that Yezlene's mother was crying when she told
19 her this?

20 A Yes.

21 Q And Mirabel indicated that that happened this
22 Friday. Correct?

23 A I don't remember.

24 Q Would --

25 A The day.

1 Q -- reviewing your transcript refresh your
2 recollection?

3 A Yes, please.

4 Q Do you still have it up there or with you?

5 A Yes.

6 Q I would refer you to page 16.

7 A And you're talking about --

8 Q Mirabel's.

9 A Mirabel.

10 Q We're on Mirabel still.

11 A Okay.

12 MS. KOLLINS: Excuse me. Just for clarification,
13 are we --

14 THE COURT: Yes, ma'am.

15 MS. KOLLINS: -- talking about the conversation
16 between the child and Yezlene's mother or the incident with
17 the tape when you're referring to Friday? Because those
18 were both questions posed just for foundation.

19 MS. KIERNY: Okay.

20 THE COURT: If you can clarify which incident
21 you're talking about.

22 MS. KIERNY: I'm referring to the incident when --
23 when Maridel -- Mirabel said she witnessed Yezlene being
24 pulled into the apartment.

25 BY MS. KIERNY:

1 Q So, I'm looking -- I'm going to refer you to the
2 bottom of 16 and tell me when you've finished reading that.

3 A I'm done.

4 Q Okay. Does that refresh your recollection?

5 A Yes.

6 Q And, so, Mirabel said that that happened this
7 Friday. Correct?

8 A According to the transcripts, yes.

9 Q All right. And you were interviewing her on
10 November 2nd. Correct?

11 A Correct.

12 Q And that would have been a Wednesday?

13 A I don't know.

14 MS. KIERNY: Would the Court take judicial notice
15 that November 2nd of 2016 was a Wednesday?

16 THE COURT: November 2nd, 2016 was -- it is.

17 MS. KIERNY: Okay.

18 THE COURT: I have it right here. All right.

19 MS. KIERNY: Thank you.

20 THE COURT: Thank you.

21 BY MS. KIERNY:

22 Q So, the Friday before that would have been October
23 28th?

24 A Correct.

25 Q Okay. I'd like to move on to Yatziri's statement.

1 This is just so -- just to, you know, know that were
2 transitioning to that one. I know that there's a lot of
3 statements to keep together.

4 So, when you talked to Yatziri, you knew that she
5 had disclosed to other people beforehand. Correct?

6 A Correct.

7 Q She disclosed to a neighbor?

8 A I don't know who she disclosed to but there was an
9 outcry.

10 Q Okay. Do you know if she had spoken to her
11 mother?

12 A Yes.

13 Q Do you know if she had spoken to the other
14 children involved in the case?

15 A I don't know.

16 Q All right. DO you know if she had spoken to her
17 friend, Yeziene's mother?

18 A I don't know.

19 Q All right. And she indicated that Don David
20 touched her on the vagina. Correct?

21 A Correct.

22 Q And she said that he rubbed her vagina
23 desperately?

24 A I -- that he touched her vagina desperately. Yes.

25 Q Okay. And that is the word she used?

1 A I don't know the exact word off the top of my
2 head.

3 Q Okay. Court's brief indulgence.

4 I would refer you to page 38 of Yatziri's
5 statement. It may be -- well, maybe I'm wrong. Oh, I'm
6 sorry. I'm on 39, bottom of 39.

7 [Pause in proceedings]

8 BY MS. KIERNY:

9 Q Now that you've reviewed your statement, has that
10 refreshed your recollection?

11 A Yes.

12 Q Okay. And, so, she said that he was moving his
13 hand like desperate?

14 A Yes.

15 Q Okay. During Yatziri's interview, she indicated
16 that the touching was happening to both her sis -- to her.
17 Correct?

18 A Yes.

19 Q Both her sisters?

20 A Yes.

21 Q Yezlene?

22 A Yes.

23 Q And she also mentioned a neighbor, Lexi?

24 A Litzy.

25 Q Litzy. Okay. In the transcript it says Lexi, but

1 your understanding was this was a neighbor called Litzy?

2 A Yes.

3 Q And you ultimately did an interview with Litzy?

4 A Yes.

5 Q Her full name was Litzy Parades [phonetic]?

6 A Yes.

7 Q Okay. And that was at Children's Assessment
8 Center under these same protocols that we earlier
9 described?

10 A Yes.

11 Q Okay. When Yatziri talked about the touching, she
12 used the word, cola. Correct?

13 A Yes.

14 Q And you took that to mean her vagina?

15 A Correct.

16 Q And why did you believe that was vagina as opposed
17 to butt?

18 A Because she provided the function of what the cola
19 did.

20 Q And what was that?

21 A To pee.

22 Q Okay. Got it.

23 And she said that this physically occurred in the
24 kitchen of Don David's house. Correct?

25 A Yes.

1 Q All right. And her sister as well as Yezlene --
2 her two sisters, I apologize, Yezlene, and Lexi were
3 present.

4 A Yes.

5 Q If you recall Mirabel's interview, Mirabel never -
6 - or -- strike that. I apologize.

7 If you'll recall Lexi's interview, do you remember
8 Lexi said that she was never inside Don David's house.
9 Correct?

10 A I don't recall.

11 Q Okay. Additionally, she said that all of those --
12 while the girls were in the kitchen, her sisters were both
13 touched by Don David. Correct?

14 A Correct.

15 Q At the same time?

16 A Yes.

17 Q Now, when you interviewed Mirabel, she did not
18 disclose being touched by Don David in the kitchen.
19 Correct?

20 A You're talking about Mirabel?

21 Q Mirabel, the twin that we just discussed.

22 A Okay.

23 Q The first interview that Ms. Kollins went over
24 with you.

25 A Okay. Rephrase the question. The names are

1 throwing me off right now.

2 Q Okay. Do you remember in the interview with
3 Mirabel she did not disclose being touched by Don David in
4 his kitchen?

5 A Correct.

6 Q Okay. Maridel, the other twin, also did not
7 disclose being touched in the kitchen in Don David's
8 kitchen?

9 A Correct.

10 Q Neither of those girls indicated that there was
11 ever a time when they both were touched simultaneously.
12 Correct?

13 A Correct.

14 Q You indicated on direct that there was -- Grandpa
15 paid for everything so that they could be touched. Was
16 that just kind of paraphrasing or was there actually a time
17 that you recall the girls saying -- or Yatziri saying
18 exactly that?

19 A One of the girls and it was in one of the
20 transcripts stated that they were -- that he bought them
21 things or paid for things for them to be touched.

22 Q All right. I won't make you point that out in the
23 transcript, but okay.

24 Yatziri also indicated that Don David showed his
25 thing. Correct?

1 A Yes.

2 Q And she indicated that her sisters as well as Lexi
3 or Litzy, I apologize, were present when that happened?

4 A Yes.

5 Q When Litzy was interviewed, she did not disclose
6 seeing Don David's penis?

7 A Correct.

8 Q Yatziri indicated --

9 THE COURT: So, I have -- I just have to interrupt
10 you for a second.

11 MS. KIERNY: Of course.

12 THE COURT: SO, I see what you're doing here.

13 MS. KIERNY: Yes.

14 THE COURT: You're pointing out inconsistencies
15 between what one interview -- between what one interview
16 was said and what others said and --

17 MS. KIERNY: Right.

18 THE COURT: -- showing how they're not consistent.

19 MS. KIERNY: Correct.

20 THE COURT: All right. I mean, obviously that's a
21 matter for cross-examination, but which one of the factors
22 do you contend that those go to?

23 MS. KIERNY: Court's brief indulgence.

24 THE COURT: Because I read -- remember, I read the
25 list of different types of errors that the judge -- that

1 the Supreme Court --

2 MS. KIERNY: Of course.

3 THE COURT: -- wants me to consider. Which factor
4 do these go to, if any?

5 Because I think most of the -- if you look at most
6 of the factors, most of the factors that the Supreme Court
7 is asking me to focus on is not so much the substance but
8 more of the procedure by which the information is gathered.

9 MS. KIERNY: Okay.

10 THE COURT: DO you see the distinction there?

11 MS. KIERNY: Well, I agree, Your Honor, and --

12 THE COURT: I don't want to unnecessarily cut you
13 off but you're going to have to explain where you're going
14 with this because I don't -- but go ahead.

15 MS. KIERNY: Citing directly from *Felix*, child
16 hearsay statements can only be admitted if the Court, one,
17 finds the declarant was particularly likely to be telling
18 the truth when the statement was made.

19 The fact that they're being discredited and that
20 other witnesses --

21 THE COURT: Where were you reading from in *Felix*?
22 What part?

23 MS. KIERNY: 109 -- page 180 to page 181. It's
24 the two factors. Oh, three. Three factors. I'm sorry.

25 THE COURT: All right. I guess, because I was

1 looking more under the *Wright* factors at the bottom of 181
2 which seem to be a more --

3 MS. KIERNY: Right.

4 THE COURT: -- comprehensive list which doesn't --
5 those factors don't suggest that I look at the -- I
6 shouldn't consider the weight of the evidence compared --
7 what one witness says against another witness.

8 MS. KIERNY: I understand, but, I mean, I don't
9 see any other way to judge whether they're particularly
10 likely to be telling the truth. Obviously, you know,
11 inconsistent statements, statements where other witnesses
12 say the complete opposite --

13 THE COURT: Mr. Hamner, --

14 MS. KIERNY: -- would go to whether --

15 THE COURT: Let me hear Mr. Hamner's --

16 MS. KIERNY: -- they're likely to be --

17 THE COURT: Mr. Hamner is standing up. What --
18 what's your -- I mean, we don't have a lot of guidance in
19 this area. And, so, what's your --

20 MR. HAMNER: Well, I --

21 THE COURT: What's your take on it?

22 MR. HAMNER: I think Your Honor I think identified
23 really the key function of a hearing like this. Exactly
24 right. On a cross-examination in a trial, going after a
25 witness -- a victim -- I'm sorry. A child witness

1 complaining their potential inconsistencies -- that's a
2 perfect forum in a jury trial, but what *Felix* does when
3 it's talking about these two prongs, about whether to
4 determine whether declarant is likely telling the truth or
5 the statement is at least as reliable as the evidence. The
6 factors that they need to be examining right now on cross-
7 examination are things like: Was the statement being
8 spontaneous from the child? Were they being subjected to
9 repetitive questioning?

10 So, for example, they should be drilling in to see
11 if Ms. Espinoza kept asking the same thing over, and over,
12 and over again; whether the child had a motive to fabricate
13 that can be gleaned from cross-examining this witness;
14 whether the child is using terminology for a child of a
15 similar age; whether the child is in a stable mental state.

16 THE COURT: I get that. I get -- I think you're
17 right there. I think -- because I think -- Ms. Kierny, I
18 think what the Supreme Court is saying: Don't judge their
19 credibility based upon inconsistencies between their
20 statement and what someone else says. We'll look at -- you
21 know, if there's any structural errors here, if there is a
22 motive to lie, if there's repetitive questioning, if
23 there's -- like I said, I read --

24 MS. KIERNY: Of course.

25 THE COURT: You know, if there's -- concertizing,

1 which is repetitive or leading questions, if there is
2 coercive techniques used, if there is contamination errors,
3 if there -- if like -- if you have evidence or cross-
4 examination to help elicit whether the reason there's a
5 distinction between what one person said and the other
6 person is because of contamination or -- and that would be
7 shown by, as *Felix* indicated, discontinuity between what
8 they said and when the event first happened and what
9 they're saying now after they've been led.

10 MS. KIERNY: Well, this witness -- and --

11 THE COURT: And I don't think -- all you're trying
12 to show up -- Give me a time out here.

13 MS. KIERNY: Oh, I'm sorry. That's rude. I'm
14 very sorry.

15 THE COURT: She does that.

16 MS. KIERNY: I'll stop.

17 THE COURT: Never mind, it's --

18 MS. KIERNY: I am going to keep my hands behind my
19 back.

20 THE COURT: What I'm trying to say is just to
21 point out the inconsistencies without the explanation as to
22 why there's the inconsistencies isn't going to get you to
23 where you want to go here. All right?

24 MS. KIERNY: Your Honor, this witness --

25 THE COURT: So, I don't want to go down this --

1 MS. KIERNY: Oh, sorry.

2 THE COURT: Do other judges let you do that?

3 MS. KIERNY: I'm just --

4 THE COURT: That's okay.

5 MS. KIERNY: I'm sorry.

6 THE COURT: I'm teasing you. I'm sorry.

7 What I'm trying to say here is I don't want to
8 waste a lot of time just pointing out the inconsistencies
9 unless you get to more heart of the matter. Okay?

10 MR. HAMNER: And I would just note as well that
11 *Felix v. State*, you mentioned it earlier, Your Honor, as
12 well, but it does state that if a child does -- pursuant to
13 51.385, and that comes from headnote 7 that we have here.
14 It says that if a child does testify, admission of -- that
15 a child's prior consistent or inconsistent out of court
16 statement does not violate the Defendant's constitutional
17 right to confrontation so long as the child is subject to a
18 form of [indiscernible] cross-examination concerning the
19 statements at trial.

20 And I think when you mention things like cross-
21 contamination, concertizing, a preconceived agenda, these
22 should really be the focus of cross to see if Ms. Espinoza,
23 through her questioning, were doing these variety of
24 techniques that could affect the spontaneity of the child.
25 And, so, we don't want to interfere, but I think you're

1 right. It needs to focus on these particular factors and
2 not she said one thing one time and maybe something a
3 little bit different.

4 THE COURT: We're not counting this time against
5 you. Okay.

6 MS. KIERNY: Okay. You know, *Felix* does lay out
7 that three-part test. The declarant was particularly
8 likely to be telling the truth when the statement was made.
9 They can't all be particularly likely to be telling the
10 truth if they contradict each other. So, that's what I'm
11 just trying to establish.

12 THE COURT: Yeah.

13 MS. KIERNY: Reliability is required for all
14 evidence. It must be considered, especially with hearsay,
15 to see if there is this outside [indiscernible] of
16 reliability, which isn't present in these statements. With
17 hearsay, in these cases, the bar is even higher for
18 reliability and I don't think we have it in these
19 statements.

20 So, that's why I'm trying to point out all these
21 inconsistencies.

22 THE COURT: Well, --

23 MS. KIERNY: Additionally, I mean, it -- we are
24 trying to get to the bias of the interviewer. She's saying
25 these witnesses are truthful but that requires you to

1 completely ignore the contradictions that have been made
2 here.

3 So, --

4 THE COURT: So, I'll --

5 MS. KIERNY: -- I --

6 THE COURT: -- let you continue only because I
7 think you're going to use up all your time regardless of
8 what the scope is going to be and I think it's avoiding the
9 potential for an error, but I'm just letting you know now
10 that --

11 MS. KIERNY: Okay.

12 THE COURT: -- just pointing out these
13 inconsistencies by themselves is not going to be persuasive
14 to me.

15 MS. KIERNY: Okay.

16 THE COURT: All right?

17 MS. KIERNY: I will try to focus a little bit
18 more.

19 THE COURT: All right. So, go ahead.

20 MS. KIERNY: All right. Let me get back to my
21 spot.

22 THE COURT: Please.

23 [Colloquy between the Court and staff]

24 MS. KIERNY: Shall I begin?

25 THE COURT: You can keep going.

1 BY MS. KIERNY:

2 Q Yatziri indicated that when the -- that Ms. --
3 that Don David would offer candy before he would touch
4 them. Correct?

5 A Correct.

6 Q He did -- she did not say that he put it down his
7 pants?

8 A Repeat the question.

9 Q Did she ever tell you that he put candy down his
10 pants to try to get -- and they had to get the candy out of
11 his pants?

12 A No.

13 Q Okay. She did describe putting -- him putting
14 candy in Yezlene's part. Correct?

15 A Correct.

16 Q And that was your understanding that the candy was
17 in her vagina?

18 A [Inaudible].

19 Q And, then, Yezlene later took that candy out and
20 the girls smelled it?

21 A Correct.

22 Q Yezlene did not tell you that happened when you
23 interviewed her. Correct?

24 A Correct.

25 Q And the sister -- Mirabel and Maridel who you

1 talked to later did not tell you that happened. Correct?

2 A Correct.

3 Q Yezlene said she saw some things on a cell phone
4 including -- that was two people touching. Right?

5 A Correct.

6 Q I'm sorry. I said -- when I said Yezlene, strike
7 that. I met Yatziri.

8 A Okay.

9 Q So, Yatziri --

10 THE COURT: Yeah, I'm a little -- yeah, when you
11 say Yezlene, that's Y-A-Z-L-I-N-E [sic]. That one? That's
12 how I wrote it. I think someone might have --

13 MS. KIERNY: Yeah.

14 THE COURT: Okay. I'm just making sure --

15 MS. KIERNY: I am now --

16 THE COURT: -- Yezlene is Y-A-Z-L-I-N-E [sic]. I
17 just want to make sure I'm referring to my right notes
18 here.

19 MS. KIERNY: And I'm --

20 THE COURT: Go ahead.

21 MS. KIERNY: -- talking about Yatziri right now,
22 statement, which is --

23 THE COURT: Yatziri, right.

24 MS. KIERNY: -- Y-A-T-Z-I-R-E [sic].

25 MR. HAMNER: And that's the correct spelling of

1 Yatziri, but I will say for the record Yezlene's name is
2 spelled Y-E-Z-L-E-N-E. Just that --

3 THE COURT: Oh.

4 MR. HAMNER: That's how it was spelled at the
5 grand jury proceedings. You're all right about the right
6 people. It's just an E instead of an A.

7 THE COURT: All right. Thank you. All right.

8 MS. KIERNY: All right.

9 THE COURT: All right. I'm following you. Keep
10 going.

11 BY MS. KIERNY:

12 Q She described the people -- you said she described
13 the people on the phone as bitchy?

14 A Who are we talking about, please?

15 Q I'm sorry. Yatziri's interview.

16 A Yes.

17 Q She said she saw some things on a phone?

18 A Yes.

19 Q And she described the people as bitchy? Do -- you
20 said the word bitchy with Ms. Kollins.

21 A Beachy.

22 Q Beachy? What does that mean?

23 A I don't know. It's a term I've never heard
24 before, but when I further asked her she stated they had no
25 clothes on.

1 Q Okay. So, that's not a word that you were
2 familiar with in Spanish --

3 A Correct.

4 Q -- or in English?

5 A Correct. The way the transcriber wrote it was how
6 it sounds in English, but that's not what she said.

7 Q I see. All right.

8 I'm trying to sum up some of it.

9 When you talked to -- you also talked to Maridel,
10 who is the second twin that we discussed. Correct?

11 A Yes.

12 Q And you called her Maribel because that's more how
13 she says her name as well?

14 A That's what I remember from the recording. Yes.

15 Q So, both say their name Mirabel?

16 A I remember the second twin, Mirabel.

17 Q Mirabel.

18 A I remember the first twin, Maribel.

19 Q I see. Okay.

20 A And both of them I remember the enunciation being
21 B, with a boy.

22 Q I see. Thank you for that clarification.

23 She did not disclose -- the first time that she
24 talked -- when she talked to you, that wasn't her first
25 time disclosing. Correct?

1 A I don't know who all she disclosed to.

2 Q But she had disclosed to other people before that?

3 A To my knowledge, she made an outcry.

4 Q All right. So, it wasn't spontaneously to you for
5 the first time?

6 A Correct.

7 MS. KOLLINS: Objection. Calls for legal
8 conclusion, spontaneously, in this regard.

9 THE COURT: Can you explain further?

10 MS. KOLLINS: Well because spontaneous disclosure
11 is a portion of the statute, some in this instance, I don't
12 want spontaneous to be accepted as a legal conclusion for
13 purposes of the Court's rulings is all.

14 THE COURT: Ah. I see.

15 MS. KIERNY: I am applying the factors.

16 THE COURT: Okay. Well that -- I guess I will
17 make a determination whether it's spontaneous. So, let's --
18 - I'll sustain that objection and --

19 MS. KIERNY: Okay.

20 THE COURT: -- I want you to try to just find out
21 circumstances behind the statement other than having her
22 label it.

23 MS. KIERNY: Okay.

24 THE COURT: Thanks.

25 BY MS. KIERNY:

1 Q So under your -- in your understanding, she had
2 made an outcry to her mother before this. Correct?

3 A Correct.

4 Q And possibly other people?

5 A I don't know about --

6 MS. KOLLINS: Objection.

7 THE WITNESS: -- other people.

8 MS. KOLLINS: Calls for speculation.

9 THE COURT: Yeah. She doesn't -- I mean, know
10 whether there were other people that she reported it to
11 you. Do you -- I mean, that should be the question --

12 MS. KIERNY: Okay.

13 THE COURT: -- do you know if she reported it --
14 BY MS. KIERNY:

15 Q Do you know if there had been other people that
16 she had reported it to?

17 Thank you, Your Honor.

18 A No. No.

19 Q Okay.

20 THE COURT: No. Okay.

21 MS. KIERNY: All right.

22 BY MS. KIERNY:

23 Q Regarding the candy that Don David gave them, she
24 never said that -- she indicated that Don David gave them
25 Kit Kats. Correct?

1 A Correct.

2 Q And she did not say that he put them down his
3 pants?

4 A Correct.

5 Q All right. She didn't say that he put them in
6 their vagina. Correct?

7 A In -- again, I'm sorry. Who are we talking about?

8 Q I'm sorry. Maridel in her statement -- Mirabel in
9 her statement to you did not say that Don David put candy
10 in her vagina?

