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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

WEDNESDAY, MAY 3, 2017

**TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL - DAY 7**

APPEARANCES:

For the Plaintiff:

STACEY L. KOLLINS, ESQ.
Chief Deputy District Attorney
CHRISTOPHER S. HAMNER, ESQ.
Deputy District Attorney

For the Defendant:

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

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

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1 **LAS VEGAS, NEVADA, WEDNESDAY, MAY 3, 2017**

2 [Proceedings commenced at 11:16 p.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: Are we ready to proceed?

6 MS. KOLLINS: I -- I think --

7 MR. WESTBROOK: There's going to be brief record. I guess how brief
8 it is depends on the court's inclination.

9 But may I approach? I've got an exhibit I'd like to enter as
10 defense exhibit next in order.

11 THE COURT: Yeah. Defense exhibit. Okay.

12 MR. WESTBROOK: This is discovery that was turned over last night.

13 THE COURT: Discovery last night. Okay. Discovery last night. Is this
14 a new issue or something that we started talking about yesterday, or -- well...

15 MR. WESTBROOK: This is --

16 MS. KIERNY: It's a new.

17 MR. HAMNER: It's a new issue.

18 MR. WESTBROOK: This is brand new.

19 THE COURT: Oh, a new issue. Okay.

20 MR. HAMNER: No, I -- let me -- let me address just factually how this
21 happens.

22 THE COURT: Okay.

23 MR. WESTBROOK: Okay.

24 MR. HAMNER: Since it's -- since it's our obligation to turn this over.

25 THE COURT: Yes, sir.

1 MR. HAMNER: So last night we had a pretrial set up with Detective
2 Matt Campbell at 6:30 at night, because we anticipate him testifying on Thursday.

3 THE COURT: Okay.

4 MR. HAMNER: As you know, the court ordered us to turn over all
5 notes and we had indicated at that discovery motion, that argument, that we would
6 have a meeting with Detective Campbell, where we reviewed his file and he would
7 turn over all of his notes. Okay.

8 We had a meeting prior to this, as we had said. That's where we
9 got, for example, a packet of handwritten interview notes. Interview notes that
10 we've talked about previously at the first Motion to Dismiss at the beginning of trial;
11 do you remember that?

12 THE COURT: Okay. Yes, sir.

13 MR. HAMNER: Okay. So at that meeting we asked Detective
14 Campbell, bring your file, bring all your notes. And that's what we brought us and
15 we copied the rest of the things in his file.

16 Last night, at 6:30, when we were sitting there talking with him
17 about just pretrying topics, he makes an off comment along the lines of, Yeah, I'll
18 need to check my notes on the computer.

19 And we -- Ms. Kollins and I stopped and we said, What are you
20 talking about, notes on your computer?

21 And he says, Well, sometimes I put in notes that just kind of track
22 things I do during the course of a case.

23 THE COURT: Okay.

24 MR. HAMNER: And I said to him, Well, were those the notes that you
25 brought us in the file review?

1 And he was, like, No, I didn't know I needed to bring those.

2 And we looked at him and we said, When we ask you for a file
3 review and to bring all of your notes, how could you possibly think we wouldn't want
4 your notes that are on a computer?

5 He's, like, I'm sorry, I didn't know that.

6 So what we did is as we finished our -- our meeting, I sent him
7 directly to headquarters, and I said, Listen, you need to go, you need to print up all
8 those notes. I need them scanned and I need to have them e-mailed me to -- right
9 now, because I have to get them over to defense counsel.

10 I'd like marked as a court exhibit --

11 THE COURT: Yes, sir.

12 MR. HAMNER: -- Court Exhibits 1 and 2, first.

13 THE COURT: All right.

14 MR. HAMNER: That is the e-mail in which Renee McCloud, his
15 investigator, sent us over these case notes with respect to the Moreno/Estrella case
16 and with respect to the notes with the Rangel case.

17 As Exhibit 2, you can see on the time stamp on that, that would
18 be 8:02, two minutes after I received the notes without even -- even reading them, I
19 immediately e-mailed them over to Ms. Kierny.

20 THE COURT: Exhibits 1 and 2 will be admitted.

21 MR. HAMNER: Ms. -- Ms. Kierny, pursuant to --

22 THE COURT: The court -- not trial exhibits for the jury.

23 THE CLERK: Court exhibits?

24 THE COURT: Court exhibits.

25 MR. HAMNER: Pursuant to NRS 174.295(2).

1 MR. WESTBROOK: Oh, and to be clear, the defense thing is also a
2 court exhibit. I'm sorry about that. That should be a court exhibit, too, correct?
3 Just so we don't get confused.

4 THE CLERK: Which one did you just say?

5 MR. WESTBROOK: I said mark it as Defense Exhibit next in order, but
6 it would probably just be a court exhibit; is that correct, Your Honor?

7 THE COURT: That's what I said.

8 MR. WESTBROOK: Thank you.

9 THE COURT: Court Exhibits 1 and 2.

10 MS. KOLLINS: You just had that marked.

11 MR. HAMNER: Okay. So which are -- are they all -- they're not with
12 respect to a particular party, are they? Are they just all just considered court
13 exhibits?

14 THE COURT: Court exhibits.

15 MR. HAMNER: So, numerically, which exhibits would mine be versus
16 his, so I know in the next order in the chain. I have a couple other court exhibits
17 that I'd like to bring to your attention.

18 THE COURT: We're just going to number them all consecutive.

19 MR. HAMNER: Okay.

20 THE COURT: So we're -- we're up to No. 3 now.

21 MR. HAMNER: Okay. So I'd like to approach at least with Court
22 Exhibits 3 and 4.

23 THE COURT: This is -- they're just court exhibits of the day.

24 MR. HAMNER: Yes. Court Exhibit No. 3 are the detective --

25 MS. KIERNY: Oh, David already proffered those.

1 MR. HAMNER: Oh, he already proffered those?
2 THE CLERK: Okay. These are next in order. So these are actually --
3 MR. HAMNER: I didn't see them.
4 THE CLERK: -- 13 and 14.
5 MR. HAMNER: Could I see what his notes were, so I can --
6 MR. WESTBROOK: All I did, Chris, was I printed every single thing
7 that you gave me, but I can show them to you here.
8 MR. HAMNER: Is it in one packet?
9 MR. WESTBROOK: It's in one packet, and what I do is I numbered the
10 pages that I received sequentially at the bottom.
11 MR. HAMNER: Okay.
12 MR. WESTBROOK: In handwriting, because that's our technology.
13 MR. HAMNER: Okay.
14 MR. WESTBROOK: And so what I have here --
15 MR. HAMNER: Which --
16 MR. WESTBROOK: -- is 41 pages --
17 MR. HAMNER: What is --
18 MR. WESTBROOK: -- and this is from your e-mail from last night. But
19 you can look through them.
20 MR. HAMNER: What starts --
21 MR. WESTBROOK: I start --
22 MR. HAMNER: No, no, no. Hold on a second.
23 MR. WESTBROOK: Oh.
24 MR. HAMNER: I just want to see which of the two cases starts first.
25 MR. WESTBROOK: Okay.

1 MR. HAMNER: To give it reference.
2 MS. KIERNY: The e-mail is on the top.
3 MR. WESTBROOK: Yeah.
4 MR. HAMNER: It -- it -- it may be helpful to the court if you want them
5 separated out, whatever the court's pleasure.
6 THE COURT: Yes, keep them separated.
7 MR. WESTBROOK: That's fine.
8 MR. HAMNER: All right. So let's have --
9 THE COURT: Duplicates are fine.
10 MR. HAMNER: Let's have these marked as whatever the next
11 sequential one. So --
12 THE COURT: What's the next number, ma'am?
13 THE CLERK: Okay. We --
14 THE COURT: Shelley?
15 THE CLERK: You --
16 THE COURT: Just tell me the next number.
17 THE CLERK: It would be 13, 14 -- that one is 15.
18 THE COURT: All right. So I'm marking as Court Exhibit 15 this group
19 of documents. It looks like it's about maybe 20 pages. It is the Metro shield at the
20 front and at --
21 MR. HAMNER: It's -- it --
22 THE COURT: -- the bottom left-hand corner it says print date
23 May 2nd, 2017, 8:14 p.m.
24 MR. WESTBROOK: Thank you, Your Honor.
25 THE COURT: All right?

1 MR. HAMNER: And the next court exhibit is Detective Campbell's
2 electronic case notes with respect to the Rangel case.

3 THE COURT: Same date stamp, lower-left corner with an 8:18 time
4 stamp.

5 MR. HAMNER: That's correct.

6 THE COURT: That's Exhibit 16.

7 MR. HAMNER: That's correct.

8 THE COURT: Right? Continue.

9 MR. HAMNER: So what -- what I did this evening and this morning was
10 I started to go through the documents to see if the information contained in the case
11 notes was different than any discovery we had previously provided to the defense.

12 Because, obviously, under -- under that particular statute, one of
13 the remedies is you -- you don't allow, you know, the party with the turning over the
14 late discovery to potentially use it at trial, maybe you grant a continuance to give
15 them more time to look it over, you know, obviously, absent bad faith.

16 And what I found was that the information that is contained in
17 these two sets of case notes mirrors all of the discovery that had been provided to
18 the defense prior to the start of trial.

19 I can go page by page if the court would like to walk the court
20 through as to where each thing could be found in a corresponding arrest report or
21 voluntary statement. It's really the court's pleasure.

22 But the bottom line is upon review of these items, there is no
23 *Brady* information contained in here. There is nothing that exculpates the
24 defendant. There's nothing that impeaches the credibility of any witness, because
25 the things that are contained in here, that potentially are impeachment, have

1 already been provided in a corresponding voluntary statement from another -- a
2 relevant witness.

3 There is no *Giglio* material in this case, and ultimately there's --
4 there's no prejudice to the defense, because all these reports do is essentially
5 memorialize the, you know, the dates and the actions of Detective Campbell as we
6 walked through these two investigations with respect to the Moreno and Estrella
7 children, and then a separate one with respect to Scarlett Rangel, which was the
8 later disclosed victim.

9 THE COURT: All right. Thank you.

10 Well, before I decide whether you need further explanations, let's
11 hear from the defense on whether this is an issue.

12 MR. WESTBROOK: Thank you, Your Honor.

13 As a preface, I just want to remind the court that it doesn't matter
14 whether it was a district attorney who was responsible for this not being turned over
15 pursuant to the court's order or if it was a detective not communicating with the
16 district attorney. It's all the State, and any bad faith by Detective Campbell is bad
17 faith by the State. I believe that there's evidence in here of bad faith.

