

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

2
3 JOSE AZUCENA

4 Appellant,

5 v.

6
7 THE STATE OF NEVADA,

8 Respondent.

) No. 74071

)
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9
10 **APPELLANT'S APPENDIX VOLUME VIII PAGES 1403-1496**

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
vs.
JOSE AZUCENA,
Defendant.

CASE NO. C-17-321044-1
DEPT. NO. II

BEFORE THE HONORABLE RICHARD SCOTTI, DISTRICT COURT JUDGE

THURSDAY, APRIL 27, 2017

**TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL - DAY 3**

APPEARANCES:

For the Plaintiff:

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Chief Deputy District Attorney
CHRISTOPHER S. HAMNER, ESQ.
Deputy District Attorney

For the Defendant:

P. DAVID WESTBROOK, ESQ.
Deputy Public Defender
CARLI L. KIERNY, ESQ.
Deputy Public Defender

RECORDED BY: DALYNE EASLEY, COURT RECORDER
TRANSCRIBED BY: SHAWNA ORTEGA, CET-562

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1 **LAS VEGAS, NEVADA, THURSDAY, APRIL 27, 2017**

2 [Proceeding commenced at 1:22 p.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: All right. As soon as you are able, we can bring the
6 jurors in.

7 [Pause in proceedings.]

8 MR. HAMNER: Sorry. We have one housekeeping matter, Your
9 Honor. Well, two, actually. By stipulation of the parties with respect to exhibits, the
10 parties have stipulated to the admission of Exhibits 1 through 19, 22 through 48,
11 and 50 and 51, at this time. I think there may be just two objections, but we believe
12 we could get -- on 20 and 21, we'll be able to get in through authentication just
13 formally. And 49, they're still deciding as to whether or not they want to accept that.
14 And there's a 49(a), but they're making a decision on that.

15 [State's Exhibit Nos. 1 through 19, 22 through 48, 50, 51 admitted.]

16 MR. HAMNER: The second issue, Your Honor, is we noticed yesterday
17 as we were just kind of preparing, the State is -- has elected that it's not going to
18 proceed on Count 9. However, yesterday when we were so busy kind of getting
19 ready, we forgot to prepare the amended indictment dismissing the one count. So
20 I've just informed defense counsel about that. But we're not going to proceed on it,
21 but I just wanted to let the court know kind of ahead of -- ahead of time about that.

22 THE COURT: All right. So we won't read it as part of the preliminary
23 instructions. Did you hear that loud and clear? Count 9 does not get read.

24 MR. WESTBROOK: And we, of course, have no objections. That goes
25 for any dismissals of any counts.

1 Your Honor, just as another house --

2 THE COURT: I'll keep that in mind, in case I feel so inclined.

3 MR. WESTBROOK: Thank you, Your Honor. We also wanted to make
4 a -- I want to make a brief record about the audio setup. We were reviewing the
5 recording that was burned for us so kindly by your staff last night, and we noticed
6 that the witness microphone is super staticky. It doesn't show up live when she's
7 listening, but on the tape, it was extremely difficult to hear. The opposite problem
8 we were having with our microphone, which was picking up a pin drop every time I
9 spoke. It sounded like I had a megaphone. And --

10 THE COURT: Did you switch them out?

11 MR. WESTBROOK: We could certainly switch them out. I didn't know
12 if we had someone from staff, you know, court staff coming down to take a look at it
13 before we started or anything like that. But.

14 THE COURT: Just one second.

15 MR. WESTBROOK: But having it here makes it feel like we can't talk to
16 our client. It's picking it up.

17 THE COURT: I didn't know that.

18 THE COURT RECORDER: I've already placed a call to them.

19 THE COURT: Okay. Great. Well, let's try to -- maybe -- do they
20 unplug easily, those things?

21 MR. WESTBROOK: They --

22 THE COURT: They look like they just clip.

23 MR. WESTBROOK: Well, there is a clip you can -- you can certainly
24 unplug it.

25 [Pause in proceedings.]

1 THE COURT: There we go. Problem solved.
2 MS. KIERNY: Thank you.
3 THE COURT: Okay. Now what?
4 MR. WESTBROOK: Is this -- is this one on now?
5 MS. KIERNY: It is.
6 MR. WESTBROOK: Okay. Great.
7 THE COURT: All right. Let's bring the jurors in.
8 THE MARSHAL: Bring them in, Your Honor?
9 THE COURT: Bring them in.
10 Yeah, we still got to hear you, sometimes you do have an
11 important objection.
12 MR. WESTBROOK: Right. The only -- I do, but I'm so loud I can't
13 imagine it not getting picked up.
14 THE COURT: That's true.
15 [Jury reconvened at 1:29 p.m.]
16 THE COURT: Go ahead and be seated when you can take your seat.
17 Thanks.
18 What do we got now, eight and six? How did we set this up?
19 THE MARSHAL: Who doesn't have a notebook?
20 THE COURT: All right. Great. Everyone accounted for marshal?
21 THE MARSHAL: Yes, Your Honor.
22 THE COURT: All right. Please be seated everybody. This is the *State*
23 *of Nevada vs. Jose Azucena*, C-321044.
24 Counsel are we ready to proceed?
25 MR. WESTBROOK: We are, Your Honor.

1 MS. KOLLINS: Yes, Your Honor.

2 MR. WESTBROOK: We just need a brief bench conference, we'll be all
3 ready to go.

4 THE COURT: One -- one second, let's see.

5 Mr. Thomas, you had some trouble getting here this morning,
6 right? Anything -- anything we need to talk about?

7 JUROR NO. 3: No. Actually, I -- I was actually here, but I was thinking
8 I had to be up here at 1:30. So --

9 THE COURT: Okay.

10 JUROR NO. 3: -- I had forgot my badge, so I had to go back and get it.

11 THE COURT: That's not a problem. Okay. I just wanted to make sure.
12 So going forward we'll be fine, right?

13 MR. THOMAS: Yeah.

14 THE COURT: Okay. Perfect. Thank you. All right. All right. No
15 problem.

16 All right. Bench conference?

17 [Bench Conference transcribed as follows.]

18 MR. WESTBROOK: Do you have 20 and 21 handy?

19 MR. HAMNER: They're over there. Just right over there.

20 MR. WESTBROOK: We just wanted to note objections to State's
21 Proposed Exhibits 20 and 21. [Indiscernible] we've gone through before court,
22 we've all agreed that they're -- they're going to be admitted in this photo packet.
23 We object to these two, first of all, on the basis of relevance. Second of all,
24 because we think it's prejudicial, simply because, you know, these pictures, I think,
25 are being used because our guy is standing apart and he, you know, has an air of

1 menace about him. He's standing and he is apart from everybody else and he's
2 staring -- and standing in the doorway, you know, displayed in a darkened doorway.
3 Which I think is an analogy and I think it was an intentionally picked analogy.

4 I don't know what the relevance of these are. We all know who
5 everybody is, we don't know they hang out together, we know they go to parties
6 together. I don't see any relevance to these pictures, and they are, I think,
7 prejudicial.

8 MR. HAMNER: We're all going to be --

9 THE COURT: Do you see a relevance?

10 MR. HAMNER: The relevance is it actually demonstrates that they all
11 socially get together. This is a picture of Maria Estrella, that's Scarlett Rangel, this
12 is, obviously, the defendant. This woman over here is his wife, Elena. So it shows
13 a social gathering, how they get together.

14 Over here is the only shot we actually have of Amanda, this is the
15 mother of the three Moreno children. This is also relevant, because it shows how
16 they normally --

17 MR. WESTBROOK: If we could lower the --

18 MR. HAMNER: I'm sorry. It also shows the relevance as to how they
19 would typically have parties outside of their apartment. It just shows him standing
20 in the doorway at a party.

21 THE COURT: He's present.

22 MR. HAMNER: It's not -- it's not to show any sort of malice or not. It's
23 just to show how socially they interact. We're bringing this to your attention now,
24 because I intend to use them in my opening statement, because I have a good-faith
25 basis our witnesses can authenticate the people in the photograph and -- and when

1 they were taken.

2 THE COURT: Okay.

3 MR. WESTBROOK: There is no argument about who anybody is. We
4 will never argue that they don't socialize together. And regardless of the intent, the
5 result is that looks like a menacing photo, and I think it's going to color the jury's
6 perception. It will inflame the jury.

7 MR. HAMNER: The State will never make an argument that he's luring
8 at them menacingly in any of these photos. That's not the purpose of the photos.
9 But it is our burden and we're entitled to present the evidence. And we need to
10 show that there is a social connection between these multiple families and how they
11 would get together and socialize.

12 THE COURT: You don't have any -- you don't have any other photos
13 that shows these three at a --

14 MR. HAMNER: I have --

15 THE COURT: -- at a bar-b-cue?

16 MR. HAMNER: I have no photos of Amanda. I think maybe because
17 she's taking a lot of the photographs. It's the only one I have of Amanda.

18 THE COURT: Okay. This -- I don't --

19 MR. HAMNER: And I -- it's just --

20 THE COURT: This doesn't seem to be -- I mean, he's not --

21 MR. HAMNER: He's just hanging out having a soda.

22 THE COURT: He's right there with, but he's not, like --

23 MR. HAMNER: No.

24 THE COURT: -- hiding out.

25 MR. WESTBROOK: I'm more concerned about the doorway picture.

1 He's literally a dark shadow lurking in the doorway. And there is no reason to show
2 it.

3 THE COURT: I wouldn't have even known that was him. Is that
4 important for the -- you to show that he was there?

5 MR. WESTBROOK: Well [indiscernible] to show Amanda would be a
6 problem.

7 THE COURT: Well, hold on, I'm asking him.

8 MR. HAMNER: Yeah, I think it's relevant to show that, yeah, that he
9 participates in the parties and these get-togethers with the adults and the kids. And
10 I think it's important that the jury see, this is our only outdoor photo shot of -- of
11 them.

12 THE COURT: There's no minors here, it's not like he's, like, hiding from
13 them.

14 MR. HAMNER: I don't know, but it's -- it's the -- right.

15 THE COURT: Okay. Your objection's noted. Let's see if he lays -- if
16 he lays foundation, I --

17 MR. WESTBROOK: Well, I'm sure he'll lay a foundation.

18 THE COURT: -- I think --

19 MR. WESTBROOK: Amanda turned over all these pictures. It's not a
20 foundational argument.

21 THE COURT: Yeah.

22 MR. WESTBROOK: It's a, you know, a picture is worth a thousand
23 words. It's a menacing figure in the doorway, which --

24 MR. HAMNER: I don't think I'll be making that argument at any point in
25 time.

1 THE COURT: Well, don't make that argument.

2 MR. HAMNER: I won't, Your Honor.

3 THE COURT: I'm going to let -- I think the probative value is slightly
4 over --

5 MR. WESTBROOK: Thank you, Your Honor.

6 THE COURT: -- the prejudicial.

7 [End of bench conference.]

8 THE COURT: Okay. Great. Okay. Let's -- let's -- where are we? I
9 got to read some preliminary instructions. All right. All right.

10 Ladies and gentlemen, as you know, you are now the jury in this
11 case. And I want to take a few minutes to tell you something to your duties as
12 jurors and to give you some preliminary instructions. At the end of the trial, I will
13 give you more detailed written instructions that will control your deliberations.

14 When you deliberate, it will be your duty to weigh and to evaluate
15 all the evidence received in the case, and in that process, to decide the facts. To
16 the facts as you find them, you will apply the law as I give it to you. Whether you
17 agree with the law or not, you must decide the case solely on the evidence and the
18 law before you, and must not be influenced by any personal likes or dislikes,
19 opinions, prejudices, or sympathy. Please do not take anything I may say or do
20 during the trial as indicating what I think of the evidence or what your verdict should
21 be; that is entirely up to you. It is important that you keep an open mind and not
22 decide any issue in the case until the entire case has been submitted to you for
23 deliberations.

24 This is a criminal case brought by the State of Nevada. The
25 State charges the defendant with alleged crimes. The charges against the

1 defendant are contained in the document called indictment. The indictment simply
2 describes the charges the State brings against the defendant. The indictment is not
3 evidence and does not prove anything. The clerk will now read the indictment to
4 the jury.

5 [Information read.]

6 THE COURT: Thank you, Madam Clerk.

7 The defendant has pled not guilty to the charges and is
8 presumed innocent unless and until the State proves the defendant, beyond a
9 reasonable doubt, guilty. In addition, the defendant has the right to remain silent
10 and never has to prove innocence or to present any evidence.

11 The evidence that you are to consider in deciding what the facts
12 are consists of the sworn testimony of any witness, the exhibits which are received
13 in evidence, and any facts to which the parties might agree. The following things
14 are not evidence and you must not consider them as evidence in deciding the facts
15 of this case.

- 16 1. Statements and arguments of the attorneys.
17 2. Questions and objections of the attorneys.
18 3. Any testimony that I instruct you to disregard and
19 5. Anything that you may see or hear when the court is not in
20 session, even if what you see or hear is done or said by one of the parties or by
21 one of the witnesses.

22 Evidence may be direct or circumstantial. Direct evidence is
23 direct proof of a fact, such as testimony by a witness about what that witness
24 personally saw or heard or did. Circumstantial evidence is indirect evidence that
25 is -- that is -- it is proof of one or more facts for which one can find another fact.

1 You are to consider both direct and circumstantial evidence. Either can be used to
2 prove any fact. The law makes no distinction between the weight to be given to
3 either direct or circumstantial evidence. It is for you to decide how much weight to
4 give to any such evidence. I will instruct you more carefully and in more detail
5 about that at the end of the case.

6 There are rules of evidence that control what can be received in
7 evidence. When a lawyer asks a question or offers an exhibit in evidence, and a
8 lawyer on the other side thinks that it is not permitted by the rules of evidence, that
9 lawyer may object. If I overrule the objection, then the question may be answered
10 or the exhibit received. If I sustain the objection, the question cannot be answered
11 or the exhibit cannot be received. Whenever I sustain an objection to a question,
12 you must ignore the question and must not guess what the answer would have
13 been.

14 Sometimes I may order that evidence be stricken from the record
15 and that you disregard or ignore the evidence. That means that when you are
16 deciding this case, you must not consider the evidence that I told you to disregard.

17 In deciding the facts in this case, you may have to decide which
18 testimony to believe and which testimony not to believe. You may believe
19 everything a witness says or part of it or none of it. In considering the testimony of
20 any witness, you may take into account:

- 21 1. The witness's opportunity and ability to see or hear or know
22 the things testified;
- 23 2. The witness's memory;
- 24 3. The witness's manner while testifying;
- 25 4. The witness's interest in the outcome of the case, if any;

- 1 5. The witness's bias or prejudice, if any;
- 2 6. Whether other evidence contradicted the witness's testimony;
- 3 7. The reasonableness of the witness's testimony in light of all
- 4 the evidence; and
- 5 8. Any other factors that bear on believability.

6 The weight of the evidence as to effect does not necessarily

7 depend on the number of witnesses who testify about it.

