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Respondent.

Electronically Filed
Apr 10 2018 04:43 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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Counsel for Respondent

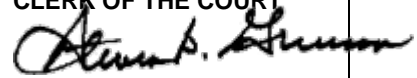
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RTRAN

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

FRIDAY, APRIL 28, 2017

**TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL - DAY 4**

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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DESCRIPTION

ADMITTED

No exhibits offered.

1 **LAS VEGAS, NEVADA, FRIDAY, APRIL 28, 2017**

2 [Proceeding commenced at 9:10 a.m.]

3
4 [Outside the presence of the jury.]

5 MS. KOLLINS: And just for a couple of questions, after I was going
6 through my notes yesterday.

7 THE COURT: Reopen the -- oh, because your --

8 MS. KOLLINS: Reopen my redirect.

9 THE COURT: Yeah.

10 MS. KOLLINS: If -- if there's any opposition or if the court's opposed,
11 I'd be more than happy to recall her.

12 THE COURT: I don't think he's -- he's going to have a problem with
13 that.

14 MR. WESTBROOK: I wouldn't mind knowing what the questions are.

15 THE COURT: I -- since you didn't start, I -- it's -- I don't have any
16 problem with that.

17 MR. WESTBROOK: Technically, Your Honor, the witness was passed.
18 So I'm -- I'm not trying to be difficult, but --

19 THE COURT: Do you want to tell him?

20 MR. WESTBROOK: I'd like to know what the questions are.

21 MS. KOLLINS: I'll just recall her, then. I mean, I could -- I wanted to
22 ask her about Amanda's demeanor in their conversation.

23 MR. WESTBROOK: That's fine.

24 THE COURT: Okay. So all right. That's fine. So I'll let you do that first
25 before you start.

1 Anything else?

2 So all right. What are we going to do about bench conferences?

3 Your -- your concern is that they can be overheard. Look, I don't know for sure if
4 they can or they can't. I -- I try to -- sometimes I'm loud. Sometimes I'm quiet.
5 Sometimes we're all loud or quiet. I don't know. But you seem to think it's an issue,
6 and you have some solutions, you said, and I -- I --

7 MR. WESTBROOK: I do have a solution.

8 THE COURT: What -- what are the solutions?

9 MR. WESTBROOK: Well, we had the same system when I was a clerk
10 in the -- in the District of Columbia Court of Appeals. And it's the same static
11 system, but it was set up better, because there were actual speakers on the jury
12 box, so that the static was actually being projected at the jury, and you couldn't
13 hear it.

14 THE COURT: Don't -- doesn't the static come out of those up there?

15 MR. WESTBROOK: Well, I mean, the static comes out of all the
16 speakers.

17 THE COURT: Oh.

18 MR. WESTBROOK: But the problem is I know that -- but they're --
19 they're so high, I mean, they're -- what is this, a 15-foot ceiling? They're -- they're
20 so high that -- a 12-foot ceiling -- that they don't -- they're not loud enough.
21 Everybody can hear what's going on.

22 My clerks and a couple of people from our office were sitting way
23 back here in the second row. They are farther away than the jury, and they could
24 hear almost every word. They were saying -- they were repeating to me what was
25 said at the bench.

1 THE COURT: How is that possible? How -- because I -- I don't
2 know that's -- I haven't heard that before, but I guess it's possible. I'm not --

3 MR. WESTBROOK: Well, we could turn it on and sit in the jury box and
4 experience it, if we like. But I don't know -- I know that --

5 THE COURT: So, I mean, the system completely doesn't work, then, is
6 what you're saying?

7 MR. WESTBROOK: It doesn't work at all. And the point of the bench
8 conference outside the presence of the jury is to be outside the presence of the
9 jury.

10 THE COURT: Have you -- have you guys had this problem in other
11 departments that have this arrangement?

12 MS. KOLLINS: No, Your Honor. Actually, no one has ever complained
13 that the bench conferences were being broadcast. I would just note in this case the
14 court's taking very careful measures to make sure the jury can't even see your
15 mouth moving, because you're always covering yourself from the left side of your
16 face.

17 THE COURT: I thought that was an extra step, because if they -- if
18 they -- if you can't see who's speaking, it's a little bit harder to figure out, you know,
19 you can't see the words, you can't see the mouth move.

20 MS. KOLLINS: No, and I --

21 THE COURT: But I don't know, how do we block them? I have -- I
22 interrupted you. I'm sorry. Go ahead.

23 MS. KOLLINS: No. I just -- obviously, I can't speak to what's being
24 heard out there. Those were associates of Mr. Westbrook, people from his office
25 that said they could hear the conferences. I mean, if they're being heard,

1 obviously --

2 THE COURT: If they're telling him that, I believe them, you know. I
3 have one of those -- what are -- those French dividers, you know. Those, like, leaf
4 divider things I have in my office. No, I do. It's -- we could bring it out and set it
5 there, like, just pull it up out when we have bench conferences so they -- they --
6 because if you can't see, maybe they can't hear as well, and, you know, block some
7 of the sound.

8 MR. WESTBROOK: I appreciate the sentiment, but they don't -- that
9 doesn't block sound at all. Look, the --

10 THE COURT: All right. So you know what I'm trying to do? I don't
11 want you -- let me -- I don't want you to feel that you're chilled in ability to express
12 yourself at the bench. Now, maybe -- maybe going forward we don't need that
13 many bench conferences, because we're -- we're beyond -- I don't know. I think
14 your co-counsel is smiling, thinking that we're probably going to need a lot more
15 going forward.

16 Now, I don't -- look, I don't want you to think --

17 MR. WESTBROOK: Sure.

18 THE COURT: -- that I believe there's been any prejudice so far, but
19 I'm -- I'm concerned going forward, I want to make sure that you have an adequate
20 opportunity to make your records --

21 MR. WESTBROOK: Well, I'm --

22 THE COURT: -- and to persuade me at the bench.

23 MR. WESTBROOK: Sure. And, Your Honor, I made the record
24 already about the prejudice that I think has already occurred, based on the bench
25 conferences --

1 THE COURT: Yeah, but going forward --

2 MR. WESTBROOK: -- being overheard.

3 THE COURT: -- going -- going forward --

4 MR. WESTBROOK: Going forward --

5 THE COURT: -- what could we do?

6 MR. WESTBROOK: -- there is an easy technical solution. Again, and
7 this is without me knowing anything about the technical setup of this building.

8 THE COURT: Okay.

9 MR. WESTBROOK: I literally -- I have a Bluetooth speaker and I have
10 a phone. I could project that same noise on a speaker right in front of the jury and it
11 would actually be effective.

12 I would be more than willing to get that done. I'm not prepared to
13 do it right this second, but I could actually do that. Or there's a legend that there is
14 building services here of a technical nature. Perhaps they could do something, if
15 the legends are true.

16 But if that's the only --

17 THE COURT: You're being a wise guy today, which is good.

18 MR. WESTBROOK: No. But, I mean --

19 THE COURT: No, I like it.

20 MR. WESTBROOK: But you -- you understand, though, Your Honor,
21 it's --

22 THE COURT: What -- what do you guys think about that idea of having
23 a Bluetooth speaker with -- with projecting more of the static?

24 MS. KOLLINS: I'm not opposed to that, or we could -- that's fine.

25 THE COURT: I mean, the other -- because I don't like to go out to the

1 hallway, because then -- then it can't be recorded.

2 MR. HAMNER: The only other thing I was thinking is why don't we just
3 have a neutral party sit in the jury box, turn on the husher, and see if we're talking
4 here, a neutral party --

5 THE COURT: Oh, like, right now?

6 MR. WESTBROOK: Yeah.

7 MR. HAMNER: Yeah. Like, right now.

8 THE COURT: Oh.

9 MR. HAMNER: Maybe have your marshal sit there and we can see.

10 THE COURT: Yeah.

11 MR. HAMNER: Because a discussion about that is a little bit different
12 than that, potentially.

13 THE COURT: All right. Let's do that. That's a good idea.

14 Marshal, sit in the front row, third seat, and -- and my law clerk is
15 going to go, too. I want you to sit in the back row, seventh seat.

16 MS. KIERNY: Well, it's going to be Stacey and David mostly, so.

17 MR. WESTBROOK: I want Chris to talk, because I -- I thought --

18 MS. KOLLINS: No, no. I actually have been very muted.

19 THE COURT: And I -- and I -- and we're going to -- we're going to talk
20 a little bit, and then you're going to see -- you're going to see how much you can
21 hear. All right.

22 [Bench conference transcribed as follows.]

23 MS. KIERNY: I really like that marshal's mustache. It's really nice.

24 MR. WESTBROOK: I was going to say it's a good-looking mustache,
25 as well, Your Honor.

1 THE COURT: Yeah.

2 MR. HAMNER: Now, we were conversing at a --

3 THE COURT: He's -- he's pretty handsome. Yeah, that's good. Well,

4 we're not talking as loud as we were yesterday.

5 MS. KOLLINS: Right.

6 MR. WESTBROOK: Right.

7 THE COURT: Let me -- let me give a number.

8 A-B-C, 1-2-3. A-B-C, 1-2-3. A-B-C, 1-2-3.

9 MR. WESTBROOK: Did you guys get the number?

10 THE MARSHAL: A-B-C, 1-2-3.

11 MR. WESTBROOK: Yeah. That's what I thought.

12 THE COURT: Did you hear anything else?

13 [End of bench conference.]

14 THE CLERK: I didn't hear anything until A-B-C, 1-2-3, except

15 mumbling.

16 THE COURT: Well, maybe I'm the problem, too loud.

17 MR. WESTBROOK: Chris -- Chris has taken it down a few.

18 THE COURT: Is it -- is it just one voice come out?

19 THE MARSHAL: I could hear you clear.

20 THE COURT: Even though I'm covering my mouth?

21 THE MARSHAL: Yeah. I can hear you clear.

22 THE COURT: All right. Let's try something else.

23 MS. KOLLINS: Maybe it's your microphone.

24 THE COURT: Maybe it's my mic.

25 [Bench conference transcribed as follows.]

1 MS. KIERNY: Is there a button to press?
2 MR. WESTBROOK: Yeah, right there in the back. Yeah.
3 THE COURT: I do have a button.
4 MR. WESTBROOK: Let's try it again.
5 THE COURT: All right. So why don't you -- why don't you say
6 something.
7 MS. KOLLINS: Good morning. Are you looking forward to the
8 weekend? I know I am.
9 THE COURT: I am very excited that I have this opportunity to try this
10 case with all of you guys.
11 MR. WESTBROOK: I like -- I like eggs, but not -- not an under-easy
12 egg.
13 THE COURT: No. I like chorizo?
14 MR. HAMNER: I love chorizo. I think everybody does.
15 THE COURT: Yeah, okay. Good.
16 MR. WESTBROOK: I'll check it.
17 THE COURT: Let's check it.
18 [End of bench conference.]
19 THE COURT: All right.
20 MS. KOLLINS: Can't hear it?
21 THE MARSHAL: Not really, no.
22 MR. WESTBROOK: Microphone. There we go.
23 MS. KIERNY: Okay.
24 THE COURT: I'm so sorry. I didn't -- I thought that -- I thought that
25 when the static goes on, my microphone's not working, because I thought it was

1 just -- that's the only microphone that should work in the courtroom right up here on
2 the bench when we turn the static on.

3 MR. WESTBROOK: I think that's exactly how it's supposed to work.

4 THE COURT: It's supposed to -- everything else is supposed to go
5 dead, except for that one.

6 THE CLERK: Correct.

7 MS. KOLLINS: So maybe when we come up here --

8 THE COURT: Oh, my God. It's my microphone.

9 MR. WESTBROOK: That's all right.

10 MS. KOLLINS: Maybe cover it with your hand, as well --

11 THE COURT: No. I'll turn it off. I'll just turn it off.

12 MR. WESTBROOK: We'll keep our eyes on it, too, because we can't
13 actually see the red button. You can't even --

14 MS. KOLLINS: Can you see it? I can't see it.

15 MR. WESTBROOK: -- see it from their angle, probably.

16 MS. KIERNY: So now it's off, but if it's on, it's bright. It's, like, glowing.
17 So.

18 MS. KOLLINS: Oh.

19 MR. WESTBROOK: This is on the record.

20 MS. KIERNY: And that makes sense, because when I talk to different
21 attorneys that you saw there, they mostly were able to repeat what you said and not
22 so much us. So I think we've gotten to the root of the problem.

23 MR. HAMNER: Farther away from the jury.

24 MR. WESTBROOK: I've got some Chris stuff, too, but he's lowered his
25 voice significantly today.

1 MS. KIERNY: We can keep quiet and you can turn it up.

2 THE COURT: Well, now, I'm wondering if I said anything at the bench
3 that would have prejudiced the jury, if they could have heard it. Now I'm -- I'm
4 wondering about that. At the bench, I don't know that I said anything at the bench,
5 other than, well, made some rulings.

6 MR. WESTBROOK: Our record's made on it.

7 THE COURT: But I want to -- but I'm wondering, do we need to -- I
8 mean, the jurors aren't going to remember what we discussed at the bench or what
9 I said at the bench -- bench conferences.

10 MR. HAMNER: I don't -- I don't believe so. I mean --

11 THE COURT: Do I need to voir dire the jurors on anything that I --
12 that -- any bench conferences that we had? I don't --

13 MR. WESTBROOK: At -- at this point, I'd be concerned about bringing
14 extra attention to the bench conferences, which they're not supposed to be listening
15 to, so.

16 THE COURT: It would -- it would bring extra attention to it.

17 MR. WESTBROOK: It kind of puts us in a Hobson's choice.

18 THE COURT: I had no idea that this was a hot mic during the bench
19 conferences.

20 MR. WESTBROOK: I didn't know, either. I didn't know, either.

21 MR. HAMNER: And I would -- I would say for the record, I don't think
22 any objections that were made at the bench were so serious or significant. I mean,
23 there was one in an opening about the photographs.

24 THE COURT: The photograph with that reference to, you know,
25 creepy-looking defendant. Did I repeat that? I hope I didn't repeat that.

1 MR. HAMNER: I don't -- I don't believe you said anything along the
2 lines of creepy-looking defendant. You didn't say that. I think the defense said
3 they're going to use it to suggest he's scary and lurking in a corner, and I had stated
4 that wasn't our purpose. Our purpose was to show, you know, that they're hanging
5 out in a social gathering.

6 And -- and then I think you had acknowledged, Yeah, I don't think
7 he was using it for that purpose. I'm going to kind of overrule your objection. I don't
8 think he's using the photos for a different purpose. And if the children who are
9 testifying about him calling them over from the doorway, they're entitled to do that,
10 because that's evidence, and he's just asking -- he's just offering the -- the jury what
11 the evidence will show.

12 And you overruled it. I don't think you --

13 THE COURT: I think that's generally what happened. I don't think I
14 used -- I -- I mean, that would be my biggest concern, if I said creepy-looking
15 defendant or something like that and they heard that.

16 MR. HAMNER: You didn't say that.

17 THE COURT: That would, obviously, be of concern to me.

18 MR. HAMNER: You didn't say that.

19 THE COURT: All right. Well, it is what it is. We just got to go forward,
20 then.

21 MR. WESTBROOK: Thank you, Your Honor.

22 THE COURT: All right. Let's bring the jurors in, then.

23 [Jury reconvened at 9:24 a.m.]

24 THE COURT: Marshal, everybody accounted for?

25 THE MARSHAL: Yes, Your Honor.

1 THE COURT: All right. Please be seated, everybody. All right.

2 Good morning, ladies and gentlemen. We're back on the record
3 in *State vs. Azucena*, C-321044.

4 Feel free to -- yeah, if you guys need to spread your chairs apart
5 a little bit, feel free to do that. I'm okay with that. You guys got enough room
6 there? We all in the right order?

7 [Pause in proceedings.]

8 THE COURT: Anything that anybody needs to bring to the attention of
9 the court before we get started?

10 Yes, ma'am. You're Ms. Kathleen Schneider, Seat No. 13. Good
11 morning, ma'am. How are you today?

12 JUROR NO. 13: I'm fine.

13 THE COURT: What -- what can we do for you?

14 JUROR NO. 13: My only problem, and it's not just me --

15 THE COURT: Yes.

16 JUROR NO. 13: But the person that interprets back here --

17 THE COURT: Yes.

18 JUROR NO. 13: It -- between them and them, it just...

19 THE COURT: It's a little distracting.

20 JUROR NO. 13: Yes.

21 THE COURT: The interpreter -- the one -- the gentleman who was
22 sitting over there near the --

23 JUROR NO. 1: No, it was the lady.

24 THE COURT: Oh, the lady?

25 JUROR NO. 13: No, it was a lady.

1 THE COURT: Okay.

2 JUROR NO. 13: Oh, maybe it's her.

3 JUROR NO. 1: Not, it's not her. It's a different lady.

4 THE COURT: No, a different lady. So it was just a little bit loud. I'm

5 wondering what we can do about that. If -- you know what?

6 JUROR NO. 13: And it's not just me.

7 JUROR NO. 1: Could they move to the other side?

8 THE COURT: Yeah. Maybe we should -- could we have her move to

9 this side, then?

10 MR. WESTBROOK: Sounds good.

11 THE COURT: Okay. When -- let's -- we'll do that. We'll make sure that

12 we're -- because I, you know, I don't want you guys -- there's so much going on in

13 court, I want you guys to be able to pay attention to whatever you think is

14 appropriate. So thank you for mentioning that. I appreciate that.

15 Anything else? No?

16 Yes, sir. Charles Elliston. Yes, sir. What can we do for you?

17 JUROR NO. 1: The interpreter that sits right here with the witness.

18 THE COURT: Yes.

19 JUROR NO. 1: I cannot see the witness.

20 THE COURT: Ah. I'll have her stand back a little bit, then. Perfect,

21 because you got to look at the witness in order to judge demeanor, so -- and -- and

22 evaluate anything else you think is appropriate. So we'll do that, as well, okay.

23 Anything else? These are very good -- very good points.

24 Anything else? All right. Good.

25 Well, let's get started. I told Ms. Kollins that she could -- she

1 wanted to reopen the case, just ask a few more questions that she forgot, I think,
2 and then we're going to continue. Then, we're going to start cross-examination.

3 So we need the call the witness, and -- and that was Yusnay
4 Rodriguez, right?

5 MS. KOLLINS: Yes, Your Honor.

6 THE COURT: All right. Let's call Yusnay Rodriguez back to the stand,
7 please. All right.

8 We were planning to go until, like, 4:45 today. We're going to
9 leave about 15 minutes -- we're going to leave about 15 minutes early. Okay. Just
10 to let everyone know.

11 JUROR NO. 6: I have a question.

12 THE COURT: Yes, 1, 2, 3, 4, 5, 6, Joyce Hudson.

13 Ms. Hudson, yes, ma'am?

14 JUROR NO. 6: Yeah. I just need to inform my job, what is our
15 schedule for Monday?

16 THE COURT: Monday -- Monday will be 9:00 to 5:00.

17 JUROR NO. 6: Okay. Thank you.

18 THE COURT: 9:00 to 5:00 on Monday.

19 JUROR NO. 6: Okay.

20 THE COURT: Okay.

21 MS. KOLLINS: Your Honor, may we approach very briefly while the
22 witness is coming in?

23 THE COURT: Yes.

24 [Bench conference transcribed as follows.]

25 THE COURT: Yes.

1 MS. KOLLINS: Something we hadn't discussed that I haven't tried a
2 case in here before is some courts, at the conclusion of a witness, will have the
3 witnesses -- the jury to ask questions. Is that something that we're going to do in
4 here?

5 THE COURT: Yeah. I read a preliminary instruction on that. Oh, no
6 problem. We -- we -- this is what we're going to do. At the conclusion of all the
7 questions, I need to [indiscernible] --

8 MS. KOLLINS: Okay.

9 THE COURT: -- the jurors to ask questions.

10 MS. KOLLINS: Okay.

11 THE COURT: [Indiscernible.] And then [indiscernible] related to the
12 juror's questions.

13 MS. KIERNY: Do we generally review the question with you before it's
14 asked?

15 THE COURT: Yes. I'll call you to the bench --

16 MS. KIERNY: Okay.

17 THE COURT: -- and I'll see I'll see if you want to [indiscernible].

18 MS. KIERNY: No, I don't --

19 THE COURT: I checked with [indiscernible].

20 MS. KIERNY: I do remember you.

21 MR. WESTBROOK: Yeah. Also remember you saying that you were
22 going to allow --

23 THE COURT: Yeah.

24 MS. KOLLINS: Some departments do -- oh. Thank you. Thank you.

25 THE COURT: I only have the one.

1 MR. WESTBROOK: I'll remember.

2 THE COURT: He remembers.

3 [End of bench conference.]

4 THE COURT: Great. All right. Do we have the witness yet?

5 THE MARSHAL: Yes, sir.

6 THE COURT: Very good.

7 Hi. Could you approach?

8 Good morning, Ms. Rodriguez. Please take your seat.

9 THE WITNESS: Thank you.

10 THE COURT: You are still under oath and still required to testify
11 truthfully; do you understand?

12 THE WITNESS: Yes.

13 THE COURT: Thank you. Please be seated. The district attorney had
14 a few more questions, so she's going to ask you a few more questions, and then,
15 we'll start with cross-examination.

16 THE WITNESS: That's fine.

17 THE COURT: Thank you.

18 **YUSNAY RODRIGUEZ,**

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

21 **DIRECT EXAMINATION (CONT.)**

22 BY MS. KOLLINS:

23 Q Good morning, Yusnay. How are you?

24 A Fine. Thank you.

25 Q We finished off yesterday and I forgot to ask you a question. I

1 apologize.

2 A That's fine.

3 Q When Amanda came to your door the following morning after speaking
4 with the girls, what was her demeanor like?

5 A She was crying.

6 Q Was she -- did she seem upset to you?

7 A She was sad. She was crying. Her face was swollen.

8 Q How long did you speak with Amanda that morning?

9 A I cannot tell you exactly how long the conversation took, but we were
10 talking for a while.

11 Q What was the first thing she said to you when she was crying?

12 MR. WESTBROOK: Objection. Hearsay.

13 MS. KOLLINS: Excited utterance, Your Honor.

14 THE COURT: Well, that's a tough one.

15 MR. WESTBROOK: I have a response to it. Mere emotion is not
16 excitement.

17 MS. KOLLINS: Well, I don't want to argue in front of the panel, if you I'd
18 like me to approach?

19 THE COURT: Of course. Just give me -- let me -- let me think for a
20 second.

21 MS. KOLLINS: Sure.

22 THE COURT: I don't think you've laid enough foundation yet for
23 excited utterance. You could try to lay more foundation. So sustained.

24 MS. KOLLINS: Okay.

25 BY MS. KOLLINS:

1 Q Did you know the subject matter that Amanda came to speak to you
2 about?

3 MR. WESTBROOK: Objection. Calls for speculation.

4 THE COURT: Give me a moment. I want to -- give me one moment.
5 So the only way she would probably know is from what was said, and that
6 implicates the hearsay. So let me just -- let me -- just give me a moment. I want to
7 check something. Give me a moment. Okay.

8 Ms. Kollins, remind me of the timing between when Ms.
9 Rodriguez had the conversation with Jatziri and the three children and how much
10 time elapsed between that and -- and this event you're talking about now, this
11 conversation now.

12 MS. KOLLINS: It's overnight, Your Honor.

13 THE COURT: Overnight?

14 MS. KOLLINS: Because Amanda came to the door the following
15 morning. The State's position was she was still under the influence of the startling
16 event.

17 THE COURT: You know what, I -- looking at NRS 51.095 concerning
18 the totality of the circumstances, I am going to now overrule the objection and allow
19 the witness to talk about the statement made by the witness on the grounds that
20 it -- under 51.095. That's all I need to say.

21 All right. Go ahead.

22 MS. KOLLINS: I'm sorry. Mr. Hamner was asking me something. Did
23 you say I may proceed?

24 THE COURT: You may proceed.

25 MS. KOLLINS: Thank you.

1 BY MS. KOLLINS:

2 Q When Amanda was crying, what was the first thing she said to you?

3 A She knocked on the door. When I opened the door, she said, May I
4 please talk to you?

5 I said, Yes. I'm glad that you came over, because I would also
6 would like to talk to you.

7 Q After she said she would like to talk to you, was she still crying?

8 A Of course. She was crying all the time.

9 Q And when you say all the time, are you referring to during that
10 conversation she was crying?

11 A Yes.

12 Q What did she tell you she wanted to talk about?

13 A That -- she told me that the girls told her what they had told me.

14 Q About Don David?

15 A Yes.

16 Q Okay. After this day that you had the conversation with Amanda, did
17 you ever see Don David in the apartment complex again?

18 A Yes.

19 Q How long after that day did you see him?

20 A I'm not sure if it was the day after I talked to Amanda.

21 Q Did you see him one time after you talked to Amanda or more than one
22 time after you spoke to Amanda?

23 A One time after I talked to her.

24 Q And then not again?

25 A No.

1 MS. KOLLINS: Now I'll pass the witness, Your Honor. Thank you.

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

3 Cross-examination, who would like to proceed?

4 MR. WESTBROOK: I will, Your Honor. Thank you.

5 THE COURT: Mr. Westbrook, you may.

6 **CROSS-EXAMINATION**

7 BY MR. WESTBROOK:

8 Q You just said that you had only seen Don David once following your
9 conversation with Amanda; is that correct?

10 A Yes.

11 Q In the entire four months you lived at the apartment complex, though,
12 before that you'd only seen him once or twice, right?

13 A Twice.

14 Q Okay.

15 MR. WESTBROOK: Nonresponsive, Your Honor. Please strike that
16 before it's translated.

17 THE COURT: Well.

18 MS. KOLLINS: How do we know it's nonresponsive? She could be
19 elaborating on what she was --

20 MR. WESTBROOK: Well, I haven't asked her a question. She
21 answered the question. If the State wants her to elaborate, they can ask her a
22 question on redirect.

23 THE COURT: Let's hear -- let's hear what the translation is, and I can
24 always strike it, I -- because I don't know if she's trying to supplement her answer
25 that was responsive to your question.

1 MR. WESTBROOK: Okay.

2 THE COURT: So let's hear.

3 THE WITNESS: I saw him once before I talked to Amanda and once
4 after I talked to Amanda.

5 BY MR. WESTBROOK:

6 Q Oh. So you only saw him two times total?

7 THE COURT: All right. So that -- just to clarify, that was responsive.

8 MR. WESTBROOK: That was responsive. You're right. I was wrong.
9 That was extremely responsive. Thank you.

10 And thank you.

11 THE COURT: All right. Let's keep going.

12 MR. WESTBROOK: I will be slower on the nonresponsive from now
13 on.

14 BY MR. WESTBROOK:

15 Q Okay. So you only saw him twice total?

16 A Yes.

17 Q And that includes the four months before the conversation and all the
18 time after the conversation?

19 A I don't know if it was four months before. All I know is I saw him once
20 before I had the conversation with the mother and once after that.

21 Q Okay. Thank you. And how long have you been in America?

22 A One year.

23 Q Okay. And you came from Cuba, right?

24 A Yes.

25 Q Okay. That means you came sometime in 2016 or was it sometime

1 in 2015?

2 A 2016. April 9, 2016, I got here. I came here.

3 Q Okay. So you just passed your one-year anniversary. Happy
4 anniversary.

5 A Thank you.

6 Q Now, Ms. Kollins asked you if you were applying for a U visa, but you're
7 from Cuba, right?

8 A I am from Cuba, yes.

9 Q Okay. Okay. I want to talk to you about your relationship with the girls.

10 Now, you said you didn't know these girls well, right?

11 A After this happened, no. They were our neighbors, and all our
12 conversations were Hi, how are you?

13 Q Okay. In fact, you -- at the time you had this conversation with them in
14 October of 2016, you didn't even know all their names, right?

15 A The name of the twins, no. Because their names are very similar and
16 they don't call themselves by their first name.

17 Q Okay. So you didn't know the names of the twins, but you didn't know
18 Yazleen's name, either, right?

19 A Not one of the girls' names is Yazleen.

20 Q Not one of the girls' names is Yazleen?

21 A No. Okay. Jatziri, Maradel, Mirabel, and the other girl's name is
22 Yezline.

23 THE COURT: Yezline.

24 BY MR. WESTBROOK:

25 Q That's my fault. I'm mispronouncing the name. That's -- that's my fault.

1 I shouldn't have taken German in high school.

2 But you didn't know Yezline's name at the time you had this
3 conversation, right?

4 A Yes. I knew her. It was Yezline. She's called by her name.

5 Q Okay. And you say you knew what her name was on the night in
6 October when you had this conversation with the girls?