18 Also, I disagree that -- that -- with the State's pronouncement that
19 there is nothing exculpatory in here.

20 As with virtually all of the other discovery that was turned over
21 late, this is full of exculpatory evidence, and I'll explain. I think we're deep enough
22 in the case now that I can explain it without giving up parts of our defense that
23 earlier I was not able to, when I requested the in camera review.

24 The first thing we learned from this is on the very first page of the
25 Defense No. 1 today, the -- the first discovery packet turned over, it just shows the

1 e-mail on there.

2 The date of the e-mail, this was an e-mail from Mr. Hamner to
3 Detective Campbell, and it's dated January 24th, 2017. There were issues in this
4 case when I was arguing about --

5 THE COURT: I don't see that.

6 MR. WESTBROOK: It should be in the first thing that was taken over.
7 It would be the -- the first packet that I submitted this morning. Is that 9 or 10? The
8 court exhibit?

9 THE COURT: I don't know what you're talking about.

10 MR. WESTBROOK: May I approach?

11 MR. HAMNER: If -- just for clarification, if the court refers to the State's
12 court exhibit.

13 MR. WESTBROOK: Right there.

14 THE COURT: I can't listen to two people --

15 MR. WESTBROOK: Sorry.

16 THE COURT: -- at the same time.

17 MR. HAMNER: No. If the court refers to the court's -- the State's
18 exhibit, if you -- if you look here, that it had a creation date time, it says 3/13/2007
19 [sic] at 9:56.

20 THE COURT: Is that Exhibit 15?

21 MR. HAMNER: Let me just see. Yes. That would be your Exhibit 15.

22 THE COURT: What about it?

23 MR. HAMNER: He's -- when he refers to the date of January 24th, it's
24 an e-mail that's embedded in an entry made by Detective Campbell on --

25 THE COURT: Oh. Okay.

1 MR. HAMNER: -- March 13, 2000 --

2 THE COURT: Because I see the March 13th date and it's down here.

3 MR. HAMNER: Right. He makes a March 13th entry --

4 THE COURT: Okay.

5 MR. HAMNER: -- where he adds an e-mail I sent on January 24th.

6 THE COURT: Now I'm with you.

7 MR. WESTBROOK: Great. Thank you, Your Honor. It's about halfway
8 down the page. And I have it marked, you know, with my little number on the
9 bottom as page 1 of my 41-page packet.

10 THE COURT: I see. Okay.

11 MR. WESTBROOK: It says, Tuesday, January -- this is just an e-mail
12 that was sent from Mr. Hamner to Detective Campbell, Tuesday, January 24th,
13 at 8:18 a.m.

14 Now, recall, this is before discovery motions. It's before any
15 arguments in this case regarding discovery.

16 One of the issues here was when did the State find things out?
17 What did they know and when? There were arguments about we, you know, we
18 said we were never given the contact information.

19 THE COURT: Don't be too fast, because you're putting too much of a
20 burden on the interpreter.

21 MR. WESTBROOK: I'll slow down, Your Honor.

22 THE COURT: Thank you.

23 MR. WESTBROOK: One of the main issues was involving us getting
24 contact information for Lexi, who is also known as Litzi, Leo, Orlando, and Juanito.
25 And it's clear from this, that not only did the State know about the identities of these

1 kids and also -- but also they had their contact information. And they had a little
2 synopsis about each one of them. Okay.

3 It was represented that they didn't know anything about this. I
4 can't go deeper than that, because again, we just got this. I would compare it to the
5 record, for example, in the context of an evidentiary hearing. But it's clear that the
6 representations were made about what was known and those representations
7 don't --

8 THE COURT: Why does it matter? I don't know what that --

9 MR. WESTBROOK: -- don't appear to be true.

10 THE COURT: What does that matter?

11 MR. WESTBROOK: Because we had done a motion, which I'm
12 renewing this morning, for a dismissal based on bad faith. I think this is evidence
13 of --

14 THE COURT: Why --

15 MR. WESTBROOK: -- bad faith.

16 THE COURT: Why is it bad faith that they knew this information?

17 MR. WESTBROOK: They represented to the court that they didn't.
18 And I would like to be specific about representations.

19 THE COURT: I don't remember that.

20 MR. WESTBROOK: Well, I could be specific about it. But again, when
21 you're in the middle of trial and you get a 41-page packet after a week and a half, it
22 puts us as kind of a disadvantage as far as arguments.

23 THE COURT: What I remember is you did a motion asking for their
24 addresses, and they said they'll give them to you, and they gave them to you. So I
25 don't know -- I -- I'm still not following your argument.

1 MR. WESTBROOK: Your Honor, I could be specific about what was
2 represented --

3 THE COURT: You've got to be specific, because I'm not --

4 MR. WESTBROOK: Well.

5 THE COURT: -- I'm not understanding what you're trying to say here.

6 MR. WESTBROOK: I just --

7 THE COURT: You're saying you didn't -- they had the addresses and
8 didn't give them to you. But my recollection is you did a motion, you wanted the
9 addresses, and they gave you the addresses. So I don't know what the problem is.

10 MR. WESTBROOK: Your Honor, representations were --

11 THE COURT: Are you saying they had a duty to give them the
12 addresses sooner? And -- and what -- what's that based on?

13 MR. WESTBROOK: Certainly they had a duty to give them sooner,
14 that's --

15 THE COURT: What's that based on?

16 MR. WESTBROOK: That's based on the NRS. And -- and based on all
17 the law that we already cited in our discovery motions, as we timely discovery.

18 THE COURT: Did they --

19 MR. WESTBROOK: But that's not my point.

20 THE COURT: If you would only give me specifics, I can't force you to.
21 So, but go ahead.

22 MR. WESTBROOK: Well, I'll -- I'll read to you from the -- from our
23 motion. Hang on. I can give you exact specifics on that. But that's not -- I mean --

24 THE COURT: Well, don't -- you -- you can't just say there's bad faith
25 and not give me the facts to support your bad faith argument.

1 MR. WESTBROOK: Well, what I'm trying to tell --

2 THE COURT: You're saying, Judge, they have a duty, but I'm not
3 going to tell you the statute. And I asked for it, but I'm not going to tell you when. I
4 mean, that's -- that's not -- that's not -- you're not making a very persuasive case
5 here.

6 MR. WESTBROOK: Well, let me tell you -- well, that's because I'm
7 trying to get to my actual argument, Your Honor.

8 THE COURT: No. You -- you start -- your argument was you're
9 complaining about the addresses.

10 MR. WESTBROOK: Okay.

11 THE COURT: Isn't that what you started arguing about, the
12 addresses?

13 MR. WESTBROOK: I was pointing out --

14 THE COURT: Why is that irrelevant? In which --

15 MR. WESTBROOK: No, it's --

16 THE COURT: -- in which case you're wasting the court's time.

17 MR. WESTBROOK: It's -- it's relevant, because what I'm arguing,
18 Your Honor, is that the State represented they didn't have this stuff. This e-mail
19 proves that they did.

20 My other representation, and this is brand --

21 THE COURT: You're -- you can answer my questions first.

22 MR. WESTBROOK: Okay. Well, then, let me -- let me get your --

23 THE COURT: You know what, I think you're wasting the court's time.

24 MR. WESTBROOK: I'm not, Your Honor.

25 THE COURT: And we're just going to have to bring in the jury.

1 Because you're -- you're really not -- not getting to the point.

2 MR. WESTBROOK: Your Honor, I've got it right here.

3 THE COURT: You're not answering my questions.

4 MR. WESTBROOK: I've got it right here. And I'm trying to answer your
5 question. All right.

6 THE COURT: All right. I'll give you another try.

7 MR. WESTBROOK: The second thing here is that this is evidence that
8 Detective Campbell has two files, and this is very important. This is so important
9 that this was -- this has been the subject in national news with other police
10 departments, such as in Cook County. He has two files and he's not sharing those
11 two files.

12 What Chris was saying about him saying, Well, I should check
13 my electronic file indicates that this officer and probably other officers within Metro
14 are keeping two files, two electronic files. And we have evidence in this case, with
15 Detective Campbell anyway, two written files.

16 The written notes that he's keeping as part of some other written
17 file were not turned over in the original discovery and they weren't turned over at all
18 until after we had our Motion to Reconsider heard by this court and granted.

19 There also -- and Mr. Hamner probably found this out last night --
20 there is also a separate computer file. This computer file is not part of the
21 electronic system that's accessible by the District Attorney's Office. Nor has this
22 ever been disclosed to us before that this even exists.

23 And yet Detective Campbell didn't turn over discovery that was in
24 a secret file that he -- that no one else apparently can access, at least not with the
25 prosecutor's office.

1 This is a huge concern that there are two different files. And this
2 detective, despite being ordered by the court and requested by Mr. Hamner, didn't
3 see fit to produce all of his information. He's keeping secret files. This is a huge
4 problem, Your Honor.

5 THE COURT: Well --

6 MR. WESTBROOK: And it clearly shows bad faith.

7 THE COURT: -- I mean, we don't know it's secret just because you say
8 it's secret.

9 MR. WESTBROOK: The State said -- said they didn't know about it.

10 THE COURT: It was kind of a -- the State didn't know about he had
11 some -- I mean, you're kind of making a big deal out of something that you haven't
12 proven to me it's a big deal yet. It's -- he had some miscellaneous documents on
13 his computer. I -- I don't know how we jump from they have this -- some kind of
14 systematic hiding of documents by Metro. I don't -- that seems like a pretty big
15 leap.

16 MR. WESTBROOK: Which is the reason why I'm requesting, once
17 again, an evidentiary hearing on the topic of bad faith. Because there is evidence
18 of it and if our request for an evidentiary hearing regarding bad faith is ignored, then
19 it's a summary judgment. I -- you're asking me to prove stuff that requires -- and I
20 completely agree with you -- this needs to be proven to some extent, or at least
21 disproven.

22 But you can't do that without an evidentiary hearing. Again, we
23 got this packet late last night. I -- I've read it this morning for the first time. I'm in
24 the middle of a week-and-a-half trial.

25 THE COURT: Well, let's get to -- let's get to whether there's anything in

1 here that's exculpatory.

2 MR. WESTBROOK: Certainly.

3 THE COURT: I mean, that's -- isn't that the more important question?

4 MR. WESTBROOK: I don't think it's the more important question. But
5 it's definitely important, Your Honor.

6 THE COURT: Okay.

7 MR. WESTBROOK: I think that the bad faith is a very important
8 question, too. Okay.

9 THE COURT: So the base --

10 MR. WESTBROOK: The first thing that's important about this
11 discovery --

12 THE COURT: Okay.

13 MR. WESTBROOK: -- that I noticed in -- in reading, and I have it
14 marked in my packet, my 41-page packet, which I hand wrote numbers on, on the
15 bottom.