8 You must decide this case based only on the evidence received

9 in the case and on my instructions as to the law that applies. You must not be

10 exposed to any other information about the case or to the issues that involves

11 during the course of -- of your jury duty. Thus, until the end of the case or until I tell

12 you otherwise, the following instructions apply:

13 Do not communicate with anybody in anyway and do not let

14 anyone else communicate with you any way about the merits of the case or

15 anything to do with it. This includes discussing the case in person, in writing, by

16 phone, by electronic means, by e-mail, by text messaging, Facebook, twitter, or any

17 other social media, or any Internet chat room, blog, website, or other feature. This

18 applies to communicating with your fellow jurors until I give you the case for

19 deliberation. And it applies to communicating with everyone else, including your

20 family members, your employer, the media, or the press, and the people involved in

21 the trial, although, you may notify your family and your employer that you have

22 been seated as a juror in this case.

23 But if you are asked or approached in any way about your jury

24 service or anything about the case, you must respond that you have been ordered

25 not to discuss the matter, and to report the contact to the court.

1 Because you will receive all the evidence and legal instructions
2 you properly may consider to return a verdict, do not read, watch, or listen to any
3 news or media accounts or commentary about the case or anything to do with it.
4 Do not do any research such as -- such as consulting dictionaries, searching the
5 Internet, or using other reference materials. And do not make any investigation or
6 in any other way try to learn about the case on your own.

7 These instructions apply whether or not I reiterate them at -- at
8 the commencement of every break. So just deem this instruction given to you
9 every time you leave the courtroom for lunch or recess or overnight break.

10 The law requires these restrictions to ensure the parties have a
11 fair trial based on the same evidence that each party has had an opportunity to
12 address. A juror who violates these restrictions jeopardizes the fairness of these
13 proceedings. If any juror is exposed to any outside information, please notify the
14 court immediately.

15 At the end of the trial, you will have -- have to make your decision
16 based on what you recall of the evidence. You will not have a written transcript of
17 the trial. I urge you to pay close attention to the testimony as it is given.

18 If you wish, you may take notes to help you remember the
19 evidence. If you do take notes, please keep them to yourself until you and your
20 fellow jurors go to the jury room to decide the case. Do not let note taking distract
21 you from being attentive. When you leave court for recesses, your notes should be
22 left in the courtroom. Leave them on your chair. No one will ever read your notes.
23 Whether or not you take notes, you should rely on your own memory of the
24 evidence. Notes are only to assist your memory. You should not be overly
25 influenced by your notes or those of your fellow jurors.

1 You will be given the opportunity to ask written questions of any
2 of the witnesses called to testify in this case. You are not encouraged to ask large
3 numbers of questions, because that is the primary responsibility of counsel.

4 Questions may be asked only in the following manner:

5 After both lawyers have finished questioning the witness and only
6 at this time, if there are additional questions you would like to ask the witness, you
7 may then seek permission to ask that witness a written question. Should you
8 desire to ask a question, write your question down with your name and juror
9 number on a full sheet of clean paper, and then raise your hand. All questions from
10 jurors must be factual in nature and designed to clarify information already
11 presented. In addition, the jurors must not place any undue weight on the
12 responses to their questions.

13 My marshal will pick up your questions and give them to me. All
14 questions must be directed to the witness and not to the lawyers or to the judge.

15 Write your questions as if you were the one asking the witness
16 the question. After I consult with counsel, I will determine if your question is legally
17 proper. If I determine that your question may properly be asked, I will ask it. No
18 adverse inference should be drawn if the court elects not to allow a particular
19 question.

20 If you cannot hear a witness, please raise your hand as an
21 indication. Also, if you need to use the restroom or if you feel ill, please raise your
22 hand as an indication. Also, I have no objection to jurors bringing drinks into the
23 courtroom, but please be careful with them.

24 Regarding cell phones, iPads, and -- and electronic devices
25 similar to that, you may keep them with you. However, you must keep them turned

1 off and not use them while court is in session. You must never use them to
2 research, seek, or obtain any information about the case.

3 For your point of information, these are standard preliminary
4 instructions I read in every single case.

5 The next phase of the trial will now begin. First, each side may
6 make an opening statement. An opening statement is not evidence. It is simply an
7 outline to help you understand what that party expects the evidence will show. A
8 party is not required to make an opening statement.

9 The State will then present evidence, and counsel for the
10 defendant may cross-examine. Then, if the defendant chooses to offer evidence,
11 counsel for the State may cross-examine.

12 After the evidence has been presented, I will instruct you on the
13 law that applies to the case, and the attorneys will make closing arguments. After
14 that, you will go to the jury room to deliberate on your verdict.

15 That concludes the preliminary instructions. Are the parties
16 ready to proceed with any opening statements?

17 MR. HAMNER: Yes, Your Honor.

18 THE COURT: All right. Very well.

19 Mr. Hamner, the State may proceed with its opening statement.

20 MR. HAMNER: Thank you. Before we begin, can I approach the court
21 clerk?

22 THE COURT: You may.

23 [Pause in proceedings.]

24 MR. HAMNER: May I proceed, Your Honor?

25 THE COURT: You may proceed.

1 MR. HAMNER: Thank you, very much.

2 Ladies and gentlemen, the evidence will show that this is a case
3 about trust, treats, and fear. The evidence is going to show that the defendant,
4 Jose Azucena, used trust, treats, and fear to ensnare these six children into a web.
5 A web in which he was able to sexually molest them over a period nearly lasting
6 over two years. In doing so, he kept all of their parents, many of them were close,
7 close friends of Mr. Azucena and his wife, completely in the dark. But, ultimately,
8 the evidence will show that the defendant's greed to have unfettered access to
9 these children, ultimately leads to his undoing.

10 And it all takes place here, the Charleston Garden Apartments.
11 This is an apartment complex located on the east side of the city over on
12 Charleston near Nellis. Now, I know a lot of parts of town, Green Valley,
13 Summerlin, when most people kind of come home, they park, maybe they wave to
14 their neighbor, but there is not a lot of interactions with your neighbors. People
15 pretty much keep to themselves.

16 The evidence is going to show that's not the case at the
17 Charleston Garden Apartments. You are going to hear at Charleston Gardens,
18 families hang out together, Friday nights, people get together, they have parties,
19 cookouts, they hang outside the doors of their apartments, and they all socialize.
20 And you're going to hear that it's due to this social network the defendant locates
21 his victims.

22 There are three families who are victimized. The Morenos and
23 their three children; Jatziri, Mirabel, and Maradel. They were over here on the first
24 floor of this building, that's right along Charleston. You have the Estrella family and
25 their two children, Yezline and Nicole. Nicole is a baby, one year's old. And you

1 got the Rangels, Scarlett, and they lived over in this different building.

2 But what you are going to hear is particularly for the Morenos and
3 the Estrellas. They were very, very close friends with the Azucenas. And he lived
4 right here.

5 You are going to see that he lived on a first-floor apartment just
6 three or four doors down from Yezline's house. And these parties you are going to
7 hear happened here, here, here. The kids would play outside, the parents would
8 hang out together. And this is a close-up version of that section, and you can kind
9 of see, and -- and you see over here, Yusnay Rodriguez. This is a neighbor, and
10 she's going to come into play in a minute. She knows some of these people, but
11 she's not super close with -- with the defendant.

12 And this is a shot here to give you an idea, perspective, of how
13 close, for example, the defendant was to his victims, Yezline and Nicole. His door
14 is right there, and they used to live right there.

15 And -- and these photos here, as we take a look, gives you an
16 example of some of these parties. You're going to hear from the parents of these
17 kids and they are going to talk about the parties that they had with the Azucenas.

18 This is Amanda Moiza, right here. She is the daughter -- or the
19 Mother of those three children Jatziri, Mirabel, and Maradel. That's the defendant
20 hanging out. And you can see over here they got their cookout gear going,
21 because this is one of the parties that they -- that they hung out at.

22 Here's another example, this is Maria Estrella, she -- she's the
23 mother of Yezline and Nicole. Okay. Defendant's there, that's his wife, Yezline.
24 And that's actually Scarlett Rangel, one of our victims. And -- and they socially
25 hung out a lot.

1 MR. WESTBROOK: Your Honor, I have an objection.

2 THE COURT: You may approach.

3 MR. WESTBROOK: Thank you, Your Honor.

4 [Bench conference transcribed as follows.]

5 MR. HAMNER: Oh, I apologize. I know what he's --

6 THE COURT: You said victims.

7 MR. HAMNER: I apologize. Correct. I misspoke.

8 THE COURT: Okay, you'll correct it?

9 MR. HAMNER: Yes.

10 MR. WESTBROOK: Thank you, Your Honor.

11 [End of bench conference.]

12 MR. HAMNER: I apologize, Your Honor.

13 One of the alleged victims. Slip of the tongue, my apologies.

14 This is one of the children that -- that's named in this case, so. And this is, for
15 example, an example of one of the birthday parties they had, with Elena, his wife,
16 and -- and there's Jose.

17 THE COURT: So whether there are any victims in this case is a
18 question for you to decide. All right. I just want to clarify that. There's been no
19 determination that anyone has been a victim in this case. All right. That's for you
20 to decide after hearing all the facts. All right.

21 Go ahead.

22 MR. HAMNER: And here's an example of another photo, Jose
23 Azucena's wife and Amanda hanging out together. And -- and you're going to hear
24 that this is a friendship particularly between the Morenos and the Azucenas that's
25 developed over years, nearly 10 years. Amanda will come here and tell you that

1 when she moved in eight years before, this is some of the people she bonded with
2 and was close with.

3 And another interesting thing you are going to hear is that all
4 these family members for all the years they hung out with the defendant, knew him
5 as David, not Jose. For nearly 10 years, they knew him as David and not Jose.

6 But this case is really about the children. The children at this --
7 the evidence will show the defendant molested. The first is Jatziri Moreno.
8 She's 10 years old now. And -- and when you were hearing those initials, that's JM.
9 Okay. You're going to hear a little bit about her, she's the oldest of all her sisters.
10 She's the oldest, really, of all the children. And you'll hear she's a little bit of the
11 leader of the group.

12 That's her little sister, Mirabel, MM1, she's one of the twins. You
13 may hear that a lot. Because a lot of the people in the neighborhood knew them as
14 the twins, because they're always together. And she's eight years old. And this is
15 her sister, Maradel, MM2. She's another one of the twins, eight years old.

16 And what you'll hear is these sisters, these three sisters hung out
17 and ran around the apartment complex a lot. And they kind of run from apartment
18 to apartment. And particularly when the parties are being held with the adults, they
19 would be hanging out and playing with each other outside, because they're not
20 large apartments. This is Yezline. Yezline is eight years old. She -- these -- these
21 four girls, Yezline, Jatziri, Mirabel, Maradel, they're the ones that hung out the most.
22 They are the ones that spent the most time there. And the evidence will show is
23 these four girls had the most interaction with the defendant.

24 And ladies and gentlemen, we talked about trust. The bond that
25 he had developed with these families was so significant that these four girls

1 referred to him as their grandfather. Grandfather or Don David. Even though the
2 evidence will show is that they have no relation by blood. No familial connections.
3 Their only bond is living in the Charleston Garden Apartments. To him they were
4 his -- that they were -- he was their step-grandfather, their Don David.

5 And this is Nicole. That's Yezline's baby sister. She's a year old.
6 You are not going to hear from her, because she can't talk. But she will come into
7 play and the evidence will show how he abused her, as well.

8 And -- and lastly, that's Scarlett. And that's with her dad,
9 Ricardo. She's seven. She's SC, and you are going to hear about her. And what's
10 interesting about Scarlett is Scarlett doesn't live at the Charleston Garden
11 Apartments every single day of the week, because she splits time between her
12 mom and her dad. And the evidence will show that there's only a couple days a
13 week that the defendant would have access to her, because she's not there all the
14 time.

15 And you're going to hear from these witnesses that, because of
16 his lack of access, the extent of his abuse is smaller than the other girls' who were
17 there 24 hours a day, seven days a week.

18 Which brings us to the second part of this case and what it's
19 about. The evidence will show that this was also about treats. It wasn't just a trust
20 that the defendant used to commit these crimes; the evidence will show he also
21 used treats. You're going to hear from these children, this is the defendant's
22 apartment, he lived right here at the corner of the building. Yezline's home was just
23 a few doors down over there.

24 And what you're going to hear from these children as well as their
25 parents, one with of the things he liked to do is to hang out by that door, open it,

1 see if the kids were around. Particularly the Moreno girls and Yezline.

2 MR. WESTBROOK: Your Honor, I have an objection. May we
3 approach?

4 THE COURT: Yes, sir.

5 [Bench conference transcribed as follows.]

6 MR. WESTBROOK: Do you remember my objection to Exhibit No. 21?
7 Remember my objection to Exhibit 21 and how I said he would be characterized as
8 a guy who would stand in a darkened doorway and looking at kids, and the State
9 said they weren't going to produce it as that? Well, they've done that now. So they
10 have a picture of him standing in a dark doorway --

11 THE COURT: Is that -- hold on, let me -- is the evidence going to show
12 that?

13 MR. HAMNER: The evidence that is shown -- we heard from the last
14 hearing, is that he would stand in the doorway.

15 THE COURT: How are you going to present that?

16 MR. HAMNER: All the children are going to say he would stand in the
17 door --

18 THE COURT: Because you said that you would [indiscernible] the
19 picture, the [indiscernible].

20 MR. HAMNER: Yeah, no. The witnesses themselves. The children
21 say he would stand in the doorway, invite us in the house --

22 MR. WESTBROOK: Also, we're a little bit loud on this. I'm sure the
23 jury can hear it.

24 THE COURT: Okay.

25 MR. WESTBROOK: This system is not very good.

1 THE COURT: So what's the objection?

2 MR. WESTBROOK: The objection is the reason I objected to this
3 picture, and you said, you know, don't go up there and say that he stands in the
4 doorway.

5 THE COURT: But he's got other evidence. Can't he say what the
6 evidence is going to show?

7 MR. WESTBROOK: Right. But he used the picture with the intent to
8 present that particular evidence later, and that was my objection. And I would --

9 THE COURT: Yeah, but the evidence can corroborate the other
10 testimony. I mean, the picture can corroborate the other testimony, can't it?

11 MR. WESTBROOK: I understand, Your Honor. But you admitted the
12 picture over my objection, because he said he wouldn't use it. And he's using it
13 exactly the way --

14 THE COURT: No, no, no. He -- I disagree. Overruled, let's keep
15 going.

16 MR. WESTBROOK: Thank you.

17 [End of bench conference.]

18 MR. HAMNER: As I was saying, you're going to hear from these
19 children that he would stand in that door and beckon them over. Either standing in
20 that general area and said, Hey, would you like some candy? Some chocolate?
21 Some fruit?

22 And when the kids would go over, particularly Yezline, Jatziri,
23 Mirabel, and Maradel, when they'd walk over to that door, a number of things could
24 possibly happen. One thing is you'll hear he'll just simply give them the candy.
25 Another thing that happens is when they come over and take the candy, he would

1 touch their bodies, rub their vagina over their clothes. Some cases and some
2 children, under their clothes.

3 The evidence will show that he would do these sort of things
4 outside, just outside the door of his apartment. There will be other instances when
5 the children will tell you that they went into the apartment and he would do those
6 things to them inside.