11 A Correct.

12 Q All right.

13 THE COURT: We're talking about still the second
14 twin that Ms. Kollins discussed?

15 MS. KIERNY: Yes, Your Honor.

16 THE COURT: Okay.

17 BY MS. KIERNY:

18 Q When Mirabel told you that she saw video on the
19 phone, she indicated that Don David was inside and Litzy
20 was also there. Correct?

21 A I don't remember the location of Litzy at that
22 time.

23 Q Okay. Do you know if -- do you recall if Maribel
24 [sic], the second twin, said that Litzy was present for
25 when she saw Don David's -- the video on Don David's phone?

1 A I don't recall.

2 Q Okay. Yezlene spoke to you about a time where her
3 mouth was taped. Correct?

4 A Correct.

5 Q And she indicated that the tape was white?

6 A Correct.

7 Q She did not say that she was dragged into that
8 apartment. Correct?

9 Let me rephrase. I'm sorry. She indicated that
10 she was sitting on the couch of that apartment. Correct?

11 A I don't remember where she was located at that
12 time.

13 Q All right.

14 A Before it started.

15 MS. KIERNY: Court's brief indulgence.

16 [Pause in proceedings]

17 MS. KIERNY: I can't find it. I'll move on. I
18 apologize.

19 BY MS. KIERNY:

20 Q Did -- was Yezlene clear to you whether the tape -
21 - taping happened more than one time, if you recall?

22 A She only talked about that one specific time with
23 the tape.

24 Q All right. And she also mentioned to you an
25 incident where she was touched in a car. Correct?

1 A I -- there was a mention of a car, but I don't
2 remember her saying that she was in the car.

3 Q All right. None of the other children that you
4 interviewed mentioned any conduct occurring in a car.
5 Correct?

6 A Not in a car, but a car being mentioned.

7 Q Okay. Not -- they didn't mention being touched
8 inside of a car. Correct?

9 A Correct.

10 Q Moving on to Scarlett. Scarlett was brought to
11 you at the Children's Assessment Center. Do you know who
12 transported her there?

13 A No.

14 Q Do you know if that was Detective Katawich
15 [phonetic] or do you have any recollection of who it was?

16 A I don't know who brought her in.

17 Q Okay. Before you spoke to her, you know that she
18 had already spoken to her dad. Correct?

19 A I don't believe I was told who had -- who she had
20 told.

21 Q Okay. But she had already made an outcry?

22 A Correct.

23 Q She didn't make it for the first time to you?

24 A Correct.

25 Q And when she was discussing going into Don David's

1 house, she indicated that Yezlene and Yatziri were present
2 for those times?

3 A Correct.

4 Q In their interviews, Yezlene and Yatzire never
5 mentioned Scarlett being present. Correct?

6 A Correct.

7 Q Were you aware of any history of lying to law
8 enforcement, that any of the children had, before
9 conducting the interview?

10 MS. KOLLINS: I'm going to object to that. I
11 mean, she's told the Court what she got in terms of
12 information. She had, at most, one sheet from her front
13 desk. So, I don't know whether she would ever have
14 information to know that these children were lying --

15 THE COURT: I'm going to sustain that. I don't
16 think it's relevant what the questioner's state of mind is
17 here except as it might bear on her actual conduct of
18 conducting the interview. And, so, that's really what you
19 need to focus on --

20 MS. KIERNY: Okay.

21 THE COURT: -- and not what -- not her state of
22 mind.

23 MS. KIERNY: All right.

24 THE COURT: All right? So, I am sustaining that
25 objection.

1 BY MS. KIERNY:

2 Q When you spoke to Scarlett, she indicated that Don
3 David touched her arm, hair, back, and cheek. Correct?

4 A And her neck.

5 Q And her neck? And the term that she used for that
6 was caressed?

7 A Yes, in Spanish.

8 MS. KIERNY: Okay. Court's brief indulgence.

9 THE COURT: Sure.

10 [Colloquy between defense counsel]

11 MS. KIERNY: All right. Pass the witness.

12 THE COURT: All right. Do we have any -- Ms.
13 Kollins, any --

14 MS. KOLLINS: Redirect.

15 MR. HAMNER: Redirect.

16 MS. KOLLINS: No, sir. Thank you.

17 THE COURT: All right. Then you are excused.
18 Thank you for your time.

19 THE WITNESS: Thank you.

20 THE COURT: I appreciate your patience.

21 THE WITNESS: Sure.

22 THE COURT: All right.

23 MS. KOLLINS: If I could have just one moment with
24 her about scheduling and --

25 THE COURT: You may.

1 MS. KOLLINS: -- I'll call my next witness.
2 MR. HAMNER: Thank you, Your Honor.
3 [Pause in proceedings]
4 [Colloquy between counsel]
5 MR. WESTBROOK: She's with me.
6 MS. KOLLINS: Oh, okay.
7 MR. WESTBROOK: We're good. That's my mom. Hi,
8 mom.
9 MS. KOLLINS: Okay. I was just checking.
10 MR. WESTBROOK: Your Honor, my mother is in the
11 front row. I'm just pointing her out.
12 THE COURT: Oh, good. No problem.
13 MR. WESTBROOK: Your Honor, this is Judge Scotti
14 [indiscernible].
15 THE COURT: Hi. Nice to meet you.
16 MR. WESTBROOK: That's my mom.
17 THE COURT: Thank you for being here.
18 MS. KOLLINS: Your Honor, the State would call
19 Yusnay Estrada-Rodriguez and she will need the assistance
20 of an interpreter.
21 THE COURT: All right. Will the interpreter
22 please --
23 THE INTERPRETER: Yes, Your Honor.
24 THE COURT: -- come forward? Do you want to --
25 you may sit down here if you want to -- the witness box --

1 the lower witness box, if you want.

2 THE INTERPRETER: That would be perfect. Thank
3 you.

4 THE COURT: You may. Please come forward.

5 THE INTERPRETER: Thank you.

6 THE COURT: Please introduce yourself to the
7 witness.

8 THE INTERPRETER: Michelle Ross.

9 THE COURT: Get yourself comfortable.

10 Okay. All right. She needs to remain standing
11 and the Court Clerk will administer the oath.

12 THE CLERK: Raise your right hand.

13 **YUSNAY RODRIGUEZ**

14 [having been first duly sworn, testifies as follows, with
15 the use of a Spanish Interpreter:]

16 THE CLERK: Thank you. Please be seated. Will
17 you please state and spell your first and last name for the
18 record?

19 THE WITNESS: Yusnay Rodriguez, Y-U-S-N-A-Y, last
20 name Rodriguez, R-O-D-R-I-G-U-E-Z.

21 THE CLERK: Thank you so much.

22 **DIRECT EXAMINATION OF YUSNAY RODRIGUEZ**

23 BY MS. KOLLINS:

24 Q Good afternoon, Ms. Rodriguez. How are you?

25 A Fine. Thank you.

1 Q May I call you Yusnay?
2 A Yusnay, si.
3 Q May I call you Yusnay?
4 A Yes.
5 Q Okay. Ma'am, where do you live?
6 A You mean the address?
7 Q Yes, ma'am.
8 A 4800 East Charleston Boulevard, Apartment Number
9 4, Las Vegas, Nevada.
10 Q And in -- is that called the Charleston Gardens
11 Apartments?
12 A Yes.
13 Q Are you friends with an Amanda Moiza?
14 A I am her neighbor.
15 Q Do you know her daughters?
16 A Yes.
17 Q Can you name her daughters for me?
18 A Yes. The oldest one, her name -- the oldest girl,
19 her name is Yatziri. Okay. I don't know if it's spelled
20 with a J or an H. Yatziri.
21 Q Okay. And her other daughters?
22 A The other girl, her name is Maribel and the next
23 girl, her name is Maridel, with D.
24 Q And those two girls are twins. Correct?
25 A Yes.

1 Q Do you know Maria Estrella?

2 A Yes.

3 Q Do you know her daughters?

4 A Yes.

5 Q And what are her daughters' names?

6 A The oldest girl, her name is Yezlene and the
7 youngest one, I'm not sure if her name is Nicole or
8 something like that.

9 Q Okay. And they're all your neighbors at the
10 Charleston Gardens Apartments?

11 A Mm-hmm.

12 Q Do you also know Jose Azucena, also known as Don
13 David?

14 A Yes.

15 Q Do you see him here in the courtroom here today?

16 A Yes.

17 Q Where is he seated and what is he wearing today?

18 A He's sitting over there. He has a blue shirt?

19 Q No jacket?

20 A No.

21 MS. KOLLINS: May the record reflect the
22 identification of the Defendant?

23 THE COURT: Yes.

24 THE WITNESS: Okay.

25 BY MS. KOLLINS:

1 Q I want to talk to you about an evening in October
2 of 2016 where the girls came to you to talk.

3 A Mm-hmm.

4 Q Okay. And do you recall when I'm talking about in
5 November of 2016 -- or excuse me. October of 2016?

6 A Yes.

7 Q Who was home that night with you?

8 A One of the girls was with me first.

9 Q Which girl was that?

10 A Yatziri.

11 Q Okay. Who else was present at your home besides
12 you and Yatziri?

13 A At the beginning, the first moment, nobody else.

14 Q Okay. Your husband home or no?

15 A No. My husband works at night. He was not there.

16 Q Okay. So, this was in the evening hours?

17 A Yes.

18 Q Okay. And was there a party going on in the
19 apartment complex the night Yatziri came to you?

20 A Mm-hmm.

21 Q Is that a yes?

22 A Yes. There was an activity there. Some type of
23 event. I'm not sure if it was a party, but there were
24 people there sharing time together. Uh-huh.

25 Q We have to say yes or no if that's the answer.

1 A Okay. Yes. I'm sorry.

2 Q Thank you.

3 So, Yatziri came to you and no one else was home.

4 Is that correct?

5 A Nobody else.

6 Q Tell me about Yatziri's demeanor, how she was
7 acting.

8 A She was nervous. She was anxious like, like
9 scared.

10 Q Is this a child that you speak to regularly?

11 A Yes.

12 Q Other than scared and anxious, anything else about
13 how she looked like?

14 A She was behaving strange. She was like -- I don't
15 understand English.

16 Q She was strange -- you said she was acting
17 strange?

18 A Yes. She was different.

19 Q When she began -- did she begin to speak to you?

20 A Mm-hmm. Yes. Sorry.

21 Q And how did she start the conversation?

22 A She asked me if I was alone in the house, if my
23 husband was not there. And I said he was not there and I
24 said I was alone. And she said: Because there is
25 something I want to tell you but I don't want you to tell

1 to your husband or to my mother.

2 Q And where did this conversation take place?

3 A At my house. At the table where I eat.

4 Q In the kitchen?

5 A Yes.

6 Q Okay. And she said: don't tell my mom or don't
7 tell your husband?

8 A Yes. She told me don't tell them.

9 Q Did you ask her what she was talking about or how
10 did -- did she keep talking to you?

11 THE INTERPRETER: Can you repeat the question for
12 the interpreter, please?

13 BY MS. KOLLINS:

14 Q Did you ask her what she was referring to or did
15 she continue to speak on her own?

16 A I asked -- I told her: No, that's fine. I won't
17 tell anybody.

18 Q And what did she tell you next?

19 A That she has been touched.

20 Q Did you ask her questions about that -- what she
21 meant?

22 A I asked her who -- what do you mean you have been
23 touched? Who has been touching you?

24 Q And did she tell you the answers to those
25 questions?

1 A Yes.

2 Q What did she tell you?

3 A She told me that her grandfather has been touching
4 her.

5 Q Did she use the word Abuelo?

6 A Yes.

7 Q When she used the word Abuelo, did you know who
8 she was referring to?

9 A I asked her by what do you mean by the Abuelo, by
10 the Grandfather, because, for us, grandfather means only
11 the mother's father and the father's father.

12 Q So, you thought she meant her real grandfather?

13 A Mm-hmm. Yes.

14 Q And she told you she was being touched. Did she
15 tell you in that conversation right there where she was
16 being touched or how she was being touched?

17 A Yes.

18 Q What did she tell you?

19 A I asked her: Who has been touching you? And she
20 said: My sisters and the other girls, this old man -- the
21 grandfather -- the Abuelo, Don David. Right. Don David.

22 Q Did you indicate to her in that conversation that
23 what she was saying was very serious?

24 Did you tell Yatziri that what she was speaking
25 about was very serious?

1 A Of course.

2 Q After she gave you the first information, did you
3 ask her to tell you everything?

4 A I told her: You want to tell me? You want to
5 talk about it? Tell me. Tell me what's happening.

6 Q Did she tell you whether or not there were other
7 girls getting touched?

8 A Yes.

9 Q Who did she tell you was getting touched?

10 A Her sisters and another girl that used to live
11 there. Yes.

12 Q Do you know the name of the other girl?

13 A Yezlene. That's her name.

14 Q Okay. Did Yatziri talk about whether or not it
15 was okay to tell mom?

16 A I asked her: Why don't you tell this to your
17 family, to your mom and your dad? And she said: No,
18 because they're going to get killed. And I told her:
19 Nobody is going to kill them. And said: Yes, that man
20 told us that if we say anything she was going to kill my
21 mom and my dad.

22 Q Now when you spoke to her -- so far how long is
23 this conversation that we just talked about?

24 A Probably about 10, 15 minutes.

25 Q Did she talk to you about candies?

1 A Yes.

2 Q What did she say about candies?

3 A All right. She told me and all of them told me
4 the same thing that when he used to come home, he used to
5 tell the girls: Would you like some candy? When the girls
6 said yes, they went to his place. He will pass the candy
7 around his private part and then he told the girls that
8 they have to eat from there.

9 Q Okay. And we're just focusing on the one
10 conversation with Yezlene right now -- or with Yatziri
11 right now.

12 A Okay.

13 Q We'll get to the other girls in a minute. Okay?

14 A Okay.

15 Q So, did Yatziri talk to you about all the girls in
16 that first conversation?

17 A Yes.

18 Q What else, other than what we've spoken about, did
19 she tell you happened with the other girls?

20 A She told me that this man used to put tape on
21 their hands, took away their clothes, and pushed them on
22 the bed.

23 Q She did not tell you which girl that happened to
24 though. Correct?

25 A Yes.

1 Q Did she talk about anything about a car?

2 A Yes.

3 Q What did she tell you about a car?

4 A She told me that he took the girls in the car to
5 McDonald's or to Chuck E. Cheese and, when they got there,
6 and the girls were walking out of the car, he was fondling
7 -- yeah, he played or fondled the private parts.

8 Q He did fondle them or he planned to?

9 A According to what they told me, he did it.

10 Q So, after you speak to Yezlene, does she -- I'm
11 sorry. Yatziri, does she go get the other girls to talk to
12 you?

13 A Mm-hmm. Yes.

14 Q So, who -- when Yatziri goes to get the other
15 girls, who comes over?

16 A Yatziri's two sisters and the other girl.

17 Q The other girl, Yezlene?

18 A Yes.

19 Q Okay. I want to talk to you about those girls one
20 at a time.

21 A That's fine.

22 Q Did Yezlene and Mirabel and Maridel all come over
23 together with Yatziri?

24 A Yes. She went to look for them.

25 Q Let's talk about Yezlene first.

1 A Mm-hmm.

2 Q When Yez -- does Yezlene come into your apartment?

3 Is that -- you have to answer out loud.

4 A Yes.

5 Q Okay. And where do you speak to Yezlene in your
6 apartment? Are you still at the table?

7 A No. I went outside because I don't know how the
8 laws are in this country because it is something so
9 serious, such a delicate subject, and knowing the laws of
10 this country, how they are, I decided to do all of this
11 outside my apartment. Mm-hmm. Yes.

12 Q So, when Yezlene first comes to you, what's her
13 appearance?

14 A I asked Yatziri, what you're saying is something
15 very serious. Please swear that all of this is true. And
16 said: Yes. It is true. And then she went out and brought
17 all of the other girls.

18 Q Okay. And what my question is, when Yezlene,
19 Yezlene first come over, what did she look like?

20 A She was -- they were all nervous.

21 Q Did Yezlene offer you information about what
22 happened or did you ask her questions or what made Yezlene
23 talk?

24 THE INTERPRETER: What was the last part of that
25 question? I'm sorry.

1 MS. KOLLINS: Or what made her talk?

2 THE WITNESS: That the girl that brought them in
3 told them to tell her. And they started telling me: Yeah,
4 he touches me here, he touched me there. Yes.

5 BY MS. KOLLINS:

6 Q Remember, we're going to talk about one girl at a
7 time.

8 A Oh yes.

9 Q Okay. So, Yatziri tells Yezlene it's okay to you
10 to you, Yusnay?

11 MS. KIERNY: Objection. Mischaracterizing what
12 she said.

13 THE COURT: Well, I -- how -- in what manner?

14 MS. KIERNY: She said Yatziri told them all to
15 talk. She didn't say it's okay to talk or anything like
16 that. So, I think she's paraphrasing incorrectly.

17 THE COURT: Yeah. I did hear it a little bit
18 differently. Why don't you re-ask it differently? I heard
19 her say that she told Yatziri to go get them and Yatziri
20 told them to come talk to her.

21 MS. KOLLINS: Okay. Maybe it was just lost in
22 translation. No, I guess I under --

23 THE COURT: Okay.

24 MS. KOLLINS: I guess I'm already in the
25 conversation, not --

1 THE COURT: OH, okay.

2 MS. KOLLINS: Okay. Let me just -- let me try to
3 clarify. You don't have to translate all that.

4 BY MS. KOLLINS:

5 Q When Yezlene comes to the apartment, does she
6 start talking or do you ask her questions?

7 THE COURT: Who talked first?

8 THE WITNESS: They didn't come alone. They came
9 with Yatziri. It was not one by one.

10 MS. KOLLINS: Okay. I understand. But we're --
11 remember, we're talking about one girl's conversation at a
12 time.

13 THE WITNESS: Okay.

14 BY MS. KOLLINS:

15 Q So, I want to talk about how the conversation with
16 Yezlene started. So how did that start?

17 A I told them: Tell me what's going on.

18 Q Okay. And what did Yezlene tell you?

19 A That he tied them down, hands and feet with tape,
20 and will undress them. Shoved them into the bed without
21 clothes. She told me what happened with the candy.

22 Q Okay. And when she told you about the tape, --
23 I'm sorry. What?

24 THE COURT: We're going to change interpreters.

25 MS. KOLLINS: Okay.

1 THE COURT: Thank you. Good job.

2 MR. WESTBROOK: I think it's customary for the
3 interpreters to slap hands like in a tag-team match from
4 the 1980s if we can do that.

5 THE COURT: Right. It was transition --

6 MR. WESTBROOK: A legal tag-in.

7 THE COURT: Interpreter, your name, please?

8 THE INTERPRETER: Elissa, E-L-I-S-S-A, Mendoza, M-
9 E-N-D-O-Z-A.

10 THE COURT: Thank you. You may either stand or
11 sit.

12 THE INTERPRETER: Yeah. Thank you.

13 THE COURT: All right. Let's proceed.

14 BY MS. KOLLINS:

15 Q Where was I? When you talk about Yezlene and the
16 tape on her hands and her feet, was she talking about just
17 herself or everyone?

18 A I believe it was about herself.

19 Q Okay. So, okay. Did Yezlene look scared to you?

20 A For me, yes.

21 Q Did she tell you she was scared?

22 A They are all scared.

23 Q Okay. And, again, we're going one girl at a time.
24 Did Yezlene tell you she was scared?

25 A Mm-hmm. Yes. Uh-huh.

1 Q What did she tell you she was scared of?

2 A Well, she told me that she was afraid that this
3 man would kill her mother and her father.

4 Q Did she say that she was told that?

5 A Her -- you mean who?

6 Q When Yezlene said that her father and mother would
7 be killed, did someone tell her that?

8 A Yes.

9 Q Who told her that?

10 A The man.

11 Q You're referring to Don David?

12 A Don David.

13 Q Is that who we're talking about?

14 A Yes.

15 Q Okay. Now, was Mirabel also there with all the
16 girls?

17 A Yes.

18 Q Okay. And you know her mom, Amanda, as well.
19 Right?

20 A Yes.

21 Q And what was Mirabel's mood like? How did she
22 look?

23 A I could see that she was anxious, she was nervous.

24 Q And what did she tell you in this conversation,
25 just Mirabel?

1 A Well that this man would offer them candy at his
2 home and then he would move the candy around his private
3 parts and then he would tell them and he said: Well, if
4 you want it, you're going to have to eat it off right here.

5 Q Did she talk about a car?

6 A Yes.

7 Q What did she tell you about the car?

8 A That this man had taken them to some place,
9 McDonald's or a place like that, you know, where they have
10 food and then as he was getting them off the car, he would
11 touch them, you know, in their parts.

12 Q By parts, do you mean genital area?

13 A Yes.

14 Q What was Mirabel's word for parts?

15 A She said my thing.

16 Q And so far all the conversations are in Spanish?

17 A Yes.

18 Q Did Mirabel talk about Grandpa saying that Mirabel
19 was Grandpa's girlfriend?

20 A Yes.

21 Q Now, was Maridel also there?

22 A Mm-hmm. Yes.

23 Q Okay. Did Maridel -- how did she look?

24 A She was just the same. She was nervous.

25 Q Did Maridel talk to you about what happened?

1 A Yes.

2 Q What did Maridel say?

3 A Well, yes, she would tell me that, yes, that it
4 was all true, that everything the girls were talking about
5 because what she was telling me he -- what she was telling
6 me is that this man was doing this in front of all of the
7 girls. I wasn't like he would take one and do it aside
8 from the other, it was when they were all there.