16 THE COURT: I have it here. Go ahead.

17 MR. WESTBROOK: Okay. I have it on page 5.

18 THE COURT: Yeah, I'm there.

19 MR. WESTBROOK: There was a discussion in here about possible
20 witness tampering. And it was stated that the District Attorney's Office never --

21 THE COURT: Well, let me read it. Let me read it here.

22 MR. WESTBROOK: Here, I'll show you.

23 MR. HAMNER: Could you refer to me what Bate --

24 MR. WESTBROOK: Yeah, I think it's --

25 THE COURT: Is it the one that's --

1 MS. KIERNY: McCloud 6 --

2 MR. WESTBROOK: It starts with Renee McCloud.

3 MR. HAMNER: If you could start at least, when you refer to pages,
4 maybe talk about the creation date in which a date happened, and that way --

5 MR. WESTBROOK: I'll do that.

6 MR. HAMNER: -- it's in reverse chronological order, Your Honor.

7 MR. WESTBROOK: Yeah. I just put it in the order that it came to us
8 on.

9 It -- okay. So it's called creation date/time 2/27/2017. And it
10 involves Orlando and Juanito. And it says:

11 I reached out to schedule forensic interviews with Orlando and
12 Juanito.

13 The author of this e-mail is Renee McCloud. As you might recall,
14 Your Honor, there was an issue where we attempted to interview Orlando and
15 Juanito, who we didn't find --

16 THE COURT: Yes, I remember.

17 MR. WESTBROOK: Right. We didn't find out about them until
18 March 11th.

19 THE COURT: Right.

20 MR. WESTBROOK: This e-mail dated 2/27 --

21 MS. KIERNY: Well, we didn't find out until, like --

22 MR. WESTBROOK: Was it later than that?

23 MS. KIERNY: Yeah. Like, the 8th -- April 8th or something.

24 MR. WESTBROOK: Oh, I'm sorry. I said March.

25 THE COURT: You meant April?

1 MR. WESTBROOK: I meant April. Yeah, I meant April. Yeah.

2 THE COURT: I remember. I'm visualizing your -- the chart that you
3 gave the court --

4 MR. WESTBROOK: Right.

5 THE COURT: -- with the dates --

6 MR. WESTBROOK: Yeah.

7 THE COURT: -- that -- that you think they knew and the date you found
8 out. Right.

9 MR. WESTBROOK: Right. Well, this is dated February 27th, 2017.
10 And this is clearly Renee McCloud reaching out to schedule interviews with
11 Orlando and Juanito through the parents. The she obviously had one scheduled
12 for 3/6/17. I believe that didn't work out. I'm not sure what other follow up was
13 done.

14 THE COURT: Did -- did this relate to the -- the separate charges that
15 were being filed? And -- and so, you know, the -- and the -- was it detective --
16 these are Detective Campbell, did he not -- I think he -- well, let me stop for a
17 second.

18 I think Mr. Hamner represented to the court that Detective
19 Campbell told him that he didn't connect the Orlando and Juanito with this case, so
20 he didn't think to turn these documents over to him in connection with this case.

21 MR. WESTBROOK: Except that this proves that Detective Campbell --

22 THE COURT: Maybe I'm a little bit off in my -- in my thinking.

23 MR. HAMNER: A little bit, but --

24 THE COURT: But he'll -- he'll correct it.

25 MR. WESTBROOK: It's a little off.

1 THE COURT: But okay.

2 MR. WESTBROOK: It's a little -- and he can do it now, if he -- if he has
3 a different take on that, if it's important.

4 THE COURT: What's your take on that?

5 MR. HAMNER: Well, let me -- I want to address -- I can address this
6 topic.

7 First of all, if you refer to that 2/27 entry from Renee McCloud, it
8 states that they tried to reach out for forensic interview for Orlando and Juanito.
9 They left a voicemail message. It doesn't indicate that they talked to her.

10 I'm waiting for her to return a phone call. Forensics tentatively
11 scheduled 3/6/17. So someone just out of an abundance of caution blocked off
12 some time.

13 If you look to March 13, 2017, that's the very first page --

14 THE COURT: Yes.

15 MR. HAMNER: -- March 13, 2007, [sic] this is where Detective
16 Campbell had embedded my e-mail from January 24th. But what he does on
17 March 13th, if you turn to the following page, on page 2 of 3, the bottom of page 2,
18 on this 3/13 entry -- he has three dashes. Lexi was interviewed, no disclosure. Leo
19 was interviewed, no disclosure. Orlando and Juanito's parents -- that's Veronica
20 Alvarez from that 2/27 entry we just looked at -- would not reply to inspector
21 McCloud's phone calls, so we were not able to set up interviews.

22 So what this entry on March 13th corroborates is what I
23 represented to the court, which was the following:

24 Detective Campbell and his people made efforts to contact this
25 woman, Veronica Alvarez. And at the time when we were arguing this, I said, a few

1 weeks back, maybe back in February -- I wasn't sure exactly when, but I had told
2 him early on, which would be January 24th, you need to try to reach out. And he
3 was unsuccessful in doing so.

4 And that corroborates what I represented to the court. These
5 entries corroborate that Veronica Alvarez never talked to them as late as
6 March 13th. And with respect to Veronica Alvarez's voluntary statement where she
7 walked into the [indiscernible], the date of that is March 27th, which is two weeks
8 after.

9 THE COURT: All right. Two weeks after this.

10 MR. HAMNER: And -- and so at this point, what --

11 THE COURT: Two weeks after the --

12 MR. HAMNER: -- the date of this -- this entry --

13 THE COURT: -- the tentative date that was set.

14 MR. HAMNER: -- where Detective Campbell is noting for his own
15 records that that particular mother has not returned any of Metro's phone calls.

16 THE COURT: Okay.

17 MR. HAMNER: So I would -- I would say that what we represented
18 several weeks before is exactly what is in here. It's not anything different than what
19 we purported to this court before. They tried to reach out to her. She did not
20 respond. They could not set up interviews, and therefore Veronica Alvarez and her
21 two children are not named victims in this case. They were never part of any
22 supplemental charging document.

23 And the other two children that --

24 THE COURT: Well, it --

25 MR. HAMNER: Sorry.

1 THE COURT: Yeah.
2 MR. HAMNER: I'll -- I'll stop there on that topic.
3 THE COURT: Well, you kind of -- okay.
4 MR. WESTBROOK: All right.
5 THE COURT: Well, thank -- thank you.
6 Mr. Westbrook, why don't you continue with -- with that. I'm still
7 trying to understand the --
8 MR. WESTBROOK: If we could return to the next page.
9 THE COURT: -- the facts.
10 MR. WESTBROOK: If we could return to the next page.
11 THE COURT: All right.
12 MR. WESTBROOK: This part's quite important.
13 MR. HAMNER: What would the entry of that --
14 MR. WESTBROOK: The very -- the very next page, all it says is one
15 line, and it says:
16 I let DA Hamner --
17 I assume the missing word there is know.
18 -- of the result of his request for setting up the interviews.
19 Which means that this tentative March date -- did we say
20 March 6th or March 13th?
21 THE COURT: March 6, 2017.
22 MS. KIERNY: As of March --
23 MR. WESTBROOK: Yes.
24 MR. HAMNER: That's not --
25 MS. KIERNY: That's Campbell --

1 MR. WESTBROOK: As of March 13th. As -- as of March 13th,
2 Detective Campbell had contacted Mr. Hamner and told him about all of this.

3 I think it's important when you're talking about bad faith. Okay.

4 THE COURT: So --

5 MR. WESTBROOK: And also --

6 THE COURT: Okay.

7 MR. WESTBROOK: I mean -- I mean, that's -- that's -- did you find the
8 page? I'm sorry, Your Honor.

9 THE COURT: Yeah.

10 MR. WESTBROOK: It was the very next page?

11 THE COURT: Yeah.

12 MR. WESTBROOK: It says Detective Campbell communicated with
13 him. That also corroborates with the -- the actual report filed by Veronica Alvarez,
14 and I believe that Mr. Hamner said -- I don't want to get his words wrong here, I
15 know it's in my original Motion to Dismiss based on *Brady* violations, but I believe
16 he said that Detective Campbell didn't know about this. And that maybe the
17 Veronica Alvarez thing was discovered by accident haphazardly when he was
18 talking to somebody else. If I remember correctly, it's definitely in my other motion.

19 Detective Campbell's phone number is on that report that was
20 filed. I mean, his -- his literal phone number is on the report. It's in Spanish. We
21 had to have it translated. But the idea that Detective Campbell didn't know about
22 this just can't be true.

23 And -- and now we have written evidence from Detective
24 Campbell in computerized notes that were never turned over that proves that it was
25 true. I mean, surely that forms --

1 THE COURT: That proves that he knew these witnesses were people
2 of interest that they need to talk to?

3 MR. WESTBROOK: That they'd been -- that some of them had been
4 talked to. Interviews had been set up for others.

5 THE COURT: But it said they didn't have anything to report and it
6 wasn't until the end of March when we got the first statement --

7 MR. WESTBROOK: Right.

8 THE COURT: -- from one of these people. So.

9 MR. WESTBROOK: And the last part of import was we requested a
10 hearing involving possible witness tampering, because somebody told Orlando and
11 Juan or their parents not to talk to us, which, of course, is a violation. And we
12 weren't sure her -- who. This packet shows that Renee McCloud was the one
13 setting up the interviews. It certainly gives us an idea of who might have told them
14 this. And it should have been the basis of -- of an evidentiary hearing and should
15 still be the basis.

16 THE COURT: All right. I -- I -- what else? I'm just not following you at
17 all. I'm sorry. You're -- I'm trying to understand what you're saying, but it's just not
18 making sense to me what you're --

19 MR. WESTBROOK: Okay.

20 MR. HAMNER: And -- and --

21 THE COURT: You're not making a clear argument. But that's okay.
22 We -- we need to bring in the jury.

23 I'm going to deny your motion, because you haven't expressed
24 any proof of bad faith. And -- and you haven't articulated yet that there's anything
25 exculpatory in here.

1 Denied your motion.
2 Bring in the jury, please, marshal.
3 You can -- you can make more of a record by writing.

4 MR. WESTBROOK: All right.

5 MR. HAMNER: And, Your Honor, just to make a court exhibit. I'll
6 provide the voluntary declaration of Ms. -- of Ms. Alvarez that's dated
7 March 27, 2017.

8 THE COURT: Whatever. Just go ahead and give it to her.

9 MR. HAMNER: Thank you very much.

10 THE COURT: Let's bring in the jury.

11 [Pause in proceedings.]

12 MS. KOLLINS: Your Honor, may I approach your clerk?

13 THE COURT: Yes.

14 MS. KOLLINS: Thank you.

15 [Jury reconvened at 11:41 a.m.]