7 But evidence will show that's not the only thing he liked to do with
8 the treats. The defendant also did another thing, particularly with things like
9 chocolate. The evidence will show he'd invite the girls over. Would you like some
10 chocolate? And then the children will tell you, you'll even hear stories from their
11 parents relaying the similar things, the defendant would unzip his pants, pull out his
12 penis, and rub the chocolate all over his penis. And then say, Well if you want the
13 chocolate, take it. After he had rubbed it on his genitalia. And the evidence will
14 show that some of these children did take the chocolate, they didn't eat it, but they
15 threw it away. But that was one of the things the defendant would do to these
16 children. Particularly those four girls. But that's not the only thing that you're going
17 to hear.

18 The evidence will show that sometimes inside and sometimes
19 outside the apartment or near that door, the defendant simply liked to unzip his
20 pants and show the girls his penis. That's one of the things that you will hear he did
21 to Scarlett. The girl that didn't -- didn't have a lot of access to. And the evidence
22 will show not just that, but on one occasion and, specifically, with the Yezline
23 Estrella, the defendant went so far as beckoning her over to that apartment, he
24 grabbed her, the evidence show he pulls her into his house, he grabbed tape, he
25 taped her mouth, he taped her hands, he taped her ankles, he disrobed the bottom

1 of her clothing, and that man over there took his hand and put his fingers inside of
2 her vagina.

3 These are some of the things the evidence will show that he was
4 able to do with treats. And -- and with respect to Nicole, Yezline is going to tell you
5 one day she actually saw the defendant with her baby sister, rubbing her body up
6 against his.

7 Which brings us, essentially -- and this is kind of a front-door shot
8 of the defendant's house -- but what the evidence is going to show is it wasn't
9 simply trust, and it wasn't simply treats that enabled the defendant to do this to
10 these six children. The evidence will show there was a third component, and it was
11 fear. These children will tell you that after he had their way with their bodies, he
12 would do something. He'd tell them to keep quiet. And he told them that if you say
13 anything to your mom or your dad, they're going to be killed. They will tell you that
14 he threatened to kill his parents or have someone kill his parents.

15 And there was one other thing I forgot to mention that he -- that
16 he liked to do. One of the things you'll hear from some of these children -- not
17 Scarlett, not Nicole, but the other children -- one of the things he liked to do was
18 take out the old iPhone or a smart phone and show them pornographic movies. He
19 liked to do that. They'll tell you about that, too.

20 But getting back to fear, you're going to hear about how the fear
21 of having their parents killed kept these children silent for a long time. But not
22 completely. And he was specific about who he was going to kill; the parents.
23 That's what the evidence will show. The parents. And that's key.

24 Because everything changes for the defendant on August --
25 October 15, 2016. That's the first disclosure the evidence is going to show. You

1 are going to hear that night there was, once again, a party at the apartment
2 complex. And it all centers around not a mom and not a dad of these children, but
3 a neighbor. The evidence will show that Yusnay Rodriguez was home alone. She
4 got a knock at the door. And this is her apartment. And you'll see that it's right
5 between the Moreno house and the defendant's house. And she knew these
6 people. She was fairly friendly with Amanda, she kind of knew Maria Estrella kind
7 of offhand. She had -- she knew of the Azucenas, she knew of the defendant, she
8 didn't really interact with him at all. She got a knock at the door.

9 And who was there? The evidence will show the oldest of the
10 group, Jatziri. She's going to describe to you what that was like. She opens the
11 door sees this small child. And she will describe Jatziri is anxious and nervous,
12 saying, I need to talk to you. She brings her in. And you will hear from her, as well
13 as from Yusnay, what happened. And she says, Listen I need to tell you
14 something, but you need to promise not to tell my mom and dad. You cannot.

15 So the neighbor says, Come on, sweetie, tell me what's up.

16 And the evidence is going to show she starts describing what the
17 defendant had been doing to her. And not just to her, but to her sisters and -- and
18 Yezline. And you are going to hear, she is going to describe her demeanor, she is
19 going to describe to you what she said, and you are going to also hear from Jatziri
20 about the fact that she told a neighbor about it.

21 And you are going to hear that the neighbor even asks her, Why
22 are you telling me? Why are you not telling your parents?

23 And you are going to hear she says, I'm -- I'm doing that,
24 because if I do, he's going to kill my parents.

25 And the evidence is going to show that maybe Jatziri didn't think

1 Yusnay was taking it serious enough. So what she does, she doesn't just tell her
2 story, she leaves and brings back someone. Not just one person, three people;
3 Yezline, Mirabel, and Maradel. And on that night the other three share with this
4 neighbor the stories of what was happening with them and the defendant, their
5 grandfather.

6 And by the end of that evening you'll hear from Yusnay, who
7 says, You need to tell your parents what happened or I am going to do it.

8 And she makes the decision, I don't want to go over to that party
9 in the middle of all this, because there's a party going on and I don't know how
10 she's going to react. She says, I am going to do it in the morning, I'll tell her in the
11 morning.

12 And you are going to hear before she can get up on
13 October 16th, 2016, and go tell Amanda Moreno what was going on -- or Maria --
14 she got a knock at the door. Who was it? Amanda. And why is that?

15 Well, it brings us to the very next day, October 16th. And on that
16 day there was a discussion going on. During that day, the defendant, you will hear,
17 wanted to take the children to Chuck E. Cheese; Yezline, Mirabel, Maradel, Jatziri.
18 But he didn't want to take them with their parents, he wanted to take them alone.
19 And the evidence is going to show the children did not want to go with that man.

20 And you are going to hear that they went up to their parents
21 saying, you know, We don't really want to go to Chuck E. Cheese alone.

22 And Amanda says, You're not going alone, we'll -- we'll go.

23 And you are going to hear she even told the defendant, We'll go
24 with you if you really want to go take them as kind of a gift, we'll go with you, Maria
25 and I, we're not going to let you -- and a little bit later in the day the children come

1 back up again and say, We don't want to go alone with him.

2 And you're going to hear Maria and Amanda are like, Well, what
3 are you talking about? We're going to go.

4 No. He's telling us he's going to take us alone, you're not
5 allowed to come. And when we're after Chuck E. Cheese, he's going to take us to
6 a far-off place.

7 You are going to hear these children are crying when they are
8 telling their parents this on October 16th, and they are upset, and they are nervous.
9 And you'll hear from the children about it, you're going to hear from the parents who
10 discover this.

11 And then, of course, the natural follow -- up, What's going on --
12 why -- what's happening?

13 And you will hear that the children finally break their silence to
14 their parents and share with them everything that the defendant had been doing to
15 them. And what you'll hear is immediately after that, on October 16th, the very next
16 day, Maria and Amanda walk their children in and report it to the police.

17 And on that day she walks straight over to Yusnay, I need to talk
18 to you. And Yusnay is, like, Funny you mention that, because I need to talk to you,
19 too.

20 And you'll hear about all that.

21 But you're going to hear that they immediately report to the
22 police. And this is the apartment where this disclosure happens. It's Maria
23 Estrella's apartment where Yezline lives, which, of course, is just down the way
24 from the defendant's.

25 But the case isn't over ladies and gentlemen, because we still

1 have Scarlett. And what happens is shortly after Amanda and Maria report to the
2 police that the defendant had done this, Scarlett's dad comes to pick Scarlett up
3 from Amanda. Sometimes you'll hear that Amanda will pick Scarlett up from school
4 and hang out when the -- when Dad's got custody of her. And so Amanda brings
5 up the topic, Listen, I don't know, I know our daughters sometimes play together
6 when you're here, but you might want to ask your daughter if something ever
7 happened.

8 And that's precisely what happens. And the evidence is going to
9 show that when Ricardo asks her daughter at first, she says, I don't want to talk
10 about it, or no, or something to that effect.

11 And then when he says, Listen, you're not in trouble for anything,
12 just let me know if something happened.

13 And you are going to hear that she discloses, Yeah, the old man,
14 you know, touched me on the shoulder, but showed me his private part.

15 And so immediately after that, Ricardo Rangel reports to the
16 police that the defendant had done something with his daughter.

17 And -- and that is essentially what happens. And what's key,
18 ladies and gentlemen, is that after October 16th, 2016, the defendant, a man who
19 had lived at those apartment complex for years, is nowhere to be found. He's not
20 at the Charleston Garden Apartment on the 16th or the 17th or the 18th or the 19th.
21 He's gone. He doesn't come back. Several weeks go by and they've reported to
22 the police, but the defendant has not been apprehended.

23 MR. WESTBROOK: Your Honor, I have an objection. May I
24 approach?

25 THE COURT: Sure.

1 [Bench conference transcribed as follows.]

2 MR. WESTBROOK: First of all, I know the jury can hear all of this,
3 because I just asked people who are at least 20 feet farther away in the box if they
4 could hear all of this at the bench, and they absolutely can. So I'm a little bit
5 concerned about that.

6 THE COURT: It's just -- you just got to talk quieter.

7 MR. WESTBROOK: I agree.

8 THE COURT: I know when we talk -- because I have tested, it, too. If
9 we talk quiet enough, they didn't hear the mumblings, but they can't hear what
10 we're saying.

11 MR. WESTBROOK: I have some technical suggestions, which might
12 fix it later. But that's for -- that's for later.

13 THE COURT: Okay.

14 MR. WESTBROOK: The second thing is, remember when you wanted
15 to know what exculpatory evidence was turned over late that would have a big
16 effect on this trial? Mr. Hamner is up there suggesting to the jury that my client is
17 somehow on the run. A very late discovered police report from Henderson, which I
18 referenced in my brief, says specifically that he was not -- there was no warrant for
19 his arrest; so he was running from nothing. The idea that they couldn't find him for
20 a week has absolutely nothing to do with this case.

21 THE COURT: Which -- this isn't the time to have a long dissertation,
22 get to your point.

23 MR. WESTBROOK: That's -- that's it. That's my whole point.

24 THE COURT: What's your -- no, what's your objection?

25 MR. WESTBROOK: Mr. Hamner knows -- my objection is Mr. Hamner

1 knows very well that he wasn't on the run for anything, because there was no --

2 THE COURT: That's not an objection.

3 MR. WESTBROOK: -- warrant.

4 THE COURT: Whatever you're trying to say, it's overruled. Let's
5 continue.

6 MR. WESTBROOK: Okay.

7 THE COURT: You can make a record later.

8 Keep going.

9 [End of bench conference.]

10 MR. HAMNER: The evidence will show that over kind of the weeks and
11 days, the parents, these -- these three sets of parents, particularly Amanda,
12 Ricardo, Maria, are concerned that Mr. Azucena, David as they knew him, hadn't
13 been apprehended. And so what they do is they had -- Amanda, for example, you'll
14 hear the evidence will show, had done some work with him and suggested maybe
15 that was one of the places.

16 And -- and what they do is they put a call into the police saying
17 that we believe that he's over at this location, 1234 North Boulder Highway in
18 Henderson.

19 And on this particular day, nearly a month later, a Henderson
20 police officer does go over. And who is there? It's the defendant. And you're going
21 to hear about that.

22 And the last kind of topic I want to talk about is -- is immigration.
23 And -- and you heard a lot of talk in voir dire about immigration and U visas.
24 Remember all that? Well, the evidence is going to show a couple of things. Every
25 one of these children, they're American. They were born here. But the evidence

1 will show that their parents are undocumented.

2 But as you listen, you are going to hear from other witnesses.

3 And what the evidence is going to show, a couple of things. Number one --

4 UNIDENTIFIED SPEAKER: Your Honor, Your Honor. We have a little
5 problem.

6 THE COURT: Technical problem. Hold on.

7 [Pause in proceedings.]

8 THE COURT: Are we fixed?

9 UNIDENTIFIED SPEAKER: Yes.

10 THE COURT: All right. Continue.

11 MR. HAMNER: Thank you, very much.

12 What the evidence will show from the witnesses, what's going to
13 bear is a couple of things that are important with effect to this topic.

14 Number one, there is never a removal proceeding instituted
15 against any parent of any of these children before they called the police or after
16 they called the police. Never. To this day there's no removal proceedings against
17 them.

18 Number two, you're going to hear about how they actually even
19 learned about what a U visa was. I mean, it's well after that they contacted the
20 police reporting what the defendant did with their children.

21 You're also going to hear from people about the long process it
22 takes to actually to apply for one. And you're also going to learn that only two of
23 the three families applied. The Morenos did, the Estrellas did, but Mr. Rangel and
24 his family did not.

25 And lastly, what you are going to hear is that when they come

1 and testify today, as it stands, this week, next week, they are under absolutely --
2 the two families that did apply, as it stands right now, are absolutely under no
3 protection from being removed. And the evidence is going to show that if ICE
4 wanted to literally remove them, start those proceedings today or tomorrow, they
5 could. Even though they have technically applied at this point for those two
6 families.

7 But, ultimately, you're going to hear from these parents, and they
8 are going to tell you why they did what they did. Why they went to the police. And
9 the evidence is going to show the reason why they did it is because they're parents
10 and these are their children. And when they heard what happened, that was their
11 reaction, to go to the authorities, despite being undocumented. They went there
12 because they wanted to stop this cycle of abusing their children, for what he did.

13 And I hope at the end of this case you just sit and listen to all of
14 the witnesses, please keep an open mind. But as you listen to the evidence, the
15 evidence in this case is extensive and it is overwhelming. And at the end of day --
16 this trial, of this week, couple weeks later, we are going to ask you to find him guilty
17 for using trust, treats, and fear to sexually molest these children. And we will ask
18 you to find him guilty on all counts at the end. Thank you, very much.

19 THE COURT: Thank you, Mr. Hamner. All right.

20 Who's going to present the opening by the defense, Ms. Kierny or
21 Mr. Westbrook?

22 MR. WESTBROOK: I will, Your Honor.

23 THE COURT: All right. Do you think anybody needs a break before
24 you -- we begin?

25 MR. WESTBROOK: I'm fine with asking the jury that, but I'm okay.

1 THE COURT: Jurors, do you need -- we might go another half hour
2 or 45 minutes or longer, does anyone need a break now or do you want to go a little
3 bit and then -- and then take a break? Raise your hand if you need to use the
4 restroom now. Don't mean to put anyone on the spot. All right. I see no hands.

5 You may proceed.

6 If you need to use the restroom just raise your hand and I'll
7 accommodate you. Okay. All right.

8 Let's proceed.

9 MR. WESTBROOK: Thank you, Your Honor.

10 [Pause in proceedings.]

11 MR. WESTBROOK: We're ready.

12 This is my client, his name is Jose Azucena. My name is Phillip
13 David Westbrook, but I go by David, and everyone knows me by David.
14 Mr. Azucena is my client. I am proud to represent him. He is not guilty any of
15 these charges.

16 This case is based on words alone. When a case is based on
17 words alone, we have to test the words. You can't just accept them, we have to
18 test them. We test them three ways.