7 A Perhaps yes, perhaps no. I don't remember.

8 Q Okay. Do you remember talking to Detective Campbell in an interview
9 on November 6th or thereabouts?

10 A Yes.

11 Q Okay. Do you remember being asked, Do you know their names? and
12 answering no?

13 A I don't remember.

14 Q Okay. Would it help if the interpreter read to you -- this is in English.
15 Normally, what I would do is I would have you read the transcript and verify that,
16 you know, you've read it, and then I would ask you a question about it. But since
17 you said you can't read English, which is fine, I can't read Spanish, if it's all right, I'll
18 just have the interpreter read it to you, the question and the response.

19 A That's fine.

20 MS. KOLLINS: Counsel, are you on 5 and 6?

21 MR. WESTBROOK: I'm on -- starting at page 5, the bottom, going
22 through 6.

23 [Interpreter read portion of transcript.]

24 BY MR. WESTBROOK:

25 Q Okay. So do you remember that?

1 A I don't remember. But if it's there, it's the truth.

2 Q Okay. Thank you.

3 In fact, you don't mention Yezline by name anywhere in this
4 transcript, do you?

5 A I don't remember.

6 Q Okay. And just so we're not confused, because, you know, on page 6, I
7 think you were mainly talking about the twins. On page 9, though, you're asked,
8 Did any of the girls talk to you?

9 You said, Yes.

10 They asked again, Do you know their names?

11 And you said, No.

12 Does that sound fair?

13 THE COURT INTERPRETER: Was that the name of the twins that
14 you're asking?

15 MR. WESTBROOK: It says, Any of the girls.

16 THE WITNESS: I don't remember.

17 BY MR. WESTBROOK:

18 Q Okay. Obviously, you know Jatziri's name?

19 A Yes.

20 Q But at the time, you for sure didn't know the twins, and according to
21 this, you didn't know Yezline either; is that fair to say?

22 A [No audible response.]

23 Q Okay. At the time, you're sure you didn't know the twins' names, and
24 according to the transcript, you didn't know Yezline's name; is that fair to say?

25 THE COURT: Counsel, can you clarify, too? Because she said that

1 the two twins that have close names, Mirabel and Maradel, weren't -- weren't called
2 by their names. They're called by some other names.

3 MR. WESTBROOK: Sure.

4 THE COURT: So when you're asking her did she know the names, are
5 you -- are you asking her did she know the Mirabel/Maradel names or the names
6 that they were --

7 MR. WESTBROOK: I knew their --

8 THE COURT: -- called by the children?

9 MR. WESTBROOK: I'll -- I'll be more clear, Your Honor.

10 THE COURT: Will you clarify?

11 BY MR. WESTBROOK:

12 Q You didn't know their real names, Mirabel and Maradel; you didn't know
13 those names?

14 A They are very similar. It's easy to confuse -- to get confused.

15 Q Sure. You just called them the Spanish word for twins, right?

16 A They -- they called themselves [speaking in Spanish]. For us, we use
17 the word twins.

18 Q Okay. So you didn't know their names when they came to talk to you in
19 October, and you didn't know the names when you talked to Detective Campbell in
20 November, right?

21 A I have heard the names, but it's possible that I did not mention their
22 names, because I was under a lot of stress due to the whole situation.

23 Q Okay. But you were asked whether you know the names, and your
24 answer was no, right?

25 A Possibly. I -- I possibly did not -- it's possible that I did not remember

1 the names at that point, but I knew who was he -- who was he talking about.

2 Q Okay. To be very clear, and I know you knew who he was talking
3 about, you knew which four girls he was talking about, you were asked directly if
4 you knew the names of the girls, and you said, No. You didn't say, I don't
5 remember. You said, No. Do you remember that?

6 MS. KOLLINS: Objection. Foundation as to which girls, because now
7 we're talking about four girls in the same sentence. So he needs to --

8 MR. WESTBROOK: I'll be very clear.

9 BY MR. WESTBROOK:

10 Q When I'm talking about the girls --

11 THE COURT: So sustained. And he's going to rephrase.

12 MR. WESTBROOK: I will rephrase.

13 THE COURT: And let's -- look, the only reason why I jump in here now
14 and then so far is because we have an interpreter. And -- and it's -- I want to make
15 sure that the witness understands the question and the jury understands the
16 answer. And there's a lot of colloquy.

17 One second. One second.

18 I -- I think it would just be better for all of us if we had, to the
19 extent possible, shorter, more direct questions. But, of course, you have the
20 discretion to ask the questions that you think are appropriate. But just my -- my
21 friendly advice.

22 MR. WESTBROOK: I will certainly do my best.

23 THE COURT: Thank you. And you've got to be respectful of that.

24 THE COURT INTERPRETER: Thank you. One at a time, please.

25 THE COURT: Yes.

1 THE COURT INTERPRETER: Thank you, Your Honor.

2 THE COURT: Please proceed.

3 BY MR. WESTBROOK:

4 Q So it's clear that in October, you knew Jatziri's name?

5 A Yes.

6 Q Okay. You didn't know her very well, right?

7 A I knew her, because they are my neighbors. They lived there in the
8 building, in the complex.

9 Q You never -- you'd never had a -- a sit-down conversation that was
10 important with Jatziri, right? Before October.

11 A No.

12 Q Okay. And the other three girls, the twins and the friend, okay, you did
13 not know their names in October when you talked to them or in November when
14 you talked to the detective?

15 A I already told you I was not sure about the twins' names that -- because
16 they're very similar. And it's also possible that I had forgotten the names while I
17 was talking to the detective.

18 Q Okay. But when you were asked by the detective whether you knew
19 the names, you said, No.

20 A Perhaps I forgot the name -- I had forgotten the names at that point.

21 Q Okay. Did you say, No?

22 A I think that if it's on your record, that's what I said.

23 Q Okay. Today you know the names, right?

24 A Of course. I believe that I will never, ever forget those names in my
25 whole life.

1 Q Okay. And not only do you know the names today, but six months after
2 this conversation, you can now say what each girl said individually, right?

3 A Yes.

4 Q Okay. Including the twins, Maradel and Mirabel?

5 A Yes.

6 Q You can say what Mirabel said and that Maradel didn't say, and what
7 Maradel said and what Mirabel didn't say?

8 A I can tell you what the twins -- I can tell what the -- the skinny girl said
9 and the one that's a little bit fuller girl, the little fuller girl said.

10 Q Okay. And you remember individually what they said?

11 A Yes.

12 Q Okay. You wouldn't confuse what Mirabel said with what Maradel said
13 here on the stand?

14 A I don't -- I don't think I would.

15 Q Okay. Did anyone help you remember what happened that night in
16 October?

17 A How can somebody remind me if I was the one in the conversation?

18 Q That's true. Have you talked to the girls since that night in October
19 about anything that they told you?

20 A I try. I do my best to avoid talking to the girls about what happened. I
21 don't believe it's healthy to keep reminding them of what happened. If they are -- at
22 a certain point, if this conversation comes about, I try to avoid it.

23 Q Okay. So the conversation has come about, right?

24 A Possible, yes.

25 Q Okay. And you've talked to Amanda about what happened in this case,

1 as well, since your conversation with her in October?

2 MS. KOLLINS: Objection. Foundation.

3 MR. WESTBROOK: She just said the topics came up, Your Honor.

4 MS. KOLLINS: Well, if he's going to imply there a conversation, I would
5 like some foundation. I think that's --

6 THE COURT: Well, isn't he asking if there was a conversation with
7 Amanda?

8 MS. KOLLINS: He -- no. He said, You have spoke to her, haven't you?

9 THE COURT: Okay. So rephrase it as a question rather than a
10 statement.

11 BY MR. WESTBROOK:

12 Q Have you spoken to Amanda since your conversation in October?

13 A Probably, yes.

14 Q Okay. About this case, right?

15 A Yes.

16 Q Okay. Have you spoken to Maria since October about this case?

17 THE COURT INTERPRETER: May the interpreter ask to repeat the
18 answer, please?

19 MR. WESTBROOK: Absolutely.

20 THE COURT: Yes.

21 THE WITNESS: The last time I spoke to Maria was the day we went to
22 the police station to talk about this case.

23 BY MR. WESTBROOK:

24 Q So that was in November?

25 A I don't remember the exact date.

1 Q Okay. If I told you November 6, 2016, was the date you talked to
2 Detective Matt Campbell, does that sound like it's about right?

3 A If you have it in the record, yes.

4 Q Okay. So you talked to Maria on the day that you talked to Detective
5 Matt Campbell, then?

6 THE COURT INTERPRETER: Please repeat the question for the
7 interpreter.

8 BY MR. WESTBROOK:

9 Q You talked to Maria, the mother of Yezline, on the same day that you
10 talked to Detective Matt Campbell, correct?

11 A Yes.

12 Q Okay. Have you talked to anyone from the police or Detective
13 Campbell since November 6th?

14 THE COURT INTERPRETER: Please repeat the question.
15 BY MR. WESTBROOK:

16 Q Have you talked to anybody from the police, or Detective Campbell
17 himself, since November 6, when you were interviewed on the record?

18 A No.

19 Q Okay. And have you talked about this case with the district attorneys
20 since October, when you talked to the girls the first time?

21 A Yes.

22 Q Okay. Did they have you review any documents or paperwork or
23 statements at that time?

24 A I don't remember, but I don't think so.

25 Q Do you remember whether they read anything to you with the help of an

1 interpreter?

2 A Yes. I remember having an interpreter next to me when I went to talk to
3 them, but I don't remember if they showed me documents or not.

4 Q Okay. Let's talk about the night in October when the girls came to your
5 house.

6 A That's fine.

7 Q The girls were scared.

8 A Yes. Very.

9 Q They were scared and they felt like they couldn't tell their parents, right?

10 A That's what they told me.

11 Q They told you that the man said if my mother and father find out, they
12 are going to be killed, right?

13 A When I asked them, Why don't you tell your mom and dad, your family?
14 That's the answer they gave me.

15 Q If my mother and father find out, they will be killed?

16 A No. What they told me, when I asked them why didn't they tell this to
17 their mother and father, they told me no, because David said -- Don David said that
18 if we tell our mother or father, he's -- he will kill them.

19 Q Yesterday you testified under oath that they said, If my mother and
20 father find out, they are going to be killed; was that truthful and accurate?

21 A No. I said -- I had -- I told you exactly what they told me. I have no
22 reason to make up anything here.

23 Q Okay. Are you saying that what you said yesterday wasn't right?

24 A When I asked them, Why are you telling me this instead of telling your
25 mother and father? They told me. That's exactly what I said yesterday and it's

1 exactly the same thing I'm saying today. They told me, Don David said that if we
2 tell our mom or dad, he will kill them.

3 Q Okay. You phrased it differently yesterday, didn't you?

4 A I don't remember exactly if I said it in a different way or -- yesterday or
5 today, but I want you to be sure that the object of my response is the same.

6 Q Okay. So you don't remember what you said yesterday, but you're sure
7 about what was said to you six months ago?

8 MS. KOLLINS: Objection. Argumentative.

9 MR. WESTBROOK: The question seems --

10 THE COURT: No. It's -- it's a little bit argumentative. And so -- and I
11 think you've kind of covered this topic pretty thoroughly. And -- and you should
12 probably wait until closing argument to -- to explain to the jury how to view all of
13 this.

14 MR. WESTBROOK: Thank you, Your Honor.

15 THE COURT: All right. Thank you.

16 So it's sustained.

17 BY MR. WESTBROOK:

18 Q Okay. Did you get the sense that the kids believed the threat?

19 THE COURT INTERPRETER: Please repeat the question for the
20 interpreter.

21 BY MR. WESTBROOK:

22 Q Did you get the sense that the kids believed the threat?

23 THE COURT INTERPRETER: That was the interpreter, made a
24 mistake. Please repeat the question.

25 BY MR. WESTBROOK:

1 Q Did you get the sense that -- and I'll go one by one -- that Jatziri
2 believed this threat?

3 A For me, yes. I don't think my child will lie about something like this.

4 Q Okay. So you think they believed the threat, they were afraid of the
5 threat?

6 A I think so.

7 Q Okay. And do you think that's true of Yezline?

8 A I believe it's true of the four girls, of all of them.

9 Q Okay. It sounds like a serious threat, right?

10 A For me, yes.

11 Q And you didn't think the kids were lying about the threat; you just said
12 that, right?

13 MS. KOLLINS: Objection. Objection. She can't comment on whether
14 she believes in the veracity of another witness. That's inappropriate. It's an
15 inappropriate question.

16 THE COURT: Well, it's asked and answered already. Let's move on.
17 All right.

18 BY MR. WESTBROOK:

19 Q Do you think a person who makes that kind of threat is dangerous?

20 A Of course.

21 Q And you were told that person lives in your apartment complex, right?

22 A Yes.

23 Q But when you were interviewed with Detective Campbell on
24 November 6th, you didn't mention it.

25 A Well, mention what?

1 Q The threat. You didn't mention the threat in your interview with
2 Detective Campbell.

3 A I don't remember.

4 Q Normally, I would have you review your entire statement to determine
5 whether you spoke to Detective Campbell about this, to refresh your recollection. I
6 think that would be unwieldy.

7 MR. WESTBROOK: So I would ask the court if it would be all right if
8 the State confirms that that's accurate and that she didn't tell the threat to the
9 police, since they have also read that voluntary statement. They can stipulate to it.

10 THE COURT: She didn't mention the threat?

11 MR. WESTBROOK: That she never mentioned the threat in the
12 statement to Detective Campbell.

13 THE COURT: What's the State's position on his suggestion?

14 MS. KOLLINS: I'm just -- Court's indulgence. Just a moment.

15 THE COURT: Yes.

16 MS. KOLLINS: Well, may we approach. I don't want this whole
17 discussion in front of the panel.

18 THE COURT: Yes, you may. Of course.

19 [Bench conference transcribed as follows.]

20 MS. KOLLINS: I will -- I will concur that she doesn't use the word
21 threat. But what she does talk about is that the girls had fear and the girls didn't
22 want to tell their mom. So that is all the information surrounding the threat.

23 So I think to say she didn't discuss the topic at all is inaccurate
24 based on the transcript. That's my position. Does she overtly use the word threat?
25 No.

1 MS. KIERNY: What if you were to ask that she didn't mention that
2 specific threat?

3 MR. WESTBROOK: Killing of the parents.

4 MS. KIERNY: The killing of the parents, to Detective Campbell?

5 THE COURT: I think [indiscernible] that.

6 MR. WESTBROOK: Let's do that.

7 THE COURT: Because I think you're right [indiscernible] English
8 [indiscernible] go through the whole transcript and say, you know, the word threat is
9 not in there, right?

10 MR. WESTBROOK: Yeah.

11 THE COURT: Killing the parents is not in there.

12 MR. WESTBROOK: And to be fair, I'm not concerned with the word
13 threat. I'm concerned with the content.

14 MS. KIERNY: The actual threat itself.

15 THE COURT: Talk about killing the parents. [Indiscernible.] I'm going
16 to -- I think it's appropriate to save some time in the translation of the whole
17 transcript.

18 MS. KOLLINS: No. And I agree. I just -- the way the question stands
19 right now, threat I think is inappropriate. I agree with the court. If you delineate
20 exactly those words, she didn't --

21 THE COURT: Identify the threat, and then I'll -- and then -- then the
22 record will reflect we're stipulating and it's not in the transcript.

23 MR. WESTBROOK: Sounds good. Thanks.

24 THE COURT: All right. Thank you.

25 [End of bench conference.]

1 THE COURT: All right.

2 BY MR. WESTBROOK:

3 Q To be clear, you didn't tell Detective Campbell that the man said if the
4 parents found out, they would be killed?

5 A If you say so.

6 Q Okay.

7 MR. WESTBROOK: The State will stipulate that that wasn't ever said.

8 THE COURT: All right. Will the State stipulate that the transcript
9 doesn't reflect that she told the detectives at this particular hearing, the date I -- I
10 don't remember, that she didn't tell the detectives that the kids said that they that
11 there was the threat that their parents would be killed?

12 MS. KOLLINS: The State will stipulate that on November 6th, 2016,
13 she did not articulate to Detective Campbell that the children said, My mom and
14 dad will be killed.

15 THE COURT: Or anything substantially similar to that statement, right?

16 MS. KOLLINS: She did not articulate that particular threat.

17 THE COURT: Okay.

18 MS. KOLLINS: I will stipulate to that.

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

20 So -- so the jurors -- this is one of the points where the parties
21 are stipulating to a particular piece of evidence. All right. All right.

22 You may continue.

23 MR. WESTBROOK: Okay.

24 BY MR. WESTBROOK:

25 Q You knew that what the kids were telling you was very important, right?

1 A Yes.

2 Q You told the girls it was very important?

3 A Of course.

4 Q You made sure to tell the girls to tell their moms everything because it
5 was so important?

6 A Yes.

7 Q And when you talked to Amanda the next day, you told her everything
8 the little girls told you, right?

9 A Yes.

10 Q When you talked to the detective, you told him the girls told you
11 everything?

12 A I think so.

13 Q If you're not sure, I can show you the page of the transcript.
14 It would be page 19, I believe.
15 But you do believe that it's true?

16 A That it's true what?

17 Q That when you talked to the detective, you said the girls told you
18 everything?

19 A I think I told him everything --

20 Q Okay.

21 A You know, but like I said before -- and this causes me a lot of stress,
22 talking about things like that, talking to a detective, to an attorney, to a judge, you
23 know. But I think I -- I told him everything.

24 Q Okay. We just covered that you didn't tell him about the threat to the
25 mom and dad. You also didn't tell the detective about the kids riding in the car, did

1 you?

2 A I don't recall. I tried to the tell the detective everything I remembered at
3 that moment.

4 Q So at that moment, you did not tell the detective about the kids riding in
5 the car, right?

6 A I'm not telling you whether I told him or did not tell him. I'm telling you
7 that I don't remember whether I did or not.

8 Q Okay.

9 MR. WESTBROOK: Will the State stipulate that they didn't tell the
10 detective about the kid -- that she did not tell the detectives about the kids riding in
11 the car?

12 MS. KOLLINS: Generally, stipulations are before we start this process.
13 If the court would just give me one moment to make sure.

14 The State will stipulate that she did not mention a ride in car.

15 THE COURT: All right. The stipulation is part of the record.

16 You may proceed.

17 Thank you, counsel.

18 MR. WESTBROOK: Thank you.

19 BY MR. WESTBROOK:

20 Q You also didn't tell the detective about Mirabel getting touched at
21 McDonald's, did you?

22 A I don't recall.

23 MR. WESTBROOK: Will the State stipulate that she didn't tell the
24 detective about Mirabel getting touched at McDonald's?

25 MS. KOLLINS: May we approach?

1 MR. WESTBROOK: Sure.

2 THE COURT: No. Let's -- we're -- let's do this right here.

3 MS. KOLLINS: Well -- okay. Well, the State thinks that that's an
4 accurate reflection of what she testified to yesterday.

5 THE COURT: Okay.

6 MS. KOLLINS: It wasn't touching at McDonald's. The McDonald's
7 made the touching contextual was the State's position. We never alleged it
8 happened at McDonald's.

9 THE COURT: Right.

10 MS. KOLLINS: So I will not stipulate to that.

11 THE COURT: Right. Yeah, I remember that. So she -- she --

12 So your question assumes a statement that was not made
13 yesterday.

14 MR. WESTBROOK: I can expand on that, Your Honor. Thank you.

15 THE COURT: Okay.

16 BY MR. WESTBROOK:

17 Q Yesterday, you said that Mirabel went to McDonald's with Don David,
18 correct?

19 A All of them went.

20 Q Okay. And did you say that Don -- that Mirabel told -- told you Don
21 David touched her on the trip to McDonald's?

22 A Well, I -- I said that I wasn't sure if it was a McDonald's or another
23 place, you know, and that he -- where he took them to go eat.

24 Q Okay.

25 A That it could have been a Chuck E. Cheese or -- but I -- I said I wasn't

1 sure.

2 Q Okay. Did you mention anything about a trip where the girls were taken
3 to go eat somewhere, Chuck E. Cheese or McDonald's or anywhere, where Mirabel
4 said she was touched; did you say any of that to the detective?

5 A I don't remember if I told that to the detective.

6 Q Okay.

7 MR. WESTBROOK: Will the State stipulate that there was nothing in
8 the record that she gave to Detective Campbell mentioning the girls going on a ride
9 to get food, to McDonald's or any other place to eat, during which Mirabel was
10 touched?

11 MR. HAMNER: I apologize. Could you repeat that, counsel?

12 MR. WESTBROOK: Sure.

13 THE COURT: Can you repeat that.

14 MR. HAMNER: Could you just repeat the potential stipulation to us?
15 We were talking.

16 MR. WESTBROOK: Sure. Here's the potential stipulation.

17 We just heard that she said that Mirabel told her she was
18 touched on a trip to get something to eat. Maybe it was McDonald's, maybe it was
19 Chuck E. Cheese or something else. My question is will the State stipulate that she
20 never told Detective Campbell that Mirabel told her she was touched on a trip to get
21 something to eat, either McDonald's or something else?

22 THE COURT: So -- so not -- so you're not asking them whether she
23 told the detectives if there was ever a touching in any car ride; you're -- you want to
24 say specifically a car ride that was to a location to get something to eat, is what
25 your -- the stipulation is?

1 MR. WESTBROOK: That is correct, Your Honor. We already have a
2 stipulation that she never mentioned a car ride. This is important, because it
3 mentions --

4 THE COURT: All right. Slow down.

5 MR. WESTBROOK: -- a specific occasion.

6 THE COURT: Slow down.

7 MR. WESTBROOK: Oh, sorry, I forgot. That actually is my slow voice.
8 I'm going to make it super slow.

9 What I'm saying is she mentioned a specific location or a specific
10 activity during which Mirabel said she was touched.

11 THE COURT: All right. You're making an argument in front of the jury
12 now rather than --

13 MR. WESTBROOK: I'm not. I'm responding to the question,
14 Your Honor.

15 THE COURT: All right. Let's -- can you stop for a second --

16 MR. WESTBROOK: Sure.

17 THE COURT: -- if you don't mind, please.

18 Ms. Kollins, you raised your hand. Were you going to make an
19 objection?

20 MS. KOLLINS: Well, I just -- just how we're articulating this, we're
21 using so many pronouns. If we could start over with the stipulation.

22 THE COURT: Tell you what, here's what I want you to do. If you
23 want -- I want to write down in words, without -- without saying it in front of the
24 jury --

25 MR. WESTBROOK: Sure.

1 THE COURT: -- write down what it is that you want them to stipulate
2 to, and then show it to them without reading it in front of the jury, and they'll tell you
3 yes or no if they'll stipulate to it. I think that's the best way to do that.

4 MR. WESTBROOK: And, Your Honor, as an alternate suggestion --

5 THE COURT: Pardon me?

6 MR. WESTBROOK: As an alternate suggestion, this might take 15
7 minutes, but it might save more time later regarding the stipulations, what if we
8 excuse the jury for about 15 minutes, I'm not sure exactly how long it will take, but it
9 shouldn't be much more than that, and have her transcript of the conversation that
10 she had with Detective Campbell read to her in Spanish? That way, I can then ask
11 her the contents of the transcript.

12 THE COURT: I'm -- I'm not going to do that. You should have had it
13 translated before trial started. So I reject that.

14 Let's continue. Do -- do it my way.

15 MR. WESTBROOK: Absolutely.

16 THE COURT: Write down your whole stipulation. Thank you.

17 [Pause in proceedings.]

18 THE COURT: How many pages is this transcript?

19 MR. WESTBROOK: It's not very long, Your Honor. It's about --

20 MS. KIERNY: It's a 27-page statement.

21 MR. WESTBROOK: It's 27, but there's a lot of double transcription in it,
22 because you have the translator's words being transcribed and the witness's words
23 being transcribed. So, really, it's half that long. I think getting through it would
24 take 10 minutes, maybe 15.

25 And, of course, I mean, if -- if the witness remembers what she

1 told the detective, then it's not necessary. But if she's having a hard time
2 remembering, and refreshing her recollection is difficult given the context, then that
3 would be a good way to do it. But I'll do whatever the court wants. I've got my first
4 stipulation regarding McDonald's ready.

5 THE COURT: Provide it to Ms. Kollins.

6 MS. KOLLINS: I understand the stipulation, but not -- I'm not going to
7 stipulate as written. And I can --

8 THE COURT: Would you like to suggest an alternate to try to resolve
9 this?

10 MS. KOLLINS: Just striking everything after the comma on the fifth and
11 sixth lines.

12 THE COURT: All right. Strike it and read some -- read the part that
13 you're willing to stipulate to, then.

14 So Mr. Westbrook, she's now going to read what she's stipulating
15 to.

16 MR. WESTBROOK: Okay.

17 THE COURT: And -- and then tell me if you will also stipulate to that
18 fact, and then we'll see where to go next.

19 MS. KOLLINS: Yusnay never told Detective Campbell that Mirabel told
20 her Don David touched her during a trip to get food.

21 THE COURT: That covers it. Thank you.

22 MR. WESTBROOK: That's him.

23 THE COURT: All right. That is -- so you stipulate to that? Both sides?

24 MR. WESTBROOK: We do.

25 MS. KOLLINS: Yes, sir. You want me to make this a court exhibit?

1 THE COURT: Yes.

2 MS. KOLLINS: Thank you.

3 THE COURT: Then provide it to the court clerk. All right.

4 Please continue.

5 BY MR. WESTBROOK:

6 Q Yesterday, you said the girls told you that their -- that Grandfather was
7 doing this, right?

8 A Yes.

9 Q You never mentioned the word grandfather to Detective Campbell, did
10 you?

11 A I don't remember, but I think so, because that's exactly how they told
12 me.

13 MR. WESTBROOK: Would the State stipulate that she never
14 referenced the word grandfather in this transcript?

15 MS. KOLLINS: Not yet.

16 THE COURT: So that would be the word *abuelo*?

17 MR. WESTBROOK: Yes.

18 THE COURT: All right. So they'll -- they'll search to see if that word's
19 in there.

20 [Pause in proceedings.]

21 MS. KOLLINS: The State will stipulate that the word grandfather or
22 *abuelo* is not in the transcript.

23 THE COURT: Thank you, Ms. Kollins.

24 Please proceed.

25 MR. WESTBROOK: Thank you, Your Honor.

1 BY MR. WESTBROOK:

2 Q You also didn't tell the detective the man called the girls his girlfriends,
3 did you?

4 A I don't recall.

5 MR. WESTBROOK: Will the State -- State stipulate that he -- she didn't
6 say to the detective that the man called the girls his girlfriends?

7 THE COURT: What's the Spanish word for girlfriends?

8 UNIDENTIFIED SPEAKER: *Novias*.

9 THE COURT: *Novias*. Okay.

10 UNIDENTIFIED SPEAKER: *Novias*, N-O-V-I-A-S.

11 MS. KOLLINS: Court's indulgence.

12 THE COURT: How many more of these are you going to have?
13 Because this is kind of an unusual procedure. I'm giving a lot of latitude here.
14 Normally, stipulations should be worked out before trial starts.

15 MR. WESTBROOK: I agree, Your Honor. Again, I was expecting her
16 to remember what she said to the detective.

17 THE COURT: Counsel, how many more?

18 MR. WESTBROOK: I think I've got three more.

19 THE COURT: All right.

20 MS. KOLLINS: And Court's indulgence, because she did use the word
21 girlfriend yesterday. So.

22 THE COURT: Well, we're talking about the transcript.

23 MS. KOLLINS: I know. And then --

24 MR. WESTBROOK: That's why -- that's why I'm asking about the
25 transcript.

1 THE COURT: We all have to be a little more flexible than normal
2 because of the language barrier here; so I appreciate everyone's cooperation.

3 MR. WESTBROOK: And I appreciate the court's understanding.
4 Thank you.

5 [Pause in proceedings.]

6 MS. KOLLINS: That's fine, Your Honor.

7 THE COURT: All right. The word -- the parties stipulate that the word
8 *novias* was not in the transcript of -- of the interview with the detectives. All right?
9 On that particular day.

10 Please proceed.

11 BY MR. WESTBROOK:

12 Q Yesterday, you said the girls told you that the man showed the --
13 showed them his penis, right?

14 A His thing. That's what they called it.

15 Q His thing. They called it a thing. You took that to mean penis, right?

16 A Of course. Because I asked them, What is that thing? Because where
17 I come from, that word doesn't exist like that. So they pointed it out to me.

18 Q Okay. But you didn't tell the detective that the girls told you the man
19 showed them his penis or his *kosa* or his thing, did you?

20 A I don't remember exactly whether I told him or not. But if it's on the
21 record, I'm assuming that it's -- that's the way it is.

22 Q Okay.

23 MR. WESTBROOK: Will the State stipulate that she never told
24 the detective that the girls told her that the man showed them his thing or gestured
25 to the area of the penis?

1 MS. KOLLINS: The State will stipulate that it was neither asked nor
2 responded to by the witness.

3 THE COURT: All right. Then it's stipulated to. Neither asked or -- or
4 responded to regarding *kosa* or thing or penis.