9 Q What else did Maridel tell you?

10 A Well, she -- they told me that, that he would
11 touch them on their body, that he would offer them candy
12 off his parts --

13 MS. KIERNY: Objection as to who they is.

14 THE WITNESS: -- and then he would say that you
15 are my girlfriends.

16 MS. KOLLINS: Can I clarify?

17 THE COURT: Please clarify. I think I'll sustain
18 the objection. We need a clarification of who they are.

19 THE WITNESS: Okay.

20 BY MS. KOLLINS:

21 Q When Maridel was speaking, okay, and she said --
22 talking about bodies getting touched, was she talking about
23 her own body or everybody's?

24 A She was making reference to her own body and the
25 body of the rest of the girls.

1 Q Okay. And I'm going to ask you the same question
2 about the candy. Was she talking about herself being
3 offered candy or everybody being offered candy?

4 A All of them.

5 Q And she said that Don David was calling people
6 girlfriend?

7 A Yes.

8 Q Was she talking about just Maridel or everybody?

9 A Of all the girls.

10 Q Now, from the time you start talking to the first
11 child to the end of this conversation, how much time, if
12 you know?

13 A It could have been maybe 20 minutes, 25 minutes.

14 Q Okay. Did you go tell Amanda or Maria that night?

15 A No.

16 Q Did you decide to wait?

17 A Yes.

18 Q Until the next day?

19 A Mm-hmm. Yes.

20 Q Why did you wait?

21 A Well, first of all because I was just so shocked
22 because of what the girls told me. And then the next thing
23 is I had to just process how do I convey this information
24 to a mother? You know, how do I tell this mother your
25 daughter, your girl, your daughters have just told me that

1 this man is touching them, this man is harming them?

2 MS. KOLLINS: I'm going to pass the witness.

3 THE COURT: Okay. Who is going to cross on this
4 side?

5 MS. KIERNY: Thank you, Your Honor.

6 THE COURT: All right. Go ahead.

7 **CROSS-EXAMINATION OF YUSNAY RODRIGUEZ**

8 BY MS. KIERNY:

9 Q Good afternoon, Ms. Rodriguez.

10 A Good afternoon.

11 Q All right. So, since this case happened, or since
12 you made this report to the police, --

13 MR. HAMNER: Objection, Your Honor. I don't think
14 this woman made a report to the police at any point in
15 time.

16 MS. KIERNY: I have a voluntary statement in my
17 hand, .

18 MR. HAMNER: I think she gave a voluntary
19 statement but that's different than --

20 THE COURT: A report?

21 MR. HAMNER: Well, calling the police and
22 reporting that it happened. And I guess I'm just unclear
23 from the --

24 THE COURT: Well, I don't know.

25 MR. HAMNER: Okay.

1 MS. KIERNY: I think it's nit-picking but I'll
2 rephrase.

3 THE COURT: Well, --

4 MS. KIERNY: It's fine. It's fine. I'm going to
5 rephrase.

6 THE COURT: -- sometimes nit-picking is important
7 in a trial.

8 MS. KIERNY: Okay. I'm going --

9 THE COURT: I won't all it that but let's be
10 precise on what the document is.

11 MS. KIERNY: OF course.

12 THE COURT: All right. Thank you.

13 BY MS. KIERNY:

14 Q So, since the -- after the girls talked to you,
15 you talked to Amanda. Correct?

16 A The following day.

17 Q All right. You also talked to Maria the following
18 day?

19 A No.

20 Q Have you ever talked to Maria about this?

21 A Yes.

22 Q When was it that you talked to Maria?

23 A When I had to go to the police office to make a
24 statement regarding what happened.

25 Q Okay. And so Maria went with you or how did you

1 speak with her that day?

2 A Amanda went -- came to my house.

3 Q All right. The day that you made the statement to
4 the police?

5 A No. The following day, after --

6 Q Okay.

7 A -- the girls told me what happened.

8 Q All right. So, you talked to Amanda the following
9 day?

10 A Yes.

11 Q When did you talk to Maria about what the girls
12 had told you?

13 A I did not speak with Maria.

14 Q Okay. How long after that was it that you talked
15 to the police?

16 A I don't remember exactly how much time elapsed.

17 Q Okay. Do you remember talking to a Detective Matt
18 Campbell about the case?

19 A Well, I spoke with a detective at the building
20 where the police is but I don't remember the name of the
21 detective.

22 Q All right. After you spoke to the police, have
23 you spoken to Amanda since then?

24 A Yes. Well, she's my neighbor.

25 Q Oh, sure. I'm sorry.

1 Have you guys discussed this case?

2 A Yes.

3 Q All right. Have you spoken to Yatziri about this
4 since you reported it?

5 A Mm-hmm. Yes.

6 Q And have you discussed the case?

7 A What are you trying to tell me when you say about
8 the case?

9 Q Have you talked about what the girls told you
10 since the first time they told you?

11 A If I spoken to whom?

12 Q Yatziri.

13 A I have tried to avoid the topic of this
14 conversation with the young girls because I don't think and
15 find it that it's prudent to have that type of conversation
16 with them.

17 Q Okay. Thank you.

18 A You're welcome.

19 Q All right. Before Yatziri came to you and told
20 you what -- that the man was touching her, did you -- how
21 many times had you talked to her before that?

22 A Like a conversation, like a long conversation?

23 Q Yes.

24 A It was just like hi, hi, how are you, how are you
25 doing, and just like that because they were out there --

1 they were just playing.

2 Q So you had never had a conversation with Yatziri
3 and she had never been to your home before the day she came
4 to tell you this?

5 A Okay. Well, you know, they did come over to the
6 house, but we didn't have a big conversation, maybe a short
7 conversation, and then there was an occasion that I saw
8 them with that man over where, you know, kind of having a
9 conversation with them and they were over by that electric
10 -- electricity box. I'm not sure how else you call it
11 here, but I went out to take the trash.

12 Q I see. Did you think it was strange that Yatziri
13 came to your house that day?

14 A No.

15 Q Okay. Do you think it was strange that she picked
16 you to tell this secret instead of her mother?

17 A No. I don't think it's strange. I think she was
18 afraid to tell her mother and that something would happen
19 to her mother.

20 Q All right. She was afraid to tell her mother
21 because she didn't want something to happen to her. Did
22 she tell you why she didn't think you would be in danger of
23 being harmed?

24 A Well, no. She was not afraid because this man
25 never told her if you speak with someone else, I'm going to

1 kill that someone else if you say something.

2 Q I see. All right.

3 Yatziri told you that the man would put candy
4 around his private parts. Correct?

5 A Yes.

6 Q Do you remember -- you remember that you went to
7 the police department and gave them a voluntary statement.
8 Correct?

9 A Yes.

10 Q Why didn't you mention that detail to the police
11 when you talked to them?

12 A Well, imagine, perhaps not for you, but, for me,
13 it's very difficult to talk to a man about another man
14 putting candy on his private parts and, you know, and then
15 if I have to look at that man and talk about another man
16 putting candy in his private parts, then he's going to be
17 saying: Well, name the names of the private parts. This
18 is difficult for me.

19 Q I understand. So, you withheld that information
20 from the police because it was difficult?

21 A Yes.

22 Q After you spoke with Yatziri for a while, she went
23 to get the other girls. Correct?

24 A Yes.

25 Q How long was it before she went to get the other

1 girls?

2 A Well she was talking to me for about 10 or 15
3 minutes, which is what I already said.

4 Q So, Yatziri talked to you for 10 to 15 minutes and
5 then, after she got the other girls, they talked to you for
6 another 10 minutes?

7 A Yes.

8 Q All right. Why did Yatziri go to get the other
9 girls?

10 A Because I told her many times, I said, this is
11 serious that you're telling me. You have to tell me the
12 truth.

13 Q Do you remember telling the police it was because
14 Yatziri thought that you did not believe her?

15 A I don't remember.

16 Q Okay. Would showing you the voluntary statement
17 that you gave the day you went to the police department
18 help you remember?

19 A If you like to.

20 MS. KIERNY: Okay. May I approach, Your Honor?

21 For the record I'm on page 12 of the voluntary
22 statement.

23 BY MS. KIERNY:

24 Q I'm not trying to be rude. Are you able to read
25 English?

1 A No.

2 Q Okay.

3 A I'm sorry.

4 Q That's fine. I'm going to ask the interpreter to
5 read it to you. Do you -- and then I'm going to ask you if
6 that refreshed your recollection, whether you told the
7 police that.

8 A Okay.

9 [Interpreter reads statement to witness in Spanish]

10 BY MS. KIERNY:

11 Q So now that the interpreter has read that portion
12 of your statement, did that refresh your recollection?

13 A Yes.

14 Q Okay. So, did Yatziri get the other girls because
15 she thought you didn't believe her?

16 A Well, I think that perhaps she thought that maybe
17 I was not believing her.

18 Q Okay. You asked Yatziri many times about what
19 happened to her?

20 MS. KOLLINS: I'm going to object to many. Can we
21 ask how many times she asked? So it's -- it's just a big
22 term. Many can be --

23 MS. KIERNY: More than once.

24 THE COURT: We'll take more than once. You can
25 clarify it on redirect if you want.

1 THE WITNESS: I don't understand what you're
2 asking.

3 MS. KIERNY: I apologize.

4 BY MS. KIERNY:

5 Q You asked Yatziri more than once to tell you what
6 happened to her?

7 A No, not -- and that time, because she came over to
8 see me, to talk to me, and basically all I was telling her
9 was this -- everything you're telling me is very serious
10 and I really need you to tell me the truth.

11 Q And you told her that many times -- or more than
12 one time?

13 A No. That's what I said.

14 THE COURT: So, repetitive --

15 THE WITNESS: And as far as me telling her --

16 THE COURT: -- questioning where it kind of loses
17 its stigma where the responses are consistent here too, so
18 -- but I understand your point.

19 MS. KIERNY: I will move on.

20 BY MS. KIERNY:

21 Q When Yatziri brought her sister and Yezlene over,
22 did you all talk at the same time?

23 A Well, at first, they all started talking at the
24 same time, yes.

25 Q All right. All the girls were talking together

1 you mean?

2 A Well, at first it was all at the same time, and
3 then they started to explain and like one of them was
4 saying: Look, he ties me up and he throws me to the bed.
5 Another one would go on and say: Oh, when he takes us in
6 the car, he touches his -- when we get out of the car and
7 so on.

8 Q Okay. And you remember exactly who said what?

9 A Well, yes, I think so.

10 Q Okay. And why didn't you tell the police that one
11 of them told you about going in a car?

12 A Well, first of all, I don't think I can go above
13 their -- the parents of those girls. For me, I was
14 thinking that I should tell the parents and if -- then see
15 if they would take matters, you know, to the issue or
16 otherwise to see -- to talk to the police.

17 Q So there are things that you didn't tell the
18 police because you wanted to talk to their parents first?

19 A No. What I told you -- what I told them is
20 basically what I've said here and this is what I'm always
21 going to say.

22 Well, just imagine how would you feeling this
23 matter, for instance, if something happens to your child
24 and then, all of sudden, out of the blue, somebody calls
25 the police and they totally skip over you and I felt that I

1 had to speak with the parents. This is something in
2 consideration to the parents and for humanity. I mean, I
3 am a mother. I have children. So, my train of thought was
4 to speak to the family, to see how they were going to
5 handle the issue and then I would decide whether I -- if I
6 was going to speak directly with the police or not.

7 Q I think some of what I was asking got lost in
8 translation. What I was asking is, after you talked to
9 Amanda, the morning after the girls told you this, and then
10 when you spoke to the police later, why didn't you tell
11 them about the touchings in the car?

12 MR. HAMNER: Your Honor, Your Honor, if I could --

13 THE COURT: Finish your translation.

14 One moment, please.

15 MR. HAMNER: And I hate to interject and I know
16 that she wants to ask her questions.

17 THE COURT: Thank you.

18 MR. HAMNER: I think at this point we're pretty
19 far afield of the actual factors. The factors are about
20 the spontaneity of the witness -- or the alleged victim as
21 they are telling these stories, the questions that person
22 is asking in that moment, if there's potential cross-
23 contamination, things along those lines. Now we're delving
24 in about her actions well after these children talked to
25 her on that October night. I just think we're just beyond

1 the scope of what the purpose of the hearing is and I think
2 we are -- you know, this is all great for cross at trial
3 when we get there, but, for right now, that's not the
4 purpose of this hearing.

5 MS. KIERNY: The State wants to introduce these
6 hearsay statements. There are things in the statement that
7 were not in previous statements before. She is adding
8 things that we're not told -- that are not in her police
9 report. So, I'm questioning her about that and I believe
10 that goes to the factors, as you laid out and directed me
11 to.

12 THE COURT: Well, I think what I directed you to
13 was to bring out any differences made by the declarant, the
14 child declarant, early on versus a change in the statement
15 later on.

16 MS. KIERNY: Well, --

17 THE COURT: And what you're getting at --

18 MS. KIERNY: Yes.

19 THE COURT: -- is not a change in the child
20 declarant statements, you're questioning the motives of the
21 person who will be testifying about those hearsay
22 statements.

23 MS. KIERNY: And it's a change in the actual
24 statement that they're seeking to admit. I can't see what
25 would be more relevant than that. The credibility,

1 reliability, and potential bias of a witness on the stand
2 has to be considered as long as -- you know, this includes
3 contradictions in that persons' statements. So that's what
4 I'm really trying to flesh out here.

5 THE COURT: It's -- you know, it's very remote.
6 So I'm going to let you -- you're running out of time
7 anyway, but I'll let you finish up because I think it's
8 remote, but go ahead.

9 MS. KIERNY: Okay.

10 THE COURT: I'll overrule the objection.

11 MS. KIERNY: I don't recall what I was asking.

12 THE COURT: Okay.

13 MS. KIERNY: Give me a minute. Okay.

14 BY MS. KIERNY:

15 Q Do you recall the question?

16 A With everything that has been spoken, of course
17 not.

18 Q Of course. I understand.

19 A I'm sorry.

20 THE COURT: That's okay. Try again.

21 BY MS. KIERNY:

22 Q I recall the question.

23 MR. WESTBROOK: It was something --

24 MS. KIERNY: I've got it. Thanks.

25 MR. HAMNER: Oh, it was about talking -- not

1 talking about the car and then talking about the car.

2 BY MS. KIERNY:

3 Q Okay. You testified today that the girls told you
4 that there were touchings that occurred in the car. Why
5 didn't you tell the police in your statement to them about
6 the touchings in the car?

7 A Well, I think that you have to understand that
8 it's not easy, at least not for me, you know, I go to a
9 detective's office that is so high, that reaches the sky
10 way up, and I'm in a country. This is not my country and I
11 was just not comfortable and perhaps I omitted some things,
12 but I can tell you that you should believe me; that I just
13 want to do what's fair for everyone.

14 THE COURT: So, I think -- I'd really like you to
15 move on from this topic because the motive --

16 MS. KIERNY: I'm done.

17 THE COURT: Okay.

18 MS. KIERNY: Thank you.

19 THE COURT: All right.

20 BY MS. KIERNY:

21 Q You mentioned that you were not born in this
22 country. Where are you from?

23 A Cuba.

24 Q All right. That's where you were born?

25 A Yes.

1 Q Are you having any issues with the translation
2 because sometimes I know that Cuban speakers have a hard
3 time -- when I have clients that are from Cuba sometimes
4 has a hard time with the interpretation?

5 A If the translator is good, I don't have a problem.

6 MS. KIERNY: Perfect. All right. No further
7 questions.

8 THE COURT: Ms. Kollins, redirect on anything?

9 MS. KOLLINS: Your Honor, I'm not going to
10 redirect this time.

11 THE COURT: Ma'am, thank you very much. We
12 probably -- are you -- we probably don't need you back
13 until tomorrow.

14 Is she under subpoena?

15 MS. KOLLINS: She's under subpoena.

16 MR. HAMNER: She's under subpoena.

17 THE COURT: All right. You're ordered to return
18 to court tomorrow at 1 p.m. or as further directed by --

19 MR. HAMNER: The State.

20 THE COURT: -- the subpoenaing party, the State.

21 MS. KOLLINS: Are we starting at 1 tomorrow?

22 THE COURT: 1.

23 MS. KOLLINS: 1 p.m. please --

24 THE COURT: Step off the stand. You are excused.

25 MR. HAMNER: All right. State -- if Your Honor's

1 fine, I can move onto the next witness. We'll call Amanda
2 Moiza.

3 THE COURT: All right. Please --

4 MR. HAMNER: Yes, please.

5 THE INTERPRETER: She doesn't speak English
6 either?

7 MR. HAMNER: Yes. Everyone here is speaking
8 Spanish. You guys are in -- you're in for the long haul.

9 THE COURT: You guys are doing great. Thank you
10 so much.

11 THE INTERPRETER: Thank you.

12 THE COURT: We're so glad you work for the courts
13 and help out.

14 THE INTERPRETER: Thanks. Okay. I'm going ot
15 leave my chair here.

16 THE CLERK: Please raise your right hand.

17 **AMANDA MOIZA**

18 [having been first duly sworn, testifies as follows, with
19 the use of a Spanish Interpreter:]

20 THE CLERK: Please state and spell your first and
21 last name.

22 THE WITNESS: Amanda Moiza, A-M-A-N-D-A M-O-I-Z-A.

23 THE CLERK: Please be seated.

24 MR. HAMNER: May I proceed, Your Honor?

25 THE COURT: Yes.

1 MR. HAMNER: Thank you.

2 **DIRECT EXAMINATION OF AMANDA MOIZA**

3 BY MR. HAMNER:

4 Q Good afternoon, Ms. Moiza.

5 A Good afternoon.

6 Q Can I call you Amanda?

7 A Yes.

8 Q Okay. Amanda, do you have three children?

9 A Yes.

10 Q One of them Yatziri Moreno?

11 A Yes.

12 Q Are the other two Maridel Moreno and the other one

13 Mirabel Moreno?

14 A Yes.

15 Q Okay. Can you spell Miradel [sic] -- Mirabel's
16 name for us?

17 A M-I-R-A-B-E-L.

18 Q Okay. And can you spell Maridel's first name for
19 us?

20 A M-A-R-I-D-E-L.

21 Q Okay. How old is Yatziri?

22 A 10.

23 Q How old is Mirabel and Mir -- I'm sorry. Maridel
24 and Mirabel?

25 A 8.

1 Q Okay. They're twins?

2 A Yes.

3 Q And were they born on September 27th, 2008?

4 A Yes.

5 Q And was Yatziri born on December 3rd, 2006?

6 A Yes.

7 Q Where do you live?

8 A 4810 East Charleston Boulevard, Apartment Number
9 1.

10 Q Okay. Do you know somebody by the name of David
11 Azucena?

12 A Yes.

13 Q Do you see him in the courtroom today?

14 A Yes.

15 Q Can you please point to where he is in the
16 courtroom and describe to us an article of clothing that
17 he's wearing?

18 A Right over there with the blue.

19 MR. HAMNER: Can I just approach the witness,
20 briefly?

21 Thanks.

22 BY MR. HAMNER:

23 Q Okay. I want to turn your attention to October
24 16th, 2016. Okay? On that day, what was happening -- what
25 was supposed to happen on that day?

1 [Witness crying]

2 THE COURT: Can you give her a glass of water,
3 too, please? Thank you. Take your time.

4 [Pause in proceedings]

5 Do you want to be excused for a moment to use the
6 restroom and come back? You can take a break if you want
7 to.

8 MR. HAMNER: If we could just take --

9 THE COURT: Okay. We're going to take a five-
10 minute recess.

11 Do you want to call a different witness?

12 MR. HAMNER: Sure. State will call Ricardo Rangel
13 to the stand.

14 THE COURT: Will you let her know?

15 MR. HAMNER: Yes.

16 THE COURT: Ricardo Rangel.

17 MS. KOLLINS: He's going to be pretty quick.
18 After he's done, could we have about five minutes?

19 THE COURT: Yeah, sure.

20 MS. KOLLINS: Thanks.

21 THE COURT: Is this going to be like Scarlett's
22 father?

23 MS. KOLLINS: And it's different, so it's much
24 shorter.

25 THE COURT: Thank you. I excused her. We're

1 going to call a different witness right now, but thank you,
2 Marshal, I appreciate your help. Thank you very much.

3 [Pause in proceedings]

4 THE COURT: Hello, sir. We have an interpreter
5 for you. You may stand and the Court Clerk will give you
6 an oath.

7 THE CLERK: Please raise your right hand.

8 **RICARDO RANGEL**

9 [having been first duly sworn, testifies as follows, with
10 the use of a Spanish Interpreter:]

11 THE CLERK: Please be seated. Please state your
12 first and last name and the spelling.

13 THE WITNESS: Ricardo Rangel, R-I-C-E- -- I'm
14 sorry. C-A-R-D-O. Rangel, R-A-N-G-E-L.

15 THE COURT: G-E-L. Okay. Thank you. Thank you.
16 You may proceed.

17 MS. KOLLINS: Thank you, Your Honor.

18 **DIRECT EXAMINATION OF RICARDO RANGEL**

19 BY MS. KOLLINS:

20 Q Good afternoon, Mr. Rangel. How are you?

21 A Fine.

22 Q We're just here for a couple of questions here
23 today. Okay?

24 Where do you live, sir?

25 A 4850 East Charleston Boulevard, Apartment Number

1 23.