19 You look for consistency. Do the stories change or do they stay
20 the same? Truth doesn't change.

21 You look for corroboration. Is there something you can point to,
22 something independent, something unassailable, something that can't be
23 manufactured or created or lied about that corroborates the words? Are the
24 speakers credible and are the words credible? Can you trust the person saying the
25 words? Can you trust the words themselves? These are the questions that you'll

1 ask to test the words. Words are important. And when a case is based entirely on
2 words they must be tested.

3 To test the words, you have to understand the situation. Here it
4 is. Mr. Hamner just said the parents in this case are illegal immigrants, which
5 means that desperation is as much a part about this -- a part of this case as
6 anything else you'll hear. Amanda Moiza, Maria Estrella Barajas, Ricardo Rangel,
7 Nicole Estrella Moreno, Victor Moreno Espinoza, they are all illegal aliens, they are
8 undocumented here in America.

9 Because they entered the United States illegally, and the
10 evidence will demonstrate this, they face the struggles and fears of any person who
11 enters as an undocumented immigrant. When you enter without papers, the rules
12 are different for you. They certainly don't have the...

13 They want to stay in America. That's why they came here, that's
14 why millions of people come to America, they want to stay in America, and they
15 want it desperately. They want desperately to stay together. Imagine being in
16 another country without your children. People do it. One of the witnesses that
17 you'll see, the State referenced her, Yusnay, she's here from Cuba, her children are
18 in Cuba. People do it, but it's heart-wrenching.

19 The people in this case, the parents, their children -- parents are
20 here illegally, their children are with them. They want to keep it that way.
21 Deportation for these families means losing everything. It means losing their home;
22 it means losing their work; it means losing their educational opportunities for their
23 children; it means losing work opportunities; more than anything else, it means
24 losing their families.

25 They have no legal status. They have no money to speak of.

1 And you'll hear from witnesses that they have no real path for legal residency, once
2 you enter illegally, a lot of options are closed to you.

3 The fear for these people never goes away. The next knock at
4 the door could be immigration. And that is a fear they live with every single day.
5 Regardless of whatever else happens in their lives, that is something that they can't
6 escape. The fear never goes away.

7 So we're testing the words, and the first test is consistency.
8 What you'll find out is that stories are absolutely not consistent in some small ways
9 and in some incredibly large ways. You will hear many stories in this case, no two
10 of them will be -- will be the same. And when I say no two stories, I'm not talking
11 about stories of one witness versus another witness. I'm talking about the stories of
12 one witness versus that same witness a little bit later. The stories will change every
13 single time they are told. They will probably change again when they are told on
14 the stand in front of you. We will do our best to point out all of those contradictions
15 and changes. You have to remember, ultimately, if the stories aren't consistent,
16 then they shouldn't be credited. Words are important.

17 You'll see contradictions. Two things that people say happened
18 that both couldn't possibly have happened. Direct contradictions. Or you'll see
19 things change, all the sudden you'll see new details popping up that never existed
20 before. Details that popped up only after talking to parents. Details that popped up
21 only after talking to police. Details that popped up after talking to specialists whose
22 job it is to interview children for criminal cases. You will hear details that are brand
23 new. Some old details will be forgotten.

24 Truth doesn't change, but every story in this case has changed
25 numerous times and they will change again. There is a lack of consistency, which

1 means that the words can't be trusted.

2 Pay special attention to the details. Questions like who was
3 there. Who was there? There were a lot of allegations made about what happened
4 in this case and there were specifics about who was present and who wasn't
5 present. Those details will be changed. Those details will be contradicted over and
6 over again. Find those contradictions and think about them.

7 What happened? The details about what happened will change.
8 Find the contradictions, think about them. Where did it happen? You'll hear things
9 happened outside, you'll hear things happened inside. Sometimes the same thing
10 will happen in the bathroom and then later it will be said that it happened in a
11 bedroom, and then later it will be said that it happened in a living room. Sometimes
12 the exact same supposed fact will be said to have occurred in a car. Sometimes
13 outside of a car. Sometimes the car will not exist and the conduct of the story.
14 Where did it happen? Listen closely.

15 When did it happen? There will never be a specific date from
16 any of this. There won't even be, generally speaking, a ballpark, something easy
17 that anybody could remember. Did it happen when the sun was out? Or did it
18 happen when the sun was down? These questions are rarely answered by law
19 enforcement -- or rarely asked by a law enforcement, and they're never reliably
20 answered by the witnesses.

21 The details will be different, because this didn't happen. When
22 you're dealing with words alone, you have to test the words. These stories are not
23 going to be corroborated by physical evidence. What would you expect to find in a
24 sexual assault case? DNA? Maybe. Physical injuries?

25 MS. KOLLINS: Your Honor, can we approach?

1 THE COURT: Sure.

2 [Bench conference transcribed as follows.]

3 THE COURT: What's -- what's your objection?

4 MR. HAMNER: It's argumentative. It's not the laying out what the
5 argument -- what the evidence will show trial, he's now saying, What do you think
6 you'd expect to find, DNA? This -- that's argumentative.

7 MR. WESTBROOK: That's all going to come out with the SANE nurse.

8 THE COURT: His argumentative. It's supposed to be an opening
9 statement --

10 MR. HAMNER: It's argumentative. Yeah.

11 THE COURT: -- what the evidence is going to show, not what they
12 should show that they're not going to show, right?

13 MR. WESTBROOK: Absolutely.

14 THE COURT: Okay.

15 MR. WESTBROOK: I'm going to say what SANE nurse is going to say.

16 MR. HAMNER: No. The way he's phrasing it is argumentative, and
17 that slide right now is argumentative, and I don't know how many more --

18 THE COURT: Are you going to have the witness that says this
19 definitely -- this is typically -- typically comes out in sex assault cases?

20 MR. WESTBROOK: Yeah, I believe the SANE nurse is going to say
21 that the evidence -- not typically comes out --

22 MR. HAMNER: No, but he can't -- no.

23 THE COURT: Sure.

24 MR. HAMNER: The -- the SANE nurse will actually indicate that in
25 those cases there will never be physical findings, particularly with -- with children.

1 You're not going to find findings, particularly with things like touching.

2 THE COURT: I'll let -- I'll -- what I'm going to do, as long as he
3 prefaces -- because you could contest it later. You've got -- I want you to
4 specifically preface this with the evidence is going to show.

5 MR. WESTBROOK: Absolutely.

6 THE COURT: Because it puts it on you.

7 MR. WESTBROOK: I'm going to, Your Honor.

8 THE COURT: All right. Go ahead.

9 MS. KOLLINS: It's also counter the instruction.

10 THE COURT: Huh?

11 MS. KOLLINS: It's also counter the jury instruction.

12 [End of bench conference.]

13 MR. WESTBROOK: So what would you expect to find in a sexual
14 assault case? Can you find DNA? The evidence will show that you can. You don't
15 always find DNA in cases, it's not always there. But it's certainly something that
16 can be there.

17 Will you find physical injuries in a case where an allegation is
18 sexual assault, especially sexual assault on a very small children or group of
19 children? There can certainly be physical injuries. That's something that the
20 evidence will show. Not in every case, but it certainly can happen, and it might
21 even be expected given the circumstances.

22 Other physical evidence. Certainly, there can be that in a case
23 where not just one person, but multiple people over multiple days, multiple months,
24 who knows how long, again, there's been no real specifics about when any of this
25 actually occurred. There's a possibility you would think that there would be some

1 physical evidence from all of these supposed attacks.

2 THE COURT: Mr. Westbrook, is this what your evidence is going to
3 show?

4 MR. WESTBROOK: It is, Your Honor.

5 THE COURT: All right. Continue.

6 MR. WESTBROOK: There is always a possibility of physical evidence.
7 And to be very clear, there is going to be a sexual assault nurse examiner on the
8 stand who the State's going to bring as a witness. These questions will be asked,
9 and they'll be answered. She'll say that you wouldn't expect to find them in these
10 cases, based on the allegations as they occurred. However, given the number of
11 allegations, these things certainly could be there.

12 MR. HAMNER: Your Honor.

13 MR. WESTBROOK: But you won't find them.

14 THE COURT: Let him continue.

15 MR. HAMNER: Okay.

16 THE COURT: All right.

17 MR. WESTBROOK: You won't find any of that here. The girls were
18 examined by a SANE nurse. SANE stands for Sexual Assault Nurse Examiner. So
19 calling her a SANE nurse is a little bit redundant, like ATM. I am going to do it over
20 and over again, though.

21 She's going to say that there were no physical findings. And --
22 and it's her job to look for these things. She's going to say there is no DNA
23 evidence. She is going to say that there is no proof of sexual assault that's physical
24 in nature. She'll say all these things. And she'll say that that's what she expected.
25 At least that's what I expect her to say. We'll find out when she testifies. But the

1 question will be, does the evidence support or prove sexual assault? And the
2 answer will be the physical evidence absolutely does not.

3 This is the worst clicker in history.

4 Crime scene analyst and police officers searched my client's
5 apartment, other places throughout this apartment complex. You will see no
6 evidence of fingerprints, no skin cells recovered, no blood or other fluids recovered
7 from anything. No hair recovered. We just heard that one of the girls says that she
8 was tied up with tape. And, well, depending upon which version of the story she
9 tells, she was either on his bed or in the living room or in a bathroom. There's not a
10 single strand of her hair that was recovered from my client's apartment. There
11 wasn't a piece of tape that was recovered or a roll of tape.

12 There were no security videos. You'll see that there are security
13 videos all over this complex, something like four per building. Not a single security
14 video.

15 You'll find no physical evidence to corroborate these words
16 alone. So there will be no independent corroboration. There'll be no DNA from
17 Jose found on the girls. There'll be no DNA from the girls found on Jose. There'll
18 be nothing found in the apartment. There'll be nothing in the clothes.

19 You just heard Mr. Hamner say that he rubbed chocolate on his
20 penis, opened up his pants, and told the girls, go get it, they stuck their hands in
21 and took the chocolate. You won't find any clothing that has chocolate on it, you
22 know, chocolate rubbed all over genitals while pants were on. You won't find any
23 chocolate on any of the clothing. You won't find any information about the clothing.
24 It doesn't exist, because this didn't happen.

25 You'll find nothing in the car. You'll hear a whole story about a

1 sexual assault that allegedly took place inside the car, with all four girls in the car.
2 One girl will say that it happened and that everybody was there and it happened
3 inside the car. None of the rest of the girls have ever mentioned the car. Who
4 knows what they'll say on the stand? But we know what they said in the past, they
5 don't mention the car at all. No corroboration. Nothing but words. False
6 accusations are not corroboration, so you have to test the words.

7 When a case is based on words alone, you have to test
8 credibility. Credible evidence can't come from a source that is not credible. So you
9 have to test the source, and you have to test the evidence itself, and you have to
10 determine whether it's credible. Not just make it half incredible --

11 MR. HAMNER: Your Honor, I'm going to approach again.

12 MR. WESTBROOK: -- or credible. You don't need a reason for that.

13 THE COURT: Well, you don't need to. I state your objection. Are you
14 objecting?

15 MR. HAMNER: It's argumentative. It's --

16 THE COURT: Yeah. It -- Mr. Westbrook, this is argumentative. I'll
17 instruct the jury on -- on how to evaluate credibility.

18 MR. WESTBROOK: All right, Your Honor.

19 THE COURT: But it's not the time to evaluate credibility now.

20 MR. WESTBROOK: Thank you, Your Honor.

21 THE COURT: All right. Tell the jurors what the evidence will show or
22 will not show.

23 MR. WESTBROOK: The evidence will show that the adults, in this
24 case, have a bias. The evidence in this case will show that some of these things,
25 some of these stories are clearly made up. Things will be gotten wrong. And

1 anybody can make a mistake, anybody can say the car was blue, but it was really
2 green, I forgot what color the car was. But huge things will -- will be just wrong.
3 They'll be gotten wrong. There'll be something that was said in the past that will be
4 completely different on the stand or forgotten altogether.

5 THE COURT: So Mr. Westbrook, this is still -- it's inappropriate to
6 evaluate the evidence or to tell the jury how to evaluate to the evidence. Will you
7 stick to the facts of the case? I want you to move on from the slide --

8 MR. WESTBROOK: I'll be specific about a fact that will be wrong.

9 THE COURT: Please take the slide down.

10 MR. WESTBROOK: Sure. Here we go.

11 THE COURT: Thank you.

12 Anything that says credibility, I want it off of the slide.

13 MR. WESTBROOK: Well, Your Honor, I am going to talk about specific
14 things --

15 THE COURT: I want the credibility slide removed now.

16 MR. WESTBROOK: Yes, Your Honor.

17 THE COURT: You can talk about what the evidence is going to show.

18 MR. WESTBROOK: That's exactly what I am going to do, Your Honor.

19 THE COURT: Do not express your opinions on whether it's credible.
20 You cannot ask the jury how -- you can't tell them how they're going to assess the
21 credibility. You're going to tell them what the evidence is going to show or not
22 show.

23 MR. HAMNER: Can we just queue over, so he can have an opportunity
24 to clean up his slides and not republish them to the jury. If we could just queue
25 over to the overhead just for a second.

1 THE COURT: Let's take a -- we're going to take a 10-minute
2 recess now.

3 MR. WESTBROOK: Your Honor, I'm ready to go.

4 THE COURT: Ladies and gentlemen of the jury --

5 MR. WESTBROOK: Your Honor --

6 THE COURT: We're going to take a -- no, excuse me, I am talking. I
7 don't like to being interrupted when I am talking. Do you understand?

8 MR. WESTBROOK: Absolutely, Your Honor.

9 THE COURT: Thank you.

10 Ladies and gentlemen, we're going to take a recess. During this
11 recess, you're admonished not to talk with anyone else about this trial or the
12 subject matter of this trial; do not communicate at all with any of the parties, the
13 attorneys, or witnesses involved in this trial; do not seek or obtain any information
14 or comments about this case from any source including, without limitation,
15 newspapers, television, radio, Internet, e-mail, cell phones, or any other electronic
16 device; do not read, watch, or listen to any report of or commentary about the case;
17 do not form or express any opinion on any subject connected with this trial until the
18 case is finally submitted to you for deliberations; and do not perform any research
19 or investigations.

20 Actually, we're going to take a 15-minute recess. Okay. So I
21 want you back here at 3:18. Please leave your notes.

22 Marshal.

23 [Jury recessed at 3:01 p.m.]

24 THE COURT: All right. Court's adjourned. We are in recess.

25 [Court recessed at 3:02 p.m., until 3:20 p.m.]

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[Outside the presence of the jury.]

THE COURT: All right. Are we ready to proceed?

MR. WESTBROOK: We're ready, Your Honor.

THE COURT: All right. So this is -- let's all settle down -- *State vs. Azucena*, C-321044.

MR. WESTBROOK: One thing outside the presence.

THE COURT: Well, I'm first.

MR. WESTBROOK: Oh, I'm sorry.

THE COURT: I'll -- I'll invite you to speak when it's time.

Just want to make sure you understand the boundaries of what I am going to allow you to say and not allow you to say. In opening statements, the party should outline the evidence he intends to produce and not argue the case or attack the credibility of the State's witnesses. So please make sure that you don't do that. But --

MR. WESTBROOK: Your Honor --

THE COURT: -- but other than that, I will allow you to proceed.