16 THE COURT: All right. Welcome back, ladies and gentlemen. We're
17 ready to proceed. Sorry for the brief delay. We had a couple things we needed to
18 get rid of before we brought -- bring you in.

19 The State may call its first witness -- its next witness.

20 MS. KOLLINS: Your Honor, the State would call Yezline Estrella.

21 THE COURT: All right. Yezline Estrella, please. Yezline Estrella.

22 Yeah. We have a juror raising her hand, one second. Let me
23 just get your name here.

24 Where's my juror list? All right. You're in Seat No. 6. You are
25 Joyce Hudson.

1 Yes, what's up, Ms. Hudson?

2 JUROR NO. 6: Can I have a box of Kleenex?

3 THE COURT: Yes, ma'am.

4 Marshal -- where's my marshal? There he is.

5 All right. Let's proceed.

6 Yezline, hi. I'm Judge Scotti. Nice to see you. The attorneys will
7 ask you questions. Do you want to answer in Spanish or English? Spanish is fine.
8 Is that your -- more comfortable speaking Spanish?

9 THE WITNESS: Yes.

10 THE COURT: Yes?

11 THE COURT INTERPRETER: She is.

12 THE COURT: Okay. Good. Thank you for being here.

13 You may proceed.

14 MS. KOLLINS: Thank you, Your Honor.

15 **YEZLINE ESTRELLA,**

16 [having been first qualified by the judge, testified through the interpreter as follows.]

17 **DIRECT EXAMINATION**

18 BY MS. KOLLINS:

19 Q Good morning, Yezline.

20 A Good morning.

21 Q This lady is going to speak for you in Spanish. And you listen to her
22 and then you answer her in Spanish and she'll tell me what you said.

23 A Okay.

24 Q Okay. How old are you today?

25 A Eight.

1 Q Okay. And do you go to school?

2 A Yes.

3 Q Where do you go to school?

4 A Snyder Superstars. Uh-huh.

5 Q Okay. I'm going to ask you some silly questions now. Okay?

6 Do you know what color that is?

7 A Yes. Blue.

8 MS. KOLLINS: May the record reflect she's accurately identified the
9 color.

10 THE COURT: Yes.

11 BY MS. KOLLINS:

12 Q How about that one?

13 A Yellow.

14 MS. KOLLINS: May the record reflect she's already accurately
15 identified that color.

16 THE COURT: Yes.

17 BY MS. KOLLINS:

18 Q One more.

19 A Red.

20 MS. KOLLINS: May the record also reflect she's accurately identified
21 that.

22 THE COURT: Yes.

23 BY MS. KOLLINS:

24 Q What did you eat for breakfast today?

25 A Tacos. Tacos.

1 Q Okay. What kind of tacos?
2 A Meat.
3 Q Okay. If I said you had pizza and cupcakes for breakfast, is that a truth
4 or a lie?
5 A A lie.
6 Q Okay. If I said right now inside here today it's raining, is that truth or a
7 lie?
8 A It's a lie.
9 Q Okay. Is it good to tell a lie or is it bad to tell a lie?
10 A It's bad.
11 Q Okay. We're only going to talk about true things in here today.
12 A Okay.
13 Q Okay. Do you promise to tell the truth today?
14 A Yes.
15 Q Okay. If you tell a lie to Mommy or Daddy, do you get in trouble?
16 A Yes.
17 MS. KOLLINS: Okay. Is the court satisfied?
18 THE COURT: You may proceed.
19 BY MS. KOLLINS:
20 Q Who do you live with?
21 A My mom, my dad, one sister, and me.
22 Q What's your sister's name?
23 A Nicole.
24 THE COURT INTERPRETER: May I ask her to wait for me to ask the
25 question? Thank you.

1 MS. KOLLINS: Okay.

2 THE COURT INTERPRETER: Thank you.

3 Nicole.

4 BY MS. KOLLINS:

5 Q You said your sister's name is Nicole?

6 A Yes.

7 Q Is she little?

8 A Yes.

9 Q Can I show you a picture?

10 A Okay.

11 Q If you look on that screen right next to you, who's in that picture?

12 A My sister.

13 Q And who else?

14 A It's me.

15 Q Okay. And did you used to live in some apartments?

16 A Yes.

17 Q Okay. And did the same people live in that apartment?

18 A Yes.

19 Q Did you have some friends that you played with at those apartments?

20 A Yes.

21 Q Can you tell me their names?

22 A Jatziri, twin, and twin.

23 Q Okay. You call them twins?

24 A Yes.

25 Q Do you ever call them Mirabel and Maradel?

1 A Yes.

2 Q Okay. And do you also know another little girl named Scarlett?

3 A Yes.

4 Q Okay. Do you remember what your apartment looks like that you used
5 to live in?

6 A Yes.

7 Q Okay. Let me show you a picture.

8 MS. KOLLINS: And I'm sorry, the last published was State's 4. I
9 apologize for not making that record.

10 Q Showing State's 36; do you see your old apartments in that picture?

11 A Yes.

12 Q Okay. I'm going to give you a pen and I want you to use the end of it.
13 And if you touch that screen, it makes a circle that we can all see. Can you circle
14 your apartment for me?

15 MS. KOLLINS: If the record could reflect she's circled a front door on
16 the bottom of the photograph, second white door to the right.

17 Q Now, did the same people live in that apartment, your mom and your
18 dad and your sister Nicole?

19 A Yes.

20 Q Okay. Do you know Jatziri and the twins' momma?

21 A Yes.

22 Q Do you remember her name?

23 A Yes.

24 Q Can you tell me that?

25 A Amanda.

1 Q Okay. Now, and did Amanda and your mom sometimes have parties
2 with their friends in the apartments?

3 A Yes.

4 Q Okay. And there would be food and lots of people and stuff?

5 A Yes.

6 Q Okay. Do you know someone named David that lived in your
7 apartments?

8 A Yes.

9 Q I want you to look around the courtroom today and tell me if you see
10 David that lives in your apartments.

11 A Yes.

12 Q Okay. Can you tell me right now, today, what he's wearing in court
13 today, right now?

14 A Shirts, pants, and shoes.

15 Q What color is his shirt?

16 A Blue.

17 Q Does he have a tie or no tie?

18 A Yeah.

19 Q He has a tie -- okay. If you had to count where he's sitting, how many
20 would you count over there? Do you know what I mean?

21 Let me ask it a different way; does he have glasses or no
22 glasses today?

23 A He has glasses.

24 MS. KOLLINS: May the record reflect identification of the defendant.

25 THE COURT: Yes, it does.

1 MS. KOLLINS: Okay.

2 BY MS. KOLLINS:

3 Q Did you have a name for David? Did you have a -- a name for David?
4 Did you call him something?

5 A Yes.

6 Q What did you call him?

7 A Grandpa.

8 Q Okay. And did David have a wife?

9 A Yes.

10 Q Do you know her name?

11 A Yes. Yes.

12 Q Can you tell me her name, Yezline?

13 A Doña Elena.

14 Q Okay. Did they -- do you remember what David's apartment looked
15 like?

16 A Yes.

17 Q I'm going to show you a picture, okay?

18 Too many things going on, Yezline. Too much homework.

19 A Uh-huh.

20 Q I am going to show you State's 31. And I'm going to ask you to use
21 that same pen.

22 Do you see David's apartment in the picture?

23 A Yes.

24 Q Can you draw a circle on that apartment for us?

25 MS. KOLLINS: If the record could reflect that the witness has drawn a

1 circle around the white door on the lower level of the apartment building depicted in
2 State's exhibit.

3 Q Okay. Did David ever buy you stuff?

4 A Yes.

5 Q Like, what kind of stuff?

6 A Like to color --

7 Q Okay.

8 A -- and --

9 Q I'm sorry. You mean things to color with, like crayons?

10 A Yes.

11 Q Okay. Anything else?

12 A One book.

13 Q Okay. Anything else?

14 A Candy.

15 Q Okay. Would David come to the parties that your mom and Amanda
16 would have?

17 A Sometimes.

18 Q Okay. Do you know what we're here to talk about today, Yezline?

19 A Yes.

20 Q Okay. Do we have places on our body people aren't supposed to touch
21 us?

22 A Yes.

23 Q Okay. Can you tell me what those places are?

24 A Your mouth, your thing, and your tit -- tits or breast.

25 Q Okay. Your thing, what do you use that for?

1 A To go to the bathroom.
2 Q Okay. To go pee or poop?
3 A Both.
4 Q Okay. Do -- does your thing have two parts? Does it have a front and
5 a back?
6 A Yes.
7 Q Okay. And one goes pee and one goes poop?
8 A Yes.
9 Q Okay. And you said your *chi-chis*?
10 A Yes.
11 Q And your mouth?
12 A Yes.
13 Q Did you have a problem with David touching any of those spots?
14 A Yes.
15 Q Okay. Tell me the first time you remember.
16 A [No audible response.]
17 Q Okay. Let me ask it a different way.
18 Where did you get touched; was it inside a house? outside a
19 house? something different?
20 A In the house.
21 Q Okay. Let's talk about what happened in the house; who was there?
22 A Don David.
23 Q Okay. And what room in the house were you in?
24 A In his room.
25 Q Okay. His room that he uses to cook or to sleep or to go potty or

1 something else?

2 A Where he sleeps.

3 Q Okay. So was -- where in the room were you?

4 A On the bed.

5 Q Okay. How did you get on the bed?

6 A When he pushed me.

7 Q Okay. When you were on the bed, were you face up or face down or
8 something different?

9 A Facing up.

10 Q Okay. Who was -- who else was in the room besides you and David?
11 Just you alone?

12 A Yes.

13 Q Okay. Can we talk about what happened to your body?

14 A Yes.

15 Q Okay. Did your body get touched?

16 A Yes.

17 Q What part of your body got touched?

18 A My thing.

19 Q Okay. Your thing where you pee or your thing where you poop?

20 A The one I use to pee.

21 Q Okay. And what part of David's body touched your *kosa*?

22 A His hand.

23 Q Okay. You know how -- well, where did -- what did his hand do when it
24 touched you?

25 A Like a circle like he was...

1 Q Okay. He moved his hand in a circle?

2 A Yes.

3 Q Okay. And what did it feel like?

4 A Like --

5 THE COURT INTERPRETER: I forgot the word for *cosquillas*. I lost
6 the word for *cosquilla*. I'm sorry, Your Honor.

7 THE WITNESS: -- tickling.

8 MS. KOLLINS: Okay.

9 THE COURT INTERPRETER: Sorry.

10 BY MS. KOLLINS:

11 Q So you know how our front *kosa* has a separation?

12 Just work with me.

13 You know how our front *kosa* has a separate -- has a line?

14 A Yes.

15 Q You know how you wipe to go -- when you go pee?

16 A Yes.

17 Q Okay. Did it feel like that, like it was touching in that spot where you
18 wipe to go pee?

19 A Yes.

20 Q Okay. Did he use his hands to touch anyplace else on your body that
21 day?

22 A No.

23 Q Okay. Did something else happen to your hands and your feet that
24 day?

25 A Yes.

1 Q Can you tell me about that?

2 A Yeah.

3 Q Okay. What happened?

4 A He tied up my feet with the tape.

5 Q Okay. And how about your hands?

6 A Also.

7 Q How about your mouth?

8 A Also.

9 Q Okay. So do you remember what color the tape was?

10 A Yes.

11 Q Okay. What color do you remember it was?

12 A It was yellow.

13 Q Okay. Did -- did the tape hurt when it came off?

14 A Yes.

15 Q Okay. When you had the tape on your mouth and on your hands and

16 on your feet, and you were on the bed, were your clothes on or your clothes off? If

17 you --

18 A Clothes on.

19 Q Clothes on? Okay. When he used his hands to touch your thing, did

20 you feel the skin of his hand on the skin of your thing?