5 MR. WESTBROOK: So the stipulation is that the detective didn't
6 specifically ask --

7 THE COURT: Which quote? They said that it wasn't asked and it
8 wasn't responded to.

9 MR. WESTBROOK: I mean, the -- what question wasn't asked? The
10 question wasn't asked, Did he show the penis to the girls or anything like that?

11 THE COURT: So let's get a clarification --

12 MR. WESTBROOK: Thank you, Your Honor.

13 THE COURT: -- on the stipulation.

14 Go ahead and reiterate exactly your stipulation.

15 MS. KOLLINS: My stipulation is that the detective did not ask her if the
16 girls had relayed to her that Don David or Grandpa showed his penis. And she did
17 not, in the converse, respond to that question or never said that the girls relayed to
18 her that they had seen the defendant's *kosa* or thing or penis.

19 THE COURT: All right. That's pretty comprehensive. Let's --

20 MR. WESTBROOK: Sounds good.

21 THE COURT: Let's move on. Thank you.

22 You stipulate to that, Mr. Westbrook?

23 MR. WESTBROOK: I do.

24 THE COURT: Okay.

25 BY MR. WESTBROOK:

1 Q Okay. The detective asked you to tell him everything, right?

2 A Everything that I remember. Everything that they had told me.

3 Q Okay. You didn't tell the detective that the man put candy around his
4 penis, either, did you?

5 A I think I did.

6 MR. WESTBROOK: Will the State stipulate that she never mentioned
7 that the girls told her that Don David put candy on his penis?

8 THE COURT: Too long. Short -- shorter answers.

9 THE WITNESS: I don't know what -- what it represents to you, and
10 interview with a detective. But to me, it's very, very difficult. It was my first time.
11 And even more difficult for me to tell a man, a 60-plus-year-old man, things like that
12 about girls that are maybe nine years old. So it was very difficult like it is right now.
13 So I may have omitted something.

14 BY MR. WESTBROOK:

15 Q Did you ask to see a female detective?

16 A Maybe. Yes.

17 Q You think that you asked to see a female detective, or do you know?

18 A No.

19 Q So you never asked to see a female detective?

20 A No.

21 Q Did you tell Detective Campbell, I'm not telling you certain things,
22 because I feel uncomfortable?

23 A I don't know if I told him or not. But he must've noticed on my face that
24 it was uncomfortable for me to talk to a man about those things.

25 MR. WESTBROOK: Objection. Move to strike. Calls for speculation

1 as to what Detective Campbell may have noticed.

2 THE COURT: Overruled. Go ahead.

3 BY MR. WESTBROOK:

4 Q You didn't tell him you were uncomfortable, right?

5 A I don't recall.

6 MR. WESTBROOK: Okay. Will the State stipulate that nowhere in this
7 transcript does she tell Detective Campbell that she is uncomfortable?

8 MS. KOLLINS: Your Honor, at this point, I'm not willing to stipulate to
9 that. If she's testified she was uncomfortable, I don't think there's any onus or any
10 relevance as to whether the detective asked her. So I'm not willing to stipulate to
11 that at this time. I mean, I think that the response is what it is. The record stands
12 as it is.

13 MR. WESTBROOK: Usually, Your Honor, I can ask a witness
14 questions about something she said and get answers other than I don't recall or I
15 don't know. Today I can't. And --

16 THE COURT: Well --

17 MR. WESTBROOK: -- that -- that can usually be fixed in a much
18 quicker way simply by showing them the transcript, since the State provided. There
19 is no Spanish transcript that the State provided. So this is the slow and plodding
20 and terrible way that I have to do it for the record. I don't...

21 THE COURT: So I -- because I asked you how many more of these did
22 you have, and you said about three. And you talked about candy around the penis.
23 And now you're talking about if the word uncomfortable is in the transcript.

24 I think that's a fair question, Ms. Kollins, if the word
25 uncomfortable is in the transcript.

1 MR. WESTBROOK: And -- and to be specific, Your Honor, did she tell
2 Detective Campbell she was uncomfortable?

3 THE COURT: Well, I know, but it's -- it's easier just to see if the
4 words -- uncomfortable is not in there, then -- then we know she didn't --

5 MR. WESTBROOK: True. But since there's two languages here,
6 there's no synonym -- there's no statement in the transcript that she mentioned that.
7 That's -- that's the stipulation that I'm looking for.

8 THE COURT: I think that's a fair request, Ms. Kollins.

9 MS. KOLLINS: Well, and I -- I guess there -- so --

10 THE COURT: Because they don't have a translation of the entire
11 transcript.

12 MS. KOLLINS: Well, we don't have a translation. There is another
13 mechanism by which Mr. Westbrook could do this, but I'm not going to comment on
14 that.

15 THE COURT: Right.

16 MS. KOLLINS: There are points in the interview where she
17 expresses -- I won't say she uses the word uncomfortable, but she talks about not
18 wanting to go to the police first and not wanting to talk to the parents --

19 THE COURT: Where is --

20 MS. KOLLINS: -- and things like that. So just to say uncomfortable, I
21 mean, there's -- there's translation implications, and he's using it for one thing, and
22 it may read in there for something else. I'm not trying to be difficult here. I
23 understand his point.

24 THE COURT: No. I know, I get it.

25 MS. KOLLINS: But --

1 THE COURT: So -- so how does he --

2 MS. KOLLINS: If he will --

3 THE COURT: -- make his point to the jury that she never expressed
4 that she was -- she -- she never expressed to the detectives that she was
5 uncomfortable? I think that's a legitimate topic to raise with the witness.

6 MS. KOLLINS: So do I, but I think the stipulation doesn't adequately
7 cover it.

8 THE COURT: Okay.

9 MS. KOLLINS: So I agree with Your Honor. I just think the stipulation
10 is a little bit vague and subject to --

11 THE COURT: Okay.

12 MS. KOLLINS: -- some manipulation later. My -- I would stipulate --

13 THE COURT: Right.

14 MS. KOLLINS: -- that Ms. Rodriguez never expressed to the detective
15 that she wanted to speak with a female detective or wanted to stop the interview
16 because of the subject matter.

17 THE COURT: All right. I think you should -- you've got to live with that,
18 Mr. Westbrook, that she never told the detective that she wanted to speak to a
19 female detective and she never said she wanted to stop the interview because she
20 felt uncomfortable.

21 MR. WESTBROOK: That sounds fine, Your Honor. Thank you.

22 THE COURT: Well -- so that is the stipulation. All right.

23 MR. WESTBROOK: Okay.

24 THE COURT: Let's move on.

25 BY MR. WESTBROOK:

1 Q You didn't tell the detective about the man taking Yezline into his
2 apartment and taping her hands and feet?

3 THE COURT INTERPRETER: I'm sorry, counsel. What is the name?

4 MR. WESTBROOK: Yezline, if I'm pronouncing it correctly.

5 And I have it as Y-E-Z-L-E-N-E, but we've had other spellings at
6 some point. Is that the right one?

7 THE COURT: Y-E-Z-L-E-N-E, I believe.

8 MR. WESTBROOK: I'm sorry. I have Y-E-Z-E -- yeah -- L-E-N-E.
9 That's -- that's what I have.

10 THE COURT INTERPRETER: Would you repeat the question --

11 MR. WESTBROOK: Yes.

12 THE COURT INTERPRETER: -- counsel, please.

13 BY MR. WESTBROOK:

14 Q Did you tell the detective that Yezline told you that the man taped her
15 hands and feet and took her into his apartment?

16 A No. I didn't tell him.

17 Q Okay. So you didn't mention that incident at all, correct?

18 A No.

19 Q So all these things we just talked about that you didn't tell the police,
20 you're saying right now in this courtroom under oath for the first time?

21 MS. KOLLINS: Well, I'm -- I'm going to object as vague and compound.
22 I mean, if he wants to go back and ask those things individually, I don't have a
23 problem with that. But all of these things you're saying in here today; that's my
24 objection. Vague and compound.

25 MR. WESTBROOK: I can ask her if she knows what I'm talking about.

1 THE COURT: Well, in the interest of time, I think it's an appropriate
2 question. I wrote down I know exactly what things you're talking about. I'm not
3 going to reiterate them, because it -- it tends to put court emphasis on something.

4 Go ahead. Ask the question again.

5 BY MR. WESTBROOK:

6 Q These things we just talked about that you didn't tell the police six
7 months ago, you're saying you remember them here in court right now?

8 A Yes.

9 MR. WESTBROOK: Pass the witness.

10 THE COURT: All right.

11 Let's have redirect.

12 We'll -- let's go about, you know, 20 minutes or so and then we'll
13 take our break.

14 MS. KOLLINS: I think I'll be done, Your Honor.

15 THE COURT: 15-minute break. You guys good for another 20
16 minutes? All right. Good. Thanks.

17 We don't need that much time.

18 MS. KOLLINS: I don't think I will. Thank you, sir.

19 **REDIRECT EXAMINATION**

20 BY MS. KOLLINS:

21 Q Just a little more time, Ms. Rodriguez, okay?

22 A That's fine.

23 Q Okay. There are a lot of questions about whether you knew the names
24 of these girls. Do you remember Mr. Westbrook asking you about if you knew the
25 names of Mirabel and Maradel?

1 A Yes.

2 Q And yesterday you and I looked at some photographs together, and you
3 identified the girls; one is the thinner one and one is the heavier one, right?

4 A Yes.

5 Q Okay. And when we talked yesterday about what the girls had to say,
6 you distinguished between the thinner girl and the heavier girl, right?

7 A Yes.

8 Q Okay. Because the names are tough, right?

9 A Yes.

10 Q So State's 10 next to -- I can just barely get these in here.

11 MS. KOLLINS: And I had permission to publish these yesterday, just
12 for the record.

13 THE COURT: Yes.

14 MS. KOLLINS: So I apologize for not asking again.

15 BY MS. KOLLINS:

16 Q State's 13 is on the right, State's 10 is on the left. This -- is the young
17 lady on the left the thinner girl and one of the twins?

18 THE COURT INTERPRETER: I'm sorry, counsel. Could you repeat.

19 BY MS. KOLLINS:

20 Q Is the young lady on the left the thinner girl and one of the twins?

21 A These are the twins. And this is the thinner girl, and this is the heavier
22 girl, obviously.

23 Q And the heavier girl appears to your right on the screen?

24 A No, in blue?

25 Q On the right-hand side of the screen is the heavier girl?

1 A Yes, this one.

2 Q Okay. Well, for court we have to indicate whether we're talking left or
3 right, because when we say this one or that one, later no one knows what we're
4 talking about. That's why I ask.

5 A That's fine.

6 Q Okay. So again, thinner girl on the left, heavier girl on the right,
7 State's 10 on the left, State's 13 on the right. You know their names, but you mix
8 up which one's which; is that fair?

9 A Yes.

10 Q Okay. And did you do our -- your best yesterday to tell us which one
11 had what discussions with you when they came to your house?

12 A Of course. I come here to do the best I can.

13 Q Now, when you talked to Detective Campbell, you never used the word
14 grandfather; do you remember that?

15 A I don't recall.

16 Q Okay. Did you tell Detective Campbell that the person the girls were --
17 was talking -- were talking about was a family friend?

18 A Possibly, I may have.

19 Q Okay. Would -- did you tell Detective Campbell that the man's name
20 was David?

21 A Don David, that's what the girls told me.

22 Q Okay. And did you tell Detective Campbell that he was a family friend
23 of Amanda and the girls?

24 A Yes.

25 Q Okay. Do you remember -- strike that.

1 There was some discussion about how well you knew these girls
2 by Mr. Westbrook; do you remember that?

3 A The attorney?

4 Q Yeah. The attorney on the side, he asked you about how well you
5 knew Mirabel, Maradel, Jatziri.

6 A Yes.

7 Q Up until this -- you said that you were their neighbor?

8 A Yes.

9 Q Okay. Now, as their neighbor, did you -- how often did you speak to
10 them prior to this date?

11 A We may have talked every day. You know, just, like, Hi, how are you?
12 Not really a conversation.

13 Q Okay. More just greetings, not conversation?

14 A Exactly.

15 Q Okay. Mr. Westbrook asked if you told about Yezline and the tape; do
16 you remember that?

17 A Yes.

18 Q Okay. Were you ever asked by Detective Campbell about Yezline and
19 anything that happened to Yezline?

20 A No.

21 Q You came to meet with us in our office prior to this hearing, correct?

22 A Yes.

23 Q And we just explained the process to you?

24 A Yes.

25 Q Did we ever tell you what to say?

1 MR. WESTBROOK: Your Honor, this is all leading. I object.

2 THE COURT: Overruled.

3 THE WITNESS: No.

4 BY MS. KOLLINS:

5 Q You were asked some questions a few moments ago about telling the
6 detective about the threats to kill; do you remember those?

7 A Yes.

8 Q Did you tell the detective that the girls were afraid?

9 A Possibly. I can't tell you exactly what I told the -- the -- all that I told the
10 detective at this time, because -- first of all, because of the stress, and then
11 because time had gone by.

12 MS. KOLLINS: Court's indulgence.

13 Q Did you tell the detective that the girls were anxious or nervous; do you
14 remember that?

15 A I'm not sure whether I told -- told him that.

16 Q Okay. Give me just a moment, please.

17 I want to show you a page to read to yourself, Yusnay. If you can
18 give me just a moment or actually have the interpreter show you.

19 THE COURT: While you're looking it up, the jurors are probably
20 wondering why don't we just show you the transcript, you read for yourself what it
21 says, right? We can't do that. There's a procedure here, this, you know, transcript
22 is technically hearsay. Procedure here in court is -- is you have -- we have to hear
23 from the witness on the stand. When the witness says something on the stand
24 which one party says is different or inconsistent than what they said before, then
25 they can talk about, you know, that one part that might be inconsistent, you know,

1 and then we -- that -- so that limited part can get discussed.

2 We can't show you the whole transcript. That's just one of our
3 rules of evidence and procedure here. So I just wanted to -- to -- in case you're
4 probably wondering why don't you show us the whole transcript? Can't do it. All
5 right. All right.

6 Let's just keep going.

7 MS. KOLLINS: I apologize. It just takes a minute.

8 I'm going to show her 18 and 19. I'm going to have just the
9 bottom six, seven lines of 18 and top of 19, the -- which is going to be the questions
10 and the interpreted responses for the record. And then I'll ask her some questions.

11 THE COURT: Very good.

12 BY MS. KOLLINS:

13 Q Ms. Rodriguez, I'm going to have the interpreter just read a very small
14 part of your statement to you. Okay. And then I'm going to ask some questions.

15 The last of the first page and just the first -- the last six or seven
16 lines of this page, and then the first four or five of the second.

17 A My little girls?

18 Q Okay. The process is she's going to read that to you. Okay. And then
19 I'm going to ask you some questions and see if that help -- if reading that to you
20 helps you remember what you said before. You can't have the discourse back and
21 forth yet.

22 A Okay.

23 [Pause in proceedings.]

24 Q Ms. Rodriguez, I've had the interpreter interpret those couple of
25 paragraphs for you. Does that help you remember whether or not you described

1 the girls as having fear or being embarrassed?

2 A They -- they were in fear.

3 Q I asked you -- is that -- thank you.

4 I asked you one more question earlier. We were talking about
5 whether you used the word grandfather, remember that?

6 A Here or when I was talking to the girls?

7 Q Let me start over.

8 When you spoke to the detective, you did not call Don David
9 grandfather, correct?

10 A I don't recall.

11 Q Okay. Do you recall whether you described Don David as a friend of
12 the family?

13 A I think I did.

14 Q So do you remember that now, that you did describe him as friend of
15 the family?

16 A Possibly. Because that's what he represented to me, a friend of the
17 family.

18 Q Okay. Would it refresh your recollection to have your statement read,
19 at least a line of it, read to you today?

20 A Yes.

21 MS. KOLLINS: Counsel, page 7, nine lines up.

22 Q Question and answer right there.

23 A Yes.

24 Q Now that I've had that read to you, do you recall describing Don David
25 as a family friend?

1 A Yes.

2 Q Even though you never called him Grandpa?

3 A Well, it's not that I said the grandpa. It's that the -- they said, It's my
4 grandpa.

5 And I said, What do you mean, your grandpa?

6 And -- they said -- and I asked, Your mom's father or your dad's
7 father?

8 And they said, No. It's Mr. Don David.

9 Q When you spoke to Detective Campbell, did he ask you to go one by
10 one with what each girl told you?

11 A I'm not sure. I'm not sure. I don't remember completely the
12 conversation with the detective.

13 MS. KOLLINS: Would defense counsel stipulate that Detective
14 Campbell never asked Ms. Rodriguez to articulate, individual by individual, what
15 she was told in that conversation?

16 MR. WESTBROOK: I have difficulty with the stipulation, because that's
17 not how detectives do things when they interview somebody. They don't provide
18 facts.

19 THE COURT: Now you're testifying.

20 MR. WESTBROOK: Well, I'm just explaining why I have a problem with
21 the stipulation.

22 I mean, their job is not to provide facts to the witness they're
23 interviewing. It's to ask for facts.

24 So, yes, he didn't ask her any specifics. He didn't say
25 specifically, you know, Did you take the hands?

1 THE COURT: That wasn't the question, though.

2 MR. WESTBROOK: Yeah. I'll stipulate that he didn't ask her that.

3 But --

4 THE COURT: I think that's all she's asking you to stipulate --

5 MR. WESTBROOK: But I object to the implication that -- that he would
6 ask her that, because -- that's my objection.

7 THE COURT: All right. Well, I don't -- I'm having trouble trying to
8 understand what that means. You can't stipulate with an objection. So I don't --

9 MR. WESTBROOK: Okay. I stipulate that he -- that Detective
10 Campbell never said, Did the girls refer to the man who touched them as
11 grandfather? Does that work?

12 THE COURT: Okay.

13 MS. KOLLINS: That wasn't my stip. That wasn't my request.

14 THE COURT: Yeah. But that's --

15 MS. KOLLINS: My -- my request was will he stipulate that Detective
16 Campbell never --

17 THE COURT: -- didn't ask about the girls one by one.

18 MS. KOLLINS: Yes, one by one --

19 THE COURT: -- as to what they said.

20 MS. KOLLINS: Yes, sir.

21 THE COURT: I mean, that's probably pretty easy to tell from the
22 transcript.

23 MR. WESTBROOK: I will not stipulate to that, because he asked her to
24 tell him everything. I think that would encompass, Tell me what the girls said to you
25 one by one.

1 THE COURT: I -- I see your point. All right. Save the rest of that for
2 argument.

3 So he's not going to stipulate. And I -- I think if there's
4 particular --

5 MS. KOLLINS: Well, may we approach?

6 THE COURT: Yes.

7 [Bench conference transcribed as follows.]

8 THE COURT: I can't force him to stipulate, right?

9 MS. KOLLINS: No. I know. I know.

10 THE COURT: I don't think I can.

11 MS. KOLLINS: No, you can't. And now --

12 THE COURT: Okay.

13 MS. KOLLINS: -- lesson learned for me for the remainder of the
14 hearing.

15 I think my best avenue at this point is to have her read her
16 statement, lay a foundation for it, and offer it as a combination of prior consistent
17 and inconsistent statements, given the stipulations that I was willing to enter into
18 that showed voids that he wanted, and now the reciprocity isn't forthcoming. So I
19 think my best avenue right now is to mark that --

20 MR. WESTBROOK: I have --

21 MS. KOLLINS: -- mark her translated statement --

22 THE COURT: Yeah, I think --

23 MR. WESTBROOK: I have a stipulation that I can make, Your Honor.

24 THE COURT: Well, do you -- do you want to hear his offer before I
25 respond to your request?

1 MS. KOLLINS: Sure.

2 MR. WESTBROOK: I will stipulate to the following four statements,
3 which I think will assuage my fears of a generalization.

4 Did Detective Campbell ask you, specifically, what Jatziri said?

5 Detective Campbell ask you, specifically, what Mirabel said?

6 Did Detective Campbell ask you, specifically, what Maradel said?

7 Did he ask you, specifically, what Yezline said?

8 That would be fine --

9 THE COURT: Well, I think that's what she was asking.

10 MR. WESTBROOK: -- because that never happened. She was doing
11 it in general.

12 THE COURT: Okay.

13 MR. WESTBROOK: In a general way. But using the specific names,
14 I'm fine with that.

15 THE COURT: Yeah. Why don't you stipulate to that? Would that solve
16 the problem?

17 MS. KOLLINS: That's fine.

18 THE COURT: But if you have -- are you going to have a lot more?
19 Because I'm --

20 MS. KOLLINS: No. I'm -- I'll be done --

21 THE COURT: Okay.

22 MS. KOLLINS: -- with that, I'll be --

23 MR. WESTBROOK: Good, then.

24 MS. KOLLINS: -- just about done.

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

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[End of bench conference.]

THE COURT: All right. Great. So I think we worked it out.

Why don't you go ahead and --

MS. KOLLINS: Your Honor.

THE COURT: Thank you.

Mr. Westbrook, why don't you tell us what you're willing to stipulate to on the record.

MR. WESTBROOK: Your Honor, I will stipulate on the record that Detective Campbell never asked the following questions:

Tell me -- or would you tell me, specifically, what Yezline said?

Would you tell me, specifically, what Mirabel said?

Would you tell me, specifically, what Maradel said?

And will you them me, specifically, what Jatziri said?

Those questions are not in the transcript, and they weren't specifically asked by the detective.

THE COURT: All right. Very good.

MS. KOLLINS: All right.

THE COURT: Will you accept that stipulation, Ms. Kollins?

MS. KOLLINS: Yes, sir. Thank you.

THE COURT: Thank you.

BY MS. KOLLINS:

Q Yusnay, have you ever been involved in having to report anything like this before to the police?

A No.

Q How did you feel when you had to go speak to the detective?

66

1 A I just wanted to just run out of there and forget that all of this was
2 happening.

3 Q Are you telling us the best you remember right now?

4 A I'm here swearing before God to do everything that I can remember.
5 And I'm, of course, I'm doing -- I'm doing all my best to say everything that I can
6 remember.

7 MS. KOLLINS: I don't have anything else for Ms. Rodriguez,
8 Your Honor.

9 THE COURT: Thank you, Ms. Kollins.

10 Any redirect?

11 MR. WESTBROOK: Nothing further, Your Honor.

12 THE COURT: Or, I'm sorry, recross?

13 MR. WESTBROOK: No recross. Thank you.

14 THE COURT: All right.

15 This concludes your testimony. Thank you very much. You're
16 excused from court.

17 MS. KOLLINS: Your Honor.

18 THE COURT: Yes? Is there a possibility that we may need her on --
19 oh, I'm sorry.

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

21 THE COURT: I'm sorry. It's your case in chief, your rebuttal case, you
22 going to need her for your rebuttal case, possibly?

23 MS. KOLLINS: I don't know yet.

24 THE COURT: Okay.

25 So -- so you're excused for this portion of the trial. There is a

1 possibility that we might need you later.

2 MR. WESTBROOK: Your Honor --

3 THE COURT: So do not discuss your testimony with anybody.

4 MS. KIERNY: May we approach?

5 MR. WESTBROOK: Briefly.

6 THE COURT: Before I excuse her?

7 MR. WESTBROOK: Yes.

8 MS. KIERNY: Yes.

9 THE COURT: Okay.

10 [Bench conference transcribed as follows.]

11 THE COURT: Yes?

12 MR. WESTBROOK: It's about --

13 THE COURT: Did I do something wrong?

14 MS. KIERNY: Juror questions.

15 MR. WESTBROOK: Must --

16 THE COURT: Oh.

17 MR. WESTBROOK: -- do the mic.

18 THE COURT: Hold on. I forgot about the juror questions.

19 MS. KIERNY: Okay.

20 MR. WESTBROOK: That was all we wanted to do.

21 THE COURT: Oh. Yes.

22 [End of bench conference.]

23 THE COURT: Were there any juror questions? I forgot to ask.

24 That's -- all right. You're --

25 MR. WESTBROOK: I don't know. I really didn't want to be up here.

1 THE COURT: No juror questions? All right.
2 MR. WESTBROOK: No juror questions.
3 THE COURT: Because the procedure was if you have something, just
4 raise your hand. And you don't -- you don't need to ask anything.
5 THE MARSHAL: She had one, Your Honor.
6 THE COURT: Okay. Take your time. Write it down.
7 Remember, I don't encourage you to ask questions, but it is a
8 right that is extended to you, or an opportunity.
9 Make sure you write your name and your juror number on there.
10 [Pause in proceedings.]
11 THE COURT: Thank you.
12 [Bench conference transcribed as follows.]
13 MS. KOLLINS: Who is Amanda?
14 THE COURT: That's a good question.
15 MS. KOLLINS: Okay.
16 THE COURT: And then this one.
17 MS. KOLLINS: Did we not say all that? Getting Amanda and her
18 daughters and --
19 MR. WESTBROOK: We did, but I'm fine if we just take it like this, we
20 don't have to ask her.
21 MS. KIERNY: We can ask her. Just --
22 MS. KOLLINS: I'll just ask her again.
23 MR. WESTBROOK: Okay.
24 MS. KOLLINS: Or ask her.
25 THE COURT: All right. That's the other question.

1 MS. KIERNY: Okay.

2 MS. KOLLINS: What? What?

3 MR. WESTBROOK: I say no --

4 MS. KIERNY: And I'm guessing --

5 MR. WESTBROOK: I say no to the second.

6 MS. KIERNY: I would [indiscernible].

7 MR. WESTBROOK: But statutorily, Your Honor, I don't think we can

8 ask for clarification of a question by a juror. If it's not clear, we shouldn't be asking

9 it.

10 MS. KOLLINS: I don't even understand what that says. Why did

11 Ms. Rodriguez see her first and not the other family or --

12 MS. KIERNY: Any other.

13 MR. WESTBROOK: Any other.

14 MS. KOLLINS: See who first?

15 THE COURT: I think -- so I think that was already asked and

16 answered. You guys just got to remember, the jurors that had that question

17 [indiscernible] closing.

18 MR. HAMNER: I think -- I think what it's trying to ask is maybe why

19 did -- why did Jatziri --

20 MR. WESTBROOK: [Indiscernible] neighbor [indiscernible] --

21 MR. HAMNER: Why --

22 MR. WESTBROOK: -- defendant --

23 MR. HAMNER: I think it's a closing. I think it's suggesting why did

24 these children see -- talk to Ms. Rodriguez first and not go to another family or

25 friend? But it's a speculative question.

1 MS. KOLLINS: Yeah. That's way too early for that.
2 THE COURT: Yeah.
3 MS. KOLLINS: Okay. Just going to ask her, Who is Amanda?
4 MR. WESTBROOK: You can make a court exhibit, if you would.
5 THE COURT: Pardon?
6 MR. WESTBROOK: I think we're supposed to make a court exhibit, is
7 that --
8 THE COURT: Yeah. No, I'll --
9 MR. WESTBROOK: Okay.
10 THE COURT: -- I know what to do.
11 MR. WESTBROOK: Thank you. I wasn't -- I was asking, I wasn't sure.
12 MS. KOLLINS: Judge --
13 THE COURT: Okay. All right.
14 MS. KOLLINS: Just one more thing. In case -- in case you need --
15 Amanda's last name is Moiza.
16 THE COURT: Moiza, yes.
17 MS. KOLLINS: If you need to know that. Okay.
18 MR. WESTBROOK: Okay.
19 THE COURT: All right.
20 [End of bench conference.]
21 THE COURT: Okay. One question. Who is Amanda?
22 THE WITNESS: Amanda is my neighbor, the mother of three of the
23 girls.
24 THE COURT: Okay. Very good.
25 I'm not allowed to ask any follow-up, so -- but --

1 MS. KOLLINS: May I just --

2 THE COURT: -- do the parties have a quick follow-up?

3 I'm -- I'm not giving another question. We appreciate the -- the
4 other questions. But the court's not going to ask it, and the jurors should not
5 speculate as to what the answer would have been or speculate as to why I'm not
6 asking it. All right.

7 Follow-up briefly.

8 MS. KOLLINS: Yes, Your Honor. Please. Very briefly.

9 **FURTHER REDIRECT EXAMINATION**

10 BY MS. KOLLINS:

11 Q I think I -- I asked you at the beginning, who are Amanda's children?

12 A Did you?

13 Q Could you tell me their names again?

14 A Yes. The oldest girl's name is Jatziri.

15 Q Okay.

16 A And the twins, one is -- one's name is Maradel, and the other one's
17 name is Mirabel.

18 Q Okay. And Amanda is their mom?

19 A Yes.

20 Q And the same lady that we spoke about that came to your apartment on
21 the morning of October 16th?

22 A Yeah. It was Amanda.

23 Q Okay. Thank you.

24 THE COURT: Anything from you guys?

25 MR. WESTBROOK: That covers it. Thank you, Your Honor.

1 THE COURT: All right. So now you are excused. Do not discuss your
2 testimony with anybody until the trial is completely over.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you. Good day.