2 Q And that is the Charleston Gardens -- Charleston
3 Garden Apartments?

4 A Yes.

5 Q And that's here in Clark County, Las Vegas,
6 Nevada?

7 A Yes.

8 Q You have a daughter by the name of Scarlett?

9 A Yes.

10 Q And she is seven years old with a birthdate of
11 August 29 of 2009?

12 A Yes.

13 Q And within -- does Scarlett live with you full
14 time?

15 A No.

16 Q Sometimes she's with you and sometimes she's with
17 her mom?

18 A Yes.

19 Q And what days of the week does she stay with you?

20 A Saturday, Sunday, Monday, and Tuesday.

21 Q Does she sometimes play with other girls in the
22 neighborhood or in the apartment complex?

23 A Yes.

24 Q Do you know Amanda Moiza?

25 A Yes.

1 Q Do you know her daughters?

2 A Yes.

3 Q And do you know Maria Barajas Nevaro?

4 A Yes.

5 Q And do you know her daughters?

6 A Yes.

7 Q Okay. In October -- late October, early November
8 of 2016, did you have a conversation with Amanda regarding
9 Don David?

10 A Yes.

11 Q Did that cause you to go have a conversation with
12 Scarlett?

13 A Yes.

14 Q Tell me when and where that conversation took
15 place.

16 A The conversation happened across the front of the
17 apartment -- right in front of the apartment, Amanda's
18 apartment.

19 Q Who was there?

20 A Her and I. She and I.

21 Q And by her, you mean Scarlett and yourself?

22 A No. Amanda and me.

23 Q Okay. And after you talked to Amanda, did you
24 talk to Scarlett?

25 A Yes.

1 Q And where was Scarlett when you spoke to her?

2 A She was playing with the girls.

3 Q Okay. Did you have a conversation with Scarlett
4 to try to find out if anything happened to Scarlett?

5 A Yes.

6 Q Where did that happen -- that talk, where did that
7 happen?

8 A In my apartment, in my room.

9 Q Okay. And in your apartment, in your room, who
10 was there?

11 A Scarlett and me.

12 Q Okay. No Amanda?

13 A No Amanda. No.

14 Q Okay. And what did you ask Scarlett, if anything?

15 A If somebody had touched her.

16 Q Okay. Did you -- did she give you an answer?

17 A Yes.

18 Q What did she tell you?

19 A That the -- Yatziri and the twins' grandfather had
20 touched the shoulder -- her shoulder and had shown her his
21 private part.

22 Q And, after she told you that, did you call the
23 police?

24 A Not at that moment.

25 Q Soon after that?

1 A Yes.

2 Q Okay. Did you ask her any more questions about
3 being touched or seeing the man's private part? I'm sorry.
4 On that day.

5 A I asked questions -- no, I asked her questions and
6 she told me that he touched her shoulder and showed her his
7 private part.

8 Q Okay. And nothing else?

9 A No. Nothing else.

10 Q Okay. And when you started this conversation, did
11 you let Charlotte -- or Scarlett know that she was not in
12 trouble?

13 A Yes.

14 Q And how did her mood sem to you when she talked
15 about this?

16 A When she was telling me she was kind of like
17 afraid, but once we finished the conversation, she started
18 feeling better.

19 MS. KOLLINS: Okay. Thank you, Mr. Rangel. I
20 have nothing further, Your Honor.

21 THE COURT: Any cross?

22 MR. WESTBROOK: I do, Your Honor.

23 **CROSS-EXAMINATION OF RICARDO RANGEL**

24 BY MR. WESTBROOK:

25 Q Mr. Rangel, I'm David Westbrook. Do you remember

1 me?

2 THE INTERPRETER: I'm sorry. What is your last
3 name?

4 THE WITNESS: Yes. This person came to my house
5 and did not show ID or said why was here at my house.

6 BY MR. WESTBROOK:

7 Q Are you saying that under oath, Mr. Rangel?

8 A Yes.

9 Q Your statement here under oath is that I, David
10 Westbrook, came to your house, didn't show you ID, and
11 didn't tell you who I was when I talked to you?

12 THE COURT: Well he just said that. So, you don't
13 need to repeat it. Okay?

14 MR. WESTBROOK: Judge, just ask him for a yes or
15 no on that, Your Honor, because it's pretty important?

16 THE COURT: He gave us an answer. So, obviously
17 you guys have a different point of view, but --

18 MR. WESTBROOK: All right.

19 BY MR. WESTBROOK:

20 Q You're talking about your conversation with your
21 daughter.

22 A Yes.

23 Q What is the first thing that you said to your
24 daughter?

25 A If somebody had touched her.

1 Q Okay. So you said: Did someone touch you? Do
2 you remember what the second thing you said to her was?

3 A Exactly, no.

4 Q What did she say when you first asked her, did
5 somebody touch you?

6 THE INTERPRETER: Please repeat the question for
7 the interpreter.

8 BY MR. WESTBROOK:

9 Q When you said to her, did somebody touch you, what
10 was her first response?

11 A Please repeat the question.

12 Q When you said to your daughter, did somebody touch
13 you, what is the first thing that she said?

14 A She didn't want to answer.

15 Q Okay.

16 A I started telling her that she was not in trouble,
17 that she was not going to have problems, and to feel
18 comfortable telling me, that nothing would happen to her.
19 I just wanted to know if somebody had touched her and
20 that's when she told me what she said.

21 Q Okay. So, she told you this for the first time
22 after she had been staying with Amanda. Is that right?

23 THE INTERPRETER: After she was staying where?

24 MR. WESTBROOK: She was staying with Amanda.

25 MS. KOLLINS: Objection. Mischaracterizes the

1 testimony. My apologies. There's been no testimony she's
2 staying --

3 THE COURT: Well, he didn't say that yet. I think
4 he's just asking him a question. Right? Were you asking a
5 question?

6 MR. WESTBROOK: I'm asking a question. That's why
7 I said, is that right, at the end of it.

8 THE COURT: But you said so, so it kind of
9 suggests that you were trying to restate his testimony.

10 MR. WESTBROOK: Okay.

11 MS. KOLLINS: Well, I -- my objection is that
12 there's been no testimony that she was staying with Amanda
13 --

14 THE COURT: Right. That's why the question should
15 be, all right, do you know if she was staying with Amanda
16 before you asked her if somebody touched you.

17 MR. WESTBROOK: I can certainly rephrase the
18 question, Your Honor.

19 THE COURT: All right. I thought I did, but go
20 ahead. You do it your way.

21 MR. WESTBROOK: No, I was going to do it your way.

22 THE COURT: Well, okay. That's better.

23 MR. WESTBROOK: Just for the translator, so --

24 THE COURT: Thank you.

25 MR. WESTBROOK: To make sure it's clear.

1 BY MR. WESTBROOK:

2 Q Was Amanda staying -- or I'm sorry. Was your
3 daughter staying with Amanda before she told you about
4 this?

5 A What do you mean that she was staying?

6 Q Okay. What I mean is was she spending time over
7 at Amanda's house before she told you about it?

8 A Amanda is the person that picks up my children.

9 Q Okay.

10 A She had the children when I stop by to pick up the
11 children. That's when we started to talk about that and my
12 girl was playing with Amanda's girls.

13 Q Okay. So, when you say that's when we started
14 talking about that, you mean you and Amanda started talking
15 about that. Right?

16 A Yes.

17 Q Okay. So the first person that you heard this
18 from was Amanda?

19 A Yes.

20 Q Okay. And it -- was it Amanda that told you you
21 should talk to your daughter about this?

22 A No.

23 Q Okay. What did Amanda tell you?

24 A She told me what was happening with her daughters.

25 Q Okay. So, you had the information about what

1 Amanda's daughters had said before you had the information
2 about what Scarlett had said. Right?

3 A Yes.

4 Q So, the first time that you asked your daughter
5 the question, did somebody touch you, just now you said
6 that she didn't want to answer. Right?

7 A She was feeling afraid or scared.

8 Q Okay. So she didn't want to tell you. Right?

9 A She didn't want to talk.

10 Q Do you remember giving a voluntary statement to
11 the police in this case?

12 A Not to the police, to the detective. Yes.

13 Q Detective Campbell?

14 A I think so.

15 MR. WESTBROOK: Okay. I'm going to refer to page
16 3 of his voluntary statement, Your Honor. May I approach
17 the witness?

18 THE COURT: Yes. You may.

19 MR. WESTBROOK: Thank you.

20 I'm going to have the interpreter read the last
21 three lines to him.

22 [Interpreter reads statement in Spanish to witness]

23 BY MR. WESTBROOK:

24 Q So, when you first asked her, she told you that
25 nothing happened. Right?

1 A Uh-huh. Yes.

2 Q So it's not that she didn't want to talk. She did
3 talk and said nothing happened. Correct?

4 A She did not want to have this conversation with
5 me. She was feeling scared about telling me about this
6 thing.

7 Q Okay. But what she said to you was: No, nothing
8 happened?

9 A At that moment, yes.

10 Q Okay. So, you repeated your questions to her to
11 find out what happened. Right?

12 A Yes.

13 Q And once she finally told you, the first thing she
14 said was that he touched her on the shoulder?

15 A Yes.

16 Q Okay. And, then, did he say that he touched her
17 on the back or was it on the hand?

18 A I never said that. He touched her shoulder and
19 showed her his part.

20 Q Okay. So those are the only two things that she
21 said?

22 Okay. So, --

23 A Yes.

24 Q So the first thing she said was the shoulder and
25 the last thing that she said was that she saw his part?

1 A Yes.

2 Q If there wasn't the information about seeing this
3 guy's part and it was just about touching of the shoulder,
4 you wouldn't have been worried, would you?

5 THE INTERPRETER: Can you repeat the question for
6 the interpreter?

7 BY MR. WESTBROOK:

8 Q If all she had said is somebody touched my
9 shoulder, you would not have been worried. Right?

10 A Why not?

11 Q You would have been worried if he was just
12 touching the shoulder?

13 A Of course.

14 Q Okay. Why?

15 A I don't know that person. I've seen that person,
16 but I have never had any conversations or anything with
17 him.

18 THE COURT: So, your time is up. I'll give you an
19 extra 30 seconds.

20 BY MR. WESTBROOK:

21 Q Okay. So you would have been worried because you
22 heard what Amanda had told you what happened to her kids.
23 Right?

24 A Excuse me? Can you repeat the question?

25 Q You would have been worried because you heard from

1 Amanda what her kids said happened. Right?

2 A Yes. Of course.

3 Q Okay. Does your daughter have a history of being
4 honest or dishonest?

5 A She has never lied to me.

6 Q Has she ever lied to an authority figure like
7 police or an investigator or anybody else?

8 A I don't think that that's an appropriate question.

9 MR. WESTBROOK: Your Honor, that goes directly to
10 the CPS records that were turned over in this case.

11 MS. KOLLINS: And what does that have to do with
12 this --

13 THE COURT: Well that's for cross-examination, not
14 for this Court's gatekeeper analysis of whether there's
15 inherent liability of the underlying statements by the
16 minor declarants.

17 MR. WESTBROOK: If the minor declarant has a
18 history of lying to authority figures, then there is no way
19 that her statements here could be deemed -- not just
20 sufficiently reliable, particularly reliable under the
21 *Felix* standard. We have evidence that she's not only told
22 lies to other people, but, specifically, to an authority
23 figure during an investigation at the direction of her
24 mother. That is some of the exculpatory evidence that was
25 turned over --

1 THE INTERPRETER: Counsel, can you slow down,
2 please?

3 MR. WESTBROOK: I sure can. Well, he doesn't
4 -- he actually doesn't need to hear this. This is not
5 directed at him. So, --

6 MS. KOLLINS: But I might have redirect. So, --

7 MR. WESTBROOK: Okay.

8 THE WITNESS: But I want to understand that.

9 MR. WESTBROOK: Okay.

10 THE COURT: Okay. Only one person speaking at a
11 time, please.

12 THE INTERPRETER: Thank you.

13 MR. WESTBROOK: Yes. Sure.

14 THE INTERPRETER: Thank you, Your Honor.

15 MR. WESTBROOK: Your Honor, my position is that
16 I'm not asking this witness the question right now. I can
17 direct a question to the witness and she doesn't need to
18 translate this to the witness, however, what I was saying
19 is these CPS records that were the topic of our discovery
20 motions and the motions following that that are full of
21 exculpatory evidence, one of the exculpatory bits here is
22 the person making this accusation has not only been
23 dishonest in the past, but she has specifically lied at the
24 direction of her own mother to Child Protective Services.
25 I think that's an appropriate topic for conversation,

1 particularly when what we're talking about here is whether
2 or not her statements are particularly reliable for purpose
3 of admitting hearsay in a criminal trial in a life sentence
4 case.

5 MS. KOLLINS: I --

6 THE COURT: Response, Ms. --

7 MS. KOLLINS: Well, first of all, I think Mr.
8 Westbrook needs a witness to proffer that. I don't think
9 he can just stand up here, call this child a liar,
10 interpret those CPS records the way he would like to for
11 purposes of this hearing --

12 THE COURT: Well, this witness would be this
13 gentleman here. He's asking -- he's wanting to ask this
14 witness if his daughter lies.

15 MS. KOLLINS: Well, and if you notice, his
16 reference has to do with the child's mother, not with the
17 father. So, -- and that they're separated. So, if he
18 wants to call this child a liar and say she has a
19 reputation for lying, I just don't think this is the
20 appropriate --

21 THE COURT: Well, I think he already answered. I
22 mean, he asked -- didn't he ask the witness if she's -- if
23 she lies and he says she hasn't lied to him.

24 MS. KOLLINS: Well he did say that but I was
25 addressing his reference to the CPS notes and what's

1 contained in them and whether for those purposes solely
2 they should be entertained at this juncture for this
3 hearing.

4 THE COURT: CPS records aren't coming in but I
5 think it would be proper for him to ask if Mr. Ricardo has
6 knowledge about whether his daughter has lied in CPS
7 records and that's -- his time is up. That's his last --
8 got to be his last question.

9 MR. WESTBROOK: It will be my last question,
10 Judge.

11 THE COURT: I think that's a relevant question
12 because if all of the -- okay. So, I guess you're sitting
13 down.

14 MS. KOLLINS: Well, I --

15 THE COURT: Look, if there is rampant
16 untruthfulness by a minor, I think that's one factor that I
17 need to look at, and I know you disagree with me, but the
18 Court says totality of circumstances. And, so, I think I
19 need to consider -- I can't just -- because if I were to
20 say that I'm flat-out not going to consider the credibility
21 of the minors and determine whether their hearsay comes in,
22 I think the Supreme Court would have a problem with it.

23 MS. KOLLINS: And I don't disagree that that
24 should be a part of your global analysis, but I think that
25 to say that that's all that *Felix* stands for, is

1 inaccurate, one, and, two, --

2 THE COURT: I agree with you.

3 MS. KOLLINS: -- and I think the mode that he is
4 attempting to do this is improper and that's what I was
5 trying to say but I -- if the Court's ruled he can ask his
6 question, so, --

7 THE COURT: Okay. Go ahead.

8 BY MR. WESTBROOK:

9 Q Are you aware that your daughter said that you had
10 punched her in the mouth and kicked her to CPS?

11 A Yes, but that is not something that she said to
12 me.

13 Q You're aware that she said it to CPS. Was what
14 she said true?

15 A Well, I had -- they went to get my girl and my son
16 and it was --

17 MR. WESTBROOK: Your Honor, I'm going to interrupt
18 because --

19 THE COURT: Let him answer the question.

20 MR. WESTBROOK: I was going to say it's
21 nonresponsive.

22 THE COURT: I didn't hear it yet because it hasn't
23 been translated.

24 THE WITNESS: Okay.

25 THE COURT: So what was your answer, sir?

1 THE WITNESS: Well, they took the girl and the
2 boy, but it was all because the mother was saying and
3 insisting about all that, that I had hit her. But in my
4 house -- well, she's never lied to me.

5 MR. WESTBROOK: So, --

6 THE COURT: All right.

7 MR. WESTBROOK: -- it wasn't true, what she told
8 CPS? You did not hit her, you did not kick her, what
9 Scarlett said wasn't true?

10 THE COURT: I think that's what he said. It's not
11 true. Right? Either it's true or -- we need to know if
12 the witness is telling the truth or not.

13 MR. WESTBROOK: That's what I'm asking.

14 THE COURT: Isn't that what justice is about?

15 MR. WESTBROOK: So, I'm just asking was it -- was
16 it true or was it false? You just have to give me a one-
17 word answer. It's easy. Was what your daughter said about
18 you hitting and punching her and kicking her, was it true
19 or false?

20 THE WITNESS: If it was true, do you think I would
21 be sitting here?

22 MR. WESTBROOK: Was it true or false? Just answer
23 my question.

24 THE WITNESS: It was false.

25 MR. WESTBROOK: Thank you. Nothing further, Your

1 Honor.

2 THE COURT: All right. Redirect.

3 THE WITNESS: Before I finish with him, --

4 THE COURT: Yes.

5 MR. WESTBROOK: Your Honor, I object to this.

6 He's not being asked a question.

7 THE COURT: Well, I'm going to ask him a question.

8 Do you have something important that you think the Court
9 needs to know?

10 THE WITNESS: Well only that -- about what the
11 girls are saying, just what the girls have been saying.

12 THE COURT: Okay. Well, Ms. Kollins can ask you
13 more questions about that if she thinks it's appropriate.

14 **REDIRECT EXAMINATION OF RICARDO RANGEL**

15 BY MS. KOLLINS:

16 Q Mr. Rangel, today is just a very small portion of
17 the proceedings.

18 THE COURT: You'll have another chance to ask,
19 perhaps.

20 MS. KOLLINS:

21 Q We're just at the very beginning and you may come
22 back another day.

23 A Okay.

24 Q Today we're here to just talk about hat first
25 conversation with Scarlett. Es todo today. That's all

1 we're talking about today.

2 A Okay. Before I go, there's something I want to
3 tell the Judge.

4 MR. WESTBROOK: Your Honor, I object. This isn't
5 proper.

6 THE WITNESS: Something I said and it was
7 improperly identified. The issue here is that he never
8 identified himself as David, defender.

9 THE COURT: So you're talking about the interview.
10 We don't need to get into that.

11 THE WITNESS: This is when he came over to my
12 house.

13 THE COURT: I know. We might --

14 THE WITNESS: Okay.

15 THE COURT: -- have to discuss that later. It's
16 not proper to discuss it now. Okay? So, I'm not going to
17 consider that for any purposes now Okay?

18 THE WITNESS: Okay.

19 THE COURT: All right. All right.

20 Anything else?

21 MY MS. KOLLINS:

22 Q I was just going to ask you one question about
23 your conversation with Scarlett. Just one question.

24 Did you ask her one time or more than one time
25 what happened?

1 A It was that conversation -- it was just that
2 conversation that we had just then.

3 MS. KOLLINS: Okay. No more questions.

4 THE COURT: All right. Recross?

5 MR. WESTBROOK: Nothing further.

6 THE COURT: All right. Sir, you may step down and
7 you're probably still under subpoena so you may need to
8 come back. All right? You can touch with the District
9 Attorney's Office. Thank you, sir. Thank you for your
10 time.

11 THE WITNESS: Thank you.

12 MR. HAMNER: The State is going to recall Amanda
13 Moiza.

14 THE COURT: Okay.

15 MS. KIERNY: Your Honor, I apologize. Is there
16 any way we can take like a --

17 MR. HAMNER: Yeah that's fine.

18 MS. KIERNY: -- two-minute bathroom break.

19 THE COURT: Sure. Please.

20 MS. KIERNY: Thank you.

21 MR. WESTBROOK: Should have some McDonald's, Your
22 Honor. I'm loving it.

23 MS. KIERNY: Thank you.

24 THE COURT: Thank you. I'm glad you're happy.
25 Court is in a five-minute recess.

1 MS. KIERNY: Thank you so much.

2 [Recess taken at 3:33 p.m.]

3 [Hearing resumed at 3:43 p.m.]

4 THE COURT: All right. Have a seat, everybody.
5 State versus Azucena, C321044.

6 MR. HAMNER: State's going to --

7 THE COURT: I'd rather do murder cases, but they
8 took all my murder cases away and gave them to a murder
9 chief.

10 MR. HAMNER: And they moved me next to you.

11 MR. WESTBROOK: Murder is easy, Your Honor. It's
12 just a battery with one fewer witnesses.

13 THE COURT: All right. I don't have any comments.
14 So, --

15 MR. HAMNER: All right. State's going to --

16 THE COURT: I think these cases are a little bit
17 more complex than murder cases.

18 MR. WESTBROOK: I completely agree.

19 MS. KIERNY: We agree. The rest of our -- the
20 murder team in our office doesn't seem to agree.

21 MR. WESTBROOK: All the rest of everybody does.

22 MS. KIERNY: Yeah.

23 THE COURT: Murder is just like a battery when
24 somebody dies. I don't know.

25 MS. KIERNY: Exactly.

1 THE COURT: Yeah. A lot more complex issues.

2 Anyway --

3 MR. HAMNER: State's going to recall --

4 THE COURT: That's my opinion.

5 MR. HAMNER: State's going to recall Amanda Moiza
6 up to the stand.

7 THE COURT: All right. Amanda Moiza. Hello,
8 ma'am.

9 THE WITNESS: Hello.

10 THE COURT: Glad you're here. Thank you for being
11 here.

12 Do we need to re-swear the witness? Did we swear
13 her in yet? You're still under oath. Right? And you're
14 still under oath and you're still required to testify
15 truthfully and Mr. Hamner will have some questions for you.
16 Okay?