MR. WESTBROOK: Your Honor, obviously as the defense, we are not required to produce evidence. But what I will be doing is showing that the evidence the State produces will not prove their case. A lot of times --

THE COURT: You can do that.

MR. WESTBROOK: -- I'll be pointing out is the absence of evidence.

THE COURT: You can do that, as well.

MR. WESTBROOK: And the conflicts of evidence.

THE COURT: You can do that.

MR. WESTBROOK: Okay.

1 THE COURT: That is one of the most important things to point out.

2 MR. WESTBROOK: Absolutely. I just wanted to make sure. Because
3 the way -- the way it's written, what you just read says, you know, the evidence I'll
4 produce -- I, of course, will be producing -- next to -- a little evidence maybe, but
5 not -- not much.

6 THE COURT: You can point out, certainly, you can say, The evidence
7 is going to show that there's different stories.

8 MR. WESTBROOK: That's what I'll do.

9 THE COURT: The evidence is going to show, you know, but you can't
10 tell the jurors that based upon that, you know, you should disbelieve one witness or
11 another, because they haven't heard them yet. And that would be giving your --
12 your impression, your opinion, you know, that's what you can't do. You can tell
13 them the evidence does -- is not going to support the charges. You can support --

14 MR. WESTBROOK: Okay.

15 THE COURT: -- I mean, I think we are on the same frame of mind, but
16 Mr. Hamner's standing up.

17 What's up?

18 MR. HAMNER: I just wanted to make one brief record, and it was with
19 respect to the portion of his opening statement where he talked about what you can
20 expect to find. And they didn't find DNA, and they didn't find fingerprints, and they
21 didn't find, you know, forensic evidence -- they made that statement. His home was
22 never processed by CSIs -- CSAs. So he was making an argument that's factually
23 not true, because the police never went to forensically process the area. There's
24 no CSI report.

25 And I didn't want to object so I'd asked to [indiscernible]

1 counsel --

2 THE COURT: Oh, I see.

3 MR. HAMNER: -- is there even a CSA report in this where they tried to
4 process for things? Because his -- his speech to the jury was, like -- essentially like
5 the police went and processed people and locations for a biological or physical
6 evidence, and nothing was found. And that's absolutely not true. And I think
7 they're --

8 THE COURT: I don't think he said that they processed and didn't find
9 anything. Maybe that was his implication. Is that what you are saying? Because
10 he didn't say affirmatively they tested and didn't find --

11 MR. WESTBROOK: The police -- I said the police went to the
12 apartment. I didn't say --

13 MR. HAMNER: And then he didn't --

14 THE COURT: Went to the apartment, but he didn't say they collected --

15 MR. WESTBROOK: I didn't say they collected anything and processed
16 it, no.

17 MR. HAMNER: He said they didn't find DNA, they didn't find
18 fingerprints.

19 THE COURT: So the presumption is that they tested for it.

20 MR. HAMNER: Well, or -- and looked -- or looked --

21 THE COURT: I mean the assumption.

22 MR. HAMNER: -- they looked --

23 THE COURT: They looked.

24 MR. HAMNER: -- and then tested --

25 MS. KIERNY: They got a search warrant for it.

1 MR. HAMNER: -- and that's -- yeah. They never did that in this case.
2 And I think part of it is because it's a delayed disclosure, anything in this case
3 wouldn't have been located, because disclosure --

4 THE COURT: Well, so, I mean, you know how to handle that. I mean
5 you put your guys on to say, well, they didn't look for that thing. And in closing you
6 say, you heard him say in opening that, you know, that they didn't find anything and
7 you heard why they didn't find anything. They didn't look for it. I mean that's --
8 right?

9 MR. HAMNER: I --

10 MR. WESTBROOK: If they want to say that their police officers didn't
11 do their job as opposed to the stuff wasn't there because it's never happened, I'm
12 fine with either one.

13 MR. HAMNER: No, no. And I -- and I plan to do so, Your Honor. I just
14 wanted to caution him on maybe relaying a fact that's actually not even true and to
15 give an insinuation that something happened when it never actually did. That --
16 that's all.

17 THE COURT: It was -- it was a potential insinuation there. Thank you
18 for bringing it to my attention.

19 MR. HAMNER: Thank you, Your Honor.

20 THE COURT: I'll be more careful in hearing how he's presenting his
21 argument. But, hopefully, we don't need any more --

22 MR. HAMNER: Yeah. And I don't -- and I don't like interrupting, either,
23 Your Honor, and I -- so I apologize. But I just wanted to make the record. But
24 thank you. We're ready to go.

25 THE COURT: All right.

1 MR. WESTBROOK: I --

2 THE COURT: Credibility is really something that -- that's -- parties
3 should carefully avoid trying to weigh the evidence in opening statements or
4 suggesting to the jury that they need to start weighing the evidence before they've
5 even heard the evidence.

6 MR. WESTBROOK: Okay. I just have a motion. My motion is a
7 Motion for a Mistrial. I understand sustaining objections by the State. I understand
8 sustained objections by the defense. That's not my issue.

9 When the court *sua sponte* interrupts an opening argument with
10 a tone that was used, which is a similar tone that was used during the jury voir dire
11 that we objected to then, I think that it prejudices the jury. I'm moving for a
12 misconduct and -- or I'm sorry, a Motion for a Mistrial on this case, in part based on
13 that, in part based on the misconduct I made a record of at the -- at the bench by
14 the State. And also because every single thing we've said at the bench, I believe
15 the State can hear. I've talked to people from my office who are in the audience
16 who are farther away from the bench than the jury box is, and they can hear all of it,
17 particularly when Mr. Hamner talks, because he's speaking too loudly. So all of
18 those arguments have been heard by the jury, I think the jury is prejudiced, I'm
19 asking for a mistrial.

20 THE COURT: Is there any particular statement that was made by Mr.
21 Hamner at the bench that you think prejudiced the jury?

22 MR. WESTBROOK: The entire conversation about --

23 THE COURT: Which one.

24 MR. WESTBROOK: -- my client standing creepily in the doorway and
25 the back and forth about that.

1 THE COURT: He didn't say -- those weren't his words, those are your
2 words.

3 MR. WESTBROOK: Those were my words.

4 THE COURT: So that was you -- when -- when you -- talking too loud.

5 MR. WESTBROOK: But he -- but he talked very loudly right afterwards
6 that we're not using it for that purpose, and then we had the argument following that
7 when I said he was using it for exactly that purpose. And there was more colloquy
8 about that. And without reviewing exactly what was said on the bench, it's difficult
9 for me to answer that completely. Obviously, the bench conference is recorded --

10 THE COURT: No. But what is it that you think the jury heard?
11 Because -- because number one, if you can isolate what it is you think they heard,
12 maybe I can remedy it through methods short of a mistrial. So --

13 MR. WESTBROOK: One of the things they heard, Your Honor --

14 THE COURT: And you -- and you -- wait. Because when I asked you
15 that question, you referenced what Mr. Hamner said. And all Mr. Hamner said is,
16 I'm not using it for that purpose. Does that statement by itself create some kind of
17 prejudicial impact on the jury?

18 MR. WESTBROOK: Two things create prejudice. First of all, I can't
19 say exactly what Mr. Hamner said, I was noting the -- that he was the loudest at the
20 bench and I objected --

21 THE COURT: Well, how can I fix it if we don't know what was said?

22 MR. WESTBROOK: That's a good question Your Honor. But this is
23 how I am going to answer your question. I can't recite exactly what Mr. Hamner
24 said. I don't know that it can be fixed. But what I can tell you is --

25 THE COURT: You obviously have people out there in the -- out there

1 listening to things that said they heard something. What is it that you are
2 contending is so prejudicial that needs to be brought to my attention?

3 MR. WESTBROOK: One of the things that happened is we made an
4 objection, there was a conversation at the bench, and the court ruled against us at
5 the bench. The purpose of doing these things at the bench is so that the jury
6 doesn't know what we're talking about, because it could prejudice the jury, and
7 frankly, so the jury doesn't know necessarily who won or lost. That's why, when we
8 leave the bench, we always leave the bench with a smile on our face, a knowing
9 grin like, yes, that went very well. Despite what may have happened.

10 THE COURT: I don't think the jury can hear what's being said up here.
11 There's the static, I talk very quietly, sometimes people talk a little bit loud. I think
12 once in a while a word or two might get through. I -- I have no evidence and see no
13 reason to believe that the jury can hear our discussions. If they can hear it, I have
14 no reason to believe that they've heard anything that's been prejudicial to your
15 case.

16 MR. WESTBROOK: Well --

17 THE COURT: So I -- I deny your motion.

18 MR. WESTBROOK: I would ask that you --

19 THE COURT: What else do you want to say?

20 MR. WESTBROOK: Since it's a factual issue about whether that they
21 can hear, I'd ask that you poll them and ask if they can hear. And if these things
22 weren't prejudicial --

23 THE COURT: Well, I could do that if you could identify something
24 prejudicial that you think was said, which you haven't been able to do, despite I
25 asked you three times now. So let's bring the jury in.

1 I'm -- I'm not giving you any more time, because you take too
2 much of the court's time just making long-winded statements without asking for any
3 particular relief. You're wasting time, I don't like it. Please sit down now. Please sit
4 down. Thank you. Bring the jury in.

5 THE MARSHAL: Yes, Your Honor.

6 THE COURT: Thank you.

7 [Pause in proceedings.]

8 MR. HAMNER: Your Honor. If I could approach just with the amended
9 indictment with that one count dismissed, is that -- thank you, very much.

10 [Jury reconvened at 3:29 p.m.]

11 THE COURT: All right. Back on the record.

12 Mr. Westbrook, the jury is yours to continue presenting your
13 opening statement.

14 Excuse me for a second. Stay on the record, nobody move. I
15 just want to talk to my marshal.

16 [Pause in proceedings.]

17 THE COURT: All right. Not a problem. Let's continue. Sorry for the
18 interruption.

19 MR. WESTBROOK: No problem, Your Honor.

20 Court's indulgence.

21 All right. We're back.

22 THE COURT: All right. Let me make a statement to the jury.

23 The fact that I made him remove the slide should not be viewed
24 by you as any -- as any indication as to whether I agree or disagree with the
25 argument that he was making. Simply now was not the time to make that particular

1 argument. That particular argument that he was making I think is more proper for
2 closing arguments, not now, and that's why I had him remove that sign -- that slide.
3 Doesn't mean I disagree with what he was saying, it's just a matter of timing.

4 Do you understand that, jurors? All right.

5 So you may proceed.

6 MR. WESTBROOK: Thank you, Your Honor.

7 This is an opening. Opening is about what the evidence will
8 show. It's about what the evidence won't show, as well. The evidence will show
9 motives to lie or to fabricate. When you ask why, you'll find a motive to lie. No
10 legal status, no money, no path of legal residency, the fear never goes away. But
11 what if it could?

12 The evidence will show that there was an opportunity in this case
13 and that it was taken advantage of. A U visa is available to any illegal immigrant
14 who claims to be the victim of a qualifying crime, such as domestic violence,
15 trafficking of aliens, or sexual assault, including the types alleged in this case.

16 If the child is named a victim of a sex crime, their parents, the
17 whole families can get legal status. And the evidence will show that generally not
18 possible if you enter the country illegally. This is the exception. This is the
19 opportunity. This is -- whether the story is true or not, the people who help process
20 these applications aren't there to be arbiters of truth, and they'll tell you that.
21 They're there to see if the person who's asking for the U visa qualifies. And again,
22 the whole family can stay in America if they can get a U visa.

23 So what are the qualifications? A need. All the parents that you
24 see in this case have a need for a U visa. A story, a story that meets the criteria of
25 a sexual assault is all they need, and cooperation with police and prosecutors. If

1 they do not cooperate with police and prosecutors, if they say something happened
2 and then they take it back, or they say no, no, that didn't really happen, I made up
3 that story or I recant, or half of it happened, but half of it didn't. If they don't
4 cooperate with police and prosecutors, then they can't get a U visa.

5 You will hear from a State witness from an organization called
6 Hermandad Mexicana. They help with the paperwork. They instruct people and
7 how to get U visas, and you'll find that at least two witnesses in this case, Amanda
8 and Maria, were instructed directly by Hermandad Mexicana, and they filled out
9 applications which the State showed you in their opening argument. They provided
10 resources and information, but only if you cooperate with prosecutors. So once
11 you're in, you're in.

12 Once you're in, there is no going back. Otherwise, you can't get
13 a U visa. And they do check. They will tell you that they call the direct attorney's
14 office, the victim witness office, which is associated with the direct attorney's office,
15 they talk to police as they talk to detective -- police -- in other words they talk to
16 police, they talk to detectives, and they make sure you're cooperating. And if they
17 hear you're not cooperating, then they don't process your visa, or U visa.

18 Now, a U visa is not guaranteed, it takes a long time to process.
19 Longer and longer these days, because more and more people you are applying for
20 them, it being, as the evidence will show, one of the only ways -- the only way that
21 has any chance of getting somebody who entered the country illegally and wants
22 the stay here the ability to stay here.

23 Amanda Moiza, Maria, Ricardo, Nicholas, Victor, all are part of
24 U visa applications right now, where they are applying for them. Amanda and
25 Maria can get Nicholas and Victor in. Ricardo did not go through Hermandad

1 Mexicana. He didn't think Hermandad Mexicana was good enough. They're
2 nonprofit; he didn't think they'd be able to get it done. You'll hear from him that he
3 hired a private attorney to advise him on U visas, and that's how he's examining
4 and exploring it.

5 So we have a story that allows every single one of these people
6 to have their wishes fulfilled, to live in America, to have their homes, to have their
7 opportunities. Something that should be impossible is now possible, because of
8 the claims made in this case. The question isn't who would lie about that, it will be,
9 who wouldn't? And the evidence will show that for them, this is the golden ticket.

10 There will be a -- let me get this correct -- a forensic interview
11 specialist from the child advocacy center who will be testifying for the State. She
12 interviewed a lot of the kids. People make things up for different reasons. People
13 might have different motives to make things up. Kids make things up, big and
14 small. And one of the things that the evidence will show is that kids don't have a
15 good grasp of consequences. Something that might be big to a kid might be small
16 to a grownup and vice versa.

17 Kids need attention, especially here. You are going to hear
18 about the apartment complex in which all of these kids live and the parenting that's
19 going on in this apartment complex. You will hear that the kids are left alone
20 without supervision, that they end up playing with each other most of the time.
21 They spend their time together and they need the attention.

22 Kids do what their parents tell them, and you'll hear these kids
23 say that they do what their parents tell them. Kids believe what their parents tell
24 them. That's another -- going to be another question for this specialist the State is
25 bringing.

1 And kids care what other kids think. In particular, one of the kids
2 in this case -- I have a hard time with the names, I believe it was Yezline -- was
3 talking about another one of the kids in the case.

4 Court's indulgence. Let me get you the name.

5 This is Jatziri who was talking about Yezline. And she says, We
6 always want her to play with us, but she never wants to play with us. Kids care
7 what other kids think. And when the kids are together all the time, they want to
8 impress each other. Think about that when you start thinking about the stories in
9 this case, and how they might come about.