21 A Yes.

22 Q Okay. Was Elena at the apartment that day?

23 A No.

24 Q Okay. How did you get in the apartment?

25 A He -- he used to push me.

1 Q Okay. And now we're just talking about that day. Okay?

2 A Okay.

3 Q So on that day, did he push you or pull you or something? How did you

4 get in there?

5 A He pulled me.

6 Q Okay. And when he pulled you into the apartment, was anybody else

7 there?

8 A No.

9 Q Okay. And when you went in the apartment, did the door stay open or

10 closed or something different?

11 A Open.

12 Q Okay. What about the bedroom?

13 A Also.

14 Q Okay. What made everything stop that day; do you know?

15 A No.

16 Q After David stopped touching you, how did you get to go home?

17 A When I was putting on my clothes -- when I was putting on my clothes

18 and he took the tape off.

19 Q So you put on your clothes and --

20 A Yes.

21 Q -- and you took the tape off; did you take the tape -- what'd you take the

22 tape off first, your hands or your feet? Your mouth? If you remember.

23 A The feet.

24 Q Okay. Did David say anything to you before you left?

25 A No.

1 Q Okay. Did -- when you went home, did you tell Momma that day?
2 A Yes.
3 Q Okay. Now, did David ever used to give you candy?
4 A Yes.
5 Q What kind of candy?
6 A Chocolate.
7 Q Okay. Do you remember what kind of chocolate?
8 A No.
9 Q Okay. Do you remember what color wrapper it was in?
10 A Yes.
11 Q What color?
12 A Red.
13 Q Okay. Now, when he would give you the chocolate in the red wrapper,
14 would he be inside his apartment or outside his apartment?
15 A Outside.
16 Q Okay.
17 MS. KOLLINS: Mr. Hamner, could you clear that photo for me?
18 MR. HAMNER: Yes.
19 BY MS. KOLLINS:
20 Q Now, in that picture that you're looking at right there, that -- where we
21 can see the picture together -- do you see any place on that picture where David
22 gave you chocolate in the red wrapper?
23 A Yes.
24 Q Can you circle that place for me?
25 MS. KOLLINS: If the record could reflect she's indicated the black

1 power box to the bottom center of State's Exhibit 31.

2 Court's indulgence.

3 BY MS. KOLLINS:

4 Q I need to get my homework, okay, Yezline?

5 Who would be there when he would give you the chocolate in
6 the red wrapper?

7 A The three girls were there.

8 Q And who are those girls?

9 A Jatziri and the two twins.

10 Q Okay. When David would give you the chocolate or offer you the
11 chocolate, did he do anything with it first?

12 A Yes.

13 Q What did he do with the chocolate?

14 A Going around his penis -- his thing.

15 MS. KOLLINS: I'm sorry. Could the interpreter repeat that? I didn't get
16 the translation.

17 THE COURT INTERPRETER: Going around his thing.

18 MS. KOLLINS: Okay.

19 BY MS. KOLLINS:

20 Q His private part?

21 A Yes.

22 Q Okay. And did he do that inside his clothes or could you see his private
23 outside his clothes?

24 A Inside.

25 Q Okay. Did you take the candy?

1 A Yes.

2 Q Okay. When you took the candy, did you have to reach inside the
3 clothes to get the candy?

4 A Yes.

5 Q Okay. Did -- never mind. Strike that.

6 Did David ever show you his private part?

7 A Yes.

8 Q Where did that happen?

9 A Behind his car.

10 Q Okay. I'm going to show you some more pictures.
11 Showing you 33.

12 When you say behind his car, do you see -- maybe not his car,
13 but where in the apartments that happened? Is the place --

14 THE COURT INTERPRETER: In the apartment or the apartments?
15 BY MS. KOLLINS:

16 Q Is the place where David showed you his private in that picture?

17 A Yes.

18 Q Can you draw a circle for me where that happened?

19 MS. KOLLINS: The record could reflect that she has drawn a circle to
20 the right of the structure in the parking lot between two cars.

21 Q Now, did that happen daytime or nighttime; do you remember?

22 A At night.

23 Q Okay. Did that happen one time or more than one time?

24 A More than one time.

25 Q Okay. Do you -- just so I know that we're talking about the right thing,

1 I'm going to show you a picture. Okay?

2 A Okay.

3 Q Yezline, I'm going to show you a picture of a boy that's about to take a
4 bath. Okay. He doesn't have any clothes on. All right?

5 So when you talk about David's thing, I want to make sure that
6 we all know what you're talking about. Okay?

7 A Okay.

8 Q So I'm showing you what's been marked as Court Exhibit 8, and I'm
9 going to ask you to use that pen on there that I gave you and show me on there,
10 with a circle, what is a boy's private part that we're talking about.

11 MS. KOLLINS: The record could reflect she's drawn a circle around the
12 penis depicted in Court's 8.

13 Q Now, who would be there when David would show his thing?

14 A The three girls.

15 Q Okay. And who are the three girls?

16 A Jatziri, Mirabel, and Maradel.

17 Q Okay. Were there also some other friends that you played with in the
18 apartment, besides those three girls?

19 A Yes.

20 Q Can you tell me some names of those people?

21 A Solange.

22 Q Anybody else?

23 A No.

24 Q Okay. What about Leo?

25 A Yes.

1 Q Okay. Was Leo around sometimes or all the time?
2 A Sometimes.
3 Q Okay. How about Juanito?
4 A Yes.
5 Q Juanito around sometimes or all the time?
6 A All the time.
7 Q Okay. Juanito little or big?
8 A He's small.
9 Q Is he younger than you?
10 A [No audible response.]
11 Q Do you know?
12 A No.
13 Q Okay. And who is the other one I said? Orlando, Juanito, and Leo?
14 THE COURT INTERPRETER: You didn't say Orlando.
15 BY MS. KOLLINS:
16 Q Oh, Orlando. He's somebody else that you played with?
17 A No.
18 Q No? Okay. Now, you showed me where David used to have his car;
19 do you remember that, on the picture?
20 A Yes.
21 Q Okay. Do you remember what color his car was?
22 A Yes.
23 Q What color was it?
24 A Brown.
25 Q Okay. Did David ever take you to McDonald's?

1 A No.

2 Q How about 99 Cents store?

3 A No.

4 Q Okay. Did you ever get inside David's car?

5 A Yes.

6 Q Okay. Did stuff happen in David's car that you didn't like?

7 A Yes.

8 Q Can we talk about what happened in David's car?

9 A Yes.

10 Q Okay. Were you in the front seat, the back seat, something different?

11 A In the back.

12 Q Okay. And was David in the back?

13 A No.

14 Q Okay. So what happened in there that you didn't like?

15 A When he touched my leg.

16 Q Okay. He touched your leg?

17 A Yes.

18 Q Okay. Was it over your clothes or under your clothes?

19 A On top of my clothes.

20 Q Okay. Did anything else happen in the car that you didn't like?

21 A Yes.

22 Q Okay. Did someplace else on your body get touched?

23 A No.

24 Q Okay. Do you remember talking about the place where you go pee got

25 touched in the car; do you remember talking about that?

1 MR. WESTBROOK: Objection. Asked and answered. She said
2 nothing else got touched.

3 THE COURT: Yeah. She did say that.

4 Are you trying to refresh your recollection with a different --
5 some -- something new?

6 MS. KOLLINS: Yes. But I'll -- I'll rephrase.

7 THE COURT: Yeah. Thank you.

8 BY MS. KOLLINS:

9 Q Did -- were you in the --

10 THE COURT: Sustained. Go ahead.

11 BY MS. KOLLINS:

12 Q Were you in the car with David one time or more than one time?

13 A One time.

14 Q Okay. Did -- was anybody else in the car with you that day?

15 A Yes.

16 Q Who else was in there?

17 A The three twins.

18 Q Okay. The ones -- Jatziri, Mirabel, and Maradel?

19 A Yes.

20 Q Okay. Because there's two twins and one sister, right?

21 A Uh-huh.

22 Q Okay.

23 A Yeah.

24 Q Did the car move or stay still that day?

25 A It was stopped.

1 Q Okay. In the apartments?

2 A Yes.

3 Q Okay. Was that daytime or nighttime?

4 A At night.

5 Q Okay. Did David ever do anything to your mouth besides the tape?

6 A Yes.

7 Q What did he do to your mouth?

8 A He kissed me.

9 Q Okay. He kissed you on the mouth with his mouth?

10 A Yes.

11 Q Okay. Now, other than the tape day that we just talked about and the

12 car day, okay, was there another day where your thing got touched that you can

13 remember?

14 A I don't remember.

15 Q Okay. Did -- what do you call the part that you sit on? What do you call

16 that?

17 A The butt.

18 Q Okay. Did your -- did your butt get touched by David?

19 A No.

20 Q Okay. Do you remember a day that you were supposed to go to

21 Chuck E. Cheese?

22 A Yes.

23 Q Tell me about that.

24 A When we were going to Chuck E. Cheese, he -- he told us that our

25 mothers would not go there.

1 Q Okay. When you say he, are you talking about David?

2 A Yes.

3 Q So he said mommas can't go?

4 A Uh-huh.

5 Q Is that a -- is that a yes?

6 A Yes.

7 Q Okay. So he said -- did he say why mommas couldn't go with you to

8 Chuck E. Cheese?

9 A [No audible response.]

10 Q Do you understand the question?

11 A Yes.

12 Q Okay.

13 A He said -- he said he didn't want the moms to go with us. He only

14 wanted us to go with him.