17 Okay. Please proceed.

18 **CONTINUE DIRECT EXAMINATION OF AMANDA MOIZA**

19 BY MR. HAMNER:

20 Q I want to go back to October 16, 2016. On that
21 day, do you remember earlier in the day there being
22 discussion about Chuck E. Cheese?

23 A Yes.

24 Q Who brought that topic of Chuck E. Cheese up
25 first?

1 A David Azucena, that is Jose Azucena.

2 Q And you gestured over here. So that's -- okay.

3 A Yes.

4 Q What did he tell you about Chuck E. Cheese?

5 A He told me he was going to take my girls to Chuck

6 E. Cheese and I said that's fine. I said: Whenever you

7 want to, we take them.

8 Q And when you mean we, are you including yourself

9 in this trip to Chuck E. Cheese?

10 A Yes.

11 Q Did you instruct your girls to tell him that or

12 did you tell him that personally?

13 A I told him personally.

14 Q Okay. So, does the topic of Chuck E. Cheese come

15 up a little bit later?

16 A Yes.

17 Q Okay. Who brings up that topic this second time?

18 A My girls.

19 Q Okay. Which girl?

20 A All of the girls. All of them. They all said

21 that they did not want to go to Chuck E. Cheese.

22 Q All right. I want to stop you there. When you

23 say, my girls, you're referring to Yatziri, Mirabel, and

24 Maridel?

25 A Yes. And Yezlene.

1 Q Maria's daughter?

2 A Yes.

3 Q Were you over at Maria's apartment at that time?

4 A Yes.

5 Q And, at that time, is Maria's apartment only a
6 couple of doors down from David's, the Defendant David's?

7 A Yes.

8 Q Okay. When these four girls, Yatziri, Mirabel,
9 Maridel, and Yezlene approach you, I want to take each
10 child one by one. Describe the mood of Yatziri when she
11 comes to talk to you.

12 A Yatziri was very nervous.

13 Q Okay. What is Mirabel's mood?

14 A The same.

15 Q What is Maridel's mood?

16 A Also the same.

17 Q And what about Yezlene?

18 A Also.

19 Q Okay. And what do they tell you?

20 A Well, they told Maria, that is Yezlene's mother,
21 that they did not want to go to Chuck E. Cheese.

22 Q Were you standing there when they told Maria that?

23 A No. It was like this. Maria actually did some
24 signs to me kind of doing: Come, come, come, come over.

25 Q Okay. So when you walked over, what does Yatziri

1 say to you at that point?

2 A They were crying.

3 Q Okay. So let -- I want you to focus on one child
4 at a time. Okay? Was Yatziri crying?

5 A Well, she was saying: We don't want to go with
6 our grandfather to Chuck E. Cheese.

7 Q Did she tell you why she did not want to go with
8 him to Chuck E. Cheese?

9 A Yes, because he was touching them.

10 Q Okay. And I need you to focus on one child at a
11 time. Did Yatziri say that Don David, the Defendant, was
12 touching her?

13 A Yes.

14 Q What is her mood when she's talking about him
15 touching her?

16 A She was afraid.

17 Q Okay.

18 A She told me that she wanted to really tell me but
19 that he would kill me.

20 Q And when you say me, you mean yourself, Amanda?

21 A That if she were to tell me, he was going to kill
22 me.

23 Q Okay. So if Yatziri told you, Amanda, Don David
24 would kill Amanda?

25 A Yes.

1 Q Is she crying as she's telling you this?

2 A Yes.

3 Q How did she show you what parts of her body were
4 being touched?

5 A Her vagina.

6 Q How did she show you that? Did she say it? Did
7 she gesture? What did she do?

8 A Well, she touch her vagina and he says -- he
9 touches me here.

10 Q Okay.

11 A And he gives me kisses.

12 Q Okay. What does Mirabel say about anything with
13 Don David?

14 A Also that he would touch her.

15 Q Okay. What other things would she say about him
16 at this time?

17 A That she was the little girlfriend, his little
18 girlfriend.

19 Q Okay. What is her mood as she is telling you
20 these things?

21 A She was afraid and she was crying.

22 Q What about Maridel? What does she tell you about
23 what happened with Don David?

24 A Also that Don David was touching her, too.

25 Q Where?

1 A On her vagina.

2 Q All right. Did Mirabel -- I want to go back to
3 Mirabel. Did she indicate what parts of her body were
4 being touched?

5 A Well, yes, the vagina as well.

6 Q Let's talk about Maridel. When she was telling
7 you this, what was her mood like?

8 A She was also crying and she was nervous.

9 Q I want to talk about Yezlene. What is her mood
10 like as she is telling you?

11 A She was also nervous and crying.

12 Q What did she tell you?

13 A He -- she said that he was also touching her
14 vagina.

15 Q What other things did she tell you?

16 A That he was showing them porn.

17 Q What other things?

18 A That he said that he would take her -- take them
19 to Chuck E. Cheese and then when he took them to Chuck E.
20 Cheese, upon leaving Chuck E. Cheese he would take them
21 somewhere else that was very far away and very pretty.

22 Q Did she mention anything about her wrists, him
23 doing anything to her wrists?

24 A No.

25 Q Okay. Do you recall previously telling people

1 that Yatziri -- or that Yezlene said he had tried -- he had
2 tied her wrists?

3 A Oh, see. I thought you were talking about the
4 dolls that you play with.

5 Q No, no, no, no. I meant -- so, what did Yezlene
6 tell you about Don David and her wrists on her arms?

7 A Well, she was saying that on one occasion he tied
8 her up in the bathroom, that he tied her hands up.

9 Q Did she indicate where that bathroom was located,
10 whose house it was?

11 A At David's house.

12 Q Okay. Now, I want to take a step back. When the
13 children came to you, did you have to ask them a lot of
14 questions or did they just start telling you about these
15 things?

16 A No. They started telling me.

17 Q Okay. So were you asking specifics about body
18 parts or were they just sharing these things with you on
19 their own?

20 A Well, no. I was asking them questions and they
21 were answering.

22 Q What questions did you ask?

23 A I asked them how long has he been doing this to
24 you?

25 Q And what do you remember them telling you about

1 that?

2 A They said: He's been doing this for very long.

3 Q Okay. Did all of the girls say that or only one
4 of the girls?

5 A Well, yes. All of them did.

6 Q Okay. What other questions did you ask?

7 A Well, at that moment then, by then I went to my
8 house so that I could speak with my girls better.

9 Q Okay. So, later that day, do you have a second
10 conversation with your three children?

11 A Yes.

12 Q Okay. When you have -- where do you have this
13 conversation? What part of your home do you have that
14 conversation?

15 A In their bedroom.

16 Q Okay. Do you have that conversation with all
17 three at one time or one at a time?

18 A The three of them.

19 Q Together?

20 A Yes.

21 Q So, what did you ask Yatziri?

22 A I said: Yatziri, honey, why didn't you tell me
23 this?

24 Q What --

25 A You're the oldest one.

1 Q And what did she say to you in response?

2 A I could not tell you, she said, because he said
3 that he would kill you and dad.

4 Q Okay. So what did you say next to her?

5 A So then I said: Why are you telling her, the
6 Cuban lady? You should have told me. And she said: No,
7 because he's not going to kill her.

8 Q Okay. And let me just -- to clarify, on that day,
9 October 16th, in between your first conversation with your
10 children and the second one, did you speak with Yusnay?

11 A No. I spoke until the 17th in the morning.

12 Q Okay. Well let me ask you this. If you spoke to
13 -- how did you know that they talked to Yusnay? Did they
14 tell you that or did you speak to Yusnay?

15 A No. They told me.

16 Q Okay. So, in that second conversation, did they
17 tell you that they actually told the Cuban lady about what
18 happened before telling you?

19 A Yes.

20 Q What other questions did you ask Yatziri?

21 A I said: Honey, what else is he doing to you?

22 Q And what was her response to that?

23 A She said that he kisses us -- well, he kisses me
24 on the mouth.

25 Q Okay. So, kissing on the mouth. What other

1 things did Yatziri tell you he did, if anything?

2 A Well he would blow kisses.

3 Q Okay. What else?

4 A That she was his little girlfriend.

5 Q Okay.

6 A That he would put all that up for them, you know,
7 jumping, and that he would give them money and gifts.

8 Q And when you say jumping, do you mean like a
9 bouncy house?

10 A Yes.

11 Q So he would spend money to buy -- to rent a bouncy
12 house?

13 A Yes.

14 Q Did Yatziri ever tell you anything about candy or
15 sweets?

16 A Yes.

17 Q Okay. Did she volunteer that or did you
18 specifically ask her about that?

19 A No. She told me.

20 Q Okay. What did she tell you about the candy or
21 sweets?

22 A So, she was saying that, let's say, when Jose
23 Azucena would like peek out, he would say: Do you want
24 candy? And that they would go over there because otherwise
25 if they didn't go over there, things would be very bad for

1 me. And then he would chop up a watermelon or strawberries
2 and he would say: Hey, come over. Do you want
3 strawberries? And he was always wearing, you know, pants,
4 like -- sweatpants.

5 Q Okay.

6 A So, she says that he would pull it down and then
7 he would play -- you know, with the watermelon or the
8 strawberry, he would kind of play with it right there and
9 even the candy, too.

10 Q Okay. You say that he would -- your children said
11 he would pull it down. What is being pulled down?

12 A The pants.

13 Q You said that he would take watermelon or candies
14 or sweets and play with it. What is it?

15 A With his penis. He would play with it on the
16 penis.

17 Q So, he would play with watermelon and candies and
18 sweets on his penis?

19 A Yes.

20 Q Okay. And --

21 A And then he would give it to them.

22 Q Oh. And would they take it?

23 A Yes. But Yatziri says that they would not eat it.
24 That they would throw it outside. Whenever he gave them to
25 him wrapped, then yes. But when it was uncovered, then no.

1 Q Okay. Did they ever talk to you about movies or
2 videos on his phone? And, specifically, Yatziri. Did
3 Yatziri tell you about any movies or videos on his phone?

4 A Yes.

5 Q And what did she tell you would be on these
6 videos?

7 A She would say: My grandfather shows me movies
8 about when they're getting married. And I said: What do
9 you mean when they're getting married? She said the woman
10 does not wear a brazier, doesn't have panties, and neither
11 does the man, and the man gets on top of the woman, and
12 then they get married.

13 Q okay. Did she also indicate to you something
14 about a woman eating a man?

15 A Mm-hmm.

16 Q Okay. And that was Yatziri who told you that?

17 A Yes.

18 Q Did Yatziri also repeat the fact that he had
19 touched her vagina in that second conversation?

20 A Yes.

21 Q And did Yatziri indicate that he would do these
22 things that she describe -- that she described to you to
23 the other sisters as well as Yezlene?

24 A Yes.

25 Q I want to talk about Mirabel. Did she tell you

1 anything about videos on his phone?

2 A Yes.

3 Q And what did she tell you?

4 A Well that she would also see videos where they're
5 getting married and doing dirty things.

6 Q Okay. Okay. Did she ever talk to you about
7 sweets and candy?

8 A Well, yes, also.

9 Q Was it the same stuff that you described to us or
10 something different?

11 A Well, yes, it's the same.

12 Q Okay. So rubbing fruits or sweets and candy on
13 his penis and then offering it to the children?

14 A Yes.

15 Q Okay. I want to talk about Maridel. Did she say
16 anything about videos on a phone?

17 A Well, yes, also.

18 Q What did she tell you?

19 A Well, she said my grandfather is using -- well,
20 please excuse the word, but like stupid things.

21 Q Go ahead.

22 A She says: Mom, these are bad things, these things
23 he's showing us.

24 Q Okay. And that's what Maridel would say to you?

25 A Yes.

1 Q Did she talk about watermelon and candy?

2 A Yes, also.

3 Q Okay. And was it similar to the things you've
4 already told us about?

5 A Yes.

6 Q Did Maridel indicate that he -- in the second
7 conversation that he would touch her vagina?

8 A Yes. And that she would tell him: Grandpa, why
9 are you doing this to me? You should not be doing this to
10 us because my mom says this is bad and then he would say:
11 Shut up. This is not bad.

12 Q Did Mirabel indicate anything about -- in the
13 second conversation about him touching her vagina?

14 A Yes. She said that he would do it rough -- sorry.

15 Q Okay.

16 A Roughly.

17 Q What is her mood when she's telling you, Mirabel?

18 A Well, she's crying.

19 Q Okay. And what is Maridel's mood when she's
20 telling you these things?

21 A She is also nervous and she's crying.

22 Q Okay. And what was Yatziri's mood when she was
23 telling you these things in the second conversation?

24 A Also nervous and crying.

25 Q Now, with respect to Mirabel, did you have to ask

1 her a lot of questions in this second conversation or is
2 she volunteering information?

3 A Well, I would ask them -- but then they were also
4 telling me new things.

5 Q Okay. Without you prompting them, they were just
6 offering new things?

7 A Yes.

8 Q Okay. How about with Maridel, did you have to ask
9 her a lot of questions about things or was she just
10 volunteering information?

11 A Well, it was the same thing.

12 Q Okay. And I have to ask for each child.

13 A Okay.

14 Q And, so, it sounds like Maridel was also
15 volunteering information to you?

16 A Yes.

17 Q Did the children talk to you about any threats
18 that he was making to them in the second conversation?

19 A Well, yes, that he would kill us.

20 Q Okay. Is that what Yatziri told you?

21 A Yes.

22 Q Is that what Mirabel told you?

23 A Yes.

24 Q Is that what Maridel told you?

25 A Yes.

1 MR. HAMNER: Okay. Court's indulgence.

2 I have no further questions for this witness at
3 this time.

4 THE COURT: All right. Cross-exam.

5 MS. KIERNY: Court's brief indulgence.

6 [Pause in proceedings]

7 **CROSS-EXAMINATION OF AMANDA MOIZA**

8 BY MS. KIERNY:

9 Q Hi, Amanda. How are you doing?

10 A Well.

11 Q Okay. Now, when the girls first talked to you,
12 you knew they had already told a neighbor. Correct?

13 A No.

14 Q Okay. When did you learn that?

15 A When they decided to tell me.

16 Q Okay. So, was that later that day?

17 A No. It was within the hour.

18 Q Okay. Was that when Yezlene was still present?

19 A Can you repeat?

20 Q Was that when Yezlene and Maria were still
21 present?

22 A Yes.

23 Q Okay. And did you think it was strange that they
24 told the Cuban woman this before you?

25 A Well, no, because my daughters were being

1 threatened.

2 Q Okay. So did you guys -- were you guys -- you are
3 calling her the Cuban woman. You weren't that close, were
4 you?

5 A Yes, no.

6 Q The girls, when they told you -- it was pretty
7 clear that they had talked among themselves about this
8 sometimes before they brought it up to you?

9 A They were crying.

10 Q Right. My question was: It seemed like -- did it
11 seem like the girls had talked about this topic with
12 themselves before talking to you?

13 MR. HAMNER: Objection, Your Honor. It's
14 speculation.

15 THE COURT: Well, hold on. So, your question --
16 I'm going to sustain the objection. Your question is
17 calling for speculation. I don't know how a person -- how
18 -- I -- someone -- I don't know how it was seen. You know?
19 Really, you've got to find out if the girls told her that.

20 MS. KIERNY: Okay.

21 THE COURT: I mean, how would the girls be acting
22 differently if they talked amongst themselves somewhere?

23 MS. KIERNY: Well, from the discussions.

24 THE COURT: I mean, I don't know that -- I mean,
25 so you've got to explain what you mean by that question,

1 you know, --

2 MS. KIERNY: Okay.

3 THE COURT: It's really calling for speculation
4 the way you phrased it. Okay?

5 MS. KIERNY: All right.

6 BY MR. KIERNY:

7 Q From the conversations that you were -- that the
8 girls were having with you, it seemed pretty clear that
9 they'd already -- that they'd talked about this before.

10 MR. HAMNER: Objection, Your Honor. Calls for
11 speculation.

12 MS. KIERNY: I've added a little bit to it to see
13 if -- based --

14 THE COURT: Well, you added --

15 MS. KIERNY: Based on the conversations that they
16 had, they believe -- she believes that the girls had talked
17 about it before.

18 THE COURT: So, you want the witness to draw the
19 conclusion based upon the what? The similarity in their
20 stories that they talked about it? Is that what you are
21 asking?

22 MS. KIERNY: Well, let me back up then.

23 THE COURT: Okay. Because I am having trouble
24 seeing how she would know.

25 MS. KIERNY: Okay.

1 THE COURT: Go ahead. Rephrase your question.

2 BY MR. KIERNY:

3 Q This was a group conversation. Right?

4 A With the girls?

5 Q Yes. And they were all kind of talking all at the
6 same time.

7 A No.

8 Q Who was talking first?

9 A I spoke with Yatziri.

10 Q I'm talking about the first time when you all were
11 at Maria's house. My understanding from what you testified
12 earlier was that Yezlene was the first one to talk.

13 MR. HAMNER: Is that a --

14 BY MR. KIERNY:

15 Q Is that correct?

16 A No.

17 Q All right. Then the girls were talking to you
18 about this. Was only one girl talking and all the others
19 were quiet?

20 A They were crying because I was asking them
21 questions one by one.

22 Q All right. Were the other girls volunteering
23 information about what they might have seen or heard at the
24 same time?

25 A What do you mean? I don't understand.

1 Q When you speaking with one child, were the other
2 children also chiming in and giving you additional
3 information?

4 A No.

5 Q All right. Now, you indicated that Yatziri was
6 the first one that you talked to.

7 A Yes.

8 Q And you said that she told you he touched her
9 vagina?

10 A Yes.

11 Q What word did she use to describe that?

12 A He touched my thing.

13 Q She used the word cosa?

14 A Yes.

15 Q What about Maribel? What word did she use to
16 describe her vagina?

17 A The only thing she did is she simply touched
18 herself and said he touches me her.

19 Q And what about Mirabel? What word did she use?

20 A She said he touched my thing also.

21 Q So the word cosa?

22 A Yes.

23 Q None of your girls told you that he touched them
24 on the chest?

25 A Yes.

1 Q Or the butt?

2 A He touched them -- he touched everything.

3 Q Is that what they told you?

4 A He was caressing them.

5 Q Is that the word they used or is that a word
6 you're using to describe that?

7 A Well, that's what they told me.

8 Q And that's the exact word they used?

9 A No, not exactly, exactly.

10 Q Caressing is your word?

11 A No. It's theirs.

12 Q Okay. Now, it was your understanding that if the
13 girls did not take the candy, Don David would hurt them?

14 A No. That he was going to harm me and their
15 father.

16 Q So, they were being forced to take the candy?

17 A Yes.

18 Q You recall that you gave a statement in this case.
19 Correct?

20 Let me back up. You went down to the police
21 department and talked to a detective?

22 A Mm-hmm. Yes.

23 Q And you gave a statement to him?

24 A Yes.

25 Q And you wanted to be complete in that statement?

1 A Well, yes, but there were things that I just
2 didn't have the frame of mind.

3 Q So, there's things that aren't in that statement?

4 A No, because day after day my girls were coming up
5 with new things, and then more things, and more things.

6 Q When you talked to the police, did you give them a
7 complete picture -- were you trying to be complete with
8 what you knew at that time?

9 A Yes.

10 Q Because you thought your kids were in danger?

11 A Of course.

12 Q And you wanted to tell them everything that your
13 girls had said?

14 A Well, yes, of course, these are my daughters and
15 just basically what they had already told me.

16 Q So, you're saying that everything that you've
17 testified today that your girls disclosed to you that first
18 day is in your police statement?

19 A Yes.

20 Q Okay. Did your girls ever tell you that anyone
21 else was with them when they were watching videos?

22 A No.

23 Q Did they ever say that anyone was with tem when
24 Don David was touching them? And, to clarify, I'm saying
25 anyone besides Yezlene and then your three girls.

1 A Well, yes. They were together.

2 Q Were there any other children with tem when this
3 was happening?

4 A Well, no, but yes in the surrounding -- well, I
5 mean, -- but there were children in the surrounding area.

6 Q Is this what they told you at the time or is this
7 what you're -- are you speculating about that?

8 A They told me.

9 Q What children were around when they were touched
10 besides Yezlene and your three girls?

11 A Oh, that, you know, saw that he was touching them?

12 Q Yes.

13 A No. Nobody.

14 MS. KIERNY: No further questions.

15 THE COURT: All right. Redirect?

16 MR. HAMNER: Yes. Just real briefly.

17 **REDIRECT EXAMINATION OF AMANDA MOIZA**

18 BY MR. HAMNER:

19 Q Just two things. These two conversations happened
20 on October 16, 2016. Correct?

21 A Yes.

22 Q And on the very next day, October 17th, 2016, you
23 did report this to the police?

24 A The 17th, yes.

25 Q Okay. You were asked a number of questions on

1 cross-examination about talking with a police detective and
2 wanting to include everything. Do you remember being asked
3 those questions?