5 THE WITNESS: Thank you, all of you.

6 THE COURT: Stay safe. All right.

7 Let's take our 15-minute recess. Does that work? All right.

8 Ladies and gentlemen of the jury, 15-minute recess. Let me read
9 the standard admonishment.

10 Do not communicate among yourselves or with anybody else
11 about this trial or the subject matter of the trial; do not communicate with any of the
12 parties, attorneys, or witnesses involved in the trial; do not seek or obtain
13 information about the case from any source; do not read, watch, or listen to any
14 report or commentary about the case; do not form or express any opinions on any
15 subject connected with the trial; do not perform any research or investigations.

16 Please return to the hallway outside this courtroom at 11:20. All
17 right.

18 Thank you very much. You are excused for the break.

19 [Jury recessed at 11:04 a.m.]

20 THE COURT: All right. We're outside the presence of the jury.

21 Mr. Westbrook -- I'm sorry.

22 MR. WESTBROOK: It's all right, Your Honor. We were discussing
23 scheduling.

24 THE COURT: No. I was just telling -- I -- I mark all the jury questions I
25 want -- I -- just to let you know, I initial them, and I write given or not given on them,

1 and I provided them to the court clerk.

2 MR. WESTBROOK: Thank you, Your Honor. I appreciate it.

3 THE COURT: Anything off the record?

4 MR. HAMNER: Just -- I mean, just a scheduling thing.

5 We -- we had some children in tow potentially for today, but given
6 kind of the rate, and we need to go through four adults, and where it's 11:00 now,
7 I'm not going to have them come in. At best, we'll get through the four parents, and
8 I don't know if we'll be able to do that. But.

9 THE COURT: All right.

10 MR. HAMNER: But I talked it over with defense counsel and they're
11 fine with that, but I just wanted to let you know.

12 MR. WESTBROOK: Yeah. Absolutely.

13 THE COURT: All right. Good. Enjoy your break. We'll come back in --

14 MR. HAMNER: Thank you very much.

15 THE COURT: -- soon.

16 [Court recessed at 11:06 a.m., until 11:21 a.m.]

17 [Outside the presence of the jury.]

18 THE COURT: All right. Let's call our first witness. Let's bring the
19 jurors in first. Let's do that, please.

20 [Jury reconvened at 11:23 a.m.]

21 THE COURT: All right. Everyone's accounted for. Please be seated.

22 The State may call its next witness.

23 MR. HAMNER: Thank you, Your Honor.

24 The State's going to call Amanda Moiza to the stand.

25 THE COURT: Amanda Moiza is called to the stand.

1 Please step forward and remain standing. The clerk -- remain
2 standing, and the clerk will administer your oath.

3 **AMANDA MOIZA,**

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

6 THE CLERK: Please be seated. Please state and spell your first and
7 last name for the record.

8 THE WITNESS: Amanda Moiza, A-M-A-N-D-A M-O-I-Z-A.

9 THE COURT: You may proceed.

10 MR. HAMNER: Thank you very much, Your Honor.

11 **DIRECT EXAMINATION**

12 BY MR. HAMNER:

13 Q Good morning, ma'am. How are you?

14 A Good morning. Fine.

15 Q Is it okay if I call you Amanda?

16 A Yes.

17 Q All right. Amanda, how old are you?

18 A 34.

19 Q And what do you kind of do for a living?

20 A I don't work.

21 Q Okay. Do you stay home and take care of your children?

22 A Yes.

23 Q Okay. Now, let's talk about that for a second.

24 Are -- are you married?

25 A Yes.

1 Q And how many children do you have?
2 A Three.
3 Q Three kids. What are their names?
4 A Maradel Moreno, Mirabel Moreno, Jatziri Moreno.
5 Q Okay. How -- what is Jatziri's birthday?
6 A December 3rd, 2006.
7 Q Okay. I'm publishing what's already been admitted by stipulation as
8 State's Exhibit 7.
9 Amanda, if you look at that little monitor right there, who is in
10 Exhibit 7?
11 A Jatziri.
12 Q So that's who we were just talking about. Is she your oldest?
13 A Yes.
14 Q Okay. Let's talk about Mirabel and Maradel; what are their birthdays?
15 A September 27, 2008.
16 Q Okay. I want to show what's been -- and are they twins?
17 A Yes.
18 Q Okay. Do they -- around the neighborhood, are they kind of known as
19 the twins?
20 A Yes.
21 Q Okay. I want to show you Exhibit 15; who are we looking at there?
22 A Maradel Moreno.
23 Q Okay. And I want to show you what's been admitted as State's 9; who's
24 that?
25 A Mirabel Moreno.

1 Q Is -- is Maradel a little stockier than Mirabel?

2 A Yes.

3 Q Okay. I want to talk a little bit about their grades for a second. And by
4 grades, I mean what school they're in, the grade in school they're in there.

5 THE COURT INTERPRETER: I'm sorry, counsel. Repeat the
6 question.

7 MR. HAMNER: I apologize. That was just a brutal question.

8 BY MR. HAMNER:

9 Q I'd like to talk to you about what grade they are in school right now.

10 What grade is Jatziri in right now?

11 A Fourth --

12 Q Okay.

13 A -- grade.

14 Q How old is she right now?

15 A 10.

16 Q Okay. And so in -- back in 2015, during at least in December of 2015,
17 she would have been in the third grade; is that right?

18 THE COURT INTERPRETER: December 2016?

19 MR. HAMNER: '15.

20 THE COURT INTERPRETER: '15. Which grade? I'm sorry. Third
21 grade?

22 MR. HAMNER: Third grade.

23 THE WITNESS: Yes.

24 BY MR. HAMNER:

25 Q Okay. I'm going to publish what's already been admitted by stipulation

1 as State's 53; do you see your daughter's name up here?

2 A Yes.

3 Q And December 3rd is her birthday?

4 A Yes.

5 Q When you -- I want you to take a look at this chart. Does that
6 accurately reflect how old she would be for each of these years on her birthday?

7 THE COURT INTERPRETER: From -- what do you mean?

8 BY MR. HAMNER:

9 Q Well, when she -- I mean, in 2007 on December 3rd, she turned one
10 years old; is that right?

11 A Yes.

12 Q Then, the next year, she turned two?

13 A Yes.

14 Q And the next year, three?

15 A Uh-huh.

16 Q Does that look about right?

17 A Yes.

18 Q All right. I'm going to do the same for the twins. I'm publishing what's
19 been admitted as State's 54; does this look like another accurate chart of their
20 birthdays and the grades they were in school?

21 A Yes.

22 Q All right. Let's talk about where you live.

23 Where do you live here in Clark County?

24 A 4810 East Charleston Boulevard, Apartment No. 1.

25 Q All right. What's the name of the apartment complex?

1 A Charleston Gardens.

2 Q I want to show you what's been admitted already as State's 22. We'll
3 zoom in a little bit. Do you -- do you recognize what we're looking at here?

4 A Yes.

5 Q What is that?

6 A The apartments.

7 Q Okay. The apartments that you live at?

8 A Yes.

9 Q Do you live to the left or do you live to the right?

10 A The left side.

11 Q Okay. Do you see the building that your apartment is located in on the
12 left of State's 22?

13 A Yes.

14 Q And -- and to help you out, down here, this is Charleston Boulevard,
15 this road right here.

16 A Yes.

17 Q Now, Amanda, if you take your finger and touch that screen, you can
18 make a mark. Can you take your finger and circle the building where you live in?
19 All right.

20 MR. HAMNER: Let the record reflect that the witness has circled the
21 building -- let's do it this way.

22 The building's set to the left; it is the building in the center that is
23 closest to Charleston Boulevard.

24 THE WITNESS: Yes.

25 BY MR. HAMNER:

1 Q I've published what's been already --

2 MR. HAMNER: If we could clear that?

3 Q We'll publish what's already been admitted as State's 23; is that a
4 close-up version of that apartment complex?

5 A Yes.

6 Q So you lived -- you live here in this building?

7 A Yes.

8 Q First floor or second floor?

9 A First floor.

10 Q And did you live on the side of the building closest to the courtyard, or
11 did you live on the side closest to Charleston?

12 A The closest one to Charleston. To the street.

13 Q Okay. So where these trees are, you would live somewhere here; is
14 that right?

15 A Yes.

16 Q And do you live approximately kind of in the middle of where that
17 building is?

18 A To the edge.

19 Q Okay. Now, do you know someone by the name of Yusnay Rodriguez?

20 A Yes.

21 Q All right. And before we get to Yusnay, I just want to publish some
22 other photographs.

23 Publishing State's 40; do you see your apartment there?

24 A Yes.

25 Q Why don't you circle the door. Take your finger, and circle the door,

1 please.

2 Publishing 41; is this that same door that you circled?

3 A Yes.

4 MR. HAMNER: And for the record, the witness circled in State's 40 the
5 white door on the first floor with bars on it -- white bars on it in the center of the
6 photograph.

7 Q All right. Now, you were talking about Yusnay.

8 Publishing, again, State's 23; do you see the building where
9 Yusnay lives in?

10 A Yes.

11 Q Can you circle where you believe generally where she lived, in which
12 building?

13 MR. HAMNER: Okay. So let the record reflect the witness, in
14 State's 23, has circled the building all the way to the left, and she has circled an
15 area -- what appears to be the sidewalk that runs parallel to Charleston leading out
16 of that building in this -- in this photograph, leading towards the courtyard.

17 Q Now, you circled a smaller circle; is that where you believing Yusnay
18 lives in that building?

19 A Yes.

20 Q Does she live on the first or the second floor?

21 A First floor.

22 Q Okay. So your apartment is here, and Yusnay is here; is that right?

23 A Yes.

24 Q All right. Now, I want to ask you about Maria Estrella Barajas; do you
25 know who that is?

1 A Yes.

2 Q And who is she?

3 A Yezline's mother.

4 Q Is she also the mother to Nicole?

5 A Yes.

6 Q Is she a friend of yours?

7 A Yes.

8 Q And did she live in these apartments for a while?

9 A Yes.

10 Q Does she live there currently?

11 A No.

12 Q Do you see in this photograph, in State's 23, where Maria, Yezline, and

13 Nicole, and their family, where they lived; do you see that building in State's 23?

14 A Yes.

15 Q I'd like you to circle where their apartment is in State's 23.

16 MR. HAMNER: Let the record reflect the witness, in State's 23, has

17 circled the building in the center, farthest away from Charleston, between two

18 buildings on -- on either side of it. Specifically, the witness has circled the right

19 corner closest to the top of the picture as being where Maria, Nicole, and Yezline

20 lived.

21 Q Did -- do they live -- did they live on the first or the second floor?

22 A On the first floor.

23 Q Okay. Do you know a family known as the Azucenas?

24 A Yes.

25 Q And do you know someone by the name -- and -- and who are the --

1 who are the two Azucenas that you know? What are their names?

2 A David.

3 Q And who else?

4 A And Elena.

5 Q Elena.

6 A Elena.

7 Q Do you see in State's 23 where their apartment was?

8 A Yes.

9 Q Could you please circle, in State's 23, where the Azucenas live?

10 MR. HAMNER: Let the record reflect, in State's 23, again, the witness
11 has circled the building at the top center of the four buildings that are depicted. She
12 has circled the upper left-hand corner as being the apartment where the Azucenas
13 live.

14 Q First floor or second floor?

15 A First floor.

16 Q All right. I'd like to show you State's 24; do you see the Azucenas'
17 apartment in this photograph?

18 A Yes.

19 Q Could you please circle the door?

20 MR. HAMNER: Let the record reflect the witness has circled the white
21 door just beyond a power box on the first floor in State's 24.

22 Publishing State's 25; is that another angle of that door? Is that
23 another picture of that same door?

24 A Yes.

25 Q 26; are we still looking at that same door?

1 A Yes.

2 Q 27; are we looking at that same door?

3 A Yes.

4 Q And I want you to show you State's 20, that appears to be a daytime
5 shot; does that show that exact same door?

6 A Yes.

7 Q And I want to show you State's 29; is this the power box that's near the
8 Azucena home in this picture?

9 A Yes.

10 Q Okay. I want to show you what's been admitted as State's 36; whose
11 apartment do you see here? And there may be a glare; so you just let me know if
12 it's hard to tell. Can you tell whose apartment that is or was?

13 A Maria Barajas.

14 Q Okay. So that's -- that's the mother of Nicole and Yezline?

15 A Yes.

16 Q Could you please circle their door?

17 MR. HAMNER: Let the record reflect that the witness has circled the
18 first-floor door with the No. 5 on it in State's 36.

19 Q And I want to show you what's been admitted as State's 35; can you
20 see the -- Maria's home in this photograph?

21 A Yes.

22 Q Can you circle that?

23 MR. HAMNER: Let the record reflect the witness has circled the
24 second-to-last door, all the way on the left, on the first floor in State's 35.

25 Now, I want you to also take a look and see if you can see where

1 the Azucenas' apartment is; can you see it in this photograph?

2 A Yes.

3 Q Okay. Could you please make a square, as best you can, where that
4 is.

5 MR. HAMNER: Let the record reflect the witness has made a square
6 on the white door, the last white door on the first floor, all the way to the right in
7 State's 34.

8 Q So they just lived a couple doors away from each other, or at least it
9 appears in that photo?

10 A Yes.

11 Q I also want to show you what's been published as State's 37; can you
12 tell what we're looking at from here? What's -- what are we seeing here in this
13 photo? And if you want, I can bring it to you, if that helps.

14 A We're looking at the building where Yusnay lives.

15 Q Oh. Why don't you circle where Yusnay lives, as best you can.

16 A You cannot see the door from here.

17 Q Okay. But it --

18 MR. HAMNER: Let the record reflect the witness has circled what
19 appears to be a door just beyond a set of stairs to the building that's depicted on
20 the left in State's 37.

21 Q And this walkway, this sidewalk here at the bottom, is that closer to
22 your apartment, or is that closer to the Azucena apartment?

23 A To mine.

24 Q Okay. And I see a power box here; is that the same power box that
25 we're seeing in the photos near the Azucenas?

1 A Yes.

2 Q So you can kind of walk this path if you wanted to go from your house
3 to their house?

4 A Yes.

5 Q Thank you very, very much.

6 I want to talk now a little bit about what life's like at the
7 Charleston Garden Apartments.

8 Did you spend a lot of social time with families in the Charleston
9 Garden Apartments?

10 A Yes.

11 Q Did that include Maria Barajas and her family?

12 A Yes.

13 Q Did that include the Azucenas?

14 A Yes.

15 Q And where would some of these parties happen?

16 A At Maria Barajas'.

17 Q At her place? How about your place?

18 A Sometimes.

19 Q Okay. I'm going to publish, again, State's 23. So Maria's house is over
20 here in this corner; is that right?

21 A Yes.

22 Q And your house is somewhere about here; is that right?

23 A Yes.

24 Q Okay. So a lot of parties would happen there. Would the --

25 A Yes.

1 Q Would the parties solely be inside an apartment, or would sometimes
2 you hang out outside?

3 A The parties were outside the apartments.

4 Q Okay. And when you would have parties outside, what would your kids
5 be doing?

6 A Playing, running.

7 Q Did Yezline spend a lot of time with your children?

8 A Yes.

9 Q Okay. Did they -- when you said they're playing, are they some of the
10 kids that would play together?

11 A Yes.

12 Q And from time to time, would a little girl named Scarlett Rangel spend
13 some time with your daughters?

14 A Yes.

15 Q Now, did she live there every single day, or did she live only some of
16 the time at the apartment?

17 A Just certain time.

18 Q Okay. But sometimes she would play with your daughters and Yezline?

19 A Yes.

20 Q Okay. I want to show you -- I want to --

21 MR. HAMNER: Let the record reflect -- I'm showing opposing counsel
22 what's been previously marked as State's Proposed Exhibits 21 and 22.

23 Your Honor, may I approach the witness at this time?

24 THE COURT: Yes, you may.

25 MR. HAMNER: Thank you very much.

1 Let the record reflect I'm showing the witness State's Proposed
2 Exhibits 21 and 22.

3 I -- I apologize and I misspoke, it's 20 and 21.

4 THE COURT: All right. Very good.

5 MR. HAMNER: Sorry about that.

6 MR. WESTBROOK: And, Your Honor, we have already made record
7 about that.

8 THE COURT: Yes, you have. And it's incorporated by reference
9 herein. Thank you.

10 MR. HAMNER: So based on that, is it admitted at this point, or do you
11 want me to lay some foundation?

12 He's nodding -- for the record, he's nodding that we can agree by
13 stipulation that they're now admitted.

14 I mean, I can lay the foundation.

15 THE COURT: Well, I'll go ahead and -- and I've already -- I know what
16 they are. I admit them subject to our prior discussions. All right?

17 MR. WESTBROOK: That's fine. Thank you.

18 THE COURT: All right.

19 [State's Exhibit Nos. 20 and 21 admitted.]

20 MR. HAMNER: Permission to publish, then.

21 THE COURT: You may publish.

22 BY MR. HAMNER:

23 Q Publishing State's 21; what are we seeing in State's 21?

24 A We are socializing. We were the friends together. And David Azucena
25 is the man standing by the door.

1 Q Okay. So why don't you circle David. Okay.

2 And is this an example of one of the parties that you might have
3 on an evening?

4 A Yes.

5 Q Do you see some of the food you guys would put out in this
6 photograph?

7 A Yes.

8 Q Why don't you circle that. All right.

9 MR. HAMNER: Let the record reflect the witness has identified David
10 as being in the doorway, and the food -- and the doorway is all the way to the right.

11 THE COURT: It does.

12 MR. HAMNER: And let the record reflect the witness has circled, all the
13 way to the left, the food they put out.

14 THE COURT: So reflects.

15 BY MR. HAMNER:

16 Q Do you see yourself in this photograph?

17 A Yes.

18 Q Which one is you?

19 A This one here.

20 Q So you're giving the peace sign?

21 A Okay.

22 THE COURT INTERPRETER: I'm sorry?

23 BY MR. HAMNER:

24 Q I said so you're giving the peace sign in that photo?

25 A Yes.

1 Q Okay. Who are the other two ladies in the picture?
2 A My friends --
3 Q Okay.
4 A Lorena Garcia and Veronica Alvarez.
5 Q Are they other women and families that live in this apartment complex?
6 A Yes.
7 Q All right. I want to publish now what's been marked -- admitted already
8 as State's 20; do you see Maria, Nicole, and Yezline's mother in this photograph?
9 A Yes.
10 Q Please circle her.
11 MR. HAMNER: Let the record reflect the witness has identified Maria
12 as the woman just beyond the -- the edible arrangement of fruit. It's awesome.
13 BY MR. HAMNER:
14 Q Do you see David?
15 A Yes.
16 Q Could you circle him.
17 MR. HAMNER: Let the record reflect the witness has circled the -- the
18 man, he's the only man standing up in the photo just beyond Maria.
19 Q Do you see Scarlett?
20 A Yes.
21 Q Could you circle her.
22 MR. HAMNER: Let the record reflect the -- the witness has circled
23 Scarlett as the little girl on the left standing up.
24 Q Do you see Elena, David's wife?
25 THE COURT INTERPRETER: I'm sorry?

1 BY MR. HAMNER:

2 Q Do you see Elena, David's wife?

3 A Yes.

4 Q Could you circle her.

5 MR. HAMNER: Let the record reflect the witness has circled the seated
6 woman just to the right of Scarlett, who's standing all the way to the left of the
7 photograph.

8 Q And the women at the end of the table, who are they?

9 A Veronica Alvarez and Lorena Garcia.

10 Q Is Veronica at the far end of the table and --

11 A Yes.

12 Q -- and Lorena is the closest woman on the right in the photograph?

13 A Yes.

14 Q All right. Would you celebrate birthday parties?

15 A Yes.

16 Q I'm publishing State's 18; is this an example of one of those birthday
17 parties?

18 A Yes.

19 Q And who -- whose party was it that day, in this photo, at least?

20 A Elena.

21 Q David's wife?

22 A Yes.

23 Q Is that -- is that Elena in the center of the photograph?

24 A Yes.

25 Q And do you see David in this photograph?

1 A Yes.

2 Q All right.

3 MR. HAMNER: Let the record reflect that the witness has identified
4 both David and Elena Azucena.

5 Publishing State's 19; who is in the center of this picture?

6 A Elena.

7 Q Okay. And who's kissing Elena?

8 A I -- I am.

9 Q Okay. Let's talk a little bit about the Azucenas. We've talked a lot
10 about David.

11 How long did you know the Azucenas for?

12 A Eight years.

13 Q Eight years.

14 A Eight years.

15 Q How long have you lived in the Charleston Garden Apartments?

16 A 13 years.

17 Q 13 years. How close were you with Elena?

18 A Yes.

19 Q How would you describe the friendship?

20 THE COURT INTERPRETER: I'm sorry?

21 BY MR. HAMNER:

22 Q How would you describe your friendship with Elena?

23 A It was a nice relationship.

24 Q What sort of things would you do with Elena?

25 A We spent time together. We would go out to eat. We would go to the

1 store.

2 Q Okay. Would you also hang out with Elena and Maria, as well?

3 A Yes.

4 Q Now, we mentioned David; have you known David for that same eight
5 years?

6 A Yes.

7 Q Would you do social things with him when you guys all got together,
8 including Elena?

9 A Yes.

10 Q Would you invite this couple over to celebrate your children's birthdays?

11 A Yes.

12 Q Holidays?

13 A Birthdays.

14 Q How -- what did you have your children call David?

15 A They -- they used to call him *abuelo*, grandfather.

16 Q Grandfather.

17 A Grandfather. Grandfather.

18 Q Are the Azucenas related to your family by blood?

19 A Just friendship.

20 Q Okay. And, in -- in fact, at least for a time, and maybe even now to this
21 day, do they actually have biological grandparents living with you guys in your
22 home?

23 A They're alive, but they don't live with us.

24 Q Okay. Did they spend -- was their periods of time when they did live in
25 the home with you guys?

1 A Yes.

2 Q Okay. And during those times, they would still refer to David as
3 Grandfather, even if they had their own real grandparents living there?

4 A Yes.

5 Q Do you see David in this courtroom?

6 A Yes.

7 Q Could you please point them -- him out to this jury and describe an
8 article of clothing that he's wearing.

9 A Over here and he's wearing a blue shirt.

10 Q Okay.

11 MR. HAMNER: Let the record reflect the witness has identified the
12 defendant.

13 THE COURT: It does.

14 BY MR. HAMNER:

15 Q During the eight years that you knew David, what did he ask you to call
16 him? What was the name that he asked you?

17 A David.

18 Q Put it another way, did he go by Jose?

19 A I did not know that.

20 Q Okay. Would Elena refer to him as David?

21 A No. The guy or the man.

22 Q The man. Okay.

23 I want to talk about David's interaction with your kids before you
24 heard a lot of stuff. Let's just talk about maybe prior to October 17th, 2016. I
25 apologize, October 16th, 2016.

1 What sort of things would he do for your daughters?

2 A He used to give them gifts and money. He would buy clothes for them,
3 books, coloring pencils. And their birthdays, he will get them the jumping.

4 Q A jumping house? A bouncing house?

5 A The jumping thing in my house.

6 Q Okay. Could they -- is it like a trampoline?

7 A Yes.

8 Q Okay. Would he ever give them things to eat?

9 A Yes.

10 Q Tell me what things you saw David give your children to eat.

11 A Candy.

12 Q What else?

13 A Fruit.

14 Q Did he ever bring them pizza from time to time?

15 MR. WESTBROOK: Your Honor, this is leading. I've been letting it go
16 for foundation. But we're talking about specifics now, so if we could stop the
17 leading.

18 THE COURT: Overruled. I'll -- I'll allow it. Give him a little more
19 leeway and see where it goes.

20 BY MR. HAMNER:

21 Q And prior to October 16th, 2016, did you trust David around your
22 children?

23 A No.

24 Q Okay. What do you mean by that?

25 A No. Because he asked me to allow them to go with him to Chuck E.

1 Cheese.

2 Q And we'll -- we'll talk about that. I want to take a step back.

3 Did you ever see your kids go into his apartment?

4 A Yes.

5 Q To get what?

6 A I don't know.

7 Q Okay. But you saw that from time to time?

8 A Yes.

9 Q Let me ask you about the parties for a second.

10 When you had parties, would David spend any time interacting
11 with the kids?

12 A Yes.

13 Q Tell us -- the jury what you'd see.

14 A Every time we were together, every time he came out with candy, and
15 he would say, Hey, come over here. You want candy?

16 Q And where would you be hanging out when that would happen?

17 A With Maria Barajas.

18 Q Okay. And what apartments would you be hanging out at when you
19 would see that sort of thing?

20 A 48120 Charleston Boulevard, Apartment No. 5.

21 Q Okay. So whose apartment is that?

22 A Maria Barajas.

23 Q Okay. So -- and Maria's is the apartment that's just down the way from
24 Jose's? I'm sorry -- from David's?

25 A Yes.

1 Q Okay. Publishing State's 35; so where would you be hanging out?
2 Show us -- circle where you would be hanging out when you would see David
3 offering the kids candy and talking to them.

4 THE COURT INTERPRETER: What? I'm sorry.

5 BY MR. HAMNER:

6 Q Offering to the kids candy and -- and talking with them.

7 A Right here.

8 Q So that's where you would be?

9 A Yes.

10 Q And you said before that David would be near his apartment?

11 A Yes.

12 Q Would this happen at daytime or nighttime or both?

13 A The afternoon.

14 Q Okay.

15 A Late afternoon.

16 Q All right. I want to turn your -- before I turn your attention to
17 October 16th, 2016 --

18 THE COURT INTERPRETER: I'm sorry. August 18th?

19 MR. HAMNER: No. No. October.

20 THE COURT INTERPRETER: I'm sorry.

21 BY MR. HAMNER:

22 Q Before I turn your attention to October 16th, 2016, I want to -- I'd like to
23 ask you about the day before, October 15th, 2016. On that evening, was there a
24 party going on?

25 A No.

1 Q Was there a get-together of some sort?
2 A Yes. Just a -- a gathering. That was it.
3 Q Okay. It was a gathering. Who was at the gathering?
4 A Maria Barajas, and Elena, and David Azucena was there. Lorena
5 Garcia, Veronica Alvarez, and Carlos, Veronica Alvarez's husband, and my
6 husband.
7 Q Whose house were you hanging out at?
8 A At Maria Barajas'.
9 Q Publishing again 35; so we're talking about House No. 5, over here?
10 A Yes.
11 Q Where were you -- where were your kids? What were they doing?
12 A Playing in the front of the area, the little area.
13 Q Okay. So that --
14 A In front of the area.
15 Q That included your daughters?
16 A Yes.
17 Q Did that include Yezline?
18 A Yes.
19 Q And would sometimes they kind of run around and -- and just do stuff
20 while the adults hung out?
21 A Yes.
22 Q All right. I want to turn your attention to October 16th, 2016.
23 A Yes.
24 Q What do you remember first happening about that day that sticks out in
25 your mind?

1 A We were just walking around with my husband, and I stopped at David
2 Azucena's house, and he told me, he said, I want to take to girls to Chuck E.
3 Cheese today. Today, Sunday.

4 I said, No, because Sundays are for my husband. They have to
5 spend time with the father.

6 He said, Okay. Whenever you want to.

7 And I said, If you want to, we'll take them Saturday.

8 And he made a face like this, hmm. Of course. We will take
9 them.

10 Q And when you said we, who did you mean that included?

11 A Take the girls, myself, and [indiscernible].

12 Q Okay. So --

13 A And he said Elena was going to go with him.

14 Q Okay. So what happens next?

15 A Later on, I was at Maria Barajas' home, and my girls arrived there,
16 because they were at Yusnay's, because they were -- they were -- Grandpa, my
17 father. Then my father left, and the girls stayed there talking to Yusnay. Then they
18 went to Maria's house. They started to eat. They were at the table and they were
19 crying and saying, You tell her. No, you tell her.

20 Then Maria entered. The girls told you, We don't want to go with
21 Grandpa to Chuck E. Cheese.

22 Q All right. Now, I wanted to stop -- I want to -- I want to just stop you
23 there, because you've given us a lot of information.

24 THE COURT INTERPRETER: Okay.

25 BY MR. HAMNER:

1 Q Republishing 35. So they're at Maria's house?
2 A Yes.
3 Q You said they were saying, You tell her. No, you tell her.
4 A Yes.
5 Q When you say the word they, which children -- give me their names --
6 are you talking about?
7 A Jatziri Moreno, Mirabel Moreno, Maradel Moreno, and Yezline Barajas.
8 Q As they are saying that, what is their mood? What is their demeanor
9 like?
10 A They were worried. They did not want to say anything.
11 Q You -- you mentioned crying; which of those four children were crying?
12 A The four of them were crying.
13 Q And that includes Yezline?
14 A Yes.
15 Q Publishing State's 1; is that who -- is that Yezline?
16 A Yes.
17 Q Okay. So you tell them. No, you tell them.
18 What happens next?
19 A Maria entered their place, and they said, Esther, we don't want to go to
20 Grandpa to Chuck E. Cheese.
21 Q And when you hear that term grandpa, who did you believe they were
22 referring to? I know they have real grandparents.
23 A Yes. Yes. David. Because they called David *abuelo*, Grandpa. And
24 my father, they call him Dada.
25 Q Oh. Okay. So --

1 MR. WESTBROOK: Your Honor, before we go any further, I just
2 wanted to make sure that, with reference to this witness, my prior hearsay
3 objections are preserved.