10 You know, for the adults you'll see evidence of bias in the
11 production of their stories, assumptions that are made. And you'll see evidence of
12 protective instincts jumping to conclusions. What starts out as protective instinct
13 could end up jumping to a conclusion that might not be supported by the State's
14 evidence in this case. Watch for those. Opportunism. And there is no bigger
15 opportunity than keeping your entire family here based on a story.

16 MR. HAMNER: Your Honor, I am going to approach again.

17 THE COURT: Okay.

18 [Bench conference transcribed as follows.]

19 MR. HAMNER: This is all arguing. Throwing a heading that says, The
20 evidence will show and then just bailing into this is opportunism, this is that. I
21 mean --

22 THE COURT: [Indiscernible] expert; is that correct?

23 MR. HAMNER: I'm -- I'm not hear --

24 THE COURT: The realm of possibility?

25 MR. HAMNER: Well, what I would like, ideally, is for him to say, You'll

1 hear from this witness, and they'll explain X, Y, Z.

2 THE COURT: I think he tried to [indiscernible].

3 MR. HAMNER: Okay.

4 THE COURT: I mean, I -- look, I mean, the jury is going to remember if
5 he said in the beginning --

6 MR. HAMNER: I know.

7 THE COURT: -- [indiscernible] expert, and then he doesn't.

8 MR. HAMNER: I know. I -- I just -- I get it, and I hate interrupting, and
9 so I am just trying to hold back.

10 THE COURT: All right. Let's get back.

11 [End of bench conference.]

12 MR. WESTBROOK: You are not going to see this evidence just from
13 one witness. You are going to see pieces of this evidence from all the witnesses in
14 their own turn. And you will see it when you look at the aggregate, all of the
15 evidence together, you will see these patterns. These patterns are in the evidence,
16 not in just what is said, but what is not said. And the -- how the stories change and
17 then who tells the stories and what they say. You will see all of this.

18 The evidence will show coaching. And when you are looking at
19 the evidence of coaching start by looking at who is involved. You will see that
20 parents were involved, obviously, at the ground floor, when these stories first came
21 out. Then the police will be involved, then the evidence will show specialists
22 involved, one in particular, Ms. Espinoza who is, again, a forensic interview
23 specialist for the Children Advocacy Center.

24 And you'll see that the other kids are involved. The other kids are
25 involved all the time. They're traveling together in a pack a lot of the times. And,

1 you know, as the State said earlier, the evidence will show that Jatziri is kind of the
2 leader of this group and that Jatziri is the first person to tell the story, and then
3 Jatziri went and got the other kids and got them to back up her story. I mean, she
4 went and got them, specifically, to back up her story when first talking to Yusnay.

5 Kids care what other kids thinks -- what other kids think. And the
6 other kids seem to be together quite a bit. And together in situations that seem
7 strange.

8 Look at how the stories have changed. The evidence will show
9 that the changes in the stories are evidence of coaching, are evidence of stories
10 that were designed to build a case for prosecution. Some things get more refined.
11 More similar over time when they started out not similar. You will find evidence of
12 that if you look carefully both at what was said in the past, what was said a little bit
13 later, and then what is said again when witnesses are sitting in the witness stand.

14 So look for the changing stories. They change every time they're
15 told. There are small changes, for example, tape color. The State just talked about
16 an incident involving hands being taped by one of the kids. Her hands were taped,
17 her legs were taped, her mouth was taped. She was even able to say the color of
18 the tape. She said it was white, except for the time when she said that it was
19 yellow, except for the time when she said that it was gray. It's just a color. But she
20 said three different things three different times. Will she say a fourth different thing
21 on the stand? Watch for it.

22 There are big changes. Some of these big changes resulted in
23 new charges being added later on that weren't present in the first place. You will
24 see many of the adults testifying, for example, Yusnay, who I think you might see
25 first. She will say that she heard stories and she was told things by the children on

1 that very first night sometime in October that don't appear in her witness statement
2 to the police and that she never spoke of before coming are here. Big things, not
3 small things, not like the color of the tape. Big things that are were left out. Listen
4 to her reasons why she left them out. Judge them for yourselves.

5 If you can't trust the storytellers, you can't trust the story. And
6 what the evidence will show is that the storytellers are not trustworthy.

7 Day after day my girls were coming up with new things, and then
8 more things, and then more things.

9 That is a direct quote from Amanda Moiza, the mother of three of
10 the girls. They were coming up with things every day. Things were getting added
11 that weren't there initially. And this is according to Amanda. This is according to
12 their mother. More things and more things. When you're looking at credibility,
13 contradictions, when you are looking as to whether or not words alone are enough,
14 look to this.

15 THE COURT: So ladies and gentlemen of the jury, counsel is telling
16 you to draw the conclusion that the evidence shows that the witnesses is not
17 credible. That is for you to determine after you hear all the evidence, and it's
18 improper for counsel to express his opinion now as to the credibility of the
19 witnesses. I will advise you to strike that argument from your mind and pretend he
20 didn't make it and to disregard it completely. All right. He's -- he's allowed to point
21 out inconsistencies or alleged inconsistencies in what the evidence is going to
22 show. He can't tell you what conclusion to draw, and in fact, you shouldn't draw
23 any conclusion until the close of all the evidence. All right.

24 Counsel, please proceed.

25 MR. WESTBROOK: Thank you, Your Honor.

1 The evidence will show lots of contradictions. The evidence will
2 show new facts that didn't exist before and old facts that were forgotten. I am
3 asking you to look at all of it and draw your own conclusions, and don't do a thing
4 until you see evidence. Don't do a thing until you see evidence.

5 At the end of this, after you've seen all the evidence, you will hear
6 things you know can't be true. You will have questions without answers. And you
7 will have reasonable doubts at the end of this case, because the evidence will not
8 show you anything more than words. Test the words you hear.

9 The evidence will show a lot of things in this case. Here's what it
10 won't show. It will not show that this man, Jose Azucena, committed the crimes
11 with which he is charged. Hold the State to its burden, and find him not guilty.
12 Thank you.

13 THE COURT: State can call its first witness.

14 MS. KOLLINS: Your Honor, the State calls Yusnay Estrada Rodriguez.

15 THE COURT: Marshal. Thank you.

16 MR. HAMNER: Your Honor, may I approach just to retrieve some
17 exhibits? Thank you.

18 THE COURT: Hello. The Court Clerk will administer your oath.

19 **YUSNAY RODRIGUEZ,**

20 [having been called as a witness and being first duly sworn, testified through the
21 interpreter as follows.]

22 THE CLERK: Thank you. Please be seated. Will you please state and
23 spell your first and last name for the record.

24 THE WITNESS: Yes. Yusnay Rodriguez.

25 THE COURT: And spell that, please?

60

1 THE WITNESS: Yes. It's Y-U-S-N-A-Y R-O-D-R-I-G-U-E-Z.

2 **DIRECT EXAMINATION**

3 BY MS. KOLLINS:

4 Q Good afternoon Ms. Rodriguez, how are you?

5 A Well, thank you.

6 Q Ma'am, where do you live?

7 A The address?

8 Q Yes, please.

9 A 4800 East Charleston Boulevard.

10 Q Is there a particular apartment?

11 A Yes. Number 4.

12 Q And is that here in Las Vegas, Nevada?

13 A Yes.

14 Q How long have you lived in that apartment?

15 A It's going to be a year.

16 Q It's going to be one year? How long have you lived in the United
17 States?

18 A It's going to be a year.

19 Q So is that your first residence?

20 A Yes.

21 Q Do you have some neighbors where you live that you socialize with?

22 A Yes.

23 Q Particularly, I am speaking about Amanda Moiza?

24 A Yes.

25 Q And do you also know Amanda's daughters?

1 A Yes.

2 Q What are their names?

3 A The oldest daughter is Jatziri, and then there's two more girls, and they

4 are twins. One of them, her name Mirabel and the other is Maribel.

5 Q And do you also have a neighbor by the name of Maria Estrella?

6 A She's no longer my neighbor.

7 Q Did she used to be your neighbor last year?

8 A Yes.

9 Q And did you know her daughters?

10 A Yes.

11 Q And what were her daughters' names?

12 A The oldest daughter, her name was Yezline.

13 Q Okay. And what -- do you know her youngest daughter's name?

14 A Nicole -- Nicholas or something like that.

15 Q Nicole or Nicholas?

16 A Well, I'm not sure.

17 Q But she's -- that daughter is very tiny? One years old?

18 A She's the youngest.

19 Q Okay. I'd like to show you some photographs.

20 MS. KOLLINS: Your Honor, may I approach?

21 THE COURT: Yes. Have they been shown to defense?

22 MS. KOLLINS: They have been stipulated to, Your Honor.

23 THE COURT: All right. Go ahead.

24 MS. KOLLINS: State's 43, 44, 45.

25 BY MS. KOLLINS:

1 Q I'd like to show you some photographs, if you could just look at those to
2 yourself. Those have been marked and admitted State's 43 through 45.

3 Do you recognize those photographs ma'am?

4 A That's my home.

5 Q Fairly and accurately represents pictures of your apartment that you live
6 in now at 4800 East Charleston?

7 A Exactly. That is my house.

8 Q Thank you.

9 A You're welcome.

10 MS. KOLLINS: Permission to publish, Your Honor.

11 THE COURT: You may.

12 BY MS. KOLLINS:

13 Q That is your Apartment 4; correct, Ms. Rodriguez?

14 A Yes.

15 Q And a little farther away is -- and I'm sorry, the first photo was 45, the
16 second one is State's 44. That's your Apartment No. 4 right there, did I move any --
17 can you see on the screen --

18 A Yes.

19 Q Is your screen up?

20 A Yes, it's right here.

21 Q Okay. And 45, that's a little larger view of your building; is that correct?

22 A Uh-huh, yes.

23 Q I want to turn your attention to the evening hours of October 15th of
24 2016; were you home?

25 A Well, I think so. Yes.

1 Q Okay. I want to talk to you about a conversation you had with Amanda
2 Moiza's daughter, Jatziri; do you remember the specific date of that conversation or
3 no?

4 A Yes.

5 Q Was it, in fact, October 15th of 2016?

6 A I don't remember the exact date as to when it was.

7 Q Okay. Well then let's just talk -- speak about it in generalities then.

8 A Very well.

9 Q Was it last fall?

10 A Yes.

11 Q Prior to Thanksgiving?

12 A Yes.

13 Q Okay. In the evening hours, were you home alone?

14 A Yes.

15 Q And your husband works nights; is that correct?

16 A Yes.

17 Q Okay. Did there come a time that you got a -- received a knock on your
18 front door?

19 A You mean on any given night?

20 Q I'm -- I'm talking -- we're talking about the night that Jatziri came to your
21 home.

22 A Yes.

23 Q Okay. How did she get in? Did she knock on the door? Did she call
24 you on the phone? How did that happen?

25 A Well, no. She could not call me on the telephone because she does

1 not have my telephone number.

2 Q Okay. How did you come into contact with Jatziri that evening?

3 A She came over to my house.

4 Q Okay. Did she come inside?

5 A No. She stood at the door and then she said, Hi, are you alone?

6 Q And after she asked you if you were alone, did you go outside to greet
7 her or did you let her in your home?

8 A Well, no. No. I usually greet people at the door and, of course, if it's
9 not a stranger and it's not someone that's representing anything harmful towards
10 me, then I invite them in.

11 Q Did you invite Jatziri in?

12 A Yes.

13 MS. KOLLINS: Permission to approach, Your Honor.

14 THE COURT: Yes.

15 MS. KOLLINS: And counsel, just for the record it's 5 -- State's 5, 6
16 and 7.

17 MS. KIERNY: Yes.

18 BY MS. KOLLINS:

19 Q I'm going to show you a series of photographs, State's 5, 6, and 7.
20 Could you look at those for me?

21 A Yes.

22 MS. KOLLINS: Just for the record, those are stipulated 5, 6, and 7.

23 BY MS. KOLLINS

24 Q Ms. Rodriguez, do you recognize the young lady in the photographs?

25 A That's Jatziri.

1 Q Okay. The young lady that we've been speaking about that came to
2 your house?

3 Can -- can you answer out loud so she can interpret?

4 A But what is it that you want to know?

5 Q I -- you nodded your head in the affirmative, and I needed the answer
6 for the record. Is this is same young lady that came to your house that evening and
7 knocked on the door?

8 A It's Jatziri. The one in -- on the picture.

9 Q And I know some of these questions seem very obvious, but we have
10 some formalities in court that we have to adhere.

11 A That's fine.

12 Q Thank you.

13 MS. KOLLINS: Permission to publish, Your Honor.

14 THE COURT: Yes.

15 BY MS. KOLLINS:

16 Q That's Jatziri Moreno, that's Miranda's oldest daughter -- or Amanda's
17 oldest daughter?

18 A Yes.

19 Q Okay. That's State's 5, 6, and just a little bit closer up, State's 7.

20 Now, after Jatziri asked you if you were alone and you told her
21 yes, you were, what's the next thing that happened?

22 A Because she said to me, I want to tell you something, I want to talk you
23 to about something.

24 Q Okay. And when she told you, I want to tell you about something, what
25 did she look like?

1 A She was nervous and anxious.

2 Q Okay. Now prior to this date, prior to this day that we're talking about,
3 had Jatziri ever come to you before and asked to talk to you about something?

4 A No.

5 Q Were you close with Jatziri at that time?

6 A No.

7 Q In October of 2016, how long had you lived in the apartments?

8 A Well, I came -- I came to live here in the city in July, that is 2016.

9 Q Okay. So about four months, then?

10 A Yes.

11 Q Okay. So you said that Jatziri was nervous and she was anxious and
12 she had some things she wanted to tell you?

13 A Yes.

14 Q Did she say to you whether it was okay to share with other people what
15 she wanted to say?

16 A No.

17 Q What did she say about that, about not sharing?

18 A Well, she said, I want to tell you something, but I don't want you to tell
19 your husband, nor my mother.

20 Q Okay. Did she say why she didn't want you to tell her mom?

21 A Yes.

22 Q What did she tell you regarding not telling her mother?

23 A Well, the girl said to me, If my mother or my father were to find out, they
24 are going to be killed.

25 Q Did you agree to Jatziri that you wouldn't tell anybody for now?

1 A Yes.

2 Q And did she continue on with her secret?

3 A Uh-huh. Well, yes afterwards -- that's afterwards I say, Yes, that's fine,
4 I'm not telling anyone.

5 Q Okay. And after you explained to her that you wouldn't tell anyone,
6 what did she begin to tell you?

7 A Well, she started to tell me that she was being touched by a man, it
8 was -- that she and her sisters and another friend.

9 Q Okay. And did she -- first of all, did she tell you who the man was?

10 A Yes.

11 MR. WESTBROOK: Your Honor, objection. Hearsay.

12 THE COURT: Overruled. And your -- your prior comments and
13 discussions are incorporated by reference, so your objection is preserved.