4 A Yes.

5 Q And you remember telling Ms. Kierny that you
6 wanted to try to be as complete as possible?

7 A Mm-hmm. Ah, yes.

8 Q And did you try to answer the questions that were
9 asked to you the best you could?

10 A No, well, I wasn't really well enough to answer
11 everything.

12 Q But, to be clear, it was a question and answer
13 interview. Is that right?

14 A Mm-hmm. Yes.

15 Q It wasn't a situation where you just spoke and
16 just told a straight story. You were being asked questions
17 and answering them?

18 A Well, no. First I was giving and I was basically
19 saying what I had to say to them.

20 Q All right. And then what happened? Were there
21 questions after you kind of said what you needed to say?

22 A No. There were only writing.

23 Q When you met with Detective Campbell, --

24 A Yes.

25 Q -- and you gave a recorded interview, did he ask

1 you questions?

2 A Yes.

3 Q Okay. When you're talking about they're just
4 writing, are you talking about October 17th?

5 A About what I was telling them about what I was
6 told on the 16th.

7 Q Okay. I just want to clear things up. On October
8 17th, you spoke to the police. Is that right?

9 A Yes.

10 Q And you told them, essentially, a story of what
11 happened and what you heard from your kids?

12 A Yes.

13 Q And they were writing down what you said.
14 Correct?

15 A Yes.

16 Q And then, a little while later, you had a second
17 interview with Detective Campbell. Right?

18 A Yes.

19 Q And, at that time, he asked you questions and you
20 answered the questions he asked. Right?

21 A Yes.

22 Q And so when you told Ms. Kierny, I was trying to
23 be as complete as possible, you're talking about on October
24 17th, the first time you spoke to police?

25 A Yes.

1 Q Okay. And were you very emotional when you were
2 talking to them, one day later, after talking to your kids?

3 A Yes.

4 MR. HAMNER: Thank you. No further questions.

5 THE COURT: Recross, Ms. Kierny?

6 MS. KIERNY: Oh, no, thank you.

7 THE COURT: All right. Thank you. You are
8 excused. You are remaining under subpoena. Okay?

9 THE WITNESS: Okay. Thank you.

10 THE COURT: Does the State have any other
11 witnesses?

12 MS. KOLLINS: Yes, Your Honor. Maria Barajas.
13 This will be our last one, Your Honor.

14 MR. HAMNER: And it will be short.

15 THE COURT: Maria Barajas.

16 Hi. The Court Clerk over here will give you the
17 oath.

18 THE WITNESS: Okay.

19 THE CLERK: Could you raise your right hand?

20 **MARIA BARAJAS**

21 [having been first duly sworn, testifies as follows, with
22 the use of a Spanish Interpreter:]

23 THE CLERK: Please be seated.

24 MS. KOLLINS: Ma'am, could you --

25 THE CLERK: Please state your first and last name

1 and the spelling for the record.

2 THE WITNESS: Maria Barajas. Maria Esther
3 Barajas, M-A-R-I-A E-S-T-H-E-R B-A-R-A-J-A-S.

4 **DIRECT EXAMINATION OF MARIA BARAJAS**

5 BY MS. KOLLINS:

6 Q Good afternoon, Maria. How are you?

7 A Fine.

8 Q Where do you live, ma'am?

9 A Sahara and Nellis.

10 Q Back in October of 2016, where did you live?

11 A 4820 East Charleston.

12 Q And what apartment number?

13 A Apartment Number 5.

14 Q Okay. Did you live there with your daughter
15 Yezlene?

16 A Yes.

17 Q How old is Yezlene?

18 A Eight years old.

19 Q And does she have a birthday of September 23rd of
20 2008?

21 A Yes.

22 Q I'd like to turn your attention to October 16th of
23 2016. Did you get some information that caused you to be
24 concerned about your daughter, Yezlene?

25 A Yes. She told me that -- the four girls told me

1 what was happening.

2 Q And based on the four girls telling you what was
3 happening and by the four girls, we're talking about
4 Maribel, Miradel, Yatziri, and Yezlene?

5 A Yes.

6 Q Did that cause you to have a conversation with
7 Yezlene by yourself?

8 A Yes.

9 Q Where did you have that conversation?

10 A Right there at the house after -- can I speak now?

11 THE INTERPRETER: Yes.

12 THE WITNESS: At that time, I went inside. At
13 that time, we were outside and the four girls got up. The
14 first ones to start were the twin girls and Yatziri about
15 what was happening. Yezlene put her face down and she
16 started crying. She didn't say anything to me until later
17 when the girls left about what was happening.

18 BY MS. KOLLINS:

19 Q Okay. Understood. And that's the conversation
20 that I would like to focus on is that conversation that
21 happened later.

22 A Yeah. That's fine.

23 Q Okay. Where did that conversation take place?

24 A I took her to the bathroom.

25 Q At your home or someone else's home?

1 A In my house.

2 Q Was anyone else in the bathroom with you and
3 Yezlene?

4 A No. Just her and me. By that time, Amanda had
5 left with her girls, went home, and I was there just with
6 my daughter.

7 Q Was Yezlene still crying?

8 A Yes. I asked her what was happening and she told
9 me: Yes, mom. He was doing that to me. He did that to
10 the four of us.

11 Q Did what to her?

12 A That he would give her candy but he [sic] had to
13 allow him to touch her and that if the four girls wouldn't
14 go, he got upset and I told her: Why didn't you tell me
15 what was going on? I couldn't tell you or dad because he
16 used to tell us that if I were to talk to you or to dad,
17 something would happen to you.

18 Q Something like what would happen?

19 A That he was going to kill us.

20 Q Kill us, being mom and dad?

21 A Yes.

22 Q Earlier you said he was doing -- strike that. Let
23 me start over.

24 Did Yezlene describe any touching?

25 A Yes. Her private part.

1 Q And who did she say was touching her private part?

2 A The Grandfather, Don David.

3 Q Okay. The person you know as Don David or the
4 person your children called Grandfather, is he here in
5 court today?

6 A Yes.

7 Q Where is he seated? What is he wearing today?

8 A He's wearing a blue shirt and he's over there on
9 the other side.

10 Q No tie?

11 A No.

12 MS. KOLLINS: May the record reflect the
13 identification of the Defendant?

14 THE COURT: It does.

15 MS. KOLLINS: Thank you.

16 BY MS. KOLLINS:

17 Q Did Yezlene indicate to you where she would be?
18 Inside? Outside? Away from the apartments when this would
19 happen?

20 A At his house at the back.

21 Q Okay. When she talked to you about being at his
22 house in his bed, did she give you any details about what
23 happened that day?

24 A Yes.

25 Q Can you elaborate on that for me, please?

1 A The bedroom she went there by herself and he taped
2 her and tied up the hands and her feet.

3 Q Okay. So, when you say she went there by herself,
4 do you mean that none of the girls were with her?

5 A When he did that, it used to be different. After
6 that, he would take the four girls to the bathroom and then
7 she went to talk to his wife, she went alone, and that's
8 when he grabbed her and pulled her and that's when he taped
9 her hands and her feet. Yes.

10 Q So, if -- tell me if I'm understanding what you're
11 saying. There was some days all four girls would be over
12 there?

13 A Yes.

14 Q And there was a different day where she went over
15 there by herself and this tape incident happened?

16 A That's when he taped her, when she went there
17 alone.

18 Q Okay. So she was telling you about different
19 days?

20 A Yes.

21 Q Okay. Did she say what, if anything, happened to
22 her body when she was taped?

23 A She told me that he just touched her and in
24 [indiscernible], removed the tape and told her to leave,
25 that grandma was not there.

1 Q Okay. Do you recall indicating that she said to
2 you that he put cream on her body or cream on her private
3 area?

4 A No.

5 Q Did she tell you that Don David put her on the
6 bed?

7 A Yes.

8 Q Okay. And did she indicate to you that, yes, her
9 body did get touched while she was on the bed?

10 A Yes. Yes.

11 Q What part of her body got touched?

12 A Her private part.

13 Q Okay. Did she indicate to you what he used to
14 touch her private part?

15 A His fingers.

16 Q Did she say anything about being kissed?

17 A Yes. When the four girls went there, he touched
18 them and kissed them.

19 Q Okay. And during the same conversation where
20 you're sitting with Yezlene in the bathroom, did she talk
21 to you about seeing anything on a cell phone?

22 A Yes. She told me that he would show her -- how do
23 you call the -- pornography.

24 Q Okay. Did she use the word pornography?

25 A She told me there were bad things and that people

1 were having relations.

2 Q Okay. So, she did not know the word pornography?

3 A No. I'm the one telling you that those videos,
4 she said the word videos, they were doing bad things.

5 Q Did she, in that same conversation in the
6 bathroom, talk to you about seeing Don David's private part
7 or penis?

8 A Yes.

9 Q What did she tell you about that?

10 A And she said: Mom, he also shows us his part.

11 Q Did she tell you what he did with his part?

12 A He just showed them the part -- the part to them.

13 Q Did she talk to you about candy?

14 A Yes. That he will touch his private part with
15 them and then he would give them to the girls.

16 Q When you say them, are you referring to candy?

17 A Yes.

18 Q Okay. So, he would rub the candy on his private
19 parts and give it to the girls?

20 A Yes. He would pull his pants down and then he
21 would rub his private parts with that and then he would
22 give it to the girls.

23 Q Okay. Do you remember a day when -- and we're
24 just changing it up a little bit. Do you remember a day
25 when the Moreno girls came and took your youngest daughter,

1 Nicole, out to play?

2 MS. KIERNY: I'm going to object --

3 THE WITNESS: Yes.

4 THE COURT: All right. What's the objection?

5 MS. KIERNY: This is beyond the scope of the
6 51.385 hearing. There are no statements from Nicole that
7 are going to be admitted.

8 MS. KOLLINS: It's correct that there are no
9 statements from Nicole. She's nonverbal, but it's just
10 laying some foundation for the Court regarding what Yezlene
11 is going to say she witnessed regarding her little sister.
12 So, I'm not -- the two year old -- she'd not even two yet.
13 She's not verbal, but she witnessed conduct that she's
14 going to relay to her mother and just to give the Court
15 some context, that's why I was asking that question.

16 THE COURT: I don't need that context. I'll
17 sustain the objection.

18 BY MS. KOLLINS:

19 Q What did Yezlene tell you she saw happen to Nicole
20 with Don David?

21 A That they were cooking in the kitchen and the
22 three girls from Amanda Moiza were there and Yezlene said,
23 I'm going to the bathroom, and I said: Okay. Nicole was
24 in my house in the living room and then the three girls
25 said: We're going to take Nicole outside. And then I

1 said: Yezlene, are you still in the bathroom? I wanted to
2 go see what Nicole is doing. She came running and says:
3 Mom, she's over there with Grandpa and the girls. And I
4 said: Go get her. She's not allowed. Go bring her back.
5 She went there running. She said when she got to the door,
6 the guy had the girl like this and against his body,
7 rocking against his body and then put her down.

8 THE INTERPRETER: And I need to ask you. [Spoke
9 in Spanish].

10 THE WITNESS: Oh, yes. Yatziri told Yezlene that
11 she was going to go and tell mom --

12 MS. KIERNY: I'm going to object. That's double
13 hearsay at this point.

14 THE INTERPRETER: I'm not finished translating
15 yet.

16 MS. KIERNY: Oh, I'm sorry.

17 MS. KOLLINS: Well, I --

18 THE COURT: Well, --

19 MS. KOLLINS: Well, and that's fine.

20 MS. KIERNY: Triple hearsay? I don't know how
21 many layers we're at now. I'm sorry.

22 THE COURT: And we're in the middle of a
23 translation, but --

24 MS. KOLLINS: Can I just --

25 THE COURT: Why don't you translate it and then

1 I'll decide if I should strike it.

2 THE INTERPRETER: Okay.

3 THE WITNESS: Yezlene told Yatziri that they were
4 going to go tell Esther about what happened with Don David.

5 THE COURT: Yeah, that's like triple hearsay.
6 Obviously, we have to strike it and I can't consider that.

7 THE WITNESS: Okay.

8 MS. KOLLINS:

9 Q Okay. We have to go back and just stay kind of
10 focused here, one statement, at a time. Okay?

11 A Yes.

12 Q Because we're only going to talk about what
13 Yezlene told you she saw or she experienced. Okay?

14 A Okay.

15 Q What did Yezlene tell you she saw with Nicole and
16 Don David?

17 A She said: Mom, about Nicole, Grandpa -- when you
18 send me to pick her up, I got through the door and then I
19 got to -- when I got to the door, I saw him getting her and
20 rubbing her against his body and then he put her down.

21 MS. KOLLINS: I have nothing further, Your Honor.

22 THE COURT: All right. Cross.

23 **CROSS-EXAMINATION OF MARIA BARAJAS**

24 BY MR. WESTBROOK:

25 Q Good morning, Mrs. Estrella [sic]. I'm sorry. Do

1 you go by Ms. Estrella or Ms. Barajas or Estrella Barajas?

2 A Barajas.

3 Q Thank you.

4 I want to talk to you about what your daughter
5 said happened with Nicole.

6 A Okay.

7 Q The three girls who took Nicole out of the
8 apartment were who?

9 A Yatziri, and the twins. I don't know their names.

10 Q Okay. Yatziri and the twins. Was your daughter
11 with them at the time?

12 A With Yezlene?

13 Q Yeah, with all of them, with the group.

14 A No. After that, she went to go pick her up or to
15 get her back.

16 Q Okay. So, you gave Yezlene and the twins
17 permission to take Nicole out of the house. Right? I'm
18 sorry. Yatziri. I have a really hard time with the names.
19 I'm sorry. Yatziri.

20 A Outside, right there.

21 Q Yeah, outside of the house.

22 A Outside of the house, yes, but, over there, no.

23 Q Okay. How long was Nicole gone before you sent
24 your daughter after Nicole?

25 A I don't remember.

1 Q I mean, was it a few minutes? Was it a few hours?

2 A A few minutes, not more than that.

3 Q Okay. So, maybe a few minutes after the girls
4 took Nicole out of the house, you sent your daughter to go
5 find Nicole. Is that right?

6 A Yes, because I was not listening to them being
7 outside. I could not hear them.

8 Q Now, how long was it before your daughter came
9 back and told you what she saw?

10 A About 10, 15 minutes.

11 Q Okay.

12 A But he did not -- she did not say anything to me
13 that day until October 16. That's when she told me what
14 had happened.

15 Q Okay. So, it was a few minutes that your -- that
16 Nicole was gone with the other girls and you decided to
17 send your daughter out to find Nicole. It was about 15
18 minutes later that Nicole came back with your daughter.
19 So, we're talking about a total of 20 minutes that Nicole
20 is out of the house. Is that right?

21 A Yes, approximately. Not a lot. Not a long time
22 because I was pushing Yezlene to go out.

23 Q Okay. Do you remember talking to Detective
24 Campbell on November 6th and doing an interview with him?

25 THE INTERPRETER: What was the date? November 6th?

1 MR. WESTBROOK: November 6th. Yeah.

2 THE WITNESS: I don't remember the date.

3 BY MR. WESTBROOK:

4 Q Okay. Do you remember talking to Detective
5 Campbell though?

6 A Yes.

7 Q Did Detective Campbell say he was going to record
8 the interview?

9 A Ours?

10 Q Yeah. When he talked to you, did he say he was
11 going to record the interview, his interview with you?

12 A No. He didn't say that.

13 Q He didn't? Okay.

14 Did he talk to you about the interview and tell
15 you that it was important to give him as many details as
16 possible?

17 A Yes.

18 Q Okay. And he told you it was his job to
19 investigate cases that involve kids and some kind of
20 touching. Right?

21 A Yes. He told us that his job was about that, to
22 listen about that.

23 Q Okay. So, you knew it was really important to
24 give him as many details as you could. Right?

25 A Yes.

1 Q So, you told him everything you knew at that time.
2 Right?

3 A Yes.

4 MR. WESTBROOK: Okay. Court's indulgence.

5 [Pause in proceedings]

6 MR. WESTBROOK: Nothing further. Thank you, Your
7 Honor.

8 MS. KOLLINS: I have no redirect, Your Honor.
9 Thank you. We're all done.

10 MR. HAMNER: All done.

11 THE COURT: Oh, no redirect?

12 MS. KOLLINS: Yes. No redirect. I'm sorry. My
13 allergies are killing today.

14 THE COURT: All right. You may step down. You're
15 excused. Thank you.

16 THE WITNESS: Okay. Thank you.

17 THE COURT: Does that conclude the State's --

18 MR. HAMNER: It does, Your Honor.

19 THE COURT: -- proffer?

20 MR. WESTBROOK: Your Honor, we had a housekeeping
21 matter to address before we do any kind of argument.

22 THE COURT: Okay. One second until they pay
23 attention.

24 MS. KIERNY: Of course.

25 [Pause in proceedings]

1 MS. KIERNY: I have a transcript question real
2 quick. Do you mind stepping in for this one?

3 MS. KOLLINS: Sure.

4 THE COURT: Do you want to handle this or do we
5 need to wait for Mr. Hamner?

6 MS. KOLLINS: I'm fine. Thank you.

7 MS. KIERNY: So, there is this service called All
8 American Court Reporters and they for a -- quite expensive
9 -- for an expense, can do a 24-hour transcript for me. Can
10 I get the JAVS of that today and then I would have it
11 Friday? Is that acceptable?

12 THE COURT: Is that possible? Yeah, my Court
13 Clerk said -- my Court Recorder says you can get the JAVS
14 today.

15 MS. KIERNY: So, I need to call them before 5. Do
16 you mind if I go do that because --

17 THE COURT: Nope.

18 MS. KIERNY: -- it's 4:55.

19 MR. WESTBROOK: I can handle the argument, Your
20 Honor, in her absence.

21 MS. KIERNY: He's going to handle the argument.
22 I'm going to handle the transcript. Is it okay if we don't
23 call them until Friday until I get that transcript?

24 MS. KOLLINS: Call who?

25 MS. KIERNY: The people who testified at this

1 hearing?

2 MS. KOLLINS: No.

3 MR. WESTBROOK: We can argue -- Your Honor, I'm
4 prepared to argue about that. She can go get the
5 transcript.

6 MS. KIERNY: Well, if I'm not going to need it
7 because they're already going to call them, then -- I guess
8 I can recall them.

9 THE COURT: Tomorrow is Thursday. They're
10 probably planning to call these -- these are like the main
11 players. Right? Tomorrow. I don't want to waste another
12 day.

13 MS. KIERNY: Well, --

14 THE COURT: Some might be -- I don't think --
15 we're certainly not going to get to all of them tomorrow.

16 MR. WESTBROOK: I have some points to make about
17 that.

18 MS. KIERNY: I don't --

19 MR. WESTBROOK: You know, it's --

20 MS. KIERNY: I don't know if it's worth if we're
21 not going to be able to get it -- I mean, if it's going to
22 get called --

23 MR. WESTBROOK: It's worth it to me.

24 MS. KIERNY: All right. I'll call. See what they
25 can do.

1 MR. WESTBROOK: We've got to put the order in. I
2 mean, it's now or never.

3 MS. KOLLINS: I can get them a witness order. You
4 can tell them which to do first. We're not going to be
5 calling Elizabeth Espinoza first, so --

6 MS. KIERNY: I don't really need hers. It was
7 mostly the parents.

8 MR. HAMNER: My thought is this. I would imagine
9 not every parent would be called tomorrow. I imagine
10 Amanda Yusnay would be called tomorrow.

11 MS. KIERNY: I need Amanda's the most.

12 MR. HAMNER: Okay.

13 MS. KIERNY: I'm trying to come up with a way --
14 there -- I don't see how it would possibly impeach off of a
15 transcript or without a transcript at this point, so I'm
16 just really stumbling in the dark here trying to come up
17 with something.

18 MR. WESTBROOK: To be honest, Your Honor, there is
19 so much impeachment my mind is swimming right now. The
20 idea that we wouldn't be able to impeach because we don't
21 have the transcript and the reason for that is because the
22 State decided to hold this hearing not prior to trial but
23 on day three of trial, it really seems like it's being held
24 against my client and not against the State, who could have
25 done this any time they wanted. They didn't have to wait

1 this long. We shouldn't be stuck and my client shouldn't
2 have his Sixth Amendment rights violated -- it's not
3 necessarily a violation, but it could be a violation. I
4 mean, certainly it's his right to have attorneys who are
5 prepared to cross-examine effectively would be violated
6 because the State didn't do this in a timely fashion. This
7 could have been done a long time ago and it just wasn't
8 done.

9 MR. HAMNER: I have a solution and that's -- I
10 take [indiscernible] with that, but let's move on. The
11 solution is this. They can recall these witnesses if they
12 want to, to testify. They can recall them in their case in
13 chief if they want to. There's nothing prevent --

14 THE COURT: They'll stay under subpoena?

15 MR. HAMNER: I'll put them under subpoena and they
16 will come back to court if need be and that way we can
17 still try our case the way we would like to try it in our
18 order. They may be able to get transcripts in the middle
19 of the State's case in chief to handle some on the second
20 day of witnesses and then they can always recall somebody.

21 THE COURT: So, they could -- well, --

22 MS. KIERNY: I don't really want a bookend with
23 your two witnesses that you're saying are the meat of your
24 case.

25 MR. HAMNER: You can recall every single witness

1 that --

2 THE COURT: You can defer all your cross of these
3 witnesses or do some cross and then cross some more -- you
4 say they get the choice?