15 Q Okay. Us being you and who else?

16 A Jatziri and the twins.

17 Q Okay. So he only wanted you and Jatziri and the twins to go, and no

18 mommas; did he tell you why he only wanted little girls to go?

19 A Yes.

20 Q What did he tell you?

21 A He said he didn't want the moms to come with us to Chuck E. Cheese,

22 just us, because after Chuck E. Cheese, he was going to take us to a far away

23 place.

24 Q Okay. How did that make you feel?

25 A Sad.

1 Q Okay. Now, right around the Chuck E. Cheese time, is that when you
2 and Jatziri and the twins, you decided to tell somebody what was going on?

3 A Yes.

4 Q Okay. Now, did David tell you before that time not to tell about stuff
5 that was happening?

6 A Yes.

7 Q Did David say what would happen if you told on him?

8 A Yes.

9 Q What did David say would happen?

10 A That if we say something to our mothers, he will kill our mothers and
11 our fathers.

12 Q Okay. So when you guys went to tell, you went to tell somebody
13 different, right?

14 A Yes.

15 Q Who did you go talk to?

16 A With the Cuban lady.

17 Q Okay. Is her name Yusnay?

18 A Yes.

19 Q Okay. And did Jatziri talk to Yusnay?

20 A Yes.

21 Q And then did you and Mirabel and Maradel -- then you went to Yusnay's
22 house?

23 A Yes.

24 Q Okay. And after that, did you sit down and tell Momma what
25 happened?

1 A Yes.

2 Q Okay.

3 MR. WESTBROOK: And Your Honor, I've been pretty quiet on the
4 leading questions. But it's getting a little bit too leading now, including the last
5 question.

6 THE COURT: So...

7 MR. WESTBROOK: And I'm trying to -- I'm trying to let her do the
8 foundation, of course. But we're getting to substantive leading questions.

9 MS. KOLLINS: I'm moving on to new topics.

10 THE COURT: All right. So she'll move on, and I'll -- raise your
11 objection, if -- if it continues.

12 MR. WESTBROOK: Thank you, Your Honor.

13 THE COURT: Thank you.

14 BY MS. KOLLINS:

15 Q Did you ever see David with a telephone?

16 A Yes.

17 Q Okay. And was there anything on the phone?

18 A Yes.

19 Q Okay. What did you see on the phone?

20 A That one girl is eating the thing of another -- of one guy.

21 Q Okay. Did they have clothes or no clothes?

22 A They did not have clothes.

23 Q Okay. And where were you when David showed you that on the
24 phone?

25 A Outside.

1 Q Okay. Outside of the apartments?
2 A Yes.
3 Q Okay. Outside David's apartment, your apartments, or where?
4 A Outside Don David's apartment.
5 Q Okay. Did that happen one time or more than one time?
6 A One time.
7 Q Okay. Do you remember who was there when that was on the -- on the
8 phone?
9 A Yes.
10 Q Who was there?
11 A Jatziri and the twins.
12 Q Okay. Before all this stuff happened, did you like David?
13 A No.
14 Q Okay.
15 MS. KOLLINS: Court's indulgence, please.
16 Q Just one second, Yezline. Okay.
17 [Pause in proceedings.]
18 BY MS. KOLLINS:
19 Q I have a few more questions. Are you doing okay?
20 A Yes.
21 Q Do you need some water or do you need a drink or are you okay?
22 A No, I'm -- I'm okay.
23 Q Okay. I want to ask you some more specific questions about the tape
24 day that I forgot to ask you. Okay?
25 A Okay.

1 Q Do you remember when you had to come talk before in front of some
2 people?

3 A Yes.

4 Q Okay. And do you remember talking to me about the tape day when
5 you had to talk before?

6 A Yes.

7 Q Okay. Do you remember saying that his hand went inside of your
8 thing?

9 A Yes.

10 Q Okay. Is that what happened?

11 A Yes.

12 Q Okay. Do you remember -- today you said it tickled; do you remember
13 anything else it feeling like?

14 A No.

15 Q Okay. Do you remember when you had to go talk to Elizabeth?

16 A Yes.

17 Q Okay. Do you remember telling Elizabeth that it felt like it was hot?

18 A Yes.

19 Q Okay. Is that what it felt like; do you remember?

20 A Yes.

21 Q Okay. Now, today you said you couldn't remember what the candy in
22 the red wrapper was called; do you remember that?

23 A Yes.

24 Q Okay. Do you remember telling us before -- telling me before that it
25 was KitKats?

1 A Yes.

2 Q Okay. Is that what was, KitKats?

3 A Yes.

4 Q Okay. When -- I'm sorry. I can't read Mr. Hamner's writing, so I'm
5 struggling. Just a minute.

6 Do you remember when we had to go talk to the people
7 downstairs?

8 A Yes.

9 Q Okay. And do you remember talking about David touching your *kosa* in
10 the car?

11 A Yes.

12 Q Okay. So did that happen? Did David touch your *kosa* in the car?

13 A Yes.

14 Q Okay. Because when I asked you before, you said you didn't
15 remember. So do you remember now or...

16 A Yes.

17 Q Okay. Was it daytime or nighttime when that happened?

18 A At night.

19 Q Okay. Was anybody else in the car?

20 A Yes.

21 Q Who else was there?

22 A Jatziri and the two twins.

23 Q Okay. Were you in the front seat this time?

24 A No.

25 Q Okay. Where were you?

1 A In the back.

2 Q Okay. And what part of David's body touched your *kosa* --

3 THE COURT INTERPRETER: Repeat the question for the interpreter.

4 BY MS. KOLLINS:

5 Q What part of David's body touched your thing?

6 A His hands.

7 Q Okay. And in the car that day, was it inside your clothes or outside your
8 clothes?

9 A Inside.

10 Q Okay. Could you feel the skin of his hand on the skin of your thing?

11 A Yes.

12 Q Okay. And like I asked you before, was it inside, outside, or something
13 different?

14 A Inside.

15 Q Okay. Did his hand stay still or move around or something different?

16 A He was moving them, going around.

17 Q Okay. And I don't think I asked you this before, so sometimes --
18 sometimes I forget my questions. Okay?

19 A Okay.

20 Q I'm sorry, Yezline. That's the first smile I've seen today. What's up
21 here? What do we call up here on girls?

22 A *Chi-chis*. Tits.

23 Q Okay. Did you ever have a problem with David touching your *chi-chis*?

24 A Yes.

25 Q Where did that happen?

1 A In his -- in his house.

2 Q Okay. Was that a different day than the tape day or the same day?

3 A On the same day.

4 Q On the same day? Okay.

5 You have a little sister named Nicole?

6 A Yes.

7 Q Okay. Do you remember a day when Jatziri and the twins took Nicole
8 out to play?

9 A Yes.

10 Q Okay. And when they took her out to play, after that, did your mom
11 send you to go find Nicole?

12 THE COURT INTERPRETER: Please repeat the question for the
13 interpreter.

14 BY MS. KOLLINS:

15 Q After the twins and Jatziri took Nicole to play, did your mom send you to
16 go find Nicole?

17 A Yes.

18 Q Where did you go to go find Nicole?

19 A At Don David's house.

20 Q Okay. Did you find Nicole at Don David's house?

21 A Yes.

22 Q Okay. And where was Don David?

23 A Outside.

24 Q And where was Nicole?

25 A Outside.

1 Q Okay. And did you see anything happen with Nicole?

2 A Yes.

3 Q Can you tell me what that was?

4 A He carried her and he was doing like he was going to, like...

5 Q Did he have Nicole in his hands?

6 A Yes.

7 Q Okay. And you said he was going to do like; can you finish your
8 sentence?

9 A Yes.

10 Q Okay. Tell me.

11 A He was going to do it like this.

12 MS. KOLLINS: Okay. If the record could reflect, she's got both of her
13 hands up in front of her body, moving from top -- from, like, the top of her chest
14 down to about her waist. But I will try to get her to explain it.

15 Q Sometimes we can't like this, because nobody knows what we're
16 describing. Okay. So can we try to describe it in words?

17 Let's start here. Was Nicole in David's hands?

18 A Yes.

19 Q And was Nicole facing David or facing away from David?

20 A She was looking towards Don David.

21 Q Okay. And did Nicole -- was Nicole's body touching David's body?

22 A No.

23 Q Okay. Did Nicole stay still or move around or something different?

24 A She was quiet.

25 Q Okay. Well, before when you showed me your hands that went from up

1 here to down to here, whose hands were doing that?

2 A Don David.

3 Q Okay. And when his hands were going from up at the top of the body
4 to the lower part of the body, where was Nicole?

5 A Below.

6 Q Okay. Was she in his hands?

7 A No, not anymore.

8 Q Okay. Did she start out in his hands?

9 A No.

10 Q Okay. I'm confused.

11 Okay. Where was Nicole when you first got there?

12 A With Don David.

13 Q Okay. Was she in his arms, in his hands, or on the ground or
14 something different?

15 THE COURT INTERPRETER: Please repeat.

16 BY MS. KOLLINS:

17 Q Was she in his hands, in his arms, or on the ground or something
18 different?

19 A She was in his hands.

20 Q Okay. And you said before that she was facing him?

21 A Yes.

22 Q Okay. And was her face near his face? Or where was he?

23 A He was looking at me.

24 Q Okay. Where did Nicole's body go?

25 MR. WESTBROOK: Your Honor, I'm going to object. I think this has

1 been asked and answered.

2 THE COURT: Well, yeah, I think it has. She -- I think you exhausted
3 her memory on this, don't you think, Ms. -- Ms. Kollins?

4 MS. KOLLINS: Well, I -- I don't know that she understands what I'm
5 trying to get her to describe without leading her. So I will move along.

6 BY MS. KOLLINS:

7 Q Yezline, I'm going to check with Christopher, but I think I don't have any
8 more questions for you for a minute. Okay?

9 Are you okay? Do you need a break or something to drink?

10 A No.

11 Q You okay?

12 A No.

13 Q Okay.

14 [Pause in proceedings.]

15 BY MS. KOLLINS:

16 Q One more, Yezline.

17 Remember when we went and talked to all the people
18 downstairs?

19 A Yes.

20 Q And I asked you what part of Nicole's body was touching Don David; do
21 you remember that question?

22 A Yes.

23 Q Do you remember what your answer was?

24 A [No audible response.]

25 Q If you remember.

1 A No.

2 Q Okay.

3 MS. KOLLINS: Page 36, Mr. Westbrook.

4 MR. WESTBROOK: Thank you.

5 BY MS. KOLLINS:

6 Q Do you remember saying her boobs and her neck?

7 A Yes.

8 Q Okay. Is that what part of Nicole touched David?

9 A Yes.

10 Q Okay. Thank you, Yezline.

11 THE COURT: Are you done?

12 MS. KOLLINS: We'll pass the witness, Your Honor.

13 THE COURT: Ms. Kierny, do you want to start for 15 minutes or take a
14 break? Your choice.

15 MS. KIERNY: I'll ask Mr. Westbrook.

16 THE COURT: Mr. Westbrook, do you want to start for 15 minutes or
17 take a break?

18 MR. WESTBROOK: If Yezline is okay with going forward right now, we
19 can go forward. Or court's preference, either way.