4 THE COURT: 51.385 objections?

5 MR. WESTBROOK: Yes, Your Honor.

6 THE COURT: Those are preserved.

7 MR. WESTBROOK: Thank you.

8 BY MR. HAMNER:

9 Q So you're believing they're referring to the defendant.

10 So what happens next?

11 A And Maria waved at me, and she said, Come, come.

12 And I said, What's going on?

13 Don David is touching the girls.

14 Q That's what Maria told you?

15 A Yes.

16 Q I want to stop you there.

17 What -- what is Maria's demeanor look like? What's her mood
18 look like as she's telling you that?

19 A She turned red.

20 Q Okay. So when you hear that, Amanda, what do you do?

21 A I got up fast, and I said, Get out and let me talk to them.

22 Q Okay. So do people leave so you can talk to the children?

23 A Yes.

24 Q Okay. When you speak to the children, which of these four children do
25 you speak to?

1 A With the four of them, Jatziri was the first one.

2 Q Okay. So when you say the four of them, are you referring to the twins,

3 Jatziri, and Yezline?

4 A Yes.

5 Q All right. You said Jatziri was the first one to talk; is that right?

6 A Yes.

7 Q Tell this jury what Jatziri says to you.

8 A I said, Mama, what's going on?

9 And she said, Ma, Grandfather is touching me.

10 Q I want to publish State's 5; who is that?

11 A Jatziri.

12 Q And this is the one who's telling you this?

13 A Yes.

14 Q Does she explain to you on what part of her body he is touching her

15 on?

16 A Yes.

17 Q What part of her body did she say he touched?

18 A Her vagina.

19 Q Okay. Does she make any physical gestures with her hands or is it

20 only verbal?

21 A Yes, she did -- she did move her hands.

22 Q Show me. Show us, if you can. Can you demonstrate how she was

23 using her hands?

24 THE COURT INTERPRETER: Can you please repeat the question?

25 MR. HAMNER: Sure.

1 BY MR. HAMNER:

2 Q Can you demonstrate with your hands how your daughter used her
3 hand to show you that he was touching her there?

4 A Yes.

5 Q Please.

6 A She said he was touching her like this.

7 MR. HAMNER: Let the record reflect the witness stood up, she took
8 her right hand, placed it on her vaginal area, and impressed.

9 BY MR. HAMNER:

10 Q Okay. Did she explain to you --

11 You can sit down now, Amanda.

12 Did she -- did Jatziri explain to you why she did not want to go to
13 Chuck E. Cheese?

14 A Yes.

15 Q What did she say?

16 A She said, I don't want to go to Chuck E. Cheese, because he said that
17 when we go there, he was going to take us to a place that's far and beautiful, and I
18 don't want to go, because I will never see you again.

19 Q And when she's telling you this, what is her demeanor like?

20 A My daughter was crying.

21 Q When you hear this, what's the next thing you ask your daughter?

22 A And I asked her, What else does he do to you, honey?

23 And she says, He kisses me on my mouth.

24 Q Okay. Did you ever ask Jatziri why she hadn't said something to you
25 earlier?

1 A Yes.

2 Q And what did Jatziri tell you?

3 A And I said, Honey, why didn't you say anything to me?

4 And she said, No, because he's going to kill you and my dad.

5 And I said, He's not going to kill anybody.

6 And she said, Yes, he said so. And he says that when he calls

7 us to come to him and he offers candy, we don't have to get the candy, something

8 is going to happen to us also. I don't want him to kill us.

9 Q Okay. Did you speak to your daughter, Mirabel?

10 A Yes.

11 Q What was her demeanor like when she talked to you at this time?

12 A She was afraid of talking and she was crying.

13 Q Okay. Showing State's 11; who's this?

14 A Mirabel.

15 Q You mentioned that Jatziri said he touched her on her vagina. And let

16 me ask you -- let me stop for one second. I want to go back to Jatziri.

17 THE COURT INTERPRETER: I need you to repeat the question,

18 please.

19 MR. HAMNER: I want to scratch the question.

20 THE COURT INTERPRETER: Okay.

21 BY MR. HAMNER:

22 Q I want to talk about Jatziri for one more thing.

23 What is the word that Jatziri used to describe her vagina?

24 A *Paparucha* [phonetic].

25 Q Okay. Now, I want to talk about -- and let me ask you this because I

1 don't speak Spanish. What does *paparucha* mean?

2 MS. KIERNY: I'm going to object. I think that would be asking the
3 interpreter what that means.

4 MR. HAMNER: Well, I'm asking for clarification. I'm asking the witness
5 to say what she thinks it means, and then the translator will translate.

6 THE COURT: I'll allow that. That's fine. Overruled.

7 MS. KIERNY: He just asked what word she uses for her vagina.

8 THE COURT: Just let --

9 MS. KIERNY: Okay.

10 MR. HAMNER: Okay. You're --

11 THE COURT: Overruled.

12 MR. HAMNER: You're right. It's okay. She -- she is correct. I can
13 move on. It's fine. It's okay. I can move on.

14 THE COURT: All right.

15 BY MR. HAMNER:

16 Q Let's go back to -- to Mirabel.

17 You said Jatziri said he had touched her on her vagina.

18 A Yes.

19 Q What did Mirabel say about Don David?

20 A She said, He touched my -- my thing. He touched me hard. And I told
21 him, No, don't touch me, because that was bad.

22 Then, he said that that was bad if I wouldn't allow -- if I wouldn't
23 allow him.

24 And he said -- David said, Shut up. It's not bad.

25 Q Okay. You said that when Mirabel talked about that touching, she used

1 the word the thing?

2 A Yes.

3 Q What did you understand the word the thing referring to?

4 A Her vagina. Because she was touching herself.

5 Q Okay. And when you say she was touching yourself, are you saying
6 that she was touching herself as when she was talking to you?

7 A Yes.

8 Q Can you demonstrate for us how Mirabel showed you with her hands
9 what he was doing?

10 A Yes.

11 Q Please stand up and -- and demonstrate for the...

12 A He said -- he touched my *kosa*, like this.

13 Q Okay. Sit down. Thank you.

14 MR. HAMNER: And let the record reflect the witness stood up, she
15 took her right hand, placed it on her vagina, and pressed.

16 Q What is Mirabel's demeanor when she is telling you these things?

17 THE COURT INTERPRETER: I'm sorry, Counsel. I lost the last part of
18 the --

19 BY MR. HAMNER:

20 Q What is Mirabel's demeanor as she is telling you these things?

21 A She was nervous and she was crying.

22 Q I want to talk about Maradel.

23 A Okay.

24 Q What is her demeanor like?

25 A Nervous and crying.

1 Q Publishing State's 14; who is that?

2 A Maradel.

3 Q What did she say about Don David?

4 A She said that he was touching her *kosa*, the vagina.

5 Q Okay. And did she use the word the thing, or did she use the word
6 vagina?

7 A The thing. And she told him, No, don't touch me. You have your wife.
8 No.

9 And he said, I don't like that -- I don't love that crazy woman.
10 You are my little girlfriends.

11 Q When -- you've demonstrated to us twice how your first two daughters
12 showed you with their hands how he touched her -- them.

13 A Yes.

14 Q Did Maradel demonstrate with her hands at all?

15 A Yes.

16 Q Was it the same way or something different?

17 A The same way.

18 Q I want to talk to you about Yezline.

19 What is her demeanor at this time?

20 MS. KIERNY: Your Honor, may we approach? I apologize.

21 THE COURT: Okay. Sure.

22 [Bench conference transcribed as follows.]

23 MS. KIERNY: At the 51.385 -- I imagine he's going to be bringing
24 in 51.385 material; is that correct?

25 MR. HAMNER: I guess so.

1 MS. KOLLINS: I didn't hear the beginning.

2 MS. KIERNY: If he's going to get in with Yezline, they only offered
3 Maria as to Yezline.

4 MR. HAMNER: That's not correct.

5 THE COURT: No. I have -- I have notes right here about what Yezline
6 said on the matters on the [indiscernible]. These are my notes on the 51.385
7 [indiscernible].

8 MS. KIERNY: I know she was noticed for them, and I wrote you know
9 what it was granted as -- but -- and maybe I'm incorrect, but the record will show it.

10 THE COURT: [Indiscernible.]

11 MS. KIERNY: But what I'm saying is the State, within their argument,
12 said that they were only offering the testimony of Maria Barajas as to Yezline.

13 THE COURT: I think you're mistaken.

14 MS. KIERNY: Okay.

15 THE COURT: [Indiscernible.]

16 MS. KIERNY: Okay. Thank you.

17 MR. WESTBROOK: Your Honor, I have the notes right here.

18 THE COURT: I -- I'm going to look at my notes. That's okay. But
19 thank you.

20 [End of bench conference.]

21 THE COURT: Okay. Go ahead.

22 BY MR. HAMNER:

23 Q Publishing State's 2; who is that?

24 A Yezline Barajas.

25 Q What is Yezline's demeanor at this time?

1 A Nervous and crying.

2 Q And what does she say about Don David?

3 A She said, He is touching me, also.

4 Q Okay. Did she indicate what part of her body was touched by Don

5 David?

6 A Yes.

7 Q What part?

8 A Her vagina.

9 Q What word did she use to describe the vagina?

10 A That he was also touching her, and she touched herself.

11 Q Okay. And when you say he touched -- she touched herself, was that

12 in describing to you what he did to her?

13 A Yes.

14 Q Okay. Did she mention anything about her wrists?

15 A When I started asking more questions, she said that he would secretly

16 go in the bathroom, and he would tie down her -- her hands and also kiss her in her

17 mouth.

18 Q Okay. And when you say the bathroom, did she indicate to you what

19 residence she was in the bathroom of?

20 A At David Azucena's house.

21 Q Did any of the children mention his private part?

22 A Yes.

23 Q Tell us what they said, or -- and if you can, specify which kid, but tell us

24 what -- what you heard from the kid.

25 A Jatziri said that he would stand close to the door by the living room and

1 that he would pull down his pants where his -- the penis is, and he would show it to
2 them. Sometimes it was in -- in the couch, and -- and he would kind of slouch
3 down, pull his pants you know, and he would show them the penis.

4 That he would cut watermelon or strawberries, and he would ask
5 them, Would you like some?

6 Yes, we would.

7 That he used the piece of -- of it, and he will juice it around his
8 penis. And then, he would say to the girls, Now eat it.

9 They went -- they went out and they would throw it away. They
10 said, I'm not going to eat it, because he passed it around his tail.

11 Q Okay. Did they indicate they took the fruit, but not eat it?

12 A Uh-huh.

13 Q Okay. What did they say about candy, if anything?

14 A About the candy, it was the same thing, pull down his pants and rub --
15 rub his penis and then say, Eat it.

16 Q Okay. Did they indicate whether or not they took the candy?

17 A Yes. But they would throw it away.

18 Q Which children told you about that?

19 A Maradel Moreno said -- said -- Mirabel Moreno, and Jatziri Moreno told
20 me that.

21 Q What did -- who -- which children told you about showing his thing?
22 How many children told you that?

23 A Four.

24 Q And -- and by four, you mean your three children, plus Yezline?

25 A Yes.

1 Q Okay. Did they ever talk about his phone at all?

2 A Them? The girls?

3 Q Yeah. Talk about --

4 A Yes.

5 Q What did they tell you about that?

6 A That he showed them the porno videos.

7 Q Okay. What did Jatziri say about that?

8 A She said -- Grandpa -- Grandpa -- Grandpa is showing me pictures,
9 videos where the people are getting married.

10 And I asked her, So what do you mean that they're getting
11 married?

12 And she said, The woman has no bra, no underwear, and the
13 guy doesn't have one either. And then, they lie down and the guy gets -- gets on
14 top of the girl -- the woman, and they're getting married. And one day the woman
15 was eating the thing of the man.

16 Q Okay. What did Mirabel tell you about that, if anything?

17 A Mirabel told me that she was looking at bad things on Grandpa's phone.

18 Q Okay. What about Maradel?

19 A Maradel said, if you'll excuse my language, My grandpa is showing us
20 stupid things.

21 Q Did Yezline say anything about this topic?

22 A No.

23 Q Okay. Did the children ever talk to you about things, about whether
24 David said it was okay to talk to you about these things?

25 THE COURT INTERPRETER: Please repeat the question for the

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1 interpreter.

2 MR. HAMNER: Sure.

3 BY MR. HAMNER:

4 Q Did the children ever tell you about whether or not David told the
5 children that it would be okay to talk about these things with their parents?

6 MR. WESTBROOK: Your Honor -- objection, Your Honor. That's
7 leading.

8 MR. HAMNER: It doesn't suggest the answer.

9 THE COURT: Overruled.

10 THE WITNESS: No.

11 BY MR. HAMNER:

12 Q Okay. Let me ask you this, were -- did he ever say anything might
13 happen -- did you ever -- let's scratch all that.

14 Let's start with Jatziri; did she tell you what might happen if she
15 told you about these things?

16 A Yes.

17 MR. WESTBROOK: Objection. Leading.

18 THE COURT: Overruled.

19 THE WITNESS: She said that -- yes. They told me that if Jatziri would
20 say anything to me or to her dad, that -- that something bad is going to happen to
21 us.

22 BY MR. HAMNER:

23 Q Who told her that?

24 A David.

25 Q Did Mirabel say anything like that to you?

1 A Yes. That's why they didn't want to say anything.

2 Q And, again, who told her that?

3 A David.

4 Q How about Maradel?

5 A Also said that he was going to kill us.

6 Q Okay. What about Yezline?

7 A Yezline, no.

8 Q Okay. I want to talk about Yusnay for a moment. Were you super

9 close with Yusnay around that time?

10 A No.

11 Q Okay. Tell the jury about how much you really interacted with Yusnay

12 around that time.

13 A I did not just spend time. The only thing would be was say hi,

14 greetings.

15 Q Okay. At that time, who would you have considered closer friends, the

16 Azucenas or Yusnay Rodriguez?

17 A The Azucenas.

18 Q Did the children tell you they had a conversation with Yusnay?

19 A Yes.

20 Q When did they tell you they talked to her?

21 A On October 16.

22 Q Well, on October 16th, you said you heard about all of these things

23 from your children. Did they say they had a conversation with Yusnay the same

24 day they told you or a different day?

25 A No. That same day.

1 Q Okay. Did they tell you why they went to talk to Yusnay?

2 A Because nothing would happen to her and to us. Yes.

3 Q Okay. Why?

4 A Because if they would tell us, David was going to kill us.

5 And they talked to the woman, the -- the Cuban woman, which is
6 Yusnay. They wouldn't kill her -- he wouldn't kill her, because he did not mention
7 Yusnay's name.

8 Q Okay. Now, who told you that? Of those children, those four children,
9 who told you that?

10 A Jatziri.

11 Q Did any of the other children tell you that, or was it just Jatziri?

12 A Maradel.

13 Q Okay. Now, after you learn all of this at Maria's house, do you continue
14 to stay at Maria's house or do you do something different?

15 A I went to my house and I started to talk to them there.

16 Q Because you went to your house?

17 A Yes. Because I went to make sure what they were telling me, and I
18 wanted to get all kinds of details.

19 Q Okay. And let me ask you this, when they were telling you this -- let's
20 just do the ages -- how old was Jatziri when she was telling you about this stuff in
21 October?

22 A Nine.

23 Q Okay. How old were the twins?

24 A Eight.

25 Q Okay. And do you know -- I don't know if you know, but do you know

1 how old Yezline was around that time?

2 A Seven.

3 Q Did they tell you around how old they were when he was doing these
4 things?

5 THE COURT INTERPRETER: Please repeat the question for the
6 interpreter.

7 MR. HAMNER: Sure.

8 BY MR. HAMNER:

9 Q Did the -- did your children tell you how old they were when this was
10 happening to them?

11 A No.

12 Q Okay. So you went home?

13 A Yes.

14 Q And did you speak to your daughters a second time at your house?

15 A Yes.

16 Q Okay. When you spoke with them, were you alone, or were there other
17 people with you?

18 A My husband was there.

19 Q Okay. Was your husband present for the conversation?

20 A Yes.

21 Q Did he ask any questions?

22 A No. He was only listening.

23 Q Okay. Did you speak to them together as group, or did you speak to
24 them one at a time?

25 A In a group.

1 Q Okay. When you talked to them, did they tell you similar things to what
2 you've just told us?

3 A Yes.

4 MR. HAMNER: Court's indulgence.

5 Your Honor, can we just briefly approach?

6 THE COURT: Sure.

7 [Bench conference transcribed as follows.]

8 MR. HAMNER: I still have some more stuff, but I thought it might be a
9 good stopping point if that'd be all right to take.

10 THE COURT: How much more time do you think you'll need?

11 MR. HAMNER: Maybe 20, 30 minutes.

12 THE COURT: Yeah. It'd be a good time to stop.

13 MR. WESTBROOK: My bladder hurts.

14 THE COURT: Okay. Right. We'll take an hour, then.

15 MR. HAMNER: That works great.

16 THE COURT: Just the normal hour. Okay.

17 MR. HAMNER: Thank you so much.

18 [End of bench conference.]

19 THE COURT: All right. We're going to take a break now for lunch. All
20 right.

21 Ladies and gentlemen, I'm going to give you an hour lunch break
22 now. So we'll -- we'll be back at -- I want you back outside the courtroom at 1:40.

23 And the admonishment I gave you before applies, so let me go
24 ahead and summarize it again.

25 You're not to communicate among yourselves or with anyone

1 else about the trial, the subject of the trial; don't communicate with any of the
2 parties, attorneys, or witnesses about the trial or anything and don't seek or obtain
3 any information or comments about the case from any source; don't read, watch, or
4 listen to any recording about the case; don't form or express any opinion on any
5 subject connected with the trial; don't do any research; don't do any independent
6 investigation.

7 And return in an hour. All right. Thank you very much. Leave
8 your notes.

9 [Jury recessed at 12:37 p.m.]

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

11 Ms. Moiza, you may step down. Please do not discuss your
12 testimony with anybody during your lunch break. Okay? Thank you. Be back here
13 at 1:40.

14 All right. Anything else to put on the record before we resume?

15 MR. WESTBROOK: Nothing here.

16 THE COURT: All right. See you back in an hour.

17 MR. HAMNER: Thank you.

18 THE COURT: Who is your next witness going to be?

19 MR. HAMNER: Maria Barajas.

20 THE COURT: All right. Thank you. Court's in recess.

21 [Court recessed at 12:38 p.m., until 01:44 p.m.]

22 [Outside the presence of the jury.]

23 THE COURT: All right. Are we all set to bring the jurors in?

24 THE MARSHAL: Yes, sir.

25 MR. WESTBROOK: We have one brief record, Your Honor.

1 THE COURT: All right. Go ahead.

2 MR. WESTBROOK: Your Honor, this -- this relates to my
3 original 51.385 analysis and argument. But I -- I just want to make it very clear,
4 especially in light of what we've seen already from this witness and even from
5 Yusnay, the first witness here today.

6 What's happening here is we are getting cumulative hearsay.
7 It's -- it's not just the hearsay -- well, for starters, I wasn't sure exactly which
8 hearsay was being admitted. That was one of my objections earlier. But what I've
9 heard today is the same thing being repeated over and over again, and I'll give you
10 an example.

11 We just heard what she says the kids told her. Now we're going
12 to hear what she says the kids told her with her husband present, which was never
13 a topic during our 51.385 hearing. And that's just an example of the kind of stuff
14 that's been going on.

15 I just wanted to cite to *Felix*, again, 109 Nev. 151, 199 versus --
16 versus -- 199 through 203. It says our --

17 THE COURT: I'm sorry. I want to make sure I understand the cite.
18 Say the cite again?

19 MR. WESTBROOK: *Felix v. State*, 109 Nev. 151. And, specifically, I
20 am going to 199 and 200.

21 THE COURT: Wait, what's --

22 MR. WESTBROOK: And I'll read the cite.

23 THE COURT: Wait. Wait. Can -- I'm still having trouble
24 understanding.

25 MR. WESTBROOK: It supports what I'm telling you.

1 THE COURT: No, no. I'm -- I'm having -- I'm having trouble
2 understanding your cite. Because --

3 MR. WESTBROOK: I can approach.

4 THE COURT: No.

5 MR. WESTBROOK: I -- what's -- once I read it, I think it'll -- it'll -- you'll
6 be able to understand it.

7 MS. KIERNY: Just say the cite again.

8 MR. WESTBROOK: Oh. I'm sorry. The actual -- 109 Nevada.

9 THE COURT: No, but you're saying 109 Nev. 151, and then you're
10 saying you're going to read from page 199.

11 So what is this, a 40-page opinion?

12 MR. WESTBROOK: Yeah. It's very long.

13 THE COURT: So page 199.

14 MR. WESTBROOK: Yeah. It goes all the way through 203.

15 THE COURT: Okay.

16 MR. WESTBROOK: If I recall it correctly.

17 THE COURT: She's going to go get it while you're reading it --

18 MR. WESTBROOK: Okay.

19 THE COURT: -- because I want it right here.

20 MR. WESTBROOK: Sure.

21 THE COURT: Okay. Thank you.

22 MR. WESTBROOK: Yeah. As I recall --

23 THE COURT: 109 Nev. 151.

24 MR. WESTBROOK: It is actually one of the longest opinions in Nevada
25 law, I think.

1 THE COURT: So on page 199. Okay.

2 So what does it say?

3 MR. WESTBROOK: Yeah. So we're on 199 and 200. And again, I'm
4 looking at Westlaw page numbers here. But -- so I guess there's a possibility that
5 it's the P.2nd page number I'm looking at, but I'll make it all clear.

6 MS. KOLLINS: No. Just for the record, it is the *Nevada Reporter*,
7 Page No. 199.

8 MR. WESTBROOK: Yeah.

9 MS. KOLLINS: The P.2nd page numbers start substantially lower, so
10 go --

11 THE COURT: Okay.

12 MR. WESTBROOK: That's what I thought. Okay.

13 So it says:

14 The admission of hearsay accusations pursuant to NRS 51.385
15 requires additional consideration of how such hearsay testimony interfaces with our
16 rules generally prohibiting the admission of prior consistent statements,
17 prohibiting --

18 And then we switch to page 200 --

19 THE COURT: All right.

20 MR. WESTBROOK: -- the admission of cumulative evidence,
21 prohibiting one witness from vouching for the testimony of another witness, and
22 permitting the district judge to exercise discretion in ruling evidence inadmissible
23 when its probative value is outweighed by its potentially prejudicial effect.

24 I -- I made the -- the argument about vouching and cumulative
25 evidence before.

1 THE COURT: Yes.

2 MR. WESTBROOK: What we're seeing here is the effect of that.
3 We've had, essentially, what amounts to a general admission of all this hearsay,
4 and it's being repeated over and over again. It will be repeated again by Maria, the
5 next witness. It'll be repeated to some extent by the kids. There'll be
6 inconsistencies, which we'll talk about.

7 But the point is this cumulative effect is going to prejudice the
8 jury. That's been my objection from the beginning, or at least part of it, and we're
9 seeing it play out right here.

10 The second citation, which is also down the page on 200, I
11 believe -- yeah -- is:

12 To harmonize NRS 51.385 and its laudable purpose with the
13 seemingly conflicting provisions of Nevada law, the receipt of hearsay
14 statements pursuant to the statute should not be completely open-ended.

15 And I think what we're seeing here is open-ended admission of
16 hearsay.

17 MS. KOLLINS: Well --

18 THE COURT: Let's -- so let's have a response. Who wants to respond
19 on the State's side?

20 MS. KOLLINS: I do, Your Honor.

21 THE COURT: Okay.

22 MS. KOLLINS: First and foremost, the paragraph Mr. Westbrook reads
23 from talks about violation of the confrontation clause. Those things that he speaks
24 of are considerations to be taken.

25 However, he highlights the importance of what he is alleging to

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1 be cumulative effect here. There's been no cumulative effect here.

2 What you have initially is the first outcry witness, which is
3 Yusnay, the first person that these children go to and give a disclosure. And then
4 you have the mother, who speaks to them and is trying to elicit enough information
5 so that she knows what happened, so she can protect her kids and make a
6 decision to go to law enforcement.

7 If we had 20 people coming in here and discussing and
8 articulating everything these kids have disclosed from, you know, counselors to
9 detectives to little friends to other neighbors, I might agree with his cumulative
10 analysis.

11 But to argue that it's cumulative on the second witness, that's --
12 that's not what this was designed for, and I don't think that gives a fair analysis to
13 what we've seen in here.

14 Again, if we had 10, 15 people walking in here and discussing
15 what these children have spoke about, then I might say, You know, the State's got
16 enough. But that's -- we haven't even broached that in here. We're talking about
17 the very inception of -- of disclosures and outcries by small kids. You know, and we
18 have to take into consideration their age.

19 And the rest of the analysis, you know, while what's been
20 highlighted here is the cumulative nature, the rest of the analysis talks about
21 prohibiting witnesses from vouching for the testimony of one another in how 51.385
22 interfaces with hearsay evidence in general.

23 And I'm looking at the same paragraph Mr. Westbrook was
24 reading from. It looks to be in the middle of page 199, and it's under the head note
25 Cumulative Error. So if you read that whole paragraph, there still does have to be a

1 weighing of probative versus prejudicial, if -- but I think the court's already done that
2 in its ruling yesterday. Plus, the kids are testifying.

3 Moreover, Your Honor, subject to connecting up -- similar to the
4 issue we had with Yusnay, these are going to also be prior consistent and prior
5 inconsistent statements, because if you note, defense counsel's entire opening
6 was, All you have is words, All you have is words, and all the reasons that everyone
7 was disingenuous. So subject to connecting up as prior consistent and inconsistent
8 statements, they would also come in as to other hearsay exceptions.

9 So I think cumulative objection at this juncture is premature. I
10 don't think we've gotten there.

11 Is there anything else I can cover?

12 THE COURT: No. I'm not prepared to say it's cumulative at this point,
13 but I think Mr. Westbrook was suggesting it's going to become cumulative,
14 because -- well, I think he said it's already cumulative. But -- but he's anticipating
15 more of the same hearsay statements based upon the evidence you're hearing
16 on 51.385. He knows where you're going. You're going to have four different
17 witnesses that are all going to talk about, you know, the same things.

18 MS. KOLLINS: Well, and -- and I understand from a defense
19 perspective why the label cumulative would be laid out there. But what you have to
20 understand is when -- not you, just a proverbial you, I'm not being condescending.

21 THE COURT: That's fine.

22 MS. KOLLINS: What needs to be understood is that -- that these are
23 children that are going to be attacked on their consistency. And it's also our burden
24 of proof.

25 So to show that these kids have been able to relay through --

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1 from their initial disclosure through their interviews some at least salient, detailed
2 consistency with their bigger details, that's an important part of our burden of proof.

3 THE COURT: So -- yeah. So, I mean, basically, one of the reasons
4 why I determined that you had met your burden under 51.385 is because there
5 was, I guess the word is corroborating evidence from several witnesses about what
6 the children said, which in my view enhanced the probable reliability of their
7 testimony.

8 And I think it's important for the jury to hear what it is that these
9 children reported to more than one -- one person in order to better assess the
10 credibility of the statements.

11 I don't think that it's unduly cumulative by having two, three, or
12 maybe even four people that are reporting the hearsay statements of the children
13 and different combinations of children and at different periods of times and different
14 statements made to them. I just don't see that as being cumulative. All right.

15 So I'm not prepared at this point to -- to grant your motion. You
16 can certainly renew it at a later point in time.

17 MR. WESTBROOK: Fine, Your Honor.

18 THE COURT: But I do think -- and I did consider this -- I do think that
19 the, you know, the probative value of some of this cumulative corroborating
20 testimony outweighs the prejudicial impact. And I -- I do understand that you have
21 the ability to cross-examine as to any inconsistencies in those statements.

22 And -- and because of your right to do that and because I'm not
23 going to interfere with your ability to do that, I think that that, you know, mitigates
24 any prejudice. So on balance, the probative value exceeds any undue -- unfair
25 prejudice.

1 MR. WESTBROOK: Thank you, Your Honor.

2 THE COURT: Your objection is noted, and I think we can move
3 forward.

4 But thank you for, you know, your explanation in -- of the *Felix*
5 case.

6 MR. WESTBROOK: Thank you, Your Honor. And just to make my
7 record clear --

8 THE COURT: Yes.

9 MR. WESTBROOK: -- I would say it's already, as you said, too
10 prejudicial. It's already cumulative. The jury has already been prejudiced. I would
11 move for a mistrial. You have indicated that you would deny that mistrial. I respect
12 your decision, and I'm ready to go.