5 MR. HAMNER: That's --

6 MS. KOLLINS: Yeah.

7 MR. HAMNER: if they want to recall them, that's
8 fine.

9 MS. KIERNY: But then they would be my witness on
10 direct, correct, if I'm recalling them.

11 MS. KOLLINS: Well, we --

12 THE COURT: Well, they're adverse witnesses.

13 MR. HAMNER: Sure.

14 THE COURT: So, you could still --

15 MS. KIERNY: I'm going to make the call then
16 because I have two minutes. I'm so sorry.

17 THE COURT: Right? They're adverse witnesses.

18 MS. KOLLINS: And, just for the record, in good
19 faith we're saying call them, treat them as hostile, treat
20 them as they're going to be on cross --

21 THE COURT: Yeah.

22 MS. KIERNY: Let me make the call to All American
23 then. I have one minute.

24 MS. KOLLINS: We're making that offer --

25 MS. KIERNY: I'm sorry.

1 MS. KOLLINS: -- so that they don't have to treat
2 them as traditional case in chief witnesses.

3 THE COURT: That sounds like --

4 MR. WESTBROOK: And, Your Honor, that's --

5 THE COURT: -- a very fair solution.

6 MR. WESTBROOK: -- completely unacceptable and let
7 me tell you why.

8 THE COURT: Okay.

9 MR. WESTBROOK: It's unacceptable because the only
10 reason they're bringing these witnesses first is because
11 stylistically they think it strengthens their case.

12 It's interesting to me that the first people they
13 want to bring are witnesses who get up here, if they get
14 their way, and deliver a bunch of hearsay about what the
15 actual alleged victim said.

16 Why don't they want to bring in the first-hand
17 witnesses, the ones who actually made these claims in the
18 first place? They don't want to put them on there because
19 they're concerned about the testimony that will come out of
20 their mouths. So they want to pave the way to these
21 witnesses and bolster them ahead of time so that these
22 other witnesses, who the State is concerned are not
23 believable, will seem more believable. This is stylistic
24 by the State. They created this problem.

25 THE COURT: It's perfectly acceptable under the

1 rules.

2 MR. WESTBROOK: It certainly would be, except that
3 they created the issue. Stylistically, the defense would
4 like to have contemporaneous cross-examination of witnesses
5 instead of having to do this patchwork quilt of witness
6 cross-examination, which is very ineffective.

7 THE COURT: What you're missing is the 51.385
8 procedure is not intended to be a discovery tool, not
9 intended to be a tool to allow the defense to develop
10 impeachment material. Mere -- it's merely intended to be a
11 mechanism for which the Court could get the information and
12 apply the factors the Supreme Court wants me to apply to
13 determine if the evidence even comes in. Once it comes in,
14 you're free to cross-examine the witnesses however you
15 want.

16 It's -- so, the fact that I let you have this long
17 hearing really -- if I let this in, really, I think inure
18 to your benefit because they gave you a lot of good
19 material to use.

20 MR. WESTBROOK: I don't disagree with that and the
21 purpose of this is not supposed to be impeachment. Of
22 course, the impeachment doesn't --

23 THE COURT: Right.

24 MR. WESTBROOK: -- exist if witnesses testify
25 consistently.

1 THE COURT: That's a collateral benefit of having
2 --

3 MR. WESTBROOK: Well, --

4 THE COURT: -- the procedure.

5 MR. WESTBROOK: Well, it's required by 51.385.

6 THE COURT: Yeah.

7 MR. WESTBROOK: If the witnesses were testifying
8 truthfully and consistently, then we wouldn't have
9 impeachment evidence.

10 THE COURT: Yeah.

11 MR. WESTBROOK: So, that's a collateral effect --

12 THE COURT: All right.

13 MR. WESTBROOK: -- of the State putting witnesses
14 on that aren't trustworthy, which will go into my argument
15 in a minute.

16 THE COURT: So, let's do that in a minute. So,
17 you made your record. I'm -- I guess I don't -- I guess
18 you were asking to -- you are asking the Court for an order
19 directing how the State can put on its witnesses, the order
20 in which they can put on the witnesses such that no
21 witnesses would be called until you had the transcript for
22 those witnesses. Is that what you're --

23 MR. WESTBROOK: I can be a little --

24 THE COURT: Is that what you're asking?

25 MR. WESTBROOK: I can be a little more clear than

1 that, Your Honor.

2 THE COURT: Okay.

3 MR. WESTBROOK: What I'm saying is that my client
4 has a right to confrontation and he has a right to
5 effective assistance of counsel. I don't think either of
6 those rights will be fulfilled if the State is allowed to
7 do a direct examination of witnesses from whom we just
8 heard when I will not have access to transcripts to impeach
9 them.

10 THE COURT: So, what is your remedy?

11 MR. WESTBROOK: My remedy is for them to wait
12 until we have the transcript to place these witnesses on.
13 They have 30, 40 witnesses. Any one of them can go
14 tomorrow and all they would have to do is change the order
15 of their witnesses and everyone gets to present their
16 witnesses, everyone gets to present their case.

17 THE COURT: Okay. So, what --

18 MR. WESTBROOK: It's very easy.

19 THE COURT: -- is the State's response to that?

20 MR. HAMNER: The State's response is it is our
21 burden of proof to prove this case beyond a reasonable
22 doubt. We do not believe that the defense is entitled to
23 tell the State what order of witnesses we need to present
24 our witnesses.

25 THE COURT: Okay.

1 MR. HAMNER: That's completely, respectfully, --

2 THE COURT: I see a little bit of a logistical
3 problem here but not any confrontation issue or Sixth
4 Amendment issue. I'm going to -- I'm not going to
5 interfere with the order in which the State puts on its
6 witnesses. You made your record.

7 Let's move on to the argument about -- well and
8 the State goes first. The State has the burden of
9 convincing this Court that it -- that the Court should
10 allow the hearsay statements of the minor declarants under
11 51.385. Present your argument.

12 MR. HAMNER: Thank you very much, Your Honor.

13 THE COURT: And let's try to be brief. I want to
14 -- look, it's after 5. I want each side to keep it to
15 under five minutes.

16 MR. HAMNER: I will keep this brief.

17 THE COURT: Because I was here and saw exactly the
18 same thing everyone else did and I took extensive notes.

19 MR. HAMNER: All right. And maybe I can do this.
20 Does the Court have any specific inquiries of the State
21 right now with respect to any particular factor?

22 THE COURT: I don't have any questions.

23 MR. HAMNER: Okay. And I'll be brief.

24 **CLOSING ARGUMENT BY THE STATE**

25 BY MR. HAMNER:

1 Look, the factors under NRS 51.385 are pretty
2 clear. The statements need to be spontaneous not subject
3 to repetitive questioning. The child shouldn't have a
4 motive to fabricate. The use of terminology shouldn't be
5 unexpected for a child of that age and they should be in a
6 stable mental state.

7 What we've heard from each one of these parents,
8 neighbor, as well as a forensic interviewer, is that the
9 statements were spontaneously made. They were not subject
10 to repetitive questioning. At best, you had Mr. Rangel,
11 with his daughter when she initially said no or I don't
12 want to talk about it, he simply followed-up with: You're
13 not going to get in trouble, you can be honest. And then
14 she shares that he exposed himself to her and touched her
15 on her back or her hair or whatnot. That falls far short
16 of repetitive questioning.

17 There was absolutely no evidence in this hearing
18 that any of these children had a motive to fabricate and
19 none of the cross-examination reflected anything that would
20 show a child had a motive to fabricate. At no point
21 through any of the -- even in the translations do we have
22 children using terminology that were unexpected of their
23 age. When they use the word la cosa and they kept saying,
24 the thing, and they would describe it as a thing where I
25 would go pee or poop out of. It can be a collective thing.

1 That's all appropriate for their age.

2 And they -- the mental state of the children was
3 stable. These children may have been crying at times, they
4 may have been nervous or anxious, but we don't have someone
5 who is mentally unstable at the time that they're speaking
6 to these five particular people.

7 Additionally, as the Court noted in *Felix v. State*
8 and did a really good -- I thought a pretty thorough job in
9 at least asking the defense to do this, pointed out the
10 factors in *Felix v. State*, systemic -- systematic
11 contamination, cross contamination, concertizing, using a
12 preconceived agenda and following up with coercive
13 questioning, or ignoring or repeatedly ignoring a child's
14 denial statement. The Court asked the defense to do this -
15 - repeated it virtually with every single witness on cross-
16 examination, but that's not what we saw on cross. We saw -
17 - there was no system contamination. There's nothing about
18 law enforcement getting involved to cause these children to
19 say these things at these particular times. Law
20 enforcement wasn't even involved with four of the five
21 witnesses. The only person where law enforcement where
22 they had been brought knowledge of was Elizabeth Espinoza
23 and, through the cross-examination of Ms. Espinoza, there
24 was nothing to suggest that the police were guiding Ms.
25 Espinoza on the interview that she should conduct.

1 There was no cross contamination. Specifically,
2 they gave an example, such as: Using information from
3 other children to kind of guide the questions. You didn't
4 have any of these parents on cross saying: Yeah, when I
5 heard something from Yatziri or from another child, I would
6 then question my other children about it. That's not how
7 these questions went about.

8 Ms. Espinoza also didn't say -- didn't come out
9 that she used an earlier forensic interview to inquire
10 further on another child. That factor is not present.

11 There was no concertizing. You didn't hear any of
12 these witnesses saying they were using repeated leading
13 questions or asked the same topic over and over.
14 Virtually, every one of these parents, it was kind of like
15 these kids ran up and were blurting all these things out
16 and multiple parents said these children were saying these
17 things on their own and volunteering information on their
18 own. Even Yusnay basically said that to the neighbor. So
19 you don't have that.

20 And there's no preconceived agenda to guide
21 questioning. These four parents were all caught completely
22 unawares as to what was happening and that's reflected
23 through the testimony on direct as well cross. And there
24 was nothing on cross-examination of Ms. Espinoza to reflect
25 that her questioning was guided by some preconceived

1 agenda. And she flat-out told you: Look, I just kind of
2 asked open-ended questions. I'm impartial. I'm just
3 trying to see if something happens or it doesn't and we
4 just kind of go with it.

5 And there wasn't any evidence that demonstrates
6 that any of these parents were repeatedly ignoring repeated
7 denials by children. That's not what you had here. You
8 had Ms. Espinoza freely tell someone: Look, if they said
9 no about some conduct that was fine and I moved on. And
10 you didn't hear anything like that from any of the parents
11 and you didn't hear that from Ms. Rodriguez or Yusnay
12 Rodriguez.

13 So, at this point, the -- it was a very long
14 hearing. It was a very thorough hearing, but these factors
15 -- these are all very spontaneous statements being made.
16 There's no motive to fabricate and, simply, under *Felix*,
17 they have not demonstrated on cross-examination that they
18 were coerced in any way or manipulated in any way.

19 And, at this point, pursuant to NRS 51.385, all of
20 these witnesses should be able to testify with respect to
21 the things that they testified today to.

22 THE COURT: All right. Mr. Westbrook, your turn.

23 **CLOSING ARGUMENT BY THE DEFENSE**

24 BY MR. WESTBROOK:

25 Your Honor, it's not our job to demonstrate that

1 they were coerced in any way. It's their job to
2 demonstrate that these individual statements were
3 particularly reliable and to go through the factors that
4 the Court uses to determine that question.

5 As a threshold matter, and this gets us a little
6 bit back to the transcript thing in a way, the State must
7 identify which statements it intends to use and why each
8 one is not just reliable, but particularly reliable. I
9 don't know which statements they intend to use. What
10 they're asking this Court to do is to make a blanket
11 determination that everything said by every witness that
12 you heard today is reliable, meets the standard, and should
13 be admitted. That kind of blanket determination will be
14 reversed. *Felix* is extremely clear on that, 109 Nevada at
15 187.

16 They're asking for a blanket determination. I --
17 standing right here, I can't tell you what they want you to
18 admit because what I heard more often than anything else
19 was: The girl said this. They said that. The girl said
20 this. They said that.

21 I couldn't tell for the life of me which girl was
22 talking because these were group conversations for the most
23 part. There's a few exceptions. For example, Scarlett is
24 an exception. That was not a group conversations. These
25 were group conversations. All the girls talking about what

1 all the girls said and the witnesses you saw before you
2 today talking about what all the girls said, all the girls
3 said.

4 THE COURT: Well, I thought he did a pretty good
5 job -- they both did a pretty good job in breaking it down.

6 MR. WESTBROOK: Certainly not for --

7 THE COURT: They repeatedly said, I -- you know,
8 let's go through one at a time. I need to know
9 specifically who is the one who said that, who's the one
10 who said that. I mean, sometimes the witnesses would say,
11 you know, and they told me, but then, I think the DAs did a
12 good job in following that up to get it broken out.

13 MR. WESTBROOK: What I heard in response to a lot
14 of those attempts to break it down was: They said this.
15 He would be taking them in and touching them. I mean, I
16 heard they and them.

17 THE COURT: See, that kind of stuff is not going
18 to come in. It's going to be specific statements, who said
19 what and what did they say. We got a lot of specific
20 statements --

21 MR. WESTBROOK: Sure.

22 THE COURT: They're not going to ask one of the
23 witnesses that were on the stand today to offer a hearsay
24 statement by an unknown declarant because --

25 MR. WESTBROOK: Well, honestly, --

1 THE COURT: -- then I think you would object and I
2 think that would be probably properly sustained. We have
3 to know who the declarant is. It's not enough to say it
4 came from one of the children.

5 MR. WESTBROOK: Right. You can certainly count on
6 me to object, but that's my point. The point here is they
7 have not identified which statements they intend to use.
8 And, furthermore, I can't identify based on what I just
9 heard. So, they have to do that before anything can be
10 admitted. Having a transcript as to which statements they
11 intend to use, that would certainly be helpful.

12 THE COURT: So, what's your next argument?

13 MR. WESTBROOK: The credibility, reliability, and
14 potential bias of not just the witnesses whose ultimate
15 testimony -- the kids. Not just the kids, but the
16 witnesses on the stand is important.

17 THE COURT: Of course.

18 MR. WESTBROOK: Okay? Also, and I know you were
19 listening closely, what you heard today is parents talking
20 about what their kid said and Ms. Espinoza talking about
21 what the kids said and hearing two different things. The
22 kids told Espinoza a whole different story than they told
23 their parents and -- and I this I think is the quote of the
24 day, and perhaps the quote of the case, what the kids told
25 their own parents seemed to change a lot. I'm going to

1 give you a quote from -- I think it was Amanda:

2 Day after day after day, my girls were coming up
3 with new things and more things.

4 That can never be found to be reliable. Okay.
5 Here's the whole story. Here's some more of the whole
6 story. I'm going to give you additional parts of the whole
7 story.

8 THE COURT: Well, you wouldn't expect a child
9 coming forward to remember everything the first time they
10 report it. I don't think an adult could do that.

11 MR. WESTBROOK: Not remembering that -- oh yeah,
12 also -- I should have mentioned this earlier, my three year
13 old sister was being rubbed on the Defendant's belly. I
14 know I didn't mention that earlier but I'm mentioning it
15 now. Her mom never said that to the police. It's not in
16 her statement. She said she gave a complete statement of
17 everything she knew. Today, for the first time ever, she
18 testified that her daughter came and told her that Nicole,
19 her youngest daughter, was being molested by the Defendant.
20 That's the first time she ever said that today.

21 THE COURT: Okay.

22 MR. WESTBROOK: You know, it's never happened
23 before, that's why it's not reliable.

24 THE COURT: Well, it's a factor.

25 MR. WESTBROOK: Yeah, and her daughter never told

1 her that before.

2 THE COURT: Okay.

3 MR. WESTBROOK: Or her daughter just told her that
4 or it's just a story that's been building and growing
5 because they keep embellishing it. I mean, it's not
6 reliable testimony.

7 THE COURT: You know, the cases -- the sex assault
8 cases where the Court has not found particularly persuasive
9 evidence of those stories that have grown over time is
10 where you start off with a child saying nothing happened
11 and then it grows into something did happen.

12 MR. WESTBROOK: Sure.

13 THE COURT: Here, we have a lot of people saying
14 something happened and here is what it was and, oh, by the
15 way, I left out this little detail here, I left out this
16 little detail here. That's a little bit different.

17 MR. WESTBROOK: Well, Your Honor, what we have
18 more than that --

19 THE COURT: Okay.

20 MR. WESTBROOK: -- is -- and this is why
21 fundamentally what we're talking about here is the
22 reliability of the children and I wonder exactly how under
23 51.385 or any statute you can assess the reliability of
24 statements made by children who aren't part of the hearing.
25 That seems very difficult to me. I think that's a --

1 THE COURT: Yeah.

2 MR. WESTBROOK: -- fault with 51.385.

3 THE COURT: The Legislature doesn't require that
4 though. I mean, I can't --

5 MR. WESTBROOK: I'm not sure that it doesn't.

6 THE COURT: -- write new law. So, --

7 MR. WESTBROOK: Well, there's nothing in it that
8 says that it's not required. What's required is a
9 determination of the credibility of the original speaker,
10 the kids in this case.

11 THE COURT: Well you invoked the exclusionary
12 rule. They would have had to stay out anyway.

13 MR. WESTBROOK: Well, yeah. The kids --

14 THE COURT: So, --

15 MR. WESTBROOK: -- could have sat outside. We
16 could have figured some way about that, but they were not
17 brought to court today. They weren't available -- they
18 weren't available for this -- made available for this by
19 their parents. They weren't here.

20 So, you know, I mean, the State chooses what it
21 wants to bring on and what it wants to convince the Court
22 to admit. Okay. That's their choice. But I'm saying that
23 I don't think the Court can make a credibility
24 determination about what these kids have said when they've
25 said markedly different things no matter who've they talked

1 to. It's changed every single time.. And when the Court's
2 never heard from the kids directly.

3 For every statement --

4 THE COURT: But I told you that I -- I quoted it
5 here. This is *Villegas versus State*, 2014, Westlaw 803939,
6 it says:

7 Although it is true that the hearsay statements of
8 A.V. were sometimes inconsistent, consistency is not a
9 factor for admissibility under NRS 51.385 subpart 2.
10 Accordingly, we conclude that the District Court did
11 not abuse its discretion in admitting A.V.'s
12 statements.

13 Don't I need to give what the Supreme Court says
14 some weight there?

15 MR. WESTBROOK: They're not saying the credibility
16 is not an issue. That's not --

17 THE COURT: Consistency. They're saying the facts
18 that you're pointing out, the inconsistency in the
19 statements, --

20 MR. WESTBROOK: Right.

21 THE COURT: -- should not -- I shouldn't take that
22 into acct in determining whether the minor declarants were
23 reliable.

24 MR. WESTBROOK: Your Honor, actually I have a
25 threshold question. Is that a published case? I just

1 noticed it's a Westlaw cite and it's usually odd --

2 THE COURT: Yeah. It's 2014.

3 MR. WESTBROOK: Okay. But --

4 THE COURT: It says --

5 MR. WESTBROOK: But it's published then?

6 THE COURT: It's not published. No.

7 MR. WESTBROOK: Okay.

8 THE COURT: No. It's not published.

9 MR. WESTBROOK: So, it's an unpublished case, not
10 authority, number one.

11 MR. HAMNER: That's not true.

12 MR. WESTBROOK: Number two, I highly doubt --

13 THE COURT: Well, I mean, I've got to look at --
14 I read all the published and unpublished --

15 MR. WESTBROOK: Oh, I do, too.

16 THE COURT: -- and published, trying to get a -- I
17 mean, I hope you do, too. We all like to know what the
18 Supreme Court's thinking. I think that helps us to --

19 MR. WESTBROOK: Sure.

20 THE COURT: -- see where they're going. Right?

21 MR. WESTBROOK: Absolutely, but that's not legally
22 binding, first of all.

23 THE COURT: It's not precedent. I mean, it's not
24 precedent and not legally binding. You're right.

25 MR. WESTBROOK: But, second of all, I suspect that

1 case does not involve five alleged victims who are
2 contradicting each other at every turn. That's what we
3 have here. These witnesses are -- they tell a different
4 story to Ms. Espinoza, to their parents, as vastly
5 different story when they testified before the Grand Jury,
6 and I can guarantee you right now they will tell a
7 different story on the stand in the next two weeks. It's a
8 different story every time and you have to make a threshold
9 credibility determination. These things have to be
10 credible and likely to be true.

11 When you have someone saying one thing one day and
12 the opposite thing the next day, you simply cannot ignore
13 that contradiction because it's impossible for both things
14 to be true. And if both things can't be true, then it
15 can't be credible. If it can't be credible, it can't be
16 admitted. It has to be particularly reliable, not just
17 reliable, particularly reliable and nothing said here today
18 was particularly reliable.

19 THE COURT: What else do you got?

20 MR. WESTBROOK: Specific to Ms. Espinoza, --

21 THE COURT: Yes.

22 MR. WESTBROOK: -- the idea that she is not an
23 investigator who is acting on behalf of the State to
24 investigate this case is pure mythology.

25 THE COURT: Okay.

1 MR. WESTBROOK: She says she's not biased and
2 she's just looking for facts, she has no horse in this
3 race, she literally works for a place called the Child
4 Advocacy Center. Advocacy by its very definition is not
5 neutral. She says she's not told by the police what to do
6 and that she is alone with the kids and no one is directing
7 her interview, but she also says that she got some kind of
8 information from the police about what she was going to
9 interview them about and sitting in a room watching
10 everything she did on video tape was Detective Campbell.
11 So this interview was taking place after the interview with
12 Detective Campbell, after reviewing stuff in the police
13 file, that little one-sheet synopsis, after talking to
14 Detective Campbell, and under the real time watchful eye of
15 Detective Campbell.