14 MR. WESTBROOK: Perfect. Thank you, Your Honor.

15 BY MS. KOLLINS:

16 Q Did she identify the person that she was speaking of?

17 A Well, she talked to me about who that person was.

18 Q And what did she say about who the person was? Who did she call
19 him?

20 A My grandfather.

21 Q Okay. And *abuelo* is grandfather in Spanish?

22 A Where I come from, a grandfather is either the father of your mother or
23 the father of your father.

24 Q Okay. At this time did you know whether or not Jatziri was talking
25 about her real grandfathers -- or real grandfather or somebody else?

1 A It's just that I said to her, Your grandfather, are you sure? And then she
2 said, Don David.

3 Q So she gave him a name besides -- besides Grandfather?

4 A Yes.

5 Q She gave him the name Don David?

6 A Yes.

7 Q When she said Don David, did you know who she was talking about?

8 A No.

9 Q At that time, did you know a Don David in the apartments?

10 A No.

11 Q Okay. Now, you said that Jatziri told you that her and her sisters and
12 another young girl were being touched?

13 A Yes.

14 Q Did she tell you -- did Jatziri tell you how she, Jatziri, was being
15 touched?

16 A Yes.

17 Q What did she tell you about that?

18 A That this man was touching their parts, you know, their intimate parts of
19 their body.

20 MS. KIERNY: Objection as to nonresponsive, their.

21 THE COURT: Yes. Sustained. Please -- please rephrase, because
22 you are asking specifically about Jatziri.

23 MS. KOLLINS: May -- may I just have an a brief colloquy about
24 pronouns so that she understands?

25 THE COURT: Yes.

1 MS. KOLLINS: Thank you.

2 BY MS. KOLLINS:

3 Q Ms. Rodriguez, if we are speaking about one person, and we're
4 speaking about Jatziri, we can't use a plural they. It's either one or all, and right
5 now we're just talking about one.

6 A Very well.

7 Q Remember yesterday when we spoke, we were talking about going one
8 at the time?

9 A Okay.

10 Q Okay. Thank you. What did -- how did Jatziri say that she, Jatziri, was
11 touched?

12 A She told me that the man would touch her body and would touch her
13 private parts.

14 Q Okay. When you say private parts, what do you mean?

15 MS. KIERNY: I'm going to object as to what she thinks private parts
16 are. The relevant question is to what the child thinks the private parts are.

17 THE COURT: Not relevant what the witness thinks. We just need to
18 know what the child said.

19 MS. KOLLINS: I understand, Your Honor.

20 THE COURT: Let's just find out what the child said.

21 MS. KOLLINS: I'm trying. I believe it's a translation issue.

22 THE COURT: Okay.

23 MS. KOLLINS: I'm trying.

24 THE COURT: Okay. Just try a little bit differently.

25 MS. KOLLINS: Okay.

1 BY MS. KOLLINS:

2 Q Yesterday we used the word *kosa*.

3 A Yes.

4 Q Is that is word Jatziri used?

5 A Jatziri refers to her vagina as *kosa*.

6 Q Okay. So my question is when Jatziri gave you information that her
7 private parts were being touched, did she use the word *kosa*? Did she use the
8 word vagina? What did she use?

9 A *Kosa*.

10 Q So tell me whether I'm not -- whether or not this is accurate. Jatziri told
11 you that the man was touching her *kosa*; is that accurate?

12 A Exactly.

13 Q Okay. Did Jatziri tell you where that happened?

14 A Yes.

15 Q Where did she say it happened?

16 A At the man's -- at the man's house. At this man's house.

17 Q At *abuelo's* house?

18 A In the house of Don David.

19 Q Okay. At the house of Don David. When she first got there, Jatziri,
20 was she troubled that you would not believe her?

21 MS. KIERNY: Objection. Calls for speculation.

22 THE COURT: Overruled. She can testify.

23 THE WITNESS: I am not understanding.

24 BY MS. KOLLINS:

25 Q Okay. Do you recall speaking about -- asking Jatziri, This is very

1 serious, is it true?

2 A Of course.

3 Q Okay. So did you say that to her?

4 A Yes, I did. And I told her, This is -- this that you are telling me is very
5 serious; is this the truth?

6 Q And what did she respond to you when you asked her that?

7 A That, yes, that it was the truth.

8 Q Okay. Now, did Jatziri tell you anything about candy?

9 A Yes.

10 Q What did she tell you?

11 A Well, she was telling me that when this man would take them to his
12 house, he would offer them candy. So he would say, Do you want candy?

13 And they would say, Yes.

14 So then this man would put the candy on his penis, and then he
15 would say -- he would -- he would just put it around his penis.

16 Q And Jatziri told you about that?

17 A Yes.

18 Q Did Jatziri discuss with you at that time seeing the man's penis?

19 A Yes.

20 Q What did she tell you about that?

21 A Well, that this man would show them his penis.

22 Q Okay. Did you find out where that happened?

23 A Well, no, I mean, I -- I asked them.

24 Q Okay. And maybe I asked the wrong question.

25 Did Jatziri tell you where that happened?

1 A Yes.

2 Q What did she tell you?

3 A That these sorts of things would happen at this man's house.

4 Q Okay. Did she talk to you about a car?

5 A Yes.

6 Q What did she tell you about a car?

7 A Well, she told me that this man took them to a place, I don't know,

8 McDonald's, a place to eat. I don't know if it was McDonald's or a place like

9 Chuck E. Cheese, just a place where you go eat. And that when they were getting

10 out of the car he would touch their private parts, this man would touch their private

11 parts.

12 Q Okay. Now Jatziri told you about things that happened to herself; did

13 she also talk to you about things that happened to her sisters and Yezline?

14 A Yes.

15 MR. WESTBROOK: And, Your Honor, this objection would be double

16 hearsay. If she's going to get into the specifics, so it's a slightly different one.

17 MS. KOLLINS: Well, her comment about what happened that she

18 witnessed is not hearsay.

19 THE COURT: I will allow the witness to testify about what Jatziri told

20 her about what Jatziri witnessed. All right. Your objection is -- is noted and

21 preserved.

22 MR. WESTBROOK: Thank you.

23 BY MS. KOLLINS:

24 Q What, if anything, did Jatziri tell you she saw happen to Yezline?

25 A Yezline --

1 Q If you remember. Sorry. Go ahead.

2 A Well, Jatziri told me that this man would tie up Yezline's hands with
3 tape. He would remove her clothes and throw her on the bed.

4 Q Okay. What, if anything, did Jatziri tell you about what happened to
5 Mirabel?

6 A He touched her in the car, you know, when he was getting her out,
7 when he took them to eat.

8 Q And what about what Jatziri may or may not have seen happen to
9 Maradel?

10 A Well, she told me -- well, she told me the same thing, that later on the
11 other girls said themselves, which is basically that as they were going in this man's
12 house, he would show him -- she would -- he would show them his parts as they
13 entered the house.

14 Q We'll get -- we'll get to the other girls in a minute. Okay.

15 A Okay.

16 Q We're going bit by bit. So, specifically, as to Maradel, did Yezline tell
17 you she saw anything happen to Maradel?

18 A I'm not remembering that very well.

19 Q Okay. I think I may have confused some names, I apologize.

20 A That's okay.

21 Q We're talking still about Jatziri, not Yezline, if I misspoke.

22 And what was this child's demeanor during that conversation?

23 A To my understanding, this child was terrified, because she was anxious
24 and she was nervous.

25 Q Was she crying at all, any tears?

1 A No.

2 Q Okay. Now --

3 MR. WESTBROOK: I apologize, Your Honor, I got confused, it may be
4 me. Are we talking about Jatziri here?

5 THE COURT: I think we still are.

6 MS. KOLLINS: Yes, we are. We are still in the first part of the
7 conversation.

8 THE COURT: Did somebody misspeak?

9 MR. WESTBROOK: Maybe, or I might have misheard. Thank you,
10 Your Honor, for clarifying that.

11 BY MS. KOLLINS:

12 Q At some point does Jatziri go retrieve Yezline and Mirabel and Maradel
13 to come over to your house?

14 A Yes.

15 Q Okay. So does she leave for a little while and she comes back with all
16 the girls?

17 A Yes.

18 Q Okay. Did you have a chance to talk each one of those girls that
19 evening?

20 A Yes.

21 Q Okay. Kind of done with Jatziri for a moment. Okay. I want to talk
22 about Yezline.

23 A That's fine.

24 Q When Yezline got to your house, what was your demeanor?

25 A She was just the same. She was anxious and she was nervous.

1 Q Okay. Now, you had said that the other girl was frightened or fearful;
2 did Yezline appear frightened or fearful to you?

3 A Yes.

4 Q Did you talk to Yezline about what happened, if anything?

5 A Well, they came over to tell me.

6 Q I understand. I just -- right -- remember yesterday, how we went one
7 person by one?

8 A One by one, yes.

9 Q Okay. What did Yezline tell you?

10 A Well, she told me that this man would tie her hands with the tape. He
11 would remove her clothing and then throw her on the bed. And then she also
12 confirmed -- she also confirmed to me, also, the behavior of this man.

13 Q Does she have a name are for the man?

14 A Yes.

15 Q What did she call him?

16 A Don David.

17 Q And you said he tied her hands and he threw her on the bed; did she
18 tell you anything that happened after he threw her on the bed?

19 A Well, yes. And then this -- this girl also told me about the candy, you
20 know, what the man did with the candy.

21 Q I am going to back you up for a second, because my question was did
22 she tell you what happened on the bed? And you said, yes, but you didn't tell me
23 what she said.

24 A Well, she told me that he would remove her clothing, he would tie her
25 hands and feet and bind them with tape --

1 Q Did she talk --

2 A -- and throw her to the bed.

3 Q Okay. Did she talk about any other part of her body getting touched
4 when that happened?

5 A Yes. Yes, he touched her. I mean, at least, she did say to me that he
6 touched her.

7 MS. KOLLINS: May I approach the witness, Your Honor?

8 THE COURT: Yes.

9 BY MS. KOLLINS:

10 Q Ms. Rodriguez, I am showing what has been marked and stipulated to
11 as State's 1 through 4. I just would like you to look at those. Give yourself a
12 moment.

13 Do you recognize all of those photos, ma'am?

14 A Yes.

15 Q And in 1 through 4, is that a picture of Yezline?

16 A 1 to 3 is a photograph of Yezline, and then the picture 4, it depicts
17 Yezline and her sister.

18 Q And her sister Nicole or Nicola?

19 A Exactly.

20 MS. KOLLINS: Okay. Permission to publish, Your Honor. I'm sorry,
21 excuse me, Your Honor. Permission to publish?

22 THE COURT: Yes.

23 MS. KOLLINS: Thank you.

24 BY MS. KOLLINS:

25 Q Is this Yezline?

1 A Yes.

2 Q And a little bit closer?

3 A Yes.

4 Q The first one was No. 1. Second one is No. 2, a little bit closer up.

5 She's kind of smiling in No. 3; was she smiling when she was talking to you that

6 night?

7 A No.

8 Q Did Yezline tell you anything she was afraid of?

9 A Yes.

10 Q What did she tell you?

11 A She told me that she was talking to me because she was afraid to talk

12 to her parents, because she was afraid this man would kill them.

13 Q Okay. Don David would kill them?

14 A Exactly.

15 Q Okay. Did she tell you that that is what Don David had said to her?

16 A Yes.

17 Q And you mentioned -- I'll just put it up there for now -- Yezline's little

18 sister Nicole, depicted here in 4 with Yezline; right?

19 A Yes.

20 Q And she was not part of that conversation that night, right?

21 A No.

22 Q Okay. When Yezline was talking to you, did she tell you about the

23 candy?

24 A Yes.

25 Q What did she tell you about the candy?

1 A So she told me that this man would take his penis out and show it to
2 them. And in this case, her, show it to her, and he would ask them and ask her, Do
3 you want candy? Do you want candy?

4 Q Okay. This conversation was at nighttime, right?

5 A Yes.

6 Q Okay. And the parents, Amanda and Maria, were not present at your
7 apartment?

8 A No.

9 Q Do you know where they were that night?

10 A Yes.

11 Q Where were they?

12 A They were at a gathering at this man's house, because there was some
13 activity there.

14 Q This man, who are you referring to?

15 A The man, Mr. -- I mean, Don David.

16 Q Okay. Was there a party or a gathering going on at his house?

17 A Well, I imagine that it was probably a party. I mean, I did not go to his
18 house.

19 Q Okay. Now, Mirabel and Maradel also came over, correct?

20 A Well, yes. They came together.

21 Q Okay. And they look a lot alike?

22 A Oh, they are identical.

23 Q Can you tell them apart?

24 A I can just say that one is skinnier and one is a little fuller, and that's how
25 I can tell one from the other.

1 Q Okay. If I show you some pictures, do you think you can tell them
2 apart?

3 A Okay.

4 Q You think so? Okay.

5 MS. KOLLINS: If I may approach, Your Honor?

6 THE COURT: Yes.

7 BY MS. KOLLINS:

8 Q I'm going to show you State's admitted 9, 10, and 11 first. Do you
9 recognize which twin is in 9, 10, and 11? If you don't know --

10 A This is the skinnier one.

11 Q Okay. Do you know the skinnier one's name?

12 A Well, but sometimes -- well, sometimes I do confuse the names,
13 because generally they're not called by their names.

14 Q Okay. What do you call them, then?

15 A They just call them the twins.

16 Q Okay. And I'm going to show you State's 13, 14, and 15; do you
17 recognize the young lady that's depicted in that one? In the -- that set? Excuse
18 me.

19 A Yes.

20 Q Okay. You referred to this previous set, State's 9, 10, 11, and 12, as
21 the thinner one; is that the bigger young lady?

22 A She's the stockier one of the twins.

23 Q Okay. And you know their names as Mirabel and Maradel, but you
24 don't know which one's which?

25 A That's exactly it.

1 MS. KOLLINS: Okay. Permission to publish just a couple of these,
2 Your Honor.

3 THE COURT: Yes, you may.

4 MS. KOLLINS: Thank you. So I am going to put 10 and 13
5 side-by-side if I can get them on the ELMO. That didn't work so well for me.

6 My apologies ladies and gentlemen, give me just a moment.

7 BY MS. KOLLINS:

8 Q So the young lady that my finger's on, that's the one that you referred to
9 as the thinner young woman -- young girl?

10 A Yes.

11 Q Okay. And this is the one that you said is stockier, in State's 13?

12 A Yes.

13 Q Okay. But those are the two young ladies that came over your home
14 that night, right?

15 A Together along with Yezline.

16 Q Okay. Now, the thinner young lady in State's 10, did she talk to you
17 about the man?

18 A Yes.

19 Q And what did she tell you?

20 A This is the girl that told me that when this man took them to eat, and he
21 was taking -- getting them off out of the car, he was touching their parts.

22 Q Okay. And did you ask her what parts?

23 A Yes.

24 Q And what did she tell you?

25 A My *kosa*. He touches our *kosa*.

1 Q And what did you take that to mean when she said my *kosa*?

2 A Well, then I asked her -- and then I asked her, What is your *kosa*?

3 Because where I come from we don't use the word *kosa*.

4 Q Okay. And you're from Cuba; correct?

5 A Correct.

6 Q And you do not use *kosa* --

7 MR. WESTBROOK: Your Honor, I'm sorry. We have an objection. We
8 have to approach on it.

9 THE COURT: Okay.

10 [Bench conference transcribed as follows.]