13 THE COURT: Excellent. Thank you, sir.

14 MR. HAMNER: I'm ready to bring in the jury, Your Honor.

15 THE COURT: Let's bring the jury in.

16 MR. HAMNER: Thank you very much.

17 [Jury reconvened at 1:57 p.m.]

18 THE COURT: All right. Please be seated, everybody.

19 Let's have the State call its next witness.

20 MR. HAMNER: The State's going to recall Amanda Moiza to the stand.

21 THE COURT: Yes. Amanda Moiza? Oh, right, right, right.

22 Please be seated. You're still under oath. Do you understand?

23 THE WITNESS: Yes.

24 THE COURT: All right. You may proceed.

25 MR. HAMNER: Thank you.

1 **DIRECT EXAMINATION (CONT.)**

2 BY MR. HAMNER:

3 Q I want to touch on a couple of topics with respect to your twins.

4 Did any of them ever discuss McDonald's at all?

5 A Yes.

6 Q Which twin? Or both? Or you tell me who talked about McDonald's?

7 A Both.

8 Q Okay. What did you -- tell us about that.

9 A David Azucena invited them to McDonald's. Well, David took them to
10 McDonald's and Brian Santiago was with them, too, and he got out first.

11 And then -- so they make all the boys get out first. And then at
12 last the girls got out. And when they did, he grabbed them and touched them.

13 Q On what part of their body?

14 A On their buttocks.

15 Q When you were having these conversations with these four girls -- your
16 three daughters and Yezline -- what language was the conversation held in?

17 A Spanish.

18 Q Did anyone discuss a 99 Cents store?

19 A Yes.

20 Q Tell me who -- who discussed a 99 Cents store?

21 A My three girls and Yezline.

22 Q Tell us about the 99 Cents store.

23 A He took them there to buy candy and chocolates and a coloring book
24 and crayons, pencils -- color pencils.

25 Q Anything else happen?

1 A He touched them there, too.

2 Q Okay. What part of their body?

3 A Also buttocks.

4 Q You were -- I want to go back to Yezline for one moment. You talked
5 about when she talked about David touching her vagina, she gestured and she
6 said, He touched me there; do you remember telling us that previously?

7 A Yes.

8 Q Just a clarification, did she ever use a word to describe her vagina?

9 THE COURT INTERPRETER: I'm sorry, Counsel. Did she ever? Or
10 did you --

11 BY MR. HAMNER:

12 Q Did Yezline, when she talked to you, talking about this time, use a word
13 to describe her vagina?

14 A The thing.

15 Q The thing. But you mentioned that you -- you had another conversation
16 at home with your kids alone, not with Yezline; is that right?

17 A Yes.

18 Q And were the things you've already told us about the things you
19 discussed in this second conversation?

20 A Yes. But they came up with other things, too.

21 MR. HAMNER: Court's indulgence.

22 BY MR. HAMNER:

23 Q All right. We'll -- we'll -- I want to move on for a moment.

24 When did you -- did you -- well, let's -- did you ever speak with
25 Yusnay?

1 A Yes. On October 17th.

2 Q Okay. So the next day, you went and spoke to her?

3 A Yes.

4 Q All right. Was it the day you heard from your kids about Chuck E.
5 Cheese or a different day?

6 A It was a different day.

7 Q Okay. Where did you go? Where --

8 A The day I spoke with her?

9 Q Yes.

10 A To the police.

11 Q Okay. Well, let me -- let me ask you this. When you spoke with
12 Yusnay, where did you speak to her?

13 A At her house. I went to her house.

14 Q Okay. And at the time that you went to her house, what was your mood
15 like at that time?

16 A I hadn't slept at all. I had spent the whole night crying.

17 Q And so you went to speak to her; and where did you? Speak, inside of
18 her house? Outside of her house? Where did you guys talk?

19 A Inside her house.

20 Q Okay. And did you kind of discuss the things that your daughter shared
21 with you, as well as Yezline?

22 A Yes.

23 Q And without getting into specific statements, did Yezline -- or did
24 Yusnay share with you things that those same children told her?

25 THE COURT INTERPRETER: I'm sorry, counsel. Could you repeat

1 that question again?

2 MR. HAMNER: Sure.

3 BY MR. HAMNER:

4 Q I don't want to get into any specific statements, but did Yusnay also talk
5 to you about things that those girls told her?

6 A Yes.

7 Q You said that on October 16th your children tell you what happened
8 with the defendant; when do you go to the police?

9 A On the 17th.

10 Q Okay. Where do you go; do you remember?

11 A I went to -- I don't know the name of it, but it was between Pecos and
12 Bonanza.

13 Q Okay. When you were there, did you speak to a detective or did you
14 speak to a police officer? Who did you remember speaking to?

15 A With a detective.

16 Q Okay. And did you -- did you -- tell us how you kind of told them what
17 happened; was it a question/answer, did you just tell them a story? How did you
18 describe it to the detective?

19 A I told him the story, and then there were questions and answers.

20 Q Okay. Who went with you to this -- this building on Bonanza and
21 Pecos?

22 A Maria Barajas, and Jatziri, Maradel, Mirabel, and Yezline.

23 Q Okay. After speaking with the police on the 17th, do you ever go and
24 have your daughters medically examined?

25 A Yes.

1 Q How many days or weeks later is that?
2 A Like, two weeks.
3 Q Okay. Did they meet with a doctor at that time?
4 A Yes.
5 Q Do you go back to that building a second time, the building on Bonanza
6 and Pecos, for your daughters to conduct interviews?
7 A Yes.
8 Q Okay. And at that time, do you do interviews or is it just your children?
9 A Me, too.
10 Q Okay. And -- and who do you speak with the second time?
11 A With Detective Campbell.
12 Q Okay. When -- after speaking with Detective Campbell and -- and after
13 doing interviews, do you ever have a conversation with Ricardo Rangel?
14 A Yes.
15 Q When does that happen?
16 THE COURT INTERPRETER: I'm sorry -- I'm sorry, counsel, where or
17 when?
18 BY MR. HAMNER:
19 Q When does that happen in relation to your children telling you about
20 what happened with David on October 16th?
21 A Like, a week later.
22 Q So a week -- sometime a week after October 16th?
23 A October 17th.
24 Q Oh. A week after that? A week after October 17th?
25 A Yes.

1 Q What do you -- what do you say to him?

2 MS. KIERNY: I'm going to object as to hearsay.

3 MR. HAMNER: It's not being offered for the truth with the effect on the
4 listener.

5 THE COURT: The effect on Mr. Rangel? I'll allow it. Overruled.

6 BY MR. HAMNER:

7 Q What do you -- what do you say to him?

8 A He would look at me, sad, and he was saying, Something's wrong with
9 you.

10 And I told him, Yes. Honestly, I have a very big problem with my
11 daughters, and I'm going to tell you about it, because I -- maybe your daughter --
12 your daughter is also included in what happened with my daughters.

13 Q Okay. And so you -- you --

14 THE COURT: So we don't need to hear the details of what she told
15 him --

16 MR. HAMNER: Correct.

17 THE COURT: -- right?

18 MR. HAMNER: No, we don't.

19 THE COURT: So let's move on from that. Okay.

20 MR. HAMNER: Okay.

21 BY MR. HAMNER:

22 Q But sometime about a week later, you -- you kind of tell your story to
23 Mr. Rangel; is that right?

24 A Yes.

25 Q I want to go back to the day that you reported the defendant to the

1 authorities, on October 17th, 2016; did -- did you see the defendant after that day
2 on the apartment complex grounds?

3 A Yes.

4 Q Okay. So you saw him the day you reported. How about the next day;
5 did you see him then?

6 A No.

7 Q How about the day after that?

8 A No.

9 Q The day after that?

10 A No.

11 Q Did you see Elena around the apartment complex?

12 A Yes.

13 Q Okay. Did several weeks go by -- how many weeks go by --

14 MR. WESTBROOK: Objection, Your Honor. This is all --

15 MR. HAMNER: I'll --

16 MR. WESTBROOK: This is all leading, I mean.

17 MR. HAMNER: It's all what?

18 MR. WESTBROOK: Leading.

19 MR. HAMNER: I'll rephrase.

20 THE COURT: Okay. Rephrase.

21 BY MR. HAMNER:

22 Q How many weeks go by -- or how much time goes by before you see
23 the defendant again?

24 A Past two weeks.

25 Q Okay.

1 MR. WESTBROOK: Your Honor, may we approach?

2 THE COURT: Yes, you may.

3 [Bench conference transcribed as follows.]

4 MR. WESTBROOK: The State is trying to paint a picture of the --

5 THE COURT: Let me turn that off.

6 MR. WESTBROOK: Sorry. The State is trying to paint a picture that
7 our client was on the run when [indiscernible] turned over a police report, I have
8 already mentioned a couple different times, clearly said that he was not under a
9 warrant for arrest when he was at his place of business.

10 That is a mischaracterization of the evidence leading to what
11 would be an inappropriate argument, which would be misconduct.

12 They note he was at his job. He works all the time. They're fully
13 aware of that, and it's in the police report.

14 MR. HAMNER: So that's --

15 THE COURT: Are you trying to paint a picture that he was on the run?

16 MR. HAMNER: I think there's evidence of flight. He never returns back
17 to the complex. I think Mr. Westbrook --

18 MR. WESTBROOK: That's too loud.

19 MR. HAMNER: I think Mr. Westbrook's making a great argument for
20 closing, but it doesn't mean that this evidence is improper, because the State's
21 interpretation of him disappearing for over a month was that he --

22 THE COURT: [Indiscernible.]

23 MR. HAMNER: Yes. [Indiscernible] prove.

24 THE COURT: [Indiscernible.]

25 MR. HAMNER: Oh, I'm sorry.

1 THE COURT: [Indiscernible.]

2 MR. HAMNER: The State believes -- that's what the State believes,
3 that he moved out of his apartment based on evidence, yes.

4 THE COURT: But he's not [indiscernible] argument, he's just
5 trying to draw out the facts. We're going to -- I mean, no one can make an
6 argument until we know what the facts are.

7 MR. WESTBROOK: That's true.

8 THE COURT: Can he ask her the facts?

9 MR. WESTBROOK: Does he have a fact -- I'm sorry to interrupt. Does
10 he have a fact witness that says that he moved out of his apartment? Because I
11 never heard that before.

12 THE COURT: Well, this is the witness, and he's trying to find out
13 [indiscernible]. Isn't that relevant to flight? I mean, because if there's enough
14 evidence -- if there's enough evidence that he did disappear, then I would imagine
15 he's going to go for a flight instruction, and you have to decide if there's enough
16 evidence.

17 So -- but how do we know if we should give the flight instruction if
18 he can't even ask the questions on the mother or his wife?

19 MR. WESTBROOK: There's a simple response to that, and it's in the
20 form of a question: Flight from what? Because there was no arrest warrant; what
21 is he fleeing from?

22 THE COURT: Well, because he's -- knows that there are these
23 allegations about him and he didn't want to be arrested. That would be --

24 MR. WESTBROOK: [Indiscernible.]

25 THE COURT: So -- so --

1 MR. WESTBROOK: I'd love to [indiscernible].

2 THE COURT: You're saying that you don't want him to establish the
3 evidence, so he can't argue it, but can he ask the -- I don't know. I guess I'm
4 having trouble understanding what the basis of your objection is. You're saying you
5 don't want him to ask the question, because he might be able to do something with
6 the evidence in closing argument, and that's not really --

7 MR. WESTBROOK: I'm sorry, Your Honor. We're getting -- we're
8 getting a little bit loud. I think they can hear us.

9 THE COURT: Oh. Okay.

10 MR. WESTBROOK: What I'm arguing is that it's a mischaracterization
11 of the evidence. And since they are -- they know there was no legal reason for him
12 not to be at his job --

13 THE COURT: I don't think it's mischaracterizing -- he's just asking the
14 question. Is -- I mean, he was trying to characterize and I would have checked
15 [indiscernible].

16 MS. KOLLINS: Well, and you're free to argue he was busy at work. I
17 mean, that's a fact --

18 THE COURT: So let's get the -- let's just find out the facts.

19 MS. KOLLINS: Subject to interpretation.

20 THE COURT: I don't want him to characterize it. Let's find out the
21 facts. When he tries to characterize it in closing, object then and we'll see if -- if
22 there's a factual predicate for it. I think it's premature.

23 MR. WESTBROOK: All right. Thank you.

24 [End of bench conference.]

25 THE COURT: All right. A lot of evidence questions.

1 So let's -- let's get going.

2 MR. HAMNER: Sure.

3 BY MR. HAMNER:

4 Q So I think you had said -- and I don't even remember what the last
5 question was. But I think you had previously stated that you hadn't seen him for a
6 couple of weeks; is that right? At -- on the apartment complex?

7 A Yes.

8 Q Do you or Maria or Mr. Rangel make an effort to try to locate David?

9 A Yes.

10 Q Tell us what you did.

11 A We went around the area of his workplace to see, to make sure he was
12 there.

13 Q Is that located at 1234 North Boulder Highway?

14 THE COURT INTERPRETER: Would you repeat the -- that address?

15 BY MR. HAMNER:

16 Q Is that located at North -- 1234 North Boulder Highway?

17 A Yes.

18 Q On November 12th, 2016, do you go to that place of work?

19 A Yes.

20 Q And who do you locate at that place of work at that time?

21 A David Azucena and Elena.

22 Q When you see they are at that place of business, what do either you or
23 Mr. Rangel or Maria do at that point?

24 A Mr. Rangel called the police.

25 Q Okay. You mentioned that you lived at the Charleston Gardens

1 apartments for eight years; how -- how long have you lived in Las Vegas?

2 A 13.

3 Q Okay. How many years have you lived in the United States?

4 A 13 years.

5 Q Were your children born in the United States?

6 A Yes.

7 Q Were you born in the United States?

8 A No.

9 Q Did you enter the country 13 years ago illegally?

10 A With a visa.

11 Q With a visa. Did you stay past your visa?

12 A Yes.

13 Q Okay. Is -- is your -- is your husband -- did your husband also stay past
14 his visa or did you guys meet here in Las Vegas?

15 A He did not come in with a visa.

16 Q Okay. So he's also undocumented at this time?

17 A Yes.

18 Q Okay. When you reported this to the police on October 17, 2016, did
19 you ask the police department about obtaining a U visa, on October 17, 2016?

20 A No.

21 Q Did you even -- did you know what a U visa was on October 17, 2016,
22 when you went to report this to the police?

23 A Yes.

24 Q Okay. You did know what it was?

25 A Yes.

1 Q Okay. But you did not ask for one?

2 A No.

3 Q Why didn't you ask the police for a U visa on the day you reported this
4 stuff involving your children?

5 A Because it mattered more to me to say about what happened to my
6 daughter instead of a visa, U visa.

7 Q Okay. Did you -- were you referred to a rape crisis counseling center
8 somewhere in Las Vegas at some point after meeting with police?

9 A Yes.

10 Q When you walked in the door, were you asking about U visas?

11 A No.

12 Q Well, why did -- what were you concerned about -- what was important
13 to you when you went into that building?

14 A For my children to have psychological assistance and counseling.

15 Q Okay. Does someone at that counseling center bring up the topic of U
16 visas during your meeting there?

17 A No.

18 Q Okay. As far as you know, no.

19 When does it get brought up to you as far as you can remember?
20 Does someone bring it up to you?

21 A Yes.

22 Q Who brought it up?

23 A Wendy.

24 Q Okay. Is that Wendy Losada?

25 THE COURT INTERPRETER: I'm sorry. Wendy Losada?

1 BY MR. HAMNER:

2 Q Wendy Losada?

3 A Yes.

4 Q Okay. Did you ask her about it or did she bring up the topic?

5 A She brought up the topic.

6 Q Okay. After that, do you go to a place called Hermandad Nacional?

7 A Yes.

8 Q Sorry. I apologize. I think it's Hermandad Mexicano Nacional?

9 A Yes.

10 Q Okay. And why did you go over there?

11 A Because Wendy sent me there.

12 Q Okay. In relation to the U visa?

13 A Yes.

14 Q Okay. Have you filed a U visa application?

15 A Yes.

16 Q Okay. When did you file that?

17 A On January 15th.

18 Q Of -- of 2017?

19 A Yes.

20 Q So three or four months after this disclosure by your children?

21 A Yes.

22 Q All right. I'm showing what's been already admitted as State's 50; does
23 this appear to be the application you filed?

24 MR. HAMNER: And I can approach if it's easier.

25 May I approach? Probably easier.

1 Q Does this appear to be your application? You can flip through it if you'd
2 like.

3 A Yes.

4 Q Okay. When you met with the officials at Hermandad, did they explain
5 to you the process?

6 A Yes.

7 Q Did they explain to you what level of protection you may have before
8 and after an application is accepted?

9 A I don't recall.

10 Q Okay. Well, let me -- let me ask you a couple other questions.

11 In the 13 years you have been living here before applying for this
12 application, had -- have there ever been removal proceedings instituted against
13 you?

14 A No.

15 Q When you first met the Azucenas eight years ago, were there any
16 removal proceedings instituted against you?

17 A No.

18 Q In October of 2016, before your children told you about what happened
19 with the defendant, were there removal proceedings being instituted against you?

20 MS. KIERNY: I'm going to object as to asked and answered. She just
21 said in the 13 years living here, no removal proceedings, so that encompasses that.

22 THE COURT: Sustained.

23 THE COURT INTERPRETER: The interpreter didn't have a chance to
24 interpret the question, even though there wasn't going to be an answer.

25 THE COURT: You may interpret and explain with his consent.

1 THE WITNESS: No.

2 BY MR. HAMNER:

3 Q Okay. Do you -- while you're -- since you've mailed in your application,
4 have you been informed whether or not it's even been accepted yet?

5 A No. I haven't sent anything.

6 Q Okay. So as far as you know, nothing's been sent in, as far as your
7 from your personal knowledge?

8 A No.

9 Q Has anyone from Hermandad Mexicano Nacional promised you any
10 sort of protection, as you sit here today, from being removed from this country?

11 A No.

12 Q And did anyone ever explain to you how long it might actually take
13 before you can receive a U visa?

14 A Like, two to three years.

15 Q Okay. And has anyone explained to you how much protection you
16 would be afforded, if any, during that waiting process?

17 MR. WESTBROOK: Objection. Objection. Asked and answered.

18 MR. HAMNER: I don't believe it has.

19 THE COURT: I'm not sure. So I'll -- I'll go ahead and allow it.

20 THE WITNESS: No.

21 BY MR. HAMNER:

22 Q I kind of want to cut to the chase here, Amanda. Did you put your
23 children up to this in order obtain a U visa for yourself?

24 A No.

25 Q Did you send your children to Yusnay Rodriguez so you could apply for

1 a U visa for yourself?

2 A No.

3 Q Did you do these things with your children in order for your husband to
4 get a U visa?

5 A No.

6 May I ask a question?

7 MR. HAMNER: No. There's --

8 MR. WESTBROOK: I would object to that, Your Honor.

9 MR. HAMNER: There is no -- you can't ask a question. I need to ask
10 you the questions.

11 BY MR. HAMNER:

12 Q Why did you go to the police? If it wasn't for a U visa, why did you go to
13 the police?

14 MR. WESTBROOK: Objection. Asked and answered. Twice, actually.

15 MR. HAMNER: I don't think that's asked and answered.

16 MR. WESTBROOK: This is cumulative.

17 THE COURT: Hold on. Don't answer.

18 Why don't you go like this? I'll allow it. It's a valid question.

19 BY MR. HAMNER:

20 Q Let me ask the question again.

21 Ms. Rodriguez -- I'm sorry. Ms. Moiza, if you did not do this for a
22 U visa, why did you go to the police?

23 A Just to be done for what -- it was done to my daughters.

24 MR. HAMNER: Court's indulgence.

25 I have no further questions at this time.

1 THE COURT: It's your turn --

2 MS. KIERNY: Thank you, Your Honor.

3 THE COURT: -- Mr. Westbrook -- oh, okay. Ms. Kierny.

4 MS. KIERNY: I do some things.

5 THE COURT: When I was a young lawyer, I -- I had questions for a --
6 or objections for a witness. Judge Porter said, You made the objections, you have
7 to do the cross-examination.

8 But we won't have that degree of formality here.

9 MR. WESTBROOK: Thank you, Your Honor. We appreciate that.

10 THE COURT: All right. Go ahead.

11 **CROSS-EXAMINATION**

12 BY MS. KIERNY:

13 Q Good afternoon, Amanda.

14 A Good afternoon.

15 Q You've lived in that apartment eight years, correct?

16 A Yes.

17 Q And Mr. Azucena and his wife lived there a little bit longer than you
18 guys, correct?

19 A Yes.

20 Q You didn't see Mr. Azucena much for the first -- or for the first few years
21 you lived there?

22 A Yes.

23 Q Because he worked a lot?

24 A No.

25 Q He doesn't work a lot?

1 A No.

2 Q All right. He doesn't work at all; is that what you're testifying to?

3 A No. He does work.

4 Q Okay. So he works -- he has a shop where he upholsters furniture,
5 right?

6 A His own business, yes.

7 Q Okay. So he has his own business, and he also sells cars?

8 A Yes.

9 Q And for a while you even worked selling -- listing some cars for him on
10 the Internet, correct?

11 A Yes.

12 Q Okay. So it's safe to say he does work?

13 A Yes.

14 Q And his wife does not work?

15 A No.

16 Q All right. So she is around more than he is?

17 A Yes.

18 Q And you would spend a lot of time with her?

19 A Yes.

20 Q Okay. You would go out to eat with her?

21 A Yes.

22 Q And you would go shopping with her?

23 A Yes.

24 Q Because David wasn't around?

25 A Yes.

1 Q He was at work?

2 A Yes.

3 Q All right. The Azucenas had dogs; right?

4 THE COURT INTERPRETER: I'm sorry, counsel?

5 BY MS. KIERNY:

6 Q The Azucenas had dogs, correct?

7 A Yes.

8 Q Four dogs?

9 A Yes.

10 MS. KIERNY: Let me grab Exhibit 21.

11 Permission to publish on the ELMO?

12 THE COURT: 21? Yes.

13 MS. KIERNY: Yes. It's already been admitted.

14 THE COURT: Yes.

15 BY MS. KIERNY:

16 Q This is the State's 21 that they showed you earlier; you can actually see
17 one of the dogs in the picture, correct?

18 A No. It's a chair.

19 Q That's a chair? Okay. But they did have four dogs?

20 A Yes.

21 Q All right. Before October of 2016, David had loaned you some money,
22 correct?

23 A No.

24 Q David had never loaned -- so is it your testimony that David never
25 loaned you money?

1 A No. He gave me.

2 Q He gave you money?

3 A Yes.

4 Q Okay. So he gave you money with no expectation of you paying him
5 back, correct?

6 A Yes.

7 Q Okay. You did not plan on repaying him that money?

8 A No. Because I was helping him sell some cars.

9 Q Okay. Was there a time where maybe you owed him some money -- or
10 owed him some money for something and you tried to repay him in gas?

11 THE COURT INTERPRETER: In --

12 BY MS. KIERNY:

13 Q In gas?

14 A No.

15 Q You also told police that David had hit on you before, correct?

16 A Yes.

17 Q That made you upset, because you were married?

18 A Yes.

19 Q Okay. You were friends with Don -- you saw David giving candy to your
20 children before the report?

21 A Yes.

22 Q And you didn't think anything of it at the time?

23 A No. Because I thought it was towards me, not towards my daughters.

24 Q The candy was towards you, not your daughters?

25 A No. What he did.

1 Q Okay. You didn't think that him giving your daughters candy was a big
2 deal when you saw it happen, I guess is the best way to ask that.

3 A No.

4 Q Okay. And they took the candy without hesitation, correct?

5 A Yes. Because if they didn't accept it, something would happen to me.

6 Q So they were -- he was threatening them if they wouldn't take his
7 candy?

8 A Yes.

9 Q Do your girls like candy?

10 A Yes.

11 Q Okay. You testified on direct that your children first told you Don David
12 was touching them on October 16th, correct?

13 A The 16th, yes.

14 Q Okay. And you're sure it's that date, because it's burned into your
15 memory?

16 A Yes.

17 Q Do you remember testifying before a grand jury in this building?

18 A I don't understand.

19 Q Do you remember testifying in -- in this building before a group of
20 people where Chris questioned you?

21 A Yes.

22 Q Okay. Do you remember saying on that day that it was actually
23 October 17th when your girls told you?

24 A No. It was on the 16th.

25 MS. KIERNY: Court's brief indulgence.

1 For the record, I'm on page 67 of the grand jury.

2 BY MS. KIERNY:

3 Q Were you asked this question, and did you give this answer:

4 Question: Why don't you explain to the grand jury what
5 happened?

6 Answer: Yes. It was the 17th of October when my daughters
7 said that David was touching.

8 A No. The 16th.

9 Q You did not give that answer?

10 A No.

11 Q Okay.

12 A The -- the 17th is when I spoke with the police, that I went to the police.
13 When I spoke with my daughters, it was a Sunday, the 16th.

14 Q So it's your testimony today that you never told the grand jury that it
15 was October 17th?

16 A No.

17 Q All right.

18 MS. KIERNY: Will the State stipulate that the document I was reading
19 from was the grand jury transcript on page 67?

20 MR. HAMNER: That's correct.

21 BY MS. KIERNY:

22 Q All right. You also testified on direct that the day the girls told you, they
23 first started eating at Maria Barajas's house, correct?

24 A Yes.

25 Q And they said, You tell her, you tell her?

1 A I said, Yes, you say it.

2 Q And it was Maria that they told they did not want to go to Chuck E.
3 Cheese?

4 A No. Maria said, Come, come. The girls don't want to go with Don
5 David.

6 Q Okay. And so you were not there for that conversation, correct?

7 A I was by the door. And then she told me, Come.

8 Q Okay. So you didn't hear when the girls said -- told Maria they don't
9 want to go to Chuck E. Cheese, because you were by the door?

10 A But they told me.

11 Q Okay. All I asked is you didn't hear that conversation because you
12 were at the door?

13 A Yes.

14 Q Okay. And later, it was Maria who told you Don David was touching the
15 girls, too?

16 A Yes.

17 Q Okay. And then you kicked everyone out of the house to talk to the
18 girls?

19 THE COURT INTERPRETER: I'm sorry. And you -- I'm sorry.

20 BY MS. KIERNY:

21 Q And then you kicked everyone out of the house to talk to the girls?

22 A Yes.

23 Q Okay. Do you remember going to the police department on
24 November 6th, 2016th and talking -- of 2016 and talking to Detective Matt
25 Campbell?

1 A I'm not sure about the date, but yes.

2 Q Well, you remember a time when you talked to Detective Matt Campbell

3 in a recorded interview, correct?

4 A Yes.

5 Q And you knew it was important to be accurate?

6 A Yes.

7 Q And it was important to be complete?

8 A Yes.

9 Q And at some point, Detective Campbell even told you, I need you to

10 give me as much detail as you can?

11 A Yes.

12 Q You told the detectives something different, that your girls told you Don

13 David was touching them, then you took them over to Maria's house.

14 A No.

15 Q All right. I have a copy of your statement.

16 MS. KIERNY: I'm on page 7 of the voluntary for the record.

17 May I approach, Your Honor?

18 THE COURT: Yes.

19 MS. KIERNY: Could I have the interpreter assist with this.

20 THE COURT INTERPRETER: Yes.

21 BY MS. KIERNY:

22 Q This is your name at the top of the statement, correct?

23 A Yes.

24 Q I'm going to have the interpreter read to you the portion that is

25 bracketed.

1 [Interpreter translates the transcript from English into Spanish for the witness.]

2 BY MS. KIERNY:

3 Q You said, That is why they told me that -- that he was touching them.
4 They were scared they were going -- they were not going to see me again. And so
5 then, I went to the hallway to my friend Maria's -- to my friend's house, Maria
6 Barajas.

7 A Uh-huh.

8 Q Okay. So the order is they -- in this -- in this statement, the order is
9 they told you something, and then you went to Maria's house?

10 MR. HAMNER: Objection. I think -- objection. I believe that misstates
11 the statement. All it states that there was a disclosure about not wanting to go to
12 Chuck E. Cheese and then they moved to a hallway. It doesn't indicate that they
13 went from one apartment to a different apartment. So I think that's a misstatement
14 of the testimony that was just read into the record.

15 THE COURT: Well --

16 MS. KIERNY: I will reread the testimony, because I think that's
17 incorrect.

18 THE COURT: Why don't we just reread the testimony -- read it and --
19 but can you read it and then provide it to the interpreter, so she could interpret it
20 exactly.

21 MS. KIERNY: Okay.

22 THE COURT: -- so we don't have a lot of paraphrasing going on.

23 So, Madam Interpreter, she's going to read it in English and then
24 give it to you, and you can translate it exactly again. Okay?

25 THE COURT INTERPRETER: Yes, Your Honor.

1 MS. KIERNY: And you know what? Just for context, maybe I'll go a
2 little bit further back so there's not confusion. Is that okay?