16 THE COURT: SO what does that suggest to you?

17 MR. WESTBROOK: It's testimonial. *Crawford* is
18 involved because it's testimonial.

19 Look, we're going to get into a lot of what Ms.
20 Espinoza did in the interview. We are because there's so
21 many contradictions and it's impeachment --

22 THE COURT: I thought that the Ninth Circuit, in
23 that *Reid* [phonetic] decision, did they -- they looked at
24 the constitutionality and whether this violated *Crawford*
25 and I think they upheld the constitutionality of 51.385 on

1 its face and as applied even if the underlying statements
2 were testimonial. Take a look at that again. I got the
3 cites for that. That's 2012 Westlaw 3929515 District of
4 Nevada, September 7, 2012.

5 MR. WESTBROOK: Your Honor, I'm not arguing that
6 the statute --

7 THE COURT: That's a Federal Court Judge.

8 MR. WESTBROOK: Yeah. I'm not arguing that the
9 statute is invalid because it violates *Crawford*. That's
10 not what I'm arguing at all. What I'm saying is that the -
11 -

12 THE COURT: Okay.

13 MR. WESTBROOK: When you take a professional
14 forensic examiner, that's her whole job, and the word
15 forensic is in her title for a reason, she's trying to get
16 a certain result. She's trying -- she's been trained to do
17 this. She has a targeted interview that is designed to get
18 results. She's doing it at the direction of the police.
19 This is different than some --

20 THE COURT: But where's the evidence that she used
21 her training to contaminate the testimony of the minors
22 here?

23 MR. WESTBROOK: There doesn't need to be any
24 evidence that she's contaminated --

25 THE COURT: No. That's exactly what *Felix*

1 requires us to do is to find indicia of contamination. The
2 fact that -- I mean, let's suppose for the sake of argument
3 she's an arm of the State, you know, --

4 MR. WESTBROOK: Okay.

5 THE COURT: -- and the child comes up and makes a
6 spontaneous statement to her about what happened, I still
7 apply the *Felix* factors and I still need to analyze whether
8 she coerced a particular statement. So there is --

9 MR. WESTBROOK: Coercion --

10 THE COURT: The mere fact of her role doesn't show
11 that there's taint here.

12 MR. WESTBROOK: Coercion is not the standard.

13 THE COURT: Coercion is one of the -- I just threw
14 that out there as one of the things.

15 MR. WESTBROOK: Right.

16 THE COURT: I don't want to list all 10 things --

17 MR. WESTBROOK: Well, --

18 THE COURT: -- that *Felix* talks about, but --

19 MR. WESTBROOK: -- let's go with the five.

20 THE COURT: But which one are -- which one is
21 implicated?

22 MR. WESTBROOK: The statement was not spontaneous.
23 It was an interview that was set up by the police where
24 everybody was told exactly what was going to happen. She
25 was told what information they were trying to get and then

1 she conducted her interview --

2 THE COURT: Okay. I see your point. I --

3 MR. WESTBROOK: -- according to that.

4 THE COURT: I'm not agreeing with you but I see
5 your point now.

6 MR. WESTBROOK: The child was subjected to
7 repetitive questioning during those interviews. You'd have
8 to read them in their entirety because it was very
9 difficult to follow along here.

10 THE COURT: So, again, I'm giving you much more
11 than five minutes to try to persuade me. What else --

12 MR. WESTBROOK: I know, Your Honor.

13 THE COURT: And you've taken up a lot of it. What
14 else do you got?

15 MR. WESTBROOK: But it was repetitive questioning.
16 Those two alone would be enough to invalidate it. But the
17 fact is this thing was designed for a different purpose.
18 Kids going in and saying: Hey, mommy, a man touched me,
19 spontaneously, is markedly different than a professional
20 forensic examiner examining children to build a case.
21 There was an active case when she was there. Her job is to
22 help build that case. Anything else is fantasy. That's
23 her job.

24 Moving onto the next thing, I wonder what the
25 relevance of any of this is because until we hear the

1 children testify, we don't even know if --

2 THE COURT: That's for -- the Legislature has said
3 it's relevant and comes in because as the Legislature says,
4 we're developing an additional exception to the hearsay
5 rule. So it would be easier for the State to present hat
6 type of evidence. That's --

7 MR. WESTBROOK: Well --

8 THE COURT: -- what our Legislature --

9 MR. WESTBROOK: Right.

10 THE COURT: -- determined.

11 MR. WESTBROOK: Sure. But what the Legislature
12 have never said is that bolstering is allowed. That's not
13 part of 51.385. If what they're doing is they're using it
14 to bolster witnesses, they can't do that.

15 THE COURT: Where is that allowed?

16 MR. WESTBROOK: Bolstering is never allowed. You
17 can't do bolstering. It's an objection.

18 THE COURT: You haven't given me any case on that.
19 So, --

20 MR. WESTBROOK: Well, Your Honor, you agree that
21 objection bolstering is a proper objection. It's in the
22 Rules of Evidence. I mean, I can certainly look them up
23 for you. But --

24 THE COURT: I don't know how that's implicated by
25 51.385.

1 MR. WESTBROOK: The reason we can't bring in prior
2 consistent statements is --

3 THE COURT: All right.

4 MR. WESTBROOK: -- because it's bolstering.

5 THE COURT: Oh you're talking about -- all right.
6 Trying to --

7 MR. WESTBROOK: Sure.

8 THE COURT: Trying to rehabilitate your own
9 witness with a prior consistent statement is --

10 MR. WESTBROOK: Right, which is at the heart of
11 what this is, but what they're trying to do is bolster the
12 credibility of their witnesses by saying: Well, she told
13 this person, too, so therefore she must be more credible.

14 THE COURT: Wouldn't anything that comes in under
15 a 51.385 be viewed as bolstering then because it's always
16 coming into supplement what the victim himself -- I mean,
17 in your argument, any time the minor is going to be on the
18 stand, then his hearsay statement is bolstering testimony.
19 So that kind of undercuts the whole intent behind 51.385.

20 MR. WESTBROOK: To me, it -- 51.385 should be
21 undercut. It's a terrible statute, but what I'm not doing
22 here right now --

23 THE COURT: All right.

24 MR. WESTBROOK: -- is telling you it's
25 unconstitutional. That's a much longer argument and one

1 that someday I'll make.

2 THE COURT: I'm just not being persuaded by your
3 bolstering --

4 MR. WESTBROOK: Right.

5 THE COURT: -- arguments.

6 MR. WESTBROOK: Without knowing --

7 THE COURT: Anyway, what else do you got?

8 MR. WESTBROOK: Without knowing exactly what they
9 want to get in because, again, --

10 THE COURT: Yeah.

11 MR. WESTBROOK: -- we still don't really know.
12 They haven't been specific, which is a threshold showing
13 they have to make.

14 THE COURT: Well, I think I know. I wrote down
15 every single statement that the witnesses on the stand said
16 came from the minors. They -- every single statement that
17 was exculpatory -- I'm sorry, that was inculpatory, which
18 was a statement out of court by the minors, they plan to
19 use. I wrote them all down.

20 MR. WESTBROOK: Okay.

21 THE COURT: I think it's crystal clear to me what
22 they want to use.

23 MR. WESTBROOK: Right. This --

24 THE COURT: Anyway, what else do you got?

25 MR. WESTBROOK: The State feels -- and this goes

1 more to Espinoza than anybody else, that when something is
2 in a question and answer format it becomes less reliable.
3 They said that specifically when they were talking to
4 Amanda and talking to her about the things that she had
5 left out of her statement to police. They said: Well,
6 this was in a question/answer format. Right? The
7 implication being that that would excuse a bunch of
8 mistakes or inconsistencies or things that were left out.

9 51.385 does that as well, as does *Felix*.

10 THE COURT: I get that argument in court all the
11 time.

12 MR. WESTBROOK: Yeah. When you are in a question
13 and answer format, what you're getting is potentially less
14 reliable and it also is apt to be a product of coaching and
15 of bias of the person answering -- asking the questions,
16 etcetera. That's another reason why nothing that Ms.
17 Espinoza said can come in under 51.385.

18 Now, rest assured, we'll be hearing a lot from
19 her.

20 THE COURT: Well, we're dealing with children.
21 That's why our Supreme Court has said you can even lead --
22 ask leading questions to children because --

23 MR. WESTBROOK: Within reason.

24 THE COURT: -- they're at a young age and it's
25 different -- within reason. It's difficult -- you have --

1 it's difficult to facilitate getting information out of
2 children.

3 MR. WESTBROOK: Right. But it can't cross the
4 line to bolstering. That's still not part of it.

5 THE COURT: I'm not speaking on bolstering.

6 MR. WESTBROOK: Okay.

7 THE COURT: Okay. What else do you got because
8 we're really --

9 MR. WESTBROOK: That's it, Your Honor. My final
10 thing is -- my final thing is I still don't know what
11 statements they want to get in. We'll obviously have to do
12 this on the fly unless we have a transcript and the State
13 is required to say exactly which statements they want in.
14 That's what I think should happen, .

15 THE COURT: Tell you what. Here's how I would
16 handle it is any time there's one of these witnesses on the
17 stand and the question is, you know, what did the minor
18 say, you know, to me, that's a clue that that's the product
19 of what we discussed today.

20 MR. WESTBROOK: Sure.

21 THE COURT: Right?

22 MR. WESTBROOK: Makes sense, Your Honor.

23 THE COURT: And, so, I think it's clear what
24 they're -- anyway, bolstering -- what's your position on
25 bolstering? I --

1 MR. HAMNER: I --

2 THE COURT: Because -- I mean, I understand the
3 argument.

4 **REBUTTAL CLOSING ARGUMENT BY THE STATE**

5 BY MR. HAMNER:

6 I want to touch on that. This is not a case of
7 bolstering. We have -- there are hearsay exceptions, not
8 just 51.385 for a reason. And they're not considered
9 bolstering because bolstering would be having a witness
10 opining, oh I think that person is super credible or I
11 really believe that person. That's not the testimony that
12 is being offered under 51.385 or under any other particular
13 hearsay exception. It's being offered is a reliable,
14 trustworthy, out of court statement being offered for the
15 truth of the matter asserted and there's a distinct
16 difference.

17 And what's interesting is Mr. -- the defense wants
18 to get up here and argue as their fundamental argument:
19 These children are so inconsistent. But for some reason he
20 wants to bring in at trial inconsistent statements, but the
21 bottom-line is the law allows for prior inconsistent
22 statements an consistent statements to be offered as an
23 exception to hearsay when someone is alleging a particular
24 witness or declarant is lying.

25 THE COURT: Okay.

1 MR. HAMNER: So, the bottom-line is that it
2 doesn't hold a lot of water.

3 THE COURT: So, I've heard enough.

4 MR. HAMNER: All right. If --

5 THE COURT: You should hear is whether the hearsay
6 statements of the minors offered by the following
7 individuals are going to come in. We have Elizabeth
8 Espinoza, who the State wants to offer to provide hearsay
9 minor statements of Mirabel, Yatziri, Maridel, and Yezlene.
10 We have the State wanting to put on Yusnay Rodriguez to
11 offer the out of court hearsay statements of minors,
12 Yatziri, Yezlene, Mirabel, and Maridel.

13 MR. HAMNER: And, Your Honor, just for the record,
14 --

15 THE COURT: Did I say that right?

16 MR. HAMNER: No, you said that fine, but, with
17 respect to Ms. Espinoza, she was also offering testimony
18 regarding Scarlett as well.

19 THE COURT: And Scarlett.

20 MR. HAMNER: Rangel.

21 THE COURT: All right. Scarlett.

22 MR. HAMNER: Sorry.

23 THE COURT: I missed that one. All right.

24 And then the State wants to offer Amanda Moiza to
25 offer hearsay statements of the declarant -- minor

1 declarants, Yatziri, Mirabel, Maridel, and Yezlene. The
2 State wants to offer Ricardo Rangel to offer hearsay
3 statements of minor declarant, Scarlett Rangel. And the
4 State wants to offer Maria Barajas to offer the hearsay
5 statements of I guess that would be Yezlene only.

6 MR. HAMNER: That's right.

7 MS. KOLLINS: Yes, sir.

8 THE COURT: All right. And, so, the Court must --
9 the Court conducted this evidentiary hearing so the Court
10 could gain information to analyze whether the hearsay
11 testimony -- hearsay statements can come in under NRS
12 51.385. The Court has studied the requirements of 51.385
13 as well as the Supreme Court cases that are instructive on
14 the factors to consider and those factors are outlined in
15 *Felix versus State*, 109 Nevada 151, 1993 as well as *Lionel*
16 *versus State* [phonetic], 107 Nevada 589, 1991.

17 So, after considering everything, I conclude as
18 follows. Here are my findings. I think that from what
19 I've heard today, I don't see any motive to fabricate by
20 these witnesses -- by either the witnesses on the stand or
21 the declarants themselves. The Court is convinced that the
22 mental state of the child declarants was sufficient such
23 that they knew what they were -- knew what the statements
24 were that they were making.

25 The evidence was that they used appropriate

1 terminology and I find that to be true. I don't think the
2 children here were subjected to repetitive questioning. I
3 find that there was -- the statements were spontaneous and
4 for the following reasons. They weren't coerced. I don't
5 see that they were the product of leading questions. They
6 weren't the product of repetitive questioning. The
7 children all made their utterances in a nonthreatening
8 environment. I didn't see any evidence of suggestive
9 questions. And there was no pressure put on the minors to
10 make their statements.

11 The -- some of the parents said: Please don't --
12 you know, don't be afraid. Don't -- you know, you're okay,
13 we need to know what's going on, and they were prompted to
14 answer. That was just in the nature of providing them
15 assurances that nobody was going to get killed if they
16 spoke out and I don't think that renders their statements
17 to be nonspontaneous. It just eliminates a grave
18 impediment of a risk of death to somebody if they did speak
19 out. So I still think the statements are spontaneous.

20 As to the contamination error issue, I don't see
21 any contamination evidence here. All these statements here
22 were made before and without any police providing any
23 information on the incidents or the investigation. I
24 certainly didn't see any evidence that the police ever
25 shared information about, you know, the investigation or

1 what anybody had said before either the parents or Espinoza
2 asked any questions.

3 The hearsay statements were all made before any
4 influence or coaching by the parents. There's no evidence
5 that the minors ever got together in an effort to
6 synchronize their story. I mean, there was some testimony
7 here that Yatziri brought the other girls to Ms. Rodriguez
8 to corroborate her story when there was some suggestion,
9 you know, that Rodriguez didn't believe her. But there was
10 no evidence presented of any concert or comingling to share
11 stories by the girls in that brief period of time between
12 when Yatziri went to get them and when they brought them
13 back. And just the fact that they came back together as a
14 group doesn't show any kind of getting together to
15 synchronize their stories.

16 There's no evidence that the -- let me think for a
17 second. Oh, I think there was substantial consistency.
18 There's certainly going to be a lot of material for cross-
19 examination here. I can see that, but there was generally
20 substantial consistency among all of the various witnesses
21 in their accts here.

22 The witnesses that came forward to present the
23 hearsay statement, to me, generally seem to be
24 substantially credible.

25 There's no evidence that any of the minors denied

1 any of the incidents after acknowledging that the incidents
2 happened. I think that's an important factor.

3 With respect to Scarlett, we did hear that
4 Scarlett did possibly talk to Amanda, possibly before
5 talking to her dad about the touching and there was some
6 evidence that the dad had heard about the touching from
7 Amanda before talking to Scarlett, but, you know, those two
8 things by themselves doesn't suggest that there is any kind
9 of improper questioning to draw out the type of information
10 that, you know, either Amanda or the dad were hoping to
11 hear.

12 Looking at the totality of the circumstances here,
13 I just don't see any proof that Amanda influenced
14 Scarlett's story and I don't see any proof that there's any
15 coercion or intimidation or leading or repetition by the
16 dad to try to reach a desired result here.

17 Some evidence here that Scarlett's possibly lied
18 to CPS and that's certainly relevant on cross-examination
19 and it's a relevant factor for me to consider in
20 determining whether the overall hearsay statements are
21 reliable. That one piece of evidence of lying doesn't
22 establish that she has an untruthful character and because
23 she might have lied in that one instance doesn't mean that
24 she lied here regarding the account of the alleged abuse in
25 the face of the totality of all of the other circumstantial

1 evidence here.

2 Similarity of stories given to Amanda Moiza, that
3 doesn't suggest, again, that they all got together and
4 worked up a single story. More likely, I think they all
5 had similar stories because they all experienced and/or
6 witnessed substantially similar conduct here.

7 I mean, in some, I do find that there's sufficient
8 circumstantial guarantees of trustworthiness of the hearsay
9 statements. I believe that the declarants are likely
10 telling the truth. That's the minors. With respect to
11 their statements, I think that their statements are -- the
12 hearsay statements coming in are as reliable as any other
13 forms of hearsay that come in under the various exceptions
14 that apply. I also believe that the statements are
15 trustworthy enough that are adversarial -- that any
16 additional adversarial questioning of the minors at the
17 time that they made these out of court statements would not
18 have added anything substantial to reliability.

19 No motive to fabricate, in case I didn't say that.

20 That's it -- the evidence by the fact that, you
21 know, these children were all scared and anxious and
22 represented that they were facing potential threats against
23 themselves or their families and, combined with the fact
24 that their statements are generally all corroborative among
25 several different witnesses, that, to me, is evidence of no

1 motive to fabricate.

2 So, you know, I wrote all this -- I'm trying to
3 follow and apply all of the factors. I think I covered all
4 of the factors. To me, this is a clear case where the
5 Legislature intended in this particular case for the
6 hearsay to come in. I'm going to let it in. There's
7 obviously a lot of good cross-examination and impeachment
8 material, but that's for another day.

9 So, that's my ruling.

10 MR. HAMNER: Yes, Your Honor.

11 THE COURT: Does anybody request that what I just
12 said, in the minutes, be reduced to a written order? Does
13 that need to be reduced to a written order?

14 MS. KOLLINS: I'm fine with the minutes.

15 MR. HAMNER: I'm fine with a minute order. That's
16 fine.

17 THE COURT: All right. Swell, that's where we
18 are. We're going to start tomorrow with opening statement.

19 MR. HAMNER: Yes, Your Honor.

20 THE COURT: How much time do you think you're
21 going to need? State?

22 MR. HAMNER: I don't know. Twenty minutes maybe.

23 THE COURT: Twenty minutes?

24 MR. HAMNER: I mean, maybe 30 at most, but I don't

25 --

1 THE COURT: How much time -- Ms. Kierny, how much
2 time do you want for your opening statement?

3 MR. WESTBROOK: I'm going to be opening, Your
4 Honor, and --

5 THE COURT: Okay. Yes, sir. I'm not going to
6 hold you to it.

7 MR. WESTBROOK: It will be less than an hour.

8 THE COURT: So an hour and 20 minutes probably
9 total. That's a long time to hold their attention, but --

10 MR. WESTBROOK: I suspect it will be --

11 THE COURT: -- you are probably captivating and
12 you can probably do it.

13 MR. WESTBROOK: -- substantially less. It will be
14 substantially less than an hour, Your Honor.

15 THE COURT: And then can you tell us who your
16 first witness is going to be? I like to -- I'd like the
17 defense to --

18 MR. HAMNER: I was just -- I --

19 THE COURT: -- have a heads up on that.

20 MR. HAMNER: I believe that we will be calling
21 Yusnay, Ms. Rodriguez, and Ms. Moiza, Amanda Moiza.

22 THE COURT: Why don't we take the first 20 minutes
23 to -- and maybe a half an hour to read some preliminary
24 instructions and we have to read the Information and the
25 Court Clerk will do that. So, --

1 MR. HAMNER: Potentially, if we get through it, we
2 may get to Maria Estrella as well.

3 THE COURT: You're very optimistic.

4 MR. HAMNER: I'm being -- we have her waiting in
5 the wings just in case but we believe it will probably be
6 just the two witnesses.

7 THE COURT: All right. See you guys tomorrow.

8 MR. HAMNER: Thank you very much, Your Honor.

9 THE COURT: -- at 1. All right. Thank you to the
10 interpreters.

11 HEARING CONCLUDED AT 5:37 P.M.

12 * * * * *

13

14

15

16

17

18

19

20

21

22

23

24

25

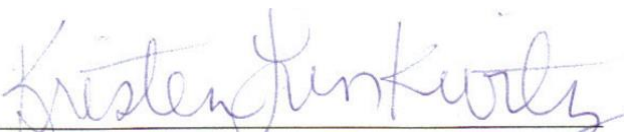
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

JOSE AZUCENA) No. 74071
)
 Appellant,)
)
 v.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)
 _____)

<p>PHILIP J. KOHN Clark County Public Defender 309 South Third Street Las Vegas, Nevada 89155-2610</p> <p>Attorney for Appellant</p>	<p>STEVE WOLFSON Clark County District Attorney 200 Lewis Avenue, 3rd Floor Las Vegas, Nevada 89155</p> <p>ADAM LAXALT Attorney General 100 North Carson Street Carson City, Nevada 89701-47 (702) 687-3538</p>
--	--

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 10 day of April, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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

BY /s/ Carrie M. Connolly
Employee, Clark County Public Defender's Office