11 THE COURT: Sorry, I didn't hear what the question was. What was
12 the question?

13 MS. KIERNY: This entire car incident at McDonald's is an uncharged
14 bad act.

15 THE COURT: What?

16 MS. KIERNY: This entire car incident at McDonald's is an uncharged
17 bad act. This is not something the children testified to at preliminary.

18 THE COURT: Didn't we discuss this yesterday?

19 MS. KIERNY: [Indiscernible.]

20 MS. KOLLINS: We did.

21 MS. KIERNY: I don't --

22 THE COURT: Yes. That's who -- that's what we talked about.

23 MS. KIERNY: Yusnay.

24 MS. KOLLINS: No. We're on Mirabel --

25 MS. KIERNY: The thinner.

1 MS. KOLLINS: Which is Mirabel.
2 MR. WESTBROOK: What she said or what the judge said?
3 MS. KOLLINS: Okay.
4 THE COURT: You people are talking. So who wants to talk first?
5 MR. WESTBROOK: Carli does.
6 THE COURT: Okay.
7 MS. KIERNY: All right.
8 THE COURT: What's the objection? An uncharged bad act. What
9 else do I need to know about that?

10 MS. KIERNY: Right. Mirabel did not testify, this isn't one of the
11 enumerated acts that she is being -- he is being charged with.

12 THE COURT: Okay. And what's your response?

13 MS. KOLLINS: I disagree. They said things have happened in the car.
14 I think they've just given it context by talking about it happened on a time we went
15 to McDonald's. I don't think it's an uncharged act. They have -- they've talked
16 about things happening in the car, around the car, and there was a trip to
17 McDonald's. And I think that lends it context. I don't think it's an uncharged act.

18 THE COURT: Okay. What's she going to say about the outcome of
19 this trip to McDonald's? Does she say he touched her then?

20 MS. KOLLINS: No, she didn't say on the trip, she said when they were
21 getting out of the car.

22 THE COURT: Oh, this is really her testimony [indiscernible] touching
23 getting in and out of the car, so wouldn't this be --

24 MS. KIERNY: But this is not -- this is not one of the enumerated acts
25 that they -- that they testified -- that Mirabel testified to at the grand jury and that

1 was subsequently a charge for her.

2 THE COURT: Doesn't it come in under NRS 51.385?

3 MS. KIERNY: Hearsay?

4 THE COURT: Yeah.

5 MS. KIERNY: Bad acts don't come in under that statute.

6 THE COURT: It isn't --

7 MS. KIERNY: -- just the hearsay statements. But there are still the
8 other rules of evidence don't apply.

9 MR. WESTBROOK: [Undiscernible] applies, Your Honor, for
10 [indiscernible]. They're two separate laws.

11 MS. KIERNY: Okay. Okay.

12 MS. KOLLINS: Are you through?

13 MR. WESTBROOK: Uh-huh.

14 MS. KIERNY: Go ahead, Stacy.

15 MS. KOLLINS: I disagree, because what the -- what the kids are
16 saying is that they were touched. They don't always give great context to where
17 and when it happened, but she has reiterated that she was touched multiple times
18 over a period of time on her private part. We have not charged him with every
19 single act. We've done it in -- in terms of a period of time.

20 THE COURT: Defense counsel is right that [indiscernible] hearsay
21 statement can come in, it's still -- you haven't charged him [indiscernible] bad acts.

22 MS. KOLLINS: Well, I --

23 THE COURT: Which one of your claims --

24 MS. KOLLINS: I disagree that it's uncharged.

25 THE COURT: Is it charged? Which claim, then?

1 MS. KOLLINS: Well, I'll have to look at my indictment.

2 THE COURT: But you are saying that one of the counts in the
3 indictment covers this particular topic?

4 MS. KOLLINS: Go ahead.

5 MR. HAMNER: The timeframe -- can I -- let me speak, please. The
6 timeframe is a two-year period. All of these witnesses, particularly the Moreno kids
7 and Yezline, say that they're touched multiple times and they're touched multiple
8 times on their vagina. That -- a charge, a touch a child's vagina, is one of the
9 counts.

10 THE COURT: Yeah, it is --

11 MR. HAMNER: And one of the charges.

12 THE COURT: -- one of the counts.

13 MR. HAMNER: And so it is --

14 THE COURT: And I -- and I spent a ton of research on the sufficiency
15 of an indictment can cover a four-year period, multiple places, I've -- I've have this
16 [indiscernible].

17 MS. KIERNY: Right. But one count cannot cover multiple different
18 touches. There has to be specificity as to each touch, if there's no account --

19 THE COURT: Let me take a look at the indictment.

20 MS. KIERNY: Okay.

21 THE COURT: Just give me a second.

22 MS. KIERNY: Of course. No, I --

23 THE COURT: All right. And we're talking about which -- which --

24 MS. KOLLINS: MM1. I think it's the next page.

25 THE COURT: Okay. So they're not really specific as to -- as to, like

1 which touching, at what period of time and where.

2 MS. KIERNY: It's okay --

3 MS. KOLLINS: Okay.

4 MS. KIERNY: Go ahead -- do you want me to speak or is Ms. Kollins
5 first?

6 THE COURT: Why don't you go first.

7 MS. KIERNY: Okay. These are based on testimony at a grand jury in
8 the proceeding. At the grand jury, the only evidence -- the evidence presented as
9 to that Count 10 for Mirabel was using hands or fingers to touch her genital area.
10 She indicated that this occurred many times outside, in front of other children. She
11 didn't say anything about a car at the grand jury. So that is where I am coming
12 from.

13 THE COURT: You have to try to convince me that this is one of
14 the [indiscernible] charges.

15 MS. KOLLINS: These kids are -- are never going to give one incident
16 at a time. So we have charged it over a span of time. That's why the beginning of
17 the indictment, the inception date is -- I apologize -- yeah, from November 1st
18 of 2014 through that -- through the October -- or -- October of '16.

19 THE COURT: Okay. Yeah, it's the timeframe, it's -- so it's the
20 timeframe is what we're saying, you know, for the same victim involving the same
21 defendant in the same -- same manner as these are the crimes, and I think it
22 comes in.

23 MS. KIERNY: Wait --

24 MS. KOLLINS: And additionally -- I wasn't quite through.

25 MS. KIERNY: I'm sorry.

1 MS. KOLLINS: Additionally, what she said is it happened when they
2 got out of the car. Not while they were at McDonald's, when they got out of the car.
3 There is multiple kids who are going to talk about incidents happening in the car.

4 THE COURT: Yeah. I -- I think it's charged. I think it's sufficiently
5 covered by the indictment; so I am going to overrule your objection.

6 MS. KIERNY: Thank you for your ruling.

7 THE COURT: But thank you for -- all right.

8 [End of bench conference.]

9 THE COURT: All right. Sorry, guys. We needed to -- legitimate
10 question that I needed to deal with so, let's -- let's move forward.

11 Do you remember where you were?

12 MS. KOLLINS: I do, Your Honor, I was just trying to...

13 BY MS. KOLLINS:

14 Q Did a -- the -- the slighter twin, the thinner twin in State's No. 10, did
15 she discuss with you that Grandfather or Don David referred to her as girlfriend, as
16 his girlfriend?

17 A Yes.

18 Q What did she tell you about that?

19 A That this man would tell -- tell her that they were his girlfriends.

20 Q Okay. Now, you also referred to the -- one of the young lady's as being
21 a little heavier, one of the twins, which she's in Picture 13 that I am pointing at,
22 correct?

23 A Yes.

24 Q I'd like to talk to you about what she had to say to you.

25 A What she had to tell me or what she told me?

1 Q What she told you back in October.

2 A Well, she told me the same thing the other girls did. And I know we're
3 not talking about all the other girls, only about her specifically, but she told me what
4 happened with the candy, and what happened when they were taken to that place,
5 the McDonald's, or that that place where they were taken to.

6 Q Okay. Let's talk about the candy. What did she tell you about the
7 candy?

8 A Well, they -- she told me that whenever they went to this man's house,
9 he would ask them all, Do you want candy? And, obviously, they would all answer
10 yes. So then she said that this man would take the candy and put it around his
11 penis.

12 Q Did she tell you whether or not her body was touched?

13 A Yes.

14 Q What did she tell you about that?

15 A That this man was touching her *kosa*.

16 Q Did she say what the man used to touch her *kosa*?

17 A That he would touch them, like, touch them with his hands.

18 Q Okay. I know some of these questions seem really obvious, but we
19 just -- we want to make a record. Okay.

20 A Very well.

21 Q Okay. Now, you had all these girls in your apartment relaying what had
22 happened with Don David, right?

23 A No. The girls -- no, the girls were telling me everything that happened
24 not inside my apartment, but outside of my apartment.

25 Q On the patio of your apartment?

1 A Outside -- outside in the -- the porch, outside.

2 Q Okay. And my point was what did you -- what did you think you should
3 do with all of this information?

4 A Well, I had to call their parents, no?

5 Q Did you call the parents that night?

6 A No.

7 Q Why not?

8 A No, I mean, for me it was just, like, I don't know about you, but I was
9 just -- I just went through a situation where I just had these girls tell me all these
10 things and I had to figure out how to tell her -- like, the mother. I wasn't going to be
11 able to go tell the mother, you know what, your daughters just happened to tell me
12 that this man that you consider almost like a member of your family is doing these
13 things and touching them.

14 Q Okay. So did it take you a while to process what -- what to do?

15 A Yes.

16 Q Now, how did you know that this person was very close with the
17 families?

18 A Well, I had already seen him before with the girls.

19 Q Do you see the person that we are talking about in court today?

20 A Yes.

21 Q Where is he seated and what is he wearing today?

22 A It's that man that is sitting over there wearing a white shirt with stripes.

23 MS. KOLLINS: May the record reflect identification of the defendant,
24 Jose Azucena.

25 THE COURT: Yes.

1 MS. KOLLINS: Thank you, Your Honor.

2 BY MS. KOLLINS:

3 Q Did you encourage these kids to go tell Mom and Dad what happened?

4 A Well, of course.

5 Q And I don't think I asked you, the two twins, the two girls, what was their
6 mood like when they were talking to you?

7 A Well, for me, they were afraid, because I saw them as being nervous.

8 Q So do you let the girls go home that night?

9 A Yes.

10 Q Okay. Did you make a plan about talking to Amanda and Maria maybe
11 the next day or at another time?

12 A Well, exactly. When my husband arrived, I told him what was
13 happening. And I said to him, Tomorrow I am telling their -- the mothers.

14 Q Okay. Did you get a chance to tell the moms?

15 A Well, the next day, the mother of the three girls came to my house.

16 Q Okay. Is that Amanda?

17 A Yes.

18 Q Okay. And did -- without telling me what Amanda said, was the topic of
19 the conversation the same as the topic of the conversation with the girls?

20 A Yes.

21 Q Okay. So from speaking to Amanda, had she learned about everything
22 the girls had already told you?

23 A Yes.

24 Q Okay. Now, did you call the police?

25 A No.

1 Q Have you applied for a U visa for this country?

2 A What's a U visa?

3 MS. KOLLINS: I have no more questions, Your Honor.

4 THE COURT: All right. Thank you.

5 Are you able to -- we're -- we're going to need you back tomorrow
6 at 9:00 a.m. Are you available?

7 THE WITNESS: Yes.

8 THE COURT: Okay. Very good. Thank you.

9 So I think -- I mean, if you wanted to go for 10 minutes, I'll give
10 you that option, or you can -- we can start tomorrow at 9:00?

11 MR. WESTBROOK: I would love to start tomorrow at 9:00, if that's all
12 right, Your Honor.

13 THE COURT: That's good.

14 Ladies and gentlemen of the jury, I am going to let you go for the
15 evening.

16 Stay right there, ma'am, just for a moment.

17 I am going to let you go. We're going to need to start tomorrow --
18 tomorrow's Friday, right? 9:00? Do you guys want -- do you guys want some
19 bagels tomorrow or donuts? I going to bring you in bagels or donuts for you.
20 Bagels? All right. I tell you what, feel free to bring in your own coffee, I'll have, like,
21 the marshal just have, like, bagels and cream cheese out there for you. I'm going
22 to get some and bring it in. Just feel free to get here a little bit early for that, all
23 right? All right.

24 So I am going to read some -- an admonishment for you. You're
25 admonished not to communicate among yourselves or with anybody else about this

1 trial or the subject matter of this trial; do not communicate with any of the parties,
2 attorney, witnesses involved in the trial; do not seek or obtain information or
3 comments about this case from any source including, without limitation,
4 newspapers, television, radio, Internet, e-mail, cell phones or any other electronic
5 device; do not read, watch, or listen to any report of or commentary about the case;
6 and do not form or express any opinion on any subject connected with the trial until
7 the case is finally submitted to you for deliberations; do not perform any research or
8 investigations.

9 Have a pleasant evening. See you all back here sometime
10 before 9:00. All right. Thank you, very much. You're excused, leave your
11 notepads. Leave your notepad on your chair. Don't forget to leave your notes and
12 the marshal will make sure they're -- they're there for you in the morning. Have a
13 good evening.

14 You can bring -- you can bring coffee and water and juice in the
15 courtroom, just be careful with it, all right.

16 [Jury recessed at 4:53 p.m.]

17 THE COURT: We are now outside the presence of the jury.

18 Ms. Rodriguez, you are free to step down. We need you back
19 here tomorrow at 9:00 in the morning. You are directed not to talk to anybody
20 about the testimony you gave on the stand; do you understand?

21 THE WITNESS: Yes.

22 THE COURT: Okay. Very good. See you tomorrow, have a nice
23 evening.

24 THE WITNESS: Thank you.

25 THE COURT: Thank you.

1 All right. What else? What do you guys got to put on the record?

2 MS. KIERNY: Do you --

3 MR. HAMNER: I just --

4 MS. KIERNY: -- do you --

5 MR. HAMNER: I just --

6 MS. KIERNY: Oh. Do you mind if we --

7 THE COURT: Go first.

8 MS. KIERNY: -- leave at 4:45 tomorrow?

9 THE COURT: Not a problem.

10 MS. KIERNY: I think everyone has some sort of slight scheduling
11 conflict, and if we were out of here --

12 THE COURT: It's okay with me.

13 MS. KIERNY: -- at 4:45 it would work.

14 MR. WESTBROOK: Thank you, very much, Your Honor.

15 MS. KIERNY: Perfect.

16 THE COURT: What else?

17 MS. KIERNY: That's it.

18 THE COURT: All right. See you guys tomorrow at 9:00.

19 [Court recessed at 4:54 p.m., until the following day,
20 April 28, 2017, at 9:10 a.m.]

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1 ATTEST: I do hereby certify that the foregoing is a true and correct transcript, to the
2 best of my ability, from the audio/visual recording of the proceedings in the above-
3 entitled case.
4

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JOSE AZUCENA) No. 74071
)
 Appellant,)
)
 v.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)
 _____)

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CERTIFICATE OF SERVICE

BY /s/ Carrie M. Connolly
Employee, Clark County Public Defender's Office