3 THE COURT: Thank you.

4 MS. KIERNY: All right.

5 THE COURT: So read the whole thing, then give it to the interpreter,
6 and then she will interpret.

7 MS. KIERNY: So I'm at, So after they were done at Chuck E. Cheese,
8 he was going to take them far away. That is why --

9 THE COURT: Ma'am, you can wait and not interpret right now. Just
10 listen.

11 MS. KIERNY: And I'm going to give you this to read.

12 THE COURT: Just tell -- tell the witness just to listen in English, and
13 then you will repeat everything in Spanish. Okay?

14 THE COURT INTERPRETER: Okay.

15 MS. KIERNY: That is why they told me that, that he was touching them
16 or they were scared, because they were not going to see me again. And so then,
17 I -- I -- I went to the hallway to my friend's house, Maria Barajas.

18 MR. HAMNER: That's -- okay. Sorry.

19 MS. KIERNY: That is the answer?

20 MR. HAMNER: Yes. Sorry. I was reading the -- the translation.

21 MS. KIERNY: And -- and so there's going to be an issue that the --
22 his -- that there's a translation. I just need you to read the parts that say -- that are
23 circled that say answer instead of the actual -- what the --

24 THE COURT: Right.

25 MS. KIERNY: -- Hispanic interpreter said. Okay.

1 May I approach?

2 THE COURT: Yes.

3 MS. KIERNY: Thank you.

4 [Interpreter translates the transcript from English into Spanish for the witness.]

5 THE WITNESS: I'm not understanding.

6 THE COURT: So for clarification, you were reading the English from
7 the transcript, correct?

8 MS. KIERNY: Yes.

9 THE COURT: All right. And that English was the translation of the
10 testimony -- or the statement that she gave in Spanish, correct?

11 MS. KIERNY: Yes.

12 THE COURT: Okay. So if there is some issue about the validity of the
13 translation, then the State can bring that up on redirect. All right?

14 Continue.

15 BY MS. KIERNY:

16 Q So is it your testimony today that you never said that?

17 A I don't understand, so I can't answer.

18 Q What is it that you don't understand about the question?

19 A If you want, I can repeat what I said.

20 Q Okay.

21 A What my daughters told me.

22 Q Did you ever tell the police that first the girls told you what was going
23 on, and then you went into the hallway, to your friend Maria's house?

24 A No. My daughters told me at Maria's house.

25 Q All right. And I just showed you a transcript. And you would agree that

1 the transcript said something different from that?

2 A No. And that's what I've said now, too. Maybe I was mistaken,
3 because my mind was all confused because of all that had happened. But just now
4 I said where my daughters told me.

5 Q Okay. So the conversation at Maria's house, Jatziri was the one who
6 started speaking first, correct?

7 THE COURT INTERPRETER: Counsel, I'm sorry. Could you repeat
8 the question.

9 MS. KIERNY: I can.

10 BY MS. KIERNY:

11 Q The conversation at Maria's house, Jatziri started speaking first?

12 A Yes.

13 Q Okay. And she said Don David had touched her over her clothes?

14 A Yes.

15 Q And the word she used with you was paparucha? I'm probably
16 butchering it, but...

17 A Yes.

18 Q And you -- you also testified on direct she told you then that Don David
19 would also kiss her on the mouth?

20 A Yes.

21 Q Do you remember in your interview with Detective Matt Campbell,
22 telling him that there were certain things that Jatziri did not tell you the first day?

23 A Yes.

24 Q And then do you remember telling me -- or telling Detective Campbell
25 that, That, like Jatziri says, she talks to me one day. Two days later, she says, Don

1 David would also kiss me on the mouth?

2 A Yes.

3 Q In fact, Jatziri keeps telling you more stuff, correct?

4 A Yes.

5 Q I think you said in the -- in a hearing that we had yesterday, Day after
6 day, my girls were coming up with new things, more and more things every day.

7 A Yes.

8 Q So it's your testimony today that Jatziri told you at that first interview at
9 Maria's house that Don David would also put watermelon and strawberries on his
10 part and then offer them to the girls?

11 A It wasn't at Maria's house; it was in my house.

12 Q Okay. Thank you for correcting me.

13 So that was -- but that was still that first day, of the 16th?

14 A No. Because I spent the whole time talking to them on the 17th on the
15 early hours in the morning.

16 Q Okay. I said the 16th. And so --

17 A No, not the 16th.

18 Q Okay. So they told you on the 17th about the strawberries and the
19 watermelon?

20 A Yes. Because it was in the early hours in the morning.

21 Q Okay. You never mentioned anything to the police about Don David
22 putting his penis -- his part on the watermelon and strawberries and feeding it to the
23 girls?

24 A But yes, about the candy.

25 Q But you did not mention the strawberries and the watermelon?

1 A Maybe it passed by me.

2 Q Okay. And you just said that you -- strike that. Let me rephrase it.

3 You testified earlier that you saw Don David actually giving your
4 children candy, correct?

5 A Yes.

6 Q You didn't see him rubbing his part on the candy before giving it to
7 them?

8 A Imagine if I had -- if I had seen that.

9 Q Right. You wouldn't have let your kids eat it?

10 A Oh, no.

11 Q All right. I wanted to ask you a few questions about what Maradel told
12 you.

13 She -- she did not tell you that he touched her on her *chi-chis*,
14 correct?

15 A Yes.

16 Q She did tell you that?

17 A Yes.

18 Q Okay. When you testified on direct, you didn't mention anything about
19 Maradel saying he touched her on her *chi-chis*, correct?

20 THE COURT INTERPRETER: I'm so sorry. The interpreter's
21 correction.

22 When -- when the counsel said that word, *chi-chis*, the interpreter
23 heard or understood something else.

24 MS. KIERNY: Oh. Okay.

25 THE COURT INTERPRETER: And --

1 MS. KIERNY: Let's --

2 THE COURT INTERPRETER: According to that, it translated in a
3 different way.

4 MS. KIERNY: Let me -- maybe that's my fault for slipping -- for trying to
5 use a Spanish word and having you interpret that.

6 BY MS. KIERNY:

7 Q She did not say that Don David touched her on her breasts?

8 A He would caress them.

9 Q He would caress her breasts? You did not mention that on direct,
10 correct?

11 A No.

12 Q Okay. You did not mention that to the police?

13 A No.

14 Q You did not mention it in the hearing yesterday?

15 A Yes.

16 MS. KIERNY: May I approach?

17 THE COURT: Are we talking about the 51.385 --

18 MS. KIERNY: No.

19 THE COURT: -- hearing?

20 MS. KIERNY: Yes.

21 [Bench conference transcribed as follows.]

22 THE COURT: Yesterday, or the day before yesterday?

23 MR. HAMNER: Two days ago.

24 MS. KIERNY: Oh. Two days ago.

25 THE COURT: That was the day before yesterday.

1 MS. KIERNY: Okay. Maybe that's my confusion.

2 MR. HAMNER: Time flies.

3 THE COURT: I'm sorry.

4 MS. KIERNY: I'm getting confusion. This is -- not having a transcript,
5 it's going to be very hard to impeach on that.

6 THE COURT: I understand that.

7 MS. KIERNY: But maybe -- let me -- now that I realized I used the
8 wrong day, maybe let me try it that way. And I apologize for the interruption.
9 Thank you.

10 [End of bench conference.]

11 THE COURT: One moment. Interpreter change.

12 MS. KIERNY: Of course.

13 THE COURT: For the ladies and gentlemen of the jury, the day before
14 yesterday, the day when you showed you up and then we just had you go home,
15 we had a hearing outside of your presence that took a few hours where I needed to
16 hear some evidence outside of your presence and then make some -- some rulings.
17 Okay.

18 And then we'll let her continue. Okay.

19 BY MS. KIERNY:

20 Q So I misspoke about the day of the previous hearing. I believe that was
21 two days ago?

22 And at that hearing two days ago, you didn't mention that
23 Maradel told you Don David would touch her on the chest? Or caress her chest?

24 A I'm confused with the names of the girls, but I said that he caressed
25 them.

1 Q You testified earlier that Maradel told Don David not to touch her,
2 because he had a wife.

3 A Yes.

4 Q But then, he said, No. You are my little girlfriend. I don't love that crazy
5 woman.

6 A Yes.

7 Q When you spoke with police, you did not tell them about that, about
8 Maradel telling you that phrase?

9 A No. Because every day, they were bringing out different things.

10 Q All right.

11 THE COURT INTERPRETER: I'm sorry. Interpreter's correction. They
12 were bringing out new things.

13 BY MS. KIERNY:

14 Q And you also didn't tell the police that Don David referred to Maradel as
15 his little girlfriend?

16 THE COURT INTERPRETER: Please repeat the question.

17 BY MS. KIERNY:

18 Q You also did not tell the police that Don David referred to -- according to
19 Maradel, Don David referred to Maradel as his little girlfriend?

20 A Yes. I told him.

21 MS. KIERNY: So that we do not have to have the interpreter read the
22 entire 27-page statement, would the State stipulate that the phrase little girlfriend
23 does not appear anywhere in Amanda Moiza's voluntary statement to Detective
24 Campbell?

25 THE WITNESS: Uh-huh. Maybe -- okay. Maybe I forgot.

1 THE COURT: Does the State want to address --

2 MR. HAMNER: I'm -- I'm trying to review --

3 THE COURT: Yeah, that would be great.

4 MR. HAMNER: -- I'm just trying to review my notes. I apologize,
5 Your Honor.

6 THE COURT: Take your time.

7 MR. HAMNER: And this is with respect to the -- the interview; is that
8 correct?

9 MS. KIERNY: The voluntary statement.

10 MR. HAMNER: And it's with respect to which -- which child?

11 MS. KIERNY: Maradel.

12 MR. HAMNER: Okay. With respect to Mirabel, no. But we'll -- we'll
13 stipulate with respect to Maradel.

14 THE COURT: All right. So for the record, the parties stipulate that
15 Amanda Moiza did not report in her statement to the police that Maradel ever said
16 that the defendant referred to her as his little girlfriend. That's the stipulation.

17 Let's continue.

18 BY MS. KIERNY:

19 Q All right. When you were at Maria's house, Yezline spoke, too, correct?

20 THE COURT INTERPRETER: I'm sorry, counselor. I didn't hear you.

21 BY MS. KIERNY:

22 Q Oh. When you were at Maria's house, Yezline spoke, too.

23 A Yes.

24 Q And she talked about Don David, correct?

25 A Yes.

1 Q And this was in front of you and Maria Barajas?
2 A No.
3 Q Who was this in front of?
4 A Just me.
5 Q All right. So there was a time when you -- at Maria's house when you
6 were alone with the girls?
7 A Yes.
8 Q Okay. When was that? You didn't explain that.
9 A October 16th.
10 Q Was that before or after -- at -- at what point during that conversation
11 did Maria leave the room?
12 A From the room?
13 Q I'm talking about Yezline; was there a time that you interviewed or
14 talked to Yezline when Maria wasn't in the room?
15 A When the girls decided to talk, Maria left or exited. I told her to leave
16 the room, and I had a conversation with the girls, one by one.
17 Q So you had a conversation with -- you had Maria leave so that you
18 could talk to her own daughter about this?
19 A Well, because I talked to my three and then for her to talk to her
20 daughter. Because -- because David's wife was there, and the purpose of this is
21 for her not to listen to the conversation.
22 Q I'm talking about Maria Barajas. I apologize.
23 So you're saying that when the girls started disclosing, David's
24 wife was there?
25 A Yes. Outside.

1 Q And did she hear what the girls said?

2 MR. HAMNER: Objection. Objection. Calls for speculation.

3 THE COURT: Sustained. It's speculation.

4 BY MS. KIERNY:

5 Q Was she close enough that perhaps she could have heard what was
6 said?

7 MR. HAMNER: Objection. Calls for speculation.

8 THE COURT: How far -- ask her --

9 BY MS. KIERNY:

10 Q How far away was she?

11 MS. KIERNY: I'm sorry.

12 THE WITNESS: She could not hear.

13 BY MS. KIERNY:

14 Q Okay. When you were at Maria Barajas's house, was there a time that
15 you talked to Yezline without Maria Barajas being present?

16 A Yes.

17 Q Okay. And then later, you also talked to your own three girls at home?

18 A Yes.

19 Q And your husband was present?

20 A Yes.

21 Q But he didn't ask the girls any questions?

22 A No.

23 Q He didn't say anything?

24 A I keep remembering that. But perhaps he said something to her. But it
25 was not a question. I don't remember.

1 Q Okay. You did not mention to the police when you interviewed with
2 them that your husband was present for the interview with the girls?

3 A No. No, no.

4 Q And when you testified at the hearing two days ago, you did not
5 mention that your husband was present while you talked to the girls?

6 A I don't remember.

7 MS. KIERNY: Will the State stipulate that the hearing two days ago
8 with Ms. Moiza did not mention that her husband was present when she
9 interviewed the children at home?

10 MR. HAMNER: We'll have to check our notes.

11 THE COURT: I didn't put that detail in my notes, so I can't help you.

12 MS. KIERNY: It's not in your notes?

13 THE COURT: No. I -- I said I didn't write that detail, so I don't -- I don't
14 know one way or another.

15 MR. WESTBROOK: [Indiscernible] negative.

16 THE COURT: But I didn't write everything down.

17 MS. KOLLINS: Certainly, I don't want to testify; so if I could just
18 approach, Your Honor, give you my recollection?

19 THE COURT: If you have to.

20 MS. KOLLINS: Sorry. I just...

21 [Bench conference transcribed as follows.]

22 MS. KIERNY: I'm really trying to avoid recalling them, so that's why --

23 THE COURT: Recalling?

24 MS. KIERNY: Like, at the end when --

25 THE COURT: Oh.

1 MS. KIERNY: -- once I have the transcript.

2 THE COURT: Yeah.

3 MS. KOLLINS: And -- and my recollection is that he was there, but not
4 in the room. That's what I have --

5 MS. KIERNY: I'll stipulate to it.

6 MS. KOLLINS: -- because that's why I always understood it that way.
7 So I just didn't want to say that in front of --

8 THE COURT: [Indiscernible] it's possible she mentioned [indiscernible]
9 that he had right now, so --

10 MS. KOLLINS: Could you just maybe ask what room and get it --

11 THE COURT: Why don't you just stipulate --

12 MS. KIERNY: Sure. I'll get to the room, and then I'll ask you for the
13 stipulation again.

14 MS. KOLLINS: Okay.

15 THE COURT: Thank you.

16 [End of bench conference.]

17 BY MS. KIERNY:

18 Q What room of the apartment were you in when you talked to the girls at
19 home?

20 A In their room.

21 Q Okay. And your husband was present in their room?

22 A Yes.

23 MS. KIERNY: I would ask the State stipulate that in the previous
24 hearing, Amanda Moiza testified that the interview took place in the children's room,
25 but her husband was not in the room.

1 MS. KOLLINS: I will -- I will stipulate to that.

2 BY MS. KIERNY:

3 Q You testified earlier that your girls go to school, right?

4 A Yes.

5 Q And they have teachers they see every day?

6 A Yes.

7 Q It's not a trick. I'm just asking you a question.

8 They have their -- their friends at their school, right?

9 THE COURT INTERPRETER: Can you please repeat the question,
10 please?

11 BY MS. KIERNY:

12 Q Do your kids have friends at school?

13 A Yes.

14 Q And they have aunts and uncles that live nearby too, right?

15 A Yes.

16 Q Some who even live in the same apartment complex?

17 A No.

18 Q Your brother does not live in the apartment complex?

19 A No.

20 Q Do they have -- do their relatives live in the apartment complex?

21 A No.

22 Q Okay. But they have aunts and uncles that live nearby?

23 A Yes.

24 Q You testified that your girls first told the neighbor who you call the
25 Cuban lady about Don David touching her?

165

1 A Yes.

2 Q And the girls told the Cuban lady about what was going on with them
3 before they told you?

4 A Yes.

5 Q And that was -- she did not come find you immediately after they told
6 her?

7 A No.

8 Q Okay. You also -- you indicated earlier that you had filled out the
9 paperwork for a U visa, correct?

10 A Yes.

11 Q Your husband has also filled out that same paperwork, correct?

12 A Yes.

13 Q All right.

14 MS. KIERNY: Court's brief indulgence.

15 I have State's 19 that has already been stipulated to. Do you
16 mind if I publish this on the ELMO?

17 THE COURT: Yeah.

18 MS. KIERNY: Fine.

19 BY MS. KIERNY:

20 Q Now, these are pictures of the Azucenas' dogs, correct?

21 A Yes. Those are really dogs.

22 Q It's not a chair. All right.

23 No further questions.

24 THE COURT: Mr. Hamner, do you have a law we should -- we could
25 take a break. It's time for our afternoon break and let's use that --

1 MR. HAMNER: Whatever the court's pleasure.

2 Yes. I've been told yes.

3 THE COURT: All right. 15-minute recess.

4 Ladies and gentlemen, for our recess, the prior admonishment
5 applies.

6 Don't do any research or investigation; don't talk about the case;
7 don't form any opinions; don't have any contact with any of the attorneys or
8 witnesses or parties about the case. All right.

9 Leave your notes here. I want you back in 15 minutes, 3:18. Or,
10 no. 3:28. 3:28. Thank you.

11 Ma'am, one moment until the jury leaves. Thank you.

12 [Jury recessed at 3:12 p.m.]

13 THE COURT: Outside the presence of the jury.

14 You are excused. Please do not talk about your testimony with
15 anybody while on break.

16 Thank you. Watch your step. Careful. Thank you.

17 Anything on the record? Can we take a break?

18 MS. KIERNY: Yes.

19 MR. HAMNER: We can take a break.

20 MS. KOLLINS: May I go home?

21 THE COURT: Can we get a -- you need to go?

22 MR. HAMNER: She said, Can I go home.

23 MS. KOLLINS: I'm just punchy. I'm sorry.

24 THE COURT: I like that. Do you think we'll get -- we're going to get to
25 one more witness after her, right?

1 MR. HAMNER: Yeah. We have two lined up. They've been patiently
2 being here. But, yes.

3 THE COURT: All right. Good.

4 MS. KIERNY: Well, you guys were going to leave at 4:45, is that still --

5 THE COURT: We have Maria, you said?

6 MS. KIERNY: -- your plan or?

7 MR. HAMNER: We have Maria. We also have Mr. Rangel.

8 THE COURT: We'll see. We're leaving -- don't worry, Ms. -- we're
9 at 4:45.

10 MS. KIERNY: Okay.

11 THE COURT: All right. Time out.

12 MS. KIERNY: I'm not timing out. I'm sorry. I was just warming my
13 hands. It's cold in here. I'm sorry.

14 THE COURT: All right. Break.

15 [Court recessed at 3:13 p.m., until 3:28 p.m.]

16 [Outside the presence of the jury.]

17 THE COURT: All right. Let's bring the jurors in.

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

19 THE COURT: Thank you. Please be seated, everybody. We're back
20 on the record.

21 And let's call the witness back to the stand, marshal.

22 So, Ms. Moiza, please sit. You're still under oath.

23 THE WITNESS: Yes.

24 THE COURT: And, Mr. Hamner, you may continue. You may begin.

25 MR. HAMNER: Thank you very much.

1 **REDIRECT EXAMINATION**

2 BY MR. HAMNER:

3 Q I want to go back to the last little topic of the dogs. Remember I asked
4 about the dogs?

5 THE COURT INTERPRETER: I'm sorry, counsel.

6 BY MR. HAMNER:

7 Q Do you remember being asked about the dogs?

8 A Yes.

9 Q Publishing State's 19; these little guys. Did they -- did both Elena and
10 David love those dogs as far as from -- based on your observations?

11 MS. KIERNY: Objection as to speculation.

12 MR. HAMNER: It's based on their observations.

13 MS. KIERNY: She doesn't know how they feel about the dogs. Also,
14 relevance.

15 THE COURT: Well, let's --

16 MR. HAMNER: I can approach on that.

17 THE COURT: No. I -- I know where this is going. I suspect. I'll -- I'll
18 allow the question.

19 BY MR. HAMNER:

20 Q So based on your observations, your interactions with Elena and David
21 with those dogs, did they care about those dogs?

22 A Yes.

23 Q Okay. You were asked some questions on cross-examination about
24 aunts and uncles not necessarily living in the apartment complex, but somewhere
25 nearby; do you remember that, those questions?

1 A No.

2 Q You don't remember Ms. Kierny asking you about, Isn't it true you have
3 aunts and uncles that live in the Charleston Garden apartments?

4 A No.

5 Q Oh, you don't recall her saying -- you telling her, No, we don't -- I don't
6 have any aunts and uncles that live there?

7 A Yes. Yes.

8 Q Okay. Do you remember that back-and-forth?

9 A Yes.

10 Q Okay. Let me ask you this question. Do -- are there aunts and uncles
11 that live in the nearby area?

12 A Yes.

13 Q Are your children permitted to just walk out of the Charleston Garden
14 Apartments to see their aunts and uncles whenever they want?

15 A No.

16 Q Okay. You were asked a question about the fact you did not tell in your
17 interview that Maradel said the defendant called her one of his girlfriends.

18 A Yes.

19 Q But did you tell the police in your interview that Jatziri had said the
20 defendant had referred to them as his queens?

21 A As I told you before, every day, something new was coming out. He
22 used to call them their -- his girlfriend -- little girlfriends, his princess, and --

23 THE COURT: Ma'am, limit your answer to what you remember telling
24 the police. Okay?

25 THE WITNESS: Yes. In other words, the little girlfriends.

1 BY MR. HAMNER:

2 Q Okay. Do -- let me ask you the question one more time.

3 Do you remember telling the detective in the interview that he
4 told Jatziri that they were his queens and they would have everything?

5 MR. HAMNER: This is line 21, page 21.

6 THE WITNESS: Yes.

7 BY MR. HAMNER:

8 Q Okay. You were asked on -- do you remember being asked on
9 cross-examination about the fact that you did not say on direct examination that
10 one of your children had been touched on their breasts; do you remember being
11 asked that on cross-examination?

12 A Yes.

13 Q Do you recall whether I asked you that specific question on direct?

14 A It was not a question. I said that.

15 Q Okay. So you don't remember me asking you on direct, do you?

16 A I don't remember.

17 Q You remember there was a bunch of questions about the hallway in
18 Maria's house when the kids were telling you what happened?

19 THE COURT INTERPRETER: Can you repeat the question, please.

20 MR. HAMNER: Sure.

21 BY MR. HAMNER:

22 Q Do you remember on cross-examination questions about being in a
23 hallway when your children were telling you about what Don David did?

24 A It was not in the hallway.

25 Q I understand that. But my question is, do you remember being asked

1 that by opposing counsel?

2 A Yes.

3 Q Okay. Why don't you just tell the jury this; where were you when your
4 children first told you about David?

5 THE COURT INTERPRETER: About?

6 BY MR. HAMNER:

7 Q David.

8 A In the bathroom.

9 Q Of whose home?

10 A Maria Barajas.

11 Q Is there a walkway from the bathroom to other parts of the apartment?

12 A Yes.

13 Q Okay. Did you ever have a disclosure -- the first time your children told
14 you about this, were you in any other apartment other than Maria Barajas'?

15 A No.

16 Q You were also asked on cross-examination near the beginning about --
17 about the date you gave in which your children told you what happened.

18 A Yes.

19 Q Okay. And opposing counsel asked you about what you said at a prior
20 proceeding?

21 MS. KIERNY: This is all -- objection. This is all leading.

22 THE COURT: Well, he's --

23 MR. HAMNER: Foundational.

24 THE COURT: He's setting stage. It's allowed.

25 MS. KIERNY: All right.

1 THE COURT: Go ahead.

2 THE COURT INTERPRETER: Please repeat the question.

3 MR. HAMNER: Sure.

4 BY MR. HAMNER:

5 Q And opposing counsel asked you about a prior proceeding where I
6 asked you questions about maybe when this happened; do you remember her
7 asking that?

8 A Yes.

9 Q And she read to you October 17th?

10 A Yes.

11 Q As you sit here today, what day did your children tell you?

12 A That they did not want to go to Chuck E. Cheese.

13 Q What's that date?

14 A October 16th.

15 Q Okay. Thank you.

16 MR. HAMNER: Court's indulgence.

17 And I would ask that the court take judicial notice that
18 October 16th, 2016, was a Sunday.

19 THE COURT: We will -- why don't you look it up really quick,
20 October 16th, 2016.

21 MR. WESTBROOK: If it helps, Your Honor, I looked it up, and it is.

22 THE COURT: All right. Thank you. I appreciate that.

23 All right. Then -- then court will -- will accept that.

24 BY MR. HAMNER:

25 Q And -- and to be clear, what day of the week was it when they told you

1 this?

2 A It was on a Sunday.

3 MR. HAMNER: I have no further questions. Thank you.

4 THE COURT: Redirect?

5 MS. KIERNY: No, thank you.

6 THE COURT: No, recross?

7 MS. KIERNY: Whatever you want to call it, no, thank you.

8 THE COURT: Questions from the jurors, if any? This is the time. I
9 don't see any, so last chance. All right.

10 You are excused. Thank you. You may step you know. Thank
11 you. You're finished. And thank you for your time. Have a good day.

12 THE WITNESS: Thank you.

13 THE COURT: Watch your step.

14 MS. KOLLINS: May I approach just very briefly while he's walking her
15 out and I'll call the next witness.

16 [Bench conference transcribed as follows.]

17 THE COURT: Hi.

18 MS. KOLLINS: Hi. I just -- for scheduling purposes, I just wanted to let
19 the court know that I've moved a shorter witness into this timeframe.

20 THE COURT: Okay.

21 MS. KOLLINS: But I can't -- if I finish with him, I can't finish another full
22 witness.

23 THE COURT: I know. That's fine.

24 MS. KOLLINS: Is that okay? All right.

25 THE COURT: You can go a little bit earlier, if you have to.

1 MS. KOLLINS: Okay.
2 MR. WESTBROOK: [Indiscernible.]
3 MS. KIERNY: Yeah.
4 MR. WESTBROOK: [Indiscernible.]
5 MS. KOLLINS: Okay.
6 THE COURT: Thank you, Ms. Kollins.
7 MS. KOLLINS: You're welcome, Your Honor. Thank you.
8 [End of bench conference.]
9 MS. KOLLINS: The state would call Ricardo Rangel.
10 THE COURT: Ricardo Rangel.
11 Hello, Mr. Rangel. Welcome back, sir. How are you today?
12 Please step forward. She will administer your oath.

13 **RICARDO RANGEL,**

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

16 THE CLERK: Please be seated. Can you please state and spell your
17 first and last name for the record.

18 THE WITNESS: My name is Ricardo Rangel.

19 MS. KOLLINS: Can you spell your name, sir?

20 THE WITNESS: It's R-I-C-A-R-D-O, my last name is R-A-N-G-E-L.

21 THE COURT: Thank you, sir. You may begin.

22 MS. KOLLINS: Thank you, Your Honor.

23 **DIRECT EXAMINATION**

24 BY MS. KOLLINS:

25 Q Good afternoon, sir. Thank you for waiting for us.

1 Where do you live?

2 A 4850 East Charleston Boulevard, Apartment 53 -- 23.

3 Q And how long have you lived there?

4 A Approximately 12 years.

5 Q Going to show you what has been admitted as State's 22. You can see

6 it up there on your screen. Wait. I have it upside-down. Here we go.

7 If you touch that screen with your finger, it will actually draw a

8 picture. Can you just -- can you circle the building in which you live in that photo?

9 MS. KOLLINS: The record could reflect he's drawn a picture around

10 the righter-most building that is in the second set of buildings with the pool closest

11 to Charleston.

12 BY MS. KOLLINS:

13 Q And how long did you say you lived there?

14 A Approximately 12 to 13 years.

15 Q Do you have a daughter?

16 A Yes.

17 Q What's your daughter's name?

18 A Scarlett Rangel.

19 Q How old is Scarlett?

20 A Seven years old.

21 Q And when is Scarlett's birthday?

22 A August 29th.

23 Q Of what year?

24 A 2009.

25 Q Okay. I'm going to show you a picture -- actually, a chart here. Can

176

1 you see that up there? It's kind of small.

2 A Yes.

3 Q Okay. Scarlett's birthday, August 29th of 2009; is that correct?

4 A Yes.

5 Q Okay. And then she's seven now, so that means last August, she
6 turned seven, correct?

7 A Yes.

8 Q And she's currently in the second grade?

9 A Yes.

10 Q So all the information in this Exhibit 56 accurately -- accurately reflects
11 Scarlett's information as to her birth date and grade?