20 THE COURT: I -- we can go for a few minutes.

21 MR. WESTBROOK: Okay.

22 THE COURT: If you want to get started, sure. Let's go.

23 **CROSS-EXAMINATION**

24 BY MR. WESTBROOK:

25 Q Hey, Yezline. Are you tired now and do you need a break, or do you

1 want to just keep going for a little bit?

2 A I would like to continue doing this for a while.

3 Q Okay. Let's do it.

4 Oh, I need my cup for this. Hang on a sec.

5 THE COURT INTERPRETER: We're going to have a break
6 in 15 minutes?

7 THE COURT: Yeah. We're going to stop at 1:00.

8 THE COURT INTERPRETER: Okay, great. Thank you.

9 BY MR. WESTBROOK:

10 Q Have you ever seen these guys on this cup before? And I can --

11 MR. WESTBROOK: Can I approach?

12 THE COURT: Sure.

13 BY MR. WESTBROOK:

14 Q Do you recognize any of these guys on this cup?

15 A No.

16 Q You've never seen any of these guys before?

17 A No.

18 Q Oh, the Marvel marketing department is going to be sad about that.

19 Well, let me ask you a question; if I told you this cup was
20 covered with flowers and butterflies, would that be the truth or a lie?

21 A A lie.

22 Q Yeah. What if I said that it was covered with monkeys and pandas; is
23 that the truth or a lie?

24 THE COURT INTERPRETER: Pandas and what was the other
25 question?

1 BY MR. WESTBROOK:

2 Q We'll just say pandas. What if I said covered in pandas, is that the truth
3 or a lie?

4 A It's a lie.

5 Q Okay. And we already talked about we're here to tell the truth today,
6 right?

7 A Yes.

8 Q Okay. Now, when your mom tells you something, is that the truth?

9 A Yes.

10 Q Okay. What about Ms. Amanda, when she tells you something, is that
11 the truth?

12 THE COURT INTERPRETER: Miss?

13 BY MR. WESTBROOK:

14 Q Amanda.

15 A Yes.

16 Q Okay. Do you remember talking to a nice lady named Elizabeth?

17 A Yes.

18 Q Okay. Now, your mom told you to tell Ms. Elizabeth everything, right?

19 THE COURT INTERPRETER: You mom told your --

20 BY MR. WESTBROOK:

21 Q Your mom told you to tell Ms. Elizabeth everything, right?

22 A Yes.

23 Q And, by the way, am I too far away for us to talk? Should -- should I,
24 like, get up here? Or can you hear me okay?

25 A No. You are fine there.

1 Q Okay. Thank you.

2 So your mom told you to tell Ms. Elizabeth everything, and then
3 you talked to Ms. Elizabeth, right?

4 A Yes.

5 Q Okay. And you told Ms. Elizabeth everything, right?

6 A Yes.

7 Q Everything that happened to you, you told Ms. Elizabeth?

8 A Yes.

9 Q Okay. And then at the end of your conversation with Ms. Elizabeth, she
10 said, Is there something else you want to tell me that I didn't ask you? Remember?

11 A Yes.

12 Q Okay. And you said to her no, right?

13 A Uh-huh.

14 Q And then she said, Is there something else that happened that you
15 have not told me? Right?

16 A Yes.

17 Q And you said no, right?

18 A Uh-huh.

19 Q Okay. Okay. I want to talk to you a little bit about the tape day; do you
20 remember telling Ms. Elizabeth about the tape?

21 A Yes.

22 Q Okay. And you told her the tape was white, right?

23 A Uh-huh.

24 Q And you told her that your top was on?

25 A Yes.

1 Q And you told her that your underwear were off, right?

2 A Yes.

3 Q Okay. You said the tape was on your hands and feet when David
4 pulled your pants down, right?

5 A Yes.

6 Q Okay. And David took your pants and he threw them across the room;
7 is that what happened?

8 A Yes.

9 Q Okay. And he threw your underwear near the bed, right?

10 A Yes.

11 Q And you told Ms. Elizabeth that his hand went outside where you pee,
12 right?

13 A Yes.

14 Q And then you said that before you left, you pulled the tape off yourself,
15 right?

16 A Yes.

17 Q And then you put your clothes on and then you went home, right?

18 A Yes.

19 Q Okay. Now, do you remember another time when you were talking to
20 Ms. Stacey in the basement of this building?

21 A Yes.

22 Q Okay. You talked about the tape day with her, too, right?

23 A Yes.

24 Q Okay. And you told her that your top was off, right?

25 A Yes.

1 Q Okay. And you told her that your underwear stayed on, right?

2 THE COURT INTERPRETER: They stayed on?

3 BY MR. WESTBROOK:

4 Q They -- that your underwear stayed on, right?

5 A Yes.

6 Q Okay. And then you said that -- oh, wait. Strike that.

7 And then you also said today that the tape is yellow, right?

8 A Yes.

9 Q Okay. I want to talk to you about the time when Don David said that
10 you shouldn't tell your parents; do you remember that?

11 A Yes.

12 Q Okay. So you said that Don David said if we say something to our
13 mothers, then he would kill your mom and dad, right?

14 A Yes.

15 Q Okay. Did you -- did you say something to your dad about what
16 happened to you?

17 A No.

18 Q Okay. And do you remember telling Ms. Stacey that you did not believe
19 the man when he said that?

20 A Yes.

21 Q Okay. And you told her that when she was asking you questions in the
22 basement of this building, right, that one day?

23 A Yes.

24 Q Okay. Oh, I want to ask you about the phone and seeing the movies on
25 the phone. Okay?

1 A Okay.

2 Q That only happened the one time, right?

3 A Yes.

4 Q Okay. Now, you talked about seeing Don David's thing?

5 A Yes.

6 Q Do you remember telling Ms. Stacey that you saw the thing only one
7 time?

8 A Yes.

9 Q Okay. And that was behind Don David's car, right?

10 A Yes.

11 Q So this happened outside, right?

12 A Uh-huh.

13 Q Okay. And Mirabel and Maradel and Jatziri were there too?

14 A Yes.

15 Q Okay. And this is the only time that you saw his thing, right?

16 A Yes.

17 Q Let's talk about candy. Okay. You told a story about a day with
18 KitKats, right?

19 A Yes.

20 Q Okay. And you were there and so was Jatziri and the twins, right?

21 A Yes.

22 Q Okay. And you were standing outside Don David's front door?

23 A Yes.

24 Q Okay. And do you remember telling Ms. Stacey that the candy was in
25 Don David's front pocket?

1 A Yes.

2 Q Okay. And do you remember telling Ms. Stacey -- and again, this was,
3 like, in the basement when you -- when you talked to Ms. Stacey that one time. Do
4 you remember telling her that you did not reach into the pocket to get the candy?

5 A Yes.

6 Q Okay. Do you remember telling her that Jatziri did reach into the
7 pocket?

8 A Yes.

9 Q Okay. And you also said that Mirabel reached into the pocket, right?

10 A Yes.

11 Q And also you said Maradel reached into the pocket, right?

12 A Yes.

13 Q Okay. So there was a day when Jatziri and the twins took Nicole out of
14 your apartment, right?

15 A Yes.

16 Q Okay. And they did this without your mom's permission, didn't they?

17 A Yes.

18 Q Okay. And so, later on, your mom sent you to go find Nicole, right?

19 A Yes.

20 Q Okay. She didn't go with you; you just went by yourself?

21 A Yes.

22 Q Okay.

23 MR. WESTBROOK: Court's indulgence.

24 BY MR. WESTBROOK:

25 Q I'm going to just to go check with my partner here. Her name is Carli,

1 and I'm going to ask her questions. I'll be right back, though.

2 MR. WESTBROOK: Okay. That's all the questions that I have for you.
3 Thanks a lot.

4 THE COURT: Redirect?

5 MS. KOLLINS: Just one, Your Honor.

6 May I?

7 **REDIRECT EXAMINATION**

8 BY MS. KOLLINS:

9 Q Hopefully last question and then you can go have some lunch.

10 A Okay.

11 Q Okay. Yezline, how did it make you feel when David said he would kill
12 your mom or your dad if you told?

13 A Sad.

14 Q Okay.

15 MS. KOLLINS: Nothing else, Your Honor.

16 THE COURT: Recross?

17 MR. WESTBROOK: No recross, Your Honor. Thank you.

18 THE COURT: Anything from the jurors?

19 Marshal?

20 MS. KIERNY: Can we approach?

21 THE COURT: You may approach.

22 [Bench conference transcribed as follows.]

23 MS. KOLLINS: What? Did she --

24 MS. KIERNY: [Indiscernible] cup?

25 MS. KOLLINS: She said she didn't know what they were.

1 THE COURT: All right. And so --

2 MS. KOLLINS: She didn't know what those Marvel people were. And

3 you can --

4 MR. WESTBROOK: I don't know. I mean -- I mean, just tell her what

5 she -- she didn't say who the people were on the cup. She wasn't able to tell who

6 they were.

7 THE COURT: So I have your permission to say that to the jury?

8 MR. WESTBROOK: Sure. Yeah. That's fine.

9 THE COURT: She didn't know --

10 MS. KIERNY: We'll stipulate now she did not know the --

11 MR. WESTBROOK: I -- I can even re-ask the question --

12 MS. KOLLINS: She doesn't know the Marvel characters on the cup.

13 THE COURT: Yep. Okay.

14 MR. WESTBROOK: Yeah. That's perfect.

15 THE COURT: Okay.

16 [End of bench conference.]

17 THE COURT: So in response to this question, the court will just

18 respond that the witness did not know the Marvel characters on the cup. Okay.

19 So -- anything else? You sure? Okay.

20 You guys are done with this witness?

21 MR. HAMNER: Yes, we're done with --

22 MS. KOLLINS: Yes, Your Honor, we are.

23 THE COURT: Okay. Then we are finished. You are excused. Thank

24 you very much. Have a nice day, okay. Bye.