12 A Okay.

13 Q Is that correct, yes?

14 A Yes, correct.

15 Q Okay. Now, I would like to show you State's admitted 17.

16 I apologize. I could not make out the number on that.

17 Who's in that picture?

18 A It's me and my girl.

19 Q Okay. Is that Scarlett?

20 A Yes.

21 Q Okay. And that's about what she looks like now, because that was
22 taken when she was seven?

23 A Yes.

24 Q Okay. Do you know a woman in your complex by the name of Amanda
25 Moreno?

1 A Yes.

2 Q How do you know Amanda?

3 A From the apartment.

4 Q Okay. Does sometimes she help you get Scarlett back and forth to
5 school?

6 A Yes.

7 Q Now, does Scarlett live with you full time?

8 A No.

9 Q What are Scarlett's living arrangements?

10 A With me, she's Saturday at 7:00 p.m. until Tuesday, 7:00 a.m.

11 Q Okay. And so Sundays, then, you're responsible for getting her back
12 and forth to school or having her picked up from school?

13 THE COURT INTERPRETER: I'm sorry. Please repeat the question.

14 BY MS. KOLLINS:

15 Q So there are a couple days of week that you are responsible to get her
16 to and from school?

17 A Yes.

18 Q Okay. And Amanda helps you with that?

19 A Yes.

20 Q Showing you what's State's admitted 21; do you see Amanda in that
21 picture?

22 A Yes.

23 Q Where is she in that picture?

24 A To my right side.

25 Q Okay. Do you mind circling her just like we did the other one? There

1 you go.

2 MS. KOLLINS: The record could reflect he's picked Amanda Moiza out
3 of the photograph.

4 BY MS. KOLLINS:

5 Q Back in October of 2016, did Amanda come to you with some
6 information that caused you some concern?

7 A Approximately. I'm not sure about the date.

8 Q Okay. Did that -- did the information that Amanda gave you have to do
9 with her daughters getting touched in the apartment complex?

10 THE COURT INTERPRETER: As the girls or just one?

11 MS. KOLLINS: The girls.

12 THE COURT INTERPRETER: Oh, the girls.

13 MS. KOLLINS: Her girls.

14 THE WITNESS: Yes.

15 BY MS. KOLLINS:

16 Q Okay. What did you do in response to that information?

17 A My daughter got along, spent time with them. It made me think that she
18 could also be involved in this.

19 Q Now, did Scarlett, when she was staying with you in your four or five
20 days a week you had her, did she play with Amanda's girls?

21 A No.

22 Q She didn't play outside with the twins and Jatziri?

23 A Yes.

24 Q Okay. And sometimes she play with Yezline outside?

25 A Yes.

1 Q Okay. Did you decide to have a conversation with Scarlett about the
2 things that Amanda had told you?

3 A Yes.

4 Q Where did you have that conversation?

5 A In my house, in my room.

6 Q Okay. Who was there?

7 A Scarlett and me.

8 Q Okay. And was it on one of the days that she was staying over, or did
9 you have to get her from Mom, or?

10 A It was one of those days that she was with me.

11 Q Okay. And what did you say to her to start the conversation?

12 A I talked to her and I asked her if somebody had touched her.

13 MR. WESTBROOK: Your Honor, I'll just repeat my continuing 51.385
14 objection, for the record.

15 THE COURT: Thank you. It is so noted.

16 BY MS. KOLLINS:

17 Q You may continue, Mr. Rangel. You asked her if anyone had touched
18 her?

19 A Yes.

20 Q When you started -- when you began speaking with Scarlett, did she
21 appear that she wanted to talk to you?

22 A At the beginning, no. She was like kind of -- she was afraid to talk.

23 Q What about how she looked or what she said let you know that she was
24 afraid to talk to you?

25 A Her physical reaction.

1 Q Okay. So you asked her if anyone had touched her?
2 A Yes.
3 Q When you asked her that question, did you use a name?
4 A No.
5 Q So you just used anyone, with no name?
6 A Yes.
7 Q And when you asked her that, what did she say to you?
8 A The first time I asked her, she said, No, nothing happened.
9 Q Okay. Nothing happened, she didn't get touched?
10 A Like, she didn't want to say anything.
11 Q Okay. So that was the first time you asked her?
12 A Yes.
13 Q Did you ask her again?
14 A Yes.
15 Q And what did she say then?
16 A That the grandfather of the twins had touched her shoulder, and he had
17 shown her his private part.
18 Q Okay. Touched her on the shoulder and shown his private part?
19 A Yes.
20 Q Did you ask her where that happened?
21 A No. She didn't say anything about where. The only thing she
22 mentioned, that they were downstairs.
23 Q Okay. Downstairs in the apartments?
24 A Yes.
25 Q Okay. Did she tell you when it happened?

1 A No.

2 Q Okay. When she said the grandfather of the twins, did you know who
3 she was talking about?

4 A Yes.

5 Q And what do you know that person as? Do you know him by another
6 name?

7 A I knew him as Jose Azucena.

8 Q Okay. Do you see him in court today?

9 A Yes.

10 Q Where is he seated, and what is he wearing today in court?

11 A He's sitting to my right and he's wearing a blue shirt.

12 MS. KOLLINS: May the record reflect identification of the defendant.

13 THE COURT: It does.

14 BY MS. KOLLINS:

15 Q Something I didn't ask you. Scarlett said the man was showing his part;
16 did you know what she meant by part?

17 A Yes.

18 Q Did she tell you what she meant by part?

19 A She said, His part.

20 And I asked her, Which part?

21 And then she said, The part that have boys.

22 Q So you took that --

23 THE COURT: Ms. Kollins, can you back up for a second.

24 How -- how did he know -- how did he know who -- I'm sorry --

25 Scarlett was referring to when she said *abuelo*? How did -- how did he know that

1 she was referring to the defendant?

2 MS. KOLLINS: I asked -- I asked him if he knew who the grandfather of
3 the twins was.

4 THE COURT: Yeah. Well, I think you -- you asked him how did -- how
5 did -- or did -- what -- what did he believe she was referring to? And he said the
6 defendant, and I'm wondering how he knew that. So anyway, can you --

7 MS. KOLLINS: I -- well, I can ask him that. I mean, they all live in the
8 same complex. But I'll ask him.

9 THE COURT: All right.

10 MS. KOLLINS: Okay.

11 BY MS. KOLLINS:

12 Q How did you --

13 MS. KOLLINS: Okay. Can I just finish my last thought and then --

14 THE COURT: You may. You may. Go ahead.

15 BY MS. KOLLINS:

16 Q So you understood your daughter to be talking about a penis, correct?

17 A Yes.

18 Q Okay. How did you know that the twins referred to Jose Azucena as
19 Grandfather; how did you know that?

20 A She told -- she had told me already. And I had already talked to
21 Amanda, and I had seen him at one of Amanda's parties.

22 Q Okay. So this is -- you knew that because of your discussion with
23 Amanda?

24 A Yes.

25 Q When you first interviewed with police, you did not know him by Jose,

1 though, correct?

2 A No.

3 Q What name did you know him by?

4 A David.

5 Q Okay. And when did you learn that his name was Jose?

6 A When the police stopped him.

7 Q Okay. Does Scarlett have a babysitter in the complex?

8 A Yes.

9 Q And what is that person's name?

10 A Her name is Lorena Garcia.

11 Q And do you know where Jose Azucena used to live in the complex?

12 A Yes.

13 Q And do you know where Lorena lives or lived in the complex?

14 A Yes.

15 Q Do they live -- does Lorena live just upstairs from the apartment that
16 Jose Azucena used to live in?

17 A Not exactly underneath, but to -- to one side.

18 Q Okay.

19 A Really close.

20 Q Same building, though, upstairs?

21 A Yes.

22 Q Now, did -- I don't know if I asked you this, and I apologize -- did
23 Scarlett tell you who else was there when Jose Azucena showed his part to her?
24 Did she mention anyone else being there?

25 A I think the name of the girl is Yezline.

1 Q Okay. Do you know Yezline?
2 A Yes.
3 Q Okay. And she's the daughter of Maria?
4 A Yes.
5 Q Okay. Okay. Did -- where were you born, sir?
6 A Mexico.
7 Q And how long have you lived in the United States?
8 A Approximately 14 years.
9 Q Okay. And how did you travel to the United States?
10 A In a truck -- oh, in the bus.
11 Q Okay. Did you come with or without a visa?
12 A With visa.
13 Q Okay. And are you still here on a visa?
14 A No. It expired already.
15 Q Okay. Since you moved to the United States, have you ever been
16 subject to removal proceedings?
17 A Yes.
18 Q Okay. Were those proceedings terminated at some point?
19 A I don't understand your question.
20 Q Your removal proceedings, what was the outcome of those?
21 A I have never been expelled from the country.
22 MS. KOLLINS: I'm sorry, Miss Interpreter?
23 THE COURT INTERPRETER: I have never -- yes. I have never been
24 deported out of the country.
25 MS. KOLLINS: Okay.

1 BY MS. KOLLINS:

2 Q So you've never been deported. Do you have any deportation
3 proceedings pending right now?

4 A No.

5 Q Okay. In October or November of 2016, did you have any deportation
6 proceedings pending?

7 A No.

8 Q Okay. Are you familiar with the term U visa?

9 A Yes.

10 Q Okay. What is your understanding of a U visa?

11 A What I understand is that if somebody had done something wrong to
12 you, had attacked you -- somebody harmed you in any way, you might have a right
13 for the visa.

14 Q Has the process of the U visa been explained to you by anyone?

15 A Explained to me? No.

16 Q Okay. Do you have a U visa application pending currently?

17 A No.

18 Q Were you referred by either the district attorney's office or Las Vegas
19 Metropolitan Police Department as to how to commence or start the U visa process
20 in this case?

21 A No.

22 Q Okay.

23 MS. KOLLINS: Court's indulgence, please.

24 BY MS. KOLLINS:

25 Q Prior to Amanda telling you about the girls, were you friends with Jose

1 Azucena, or David?

2 A No.

3 Q Did you know him -- strike that.

4 Prior to October 16th of 2016, did you have conversations with
5 Jose Azucena?

6 A No.

7 Q If you saw Jose Azucena at the Charleston Garden Apartments, did you
8 know who he was just to see him across the apartments?

9 A Yes.

10 Q Okay. Did you ever give him permission to -- or strike that.
11 Did you ever give your daughter permission to go into his
12 apartment?

13 A No.

14 Q Ever give him permission to take your daughter anywhere?

15 A No.

16 MS. KOLLINS: Your Honor, I'm going to pass the witness. Thank you.

17 THE COURT: All right. Cross-examine.

18 **CROSS-EXAMINATION**

19 BY MR. WESTBROOK:

20 Q Good afternoon. You said you've never been deported, right?

21 A No.

22 Q You are worried about being deported, though, right?

23 A No.

24 Q Well, you do -- you work hard, right?

25 A Yes.

1 Q Okay. You feel like you deserve to be here in America, right?
2 A Yes.
3 Q Okay. And you don't want to be apart from your daughter, right?
4 A Of course.
5 Q Okay. If you were deported, you'd have to be apart from your daughter,
6 right?
7 A Yes.
8 Q You don't want that to happen?
9 A It may happen.
10 Q I may, but you don't want it to happen, right?
11 A Of course.
12 Q Okay. That's why you hired a lawyer to help you with a U visa, right?
13 A I didn't hire him.
14 Q Did you consult with a lawyer?
15 A Yes.
16 Q Okay. You consulted with a lawyer in regards to U visa?
17 A Yes.
18 Q Okay. Amanda had told you about Hermandad Mexicano, right?
19 A Yes.
20 Q Okay. But you wanted to find a private lawyer, because you thought a
21 private lawyer would do a better job?
22 A Yes.
23 Q Okay. Now, the day Scarlett told you this information, Amanda had
24 picked her up from school that day; is that right?
25 A Yes.

1 Q Okay. In fact, you pay Amanda in order to take her to school and pick
2 her up, correct?

3 A Yes.

4 Q And Amanda, after school, told you about her girls getting touched,
5 right?

6 A Yes.

7 Q Amanda told you to talk to Scarlett about this?

8 A No.

9 Q Okay. She said that you should talk to your daughter, correct?

10 A No.

11 Q When she told you about the touching, you thought you should talk to
12 your daughter; is that correct?

13 A Yes.

14 Q Okay. So the first person who told you about the touching was
15 Amanda, right?

16 A Yes.

17 Q Now, when you asked Scarlett, at first she said, No, nothing happened;
18 right?

19 A That's correct.

20 Q Then she said that a man had caressed her arm and her face, right?

21 A That he had touched her shoulder and he had touched her private part,
22 that he had shown her his private part.

23 Q Okay. Not that -- not touched her private part, shown her his private
24 part; is that correct?

25 A Yes.

1 Q Okay. There was never an allegation that he touched her private part,
2 right?

3 A No.

4 Q Okay. Do you remember talking to Detective Campbell in this case?

5 A Yes.

6 Q Okay. And was that in November of 2016?

7 A Yes.

8 Q Okay.

9 MR. WESTBROOK: I grabbed the wrong folder.

10 [Pause in proceedings.]

11 MR. WESTBROOK: To the interpreter, I'm going to go ahead and
12 bracket the portion of the transcript.

13 THE COURT INTERPRETER: Very well.

14 MR. WESTBROOK: May I approach?

15 THE COURT: Me or?

16 MS. KOLLINS: Your Honor, I apologize.

17 MR. WESTBROOK: And I'll show the State --

18 THE COURT: Approach who? Okay.

19 MR. WESTBROOK: -- page 4 of his transcript.

20 MS. KOLLINS: All right. Is there a question pending before she --

21 MR. WESTBROOK: Yeah, I will. I just wanted to deliver this to the -- to
22 the interpreter and then ask a question, if that's all right?

23 THE COURT: We'll see.

24 BY MR. WESTBROOK:

25 Q You just -- you just said that you remember doing an interview with

1 Detective Campbell, right?

2 A Yes.

3 Q Would looking at a transcript of that interview help refresh your memory
4 as to what you told Detective Campbell?

5 MS. KOLLINS: I apologize. Regarding what issue?

6 THE COURT: Well, this doesn't seem -- I don't think you set it up right
7 yet. Are you trying to refresh his recollection or to --

8 MR. WESTBROOK: I asked --

9 THE COURT: Well, go ahead. You can talk first. But...

10 MR. WESTBROOK: Sorry. What I had -- what I had asked him was,
11 Did you say -- did Scarlett say that the man had, quote, "caressed her arm and her
12 face"?

13 He said it was something else.

14 THE COURT: So you want to challenge the statement based on her
15 prior inconsistent statement allegedly. All right. Go ahead.

16 MR. WESTBROOK: Correct.

17 THE COURT: You may proceed.

18 MR. WESTBROOK: So just the blue bracketed.

19 THE WITNESS: No. I said that on her shoulder, and that he had
20 shown her his private part. I never said that he had touched her on her face.

21 BY MR. WESTBROOK:

22 Q Okay.

23 MR. WESTBROOK: May I approach?

24 BY MR. WESTBROOK:

25 Q Do you agree that this transcript says, Afterwards, she -- she told me

1 that yes, that a man had -- had caressed her arm and her face?

2 A No.

3 Q Okay. I'm not asking you whether you said that to Detective Campbell.
4 I'm asking you whether you agree that the transcript says that.

5 A Well, I can't read English.

6 Q That's true. The interpreter just read it to you, though, right?

7 A Yes.

8 Q Okay. And so is that what the transcript says?

9 A I can't read English.

10 Q I -- I understand that. Would you like me to have the interpreter read
11 you the words on this page again so that I could verify whether you agree that's
12 what the transcript says?

13 MR. WESTBROOK: Or if the State would like to verify that that's what
14 the transcript says, I can move on.

15 MS. KOLLINS: I have it in front of me. I -- I'm not verifying anything.

16 THE COURT: And you read what it said, so it is what it is, right? So.

17 MR. WESTBROOK: Okay.

18 BY MR. WESTBROOK:

19 Q You agree, though, that you used the word caressed, right?

20 A I may have said that he caressed --

21 Q Okay.

22 A -- the shoulder --

23 Q Yes.

24 A -- or he touched her shoulder. But that he had touched her face? No, I
25 did not say that.

1 Q Okay. And you did tell Detective Campbell that the man showed his
2 part, right?

3 A Yes.

4 Q Okay. When you say that, though, you -- you say that Scarlett said, A
5 man. You do not say the word grandfather, and you do not say grandfather of the
6 twins?

7 A That's what I told the detective, that the girls refer to him as their
8 grandfather.

9 Q The girls? What girls?

10 A The twins, and I don't know exactly their names, and Jatziri. And
11 Maradel and Mirabel? I'm not sure.

12 Q Okay. So Scarlett didn't say the grandfather of the twins; that
13 information came from Amanda, right?

14 A When -- when it was told to me, it was told -- it was said the twins'
15 grandfather.

16 Q Okay. So you're saying that Scarlett said the twins' grandfather to you?

17 A Yes.

18 Q Okay. When you talked to the police, you didn't mention that it was the
19 twins' grandfather who did this, did you?

20 A I don't recall.

21 Q Okay. And when they asked for a name, you said, I don't recall the
22 name, I believe it's David, right?

23 A Yes.

24 Q Okay. You love your daughter, right?

25 A Of course.

1 Q Of course. But she's not always honest, is she?

2 MS. KOLLINS: Your Honor, I'm going to object. May we approach?

3 THE COURT: Okay.

4 [Bench conference transcribed as follows.]

5 THE COURT: What's up?

6 MS. KOLLINS: He's about to go into the CPS records, where there's
7 an allegation that the kid was dishonest. I just want to make sure that the
8 parameters of those questions are to treat the veracity of the kid. I don't want to get
9 into all the extraneous other information in here that's just bad.

10 THE COURT: Like what? Is there something we're worried about?

11 MS. KOLLINS: Well, there's some allegations of physical abuse by
12 him, some over-disciplining, and I think all that is just bad character as to him.

13 THE COURT: Bad character of this or Mrs. Rangel?

14 MS. KOLLINS: So we're just going to keep it to truth or veracity of the
15 character.

16 MR. WESTBROOK: That's all I'm doing.

17 MS. KOLLINS: Okay. I just wanted to get up here before it was out
18 there.

19 THE COURT: All right. She wants --

20 MS. KOLLINS: Couldn't unring the bell.

21 MS. KIERNY: To do that, he's going to have to get into what the
22 allegations asserted, which [indiscernible], and then say that that is not true.

23 MR. WESTBROOK: Correct.

24 MS. KIERNY: So -- but we need to get out that she lied about abuse.

25 THE COURT: They have to be allowed to establish the facts to

1 convince the jury that -- that Scarlett lacks truthfulness. How -- how else are you
2 going to -- unless you were going to stipulate to her untruthfulness about that, how
3 else do they -- how -- how would they -- how else would they go about trying to
4 prove it?

5 MS. KOLLINS: There -- there was a CPS investigation.

6 THE COURT: Yeah.

7 MS. KOLLINS: Doesn't have to talk about physical abuse. Doesn't
8 have to say --

9 THE COURT: No. But If you were them, how would you prove that
10 Scarlett's untruthful?

11 MS. KOLLINS: And that -- those would be my questions. I could go
12 into the fact that there was a CPS investigation, your daughter was spoken to, and
13 it is your opinion in that case she was untruthful, without talking about the
14 allegations of physical abuse and who committed them.

15 THE COURT: Kind of loses the effectiveness, if you can't explain what
16 it wasn't truthful about. I mean, the fact that it's untruthful is such a serious
17 matter -- help me -- I think it's important.

18 MR. WESTBROOK: I think I can help.

19 THE COURT: Yeah.

20 MR. WESTBROOK: I'm not going to ask him questions about the
21 actual physical abuse that he might have committed. There's an allegation that he
22 over-disciplined. I'm not going to ask about that. I'm asking about the untrue
23 allegations.

24 THE COURT: About the what? I couldn't --

25 MR. WESTBROOK: The ones that we know aren't true. Yeah.

1 THE COURT: The untrue ones, yeah.
2 MS. KOLLINS: The ones about Josh --
3 THE COURT: Yeah, don't --
4 MS. KOLLINS: The Joshua ones?
5 MR. WESTBROOK: Yeah. That's all I'm talking about. I'm not talking
6 about --
7 MS. KOLLINS: So you're going to -- you're going to imply about the
8 little brother's --
9 THE COURT: But didn't he say on the stand that he admitted that -- did
10 he admit to the abuse?
11 MS. KOLLINS: No.
12 MR. WESTBROOK: No. It's in the report, but I'm not going into it.
13 That's my point.
14 THE COURT: Okay. Yeah. Don't get into the -- the part that I guess
15 might be true. All right? Because then -- because then that doesn't go to the
16 untruthfulness of Scarlett.
17 MR. WESTBROOK: I guess when you -- right. But I want to hear --
18 MS. KOLLINS: What about the -- what about Joshua, the little brother?
19 The sexual acts of Joshua? Because that was never -- that was another --
20 THE COURT: Again, that doesn't go to untruthfulness where that --
21 that would -- that would go to showing how she is truthful.
22 MR. WESTBROOK: I wouldn't plan to get into that today. If I got into it
23 at all, I could get into it through CPS. I mean, it --
24 THE COURT: Oh, sorry.
25 MR. WESTBROOK: It could be relevant.

1 THE COURT: Leave that on [indiscernible].
2 MR. WESTBROOK: It could be -- it could be relevant to the issue of --
3 THE COURT: I don't want you to --
4 MR. WESTBROOK: Yeah. Not today, though.
5 THE COURT: -- abuse and other kids or any abuse on issues which
6 have been corroborated by [indiscernible].
7 MR. WESTBROOK: Right. The only --
8 THE COURT: [Indiscernible.]
9 MR. WESTBROOK: I'm sorry. Go ahead.
10 MS. KOLLINS: But still, I don't want the -- I don't the words uttered.
11 THE COURT: To -- to get into what the allegation was with Scarlett.
12 MS. KOLLINS: Uh-huh.
13 THE COURT: All right. Under the circumstances whatever
14 [indiscernible.]
15 MR. WESTBROOK: Okay. Do you have anything else you want to --
16 MS. KIERNY: I think that's it.
17 MS. KOLLINS: That's fine, sir. Thank you.
18 [End of bench conference.]
19 THE COURT: All right. Let's go. All right. We're going to continue.
20 THE WITNESS: Okay.
21 MR. WESTBROOK: Okay.
22 THE COURT: Sometimes I forget to turn that off.
23 BY MR. WESTBROOK:
24 Q Okay. My last question was you love your daughter, but she's not
25 always honest, right?

1 A When she's with me -- she's been with me, she's been honest.

2 Q Was there a situation when she talked to an investigator from Child
3 Protective Services where she wasn't honest, correct?

4 A Maybe. I don't know if she may have been involved under the words of
5 her mom.

6 Q Perhaps. Let me be more specific.

7 Scarlett had told a CPS investigator that you had punched her on
8 her mouth and also kicked her, correct?

9 A To my knowledge, I have never kicked her or hit her.

10 Q Exactly. You haven't done that. It wasn't true, right?

11 A No. I wouldn't be here.

12 Q Okay. But she told the CPS investigator that you had done those
13 things, right?

14 A It may not have been that way. But I wasn't there that time when she
15 said it.

16 Q Okay. Well, the CPS investigator was investigating you because of
17 what Scarlett said, right?

18 MS. KOLLINS: Your Honor, at this point I'm going to object. I think the
19 parameters of these questions were laid out pretty succinctly at the bench. So now
20 it kind of --

21 THE COURT: Yeah. I'm going to allow him -- I'm allowing him do this,
22 right? This is proper cross-examination. So overruled.

23 BY MR. WESTBROOK:

24 Q You were being investigated by CPS because Scarlett claimed that you
25 had punched her on her mouth.

1 A When they came and they took the child away from me, they said that it
2 was because I had hit my daughter. But the following week, I went back and picked
3 up my daughter and my son.

4 Q Right. Because it turns out Scarlett had lied, and her mother had put
5 her up to it, right?

6 A It could have been.

7 Q Okay. So Scarlett made a false accusation against you because her
8 mother told her to, right?

9 A It may have. It may have been.

10 MR. WESTBROOK: Court's indulgence.

11 THE COURT: Okay.

12 MR. WESTBROOK: Nothing further. Thank you, Your Honor.

13 THE COURT: All right. Redirect.

14 **REDIRECT EXAMINATION**

15 BY MS. KOLLINS:

16 Q This investigation that Mr. Westbrook was discussing with you, that
17 took place back in February of 2015; does that sound right?

18 A I'm not sure exactly of the date, but approximately.

19 Q Okay. Did the CPS investigator come to you and inform you that
20 Scarlett affirmed that her mother had put her up to this?

21 A That's correct.

22 Q Okay. So you knew from CPS that Scarlett stated that your ex-wife had
23 put the child up to that, to telling that lie?

24 A Yes.

25 Q Okay. And you said to opposing counsel that when Scarlett is with you,

1 she tells the truth?

2 A Yes.

3 Q Okay. Have you -- do you have a problem with her lying to you when
4 she's in your custody?

5 A No.

6 Q And I don't think I asked you before, Scarlett was born here in the
7 United States, right?

8 A Yes.

9 THE COURT: Is that good?

10 MS. KOLLINS: Yes, Your Honor. Thank you.

11 THE COURT: Any recross?

12 MR. WESTBROOK: Very briefly.

13 **RECROSS-EXAMINATION**

14 BY MR. WESTBROOK:

15 Q Scarlett only admitted to the lie after she was taken away from you,
16 right?

17 A I'm sorry?

18 Q Scarlett only admitted to the lie after she was taken away from you,
19 right?

20 A Well, I don't know, because I wasn't there when she said it -- when she
21 said this, and I don't know to whom she said it, and I don't know when she said it.
22 The only communication I had was through the -- the social worker, who said
23 Scarlett was fine, and it was just that she -- they were going to do an investigation
24 with the school. And so they went to the -- her school, and the following week I was
25 able to go and pick her up.

1 Q Okay. So they took her away, they did an investigation, they gave her
2 back, right?

3 A Yes.

4 MR. WESTBROOK: Nothing further.

5 THE COURT: All right. Excellent.

6 Anything from the -- oh, Ms. Kollins, did you need something?

7 MS. KOLLINS: No. I was just going to tell you I didn't have anything
8 else, Your Honor.

9 THE COURT: Great.

10 Anything from the jurors? Any questions from the jurors? I don't
11 see any hands.

12 All right. Let's see here. We -- then, I will go ahead and excuse
13 you. Mr. Rangel, you are excused. Thank you, sir.

14 THE WITNESS: Thank you very much.

15 THE COURT: There's a step, be careful.

16 THE WITNESS: Thank you.

17 THE COURT: All right. I don't think we have time for another witness.
18 Would that be correct?

19 MS. KOLLINS: That would be accurate, Your Honor. We actually sent
20 the next witness on her way, because she's going to be a little while.

21 THE COURT: All right. I understand.

22 Then we can excuse the jurors for -- for the weekend and have
23 them back here Monday at 9:00, does that work for everybody as we originally
24 planned? All right.

25 Ladies and gentlemen of the jury, you get to go home a little bit

1 early tonight. So let me go ahead and read your admonishment.

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

11 You're directed to return to the hallway outside this courtroom for
12 further proceedings Monday morning at 9:00 a.m.

13 Do we have any questions from any of the jurors before I excuse
14 you?

15 MR. WESTBROOK: Your Honor, I had a question.

16 THE COURT: Yes?

17 MR. WESTBROOK: I was talking with Ms. Kollins. Would it be
18 possible to do a 9:30 start? I know we want to get --

19 THE COURT: If that's okay with the State, too?

20 MS. KOLLINS: That would be fine with the State. I just have a couple
21 appearances I need to take care of.

22 MR. WESTBROOK: I have some, as well.

23 THE COURT: All right. Well, I always got stuff I could take care of
24 then. All right.

25 Then I'm going to give you guys 9:30, all right. Sleep in a little bit

1 longer.

2 One of the jurors said that, unfortunately, they got a ticket
3 because they parked in the wrong place. I checked with the jury commissioner.
4 Unfortunately, they said that there's nothing that we can do about it. I wish there
5 was something I could do about it, but I -- I can. So on behalf of the court, I'm
6 sorry.

7 But who is that? Oh. Sorry about that. Yeah. So the jury
8 commissioner said that it's posted -- it's explained where you're supposed to park,
9 and there's nothing that we can do to -- to get that fixed for you. All right.

10 But, anyway, have a nice weekend, be safe, and leave your
11 notepads. No one else will look at your notes, I promise you that. And have a good
12 weekend. We'll see you back here Monday at 9:30. 9:30.

13 [Jury recessed at 4:34 p.m.]

14 THE COURT: All right. Anything else we need to put on the record?
15 Anybody?

16 MR. WESTBROOK: Nothing, Your Honor.

17 THE COURT: All right. Mr. Azucena, have a good weekend, sir. See
18 you Monday.

19 MR. WESTBROOK: Thank you, Your Honor.

20 THE COURT: Good evening, everybody.

21 [Court recessed at 4:35 p.m., until Monday, May 1, 2017, at 9:37 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.

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JOSE AZUCENA) No. 74071
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 Appellant,)
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 v.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)
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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 10 day of April, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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

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