25 THE COURT INTERPRETER: May the interpreter be excused?

1 THE COURT: You can come help her down.

2 THE COURT INTERPRETER: Yes.

3 THE COURT: And then I'll excuse the jurors.

4 Ladies and gentlemen of the jury, I'm going to give you an hour
5 lunch. Please try to be back at 2:00.

6 You are admonished during this lunch break, don't communicate
7 among yourselves or with anybody else about this trial or the subject matter of this
8 trial; do not communicate at all with any of the parties, attorneys, witnesses
9 involved in the trial; do not seek or obtain any information or comments about the
10 case from any source, including, without limitation, newspapers, television, radio,
11 Internet, e-mail, cell phones, or any other electronic device; do not read, watch, or
12 listen to any report of or commentary about the case; do not form or express any
13 opinion on any subject connected with this trial until the case is finally submitted to
14 you for deliberations; do not perform any research or informations.

15 Please enjoy your lunch. Leave your notes here. Thank you.

16 [Jury recessed at 12:59 p.m.]

17 THE COURT: Who is our next witness?

18 MS. KOLLINS: Dr. Sandra Cetl.

19 THE COURT: All right. I'll see you guys back in an hour.

20 MR. HAMNER: Thank you, Your Honor.

21 MR. WESTBROOK: Thank you.

22 [Court recessed at 1:00 p.m., until 2:12 p.m.]

23 [Outside the presence of the jury.]

24 THE COURT: All right. Back on the record. What do we got planned?

25 MS. KOLLINS: I -- I have a doctor. I was just going to get this marked,

1 but I don't have a clerk yet. So I was --

2 THE COURT: Oh.

3 MS. KOLLINS: -- going to put it over here.

4 THE COURT: I'm not supposed to be here without the clerk.

5 MS. KOLLINS: Oh.

6 THE COURT: Where'd she go? All right. Never mind. Bye. False
7 alarm.

8 [Pause in proceedings.]

9 THE COURT: All right. Now we're doing it.

10 [Pause in proceedings.]

11 THE COURT: Off the record.

12 [Pause in proceedings.]

13 THE COURT: Can we bring the jurors in now?

14 MR. HAMNER: Yes, we can.

15 MS. KIERNY: Sure.

16 [Pause in proceedings.]

17 [Jury reconvened at 2:16 p.m.]

18 THE COURT: All right. Please be seated.

19 The State may call its next witness.

20 MS. KOLLINS: Thank you, Your Honor.

21 The State calls Dr. Sandra Cetl.

22 THE COURT: Sandra -- Sandra Cetl?

23 MS. KOLLINS: Cetl, C-E-T-L.

24 THE COURT: Okay. Doctor, the clerk will administer the oath. All
25 right.

1 **SANDRA CETL**

2 [having been called as a witness and being first duly sworn, testified as follows:]

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

5 THE WITNESS: Sure. It's Sandra Cetl, S-A-N-D-R-A, C-E-T-L.

6 **DIRECT EXAMINATION**

7 BY MS. KOLLINS:

8 Q Good afternoon, Doctor. Thank you for your patience. What is your
9 occupation?

10 A So I am a pediatrician that works -- I work out of Sunrise Children's
11 Hospital, as well as the Southern Nevada Children's Assessment Center, and I
12 evaluate concerns of child abuse and neglect. I also work part time as a pediatric
13 emergency room physician.

14 Q Let's talk about Sunrise Hospital. What are your duties at Sunrise
15 Hospital?

16 A So at Sunrise, like I said, I do work if the ER part time. Otherwise,
17 normally, if a patient comes into the emergency department, to the regular floor,
18 gets admitted, or to the intensive care unit, then I get called by either a physician or
19 a social worker to consult on concerns of abuse or neglect.

20 Q And when you say abuse or neglect, you're referring to physical abuse
21 and sexual abuse; is that correct?

22 A That's correct, yes.

23 Q Let's talk about the Southern Nevada Child's Assessment Center; what
24 is your role in that facility?

25 A Okay. So I run the medical clinic over there, and similarly, we evaluate

1 concerns of child abuse, but it's mostly child sexual abuse. We conduct
2 examinations of kids where there are concerns of sexual neglect -- or sexual --
3 sexual abuse or neglect.

4 Q And just in general, what kind of facility is the Child Assessment
5 Center?

6 A Yeah. So it's meant to be kind of a one-stop shop for kids. If there is a
7 concern of sexual abuse or any kind of abuse, instead of kids going to many
8 different facilities over and over again, we have kind of everything housed under
9 one roof. So investigators are housed there. Medical clinic, if they need therapy.

10 So as a multidisciplinary team, anybody a kid needs to
11 encounter for the purpose of this evaluation or investigation, they don't have to be
12 kind of separated all over the place. And so the facility is to kind of coordinate care
13 amongst everyone.

14 Q So things like forensic interviews take place there?

15 A Correct.

16 Q And child sexual assault examinations that are not acute?

17 A Yes. And we do acute exams now, as well.

18 Q Do you?

19 A Yeah.

20 Q Every change -- ever-changing. Can you briefly describe for the ladies
21 and gentlemen of the jury what qualifies you to perform in both of these capacities
22 at Sunrise, as well as Child Assessment Center?

23 A Sure. So I earned my medical degree at the University of Vermont. At
24 the -- at the end of that, I had a medical degree, but specialized in a residency
25 program in pediatrics at the University of Nevada, but here in the Las Vegas

1 program. Then I attended an apprenticeship with a child abuse pediatrician here in
2 town and continued working with her as a partner for two and a half years, until
3 taking over the practice myself.

4 And then every year I continue with medical education, including
5 conferences, various peer review activities, quality improvement research, board
6 reviews, and so on.

7 Q Okay. Do you also conduct peer reviews for child abuse situations?

8 A Yes.

9 Q And that would include reviewing what other doctors evaluate as
10 potential abuse?

11 A Yes, yes.

12 Q Okay. In the course of your career as a child abuse pediatrician, how
13 many sexual assault examinations have you conducted?

14 A Probably 2-3,000, I guess I would have to estimate.

15 Q And have you testified as an expert in pediatrics here in the Eighth
16 Judicial District previously?

17 A Yes.

18 Q Okay. As to physical abuse and sexual abuse?

19 A Yes.

20 Q Okay. I would --

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

22 Q Showing you, defense counsel, State's Proposed 58. Doctor, I'm
23 showing you --

24 A Oh. Uh-huh.

25 Q -- State's Proposed Exhibit 58; do you recognize --

1 A Yes.

2 Q -- what that is? Just give us a brief description of your recognition.

3 A An anatomical diagram of the vagina.

4 MS. KOLLINS: Okay. Your Honor, permission to publish and use this
5 for demonstrative purposes.

6 THE COURT: Yes, you may.

7 MS. KOLLINS: Thank you.

8 THE COURT: And the defense has seen it?

9 MS. KIERNY: I have, yes.

10 MS. KOLLINS: Yes, sir.

11 THE COURT: Okay.

12 BY MS. KOLLINS:

13 Q Doctor, is your screen on?

14 A Yes, it is.

15 Q Okay. So this is an artist's rendering --

16 A Correct.

17 Q -- of the female anatomy, correct?

18 A Yeah. Yes.

19 Q I just want to talk to you or have you speak a little bit about some of the
20 properties of the female vagina, its vascularity, things like that.

21 A Sure.

22 Q Could you discuss that a little bit for us?

23 A Absolutely. So a part of our anatomy and genitals, whether on males or
24 females -- we're going to talk about kind of females today -- is that there's a little bit
25 of cloaked in myth and mystery occasionally. And -- and most of the time, actually,

1 I talk a lot about the hymen to parents and -- and to patients that I have. And so we
2 can kind of go through a little bit of the anatomy.

3 But, basically, as a female is born and grows up, goes through
4 puberty and after puberty, the tissue in the vaginal area changes a lot. And one of
5 the places we see most of the change that happens will be in that hymenal area.

6 The hymen itself is often thought of as a -- a wall that covers the
7 vaginal area. And, actually, it's more of a collar. And so all females are born with a
8 hole, and normal anatomy will require there to be a hole in there. And so again,
9 often, there's a thought that that is something that changes with certain types of
10 contact.

11 As a female ages from birth through puberty and on to
12 adulthood, we generate our own estrogen or we may have some from birth from
13 mom in our bodies, and so the size and shape of -- of the body may change a little
14 bit in the genital area.

15 The most things that kind of gets affected is all the tissue in that
16 area is a lot like the inside of the mouth, so it has a ton of blood vessels, it has
17 nerves, and also heals very effectively.

18 So again, another myth that often happens is if there's any kind
19 of inappropriate contact to that area, it may leave some kind of change to the
20 anatomy and that doesn't really happen, so.

21 Q And again, that's because of the blood flow to the area and the healing
22 properties?

23 A Yeah.

24 Q Okay. When you are doing an examination and you're referring to --
25 and you're, I guess, documenting findings or no findings, is there a way that you

1 kind of refer yourself -- I am so asking the wrong question. I'm sorry.

2 To orient yourself to the position of the vagina in order to
3 document findings --

4 A Yes.

5 Q -- is what I'm trying to say.

6 A Yes.

7 Q And could you just explain that for us very briefly.

8 A Right. So regardless of where it is on the body, as physicians talking to
9 other physicians and writing, we use the clock to help us. And so when looking at
10 the vaginal opening, 12:00 will be up higher towards where the clitoris or the
11 abdomen is; 6:00 will always be down towards the anus. And we use that clock
12 face, so no matter what orientation, if a patient is on their belly or on their back, I
13 know that 12:00 is always in the same spot. And so I can orient my exam for other
14 people and professionals to understand what I'm looking at.

15 Q And, Doctor, there's a pen next to you. If you want to show what you
16 mean by 12:00 and 6:00, that actually -- that screen will actually let you write on it.

17 A Oh.

18 Q You don't have to take the tip off.

19 A I won't. I won't.

20 Q Okay.

21 A Okay. All right. So this is 12:00. It's the pen -- it's not doctor
22 handwriting. I'm so sorry.

23 Q So in some of your explanation, you were discussing the properties of
24 the hymenal issue --

25 A Yes.

1 Q -- and you -- you described it as being a collar. In terms of the number
2 orientation, where is that usually seen?

3 A Yeah. So hymens actually come in a lot of different shapes. They can
4 be a complete collar, so you see it from 12:00 all the way back to 12:00.
5 Sometimes they can present where they're only on this bottom half, so 3:00 to
6 about 9:00. And most of the time what we see is the 3:00 to the 9:00.

7 It's also kind of a significant area for any kind of nonconsensual
8 penetrating trauma, so that's an area that we do look at. But more often than not,
9 that top part of the hymen that you see, the top part of the clock is usually kind of
10 incorporated into the rest of the tissue over there. So the where we go pee from
11 and kind of the -- the surrounding area.

12 Q Okay. And -- and you mentioned something earlier, the -- there's a
13 myth regarding every time something penetrates that opening, that there will be
14 damage done to the hymen; is that true or not true?

15 A Yeah. So, again, the hymen is a lot like the stuff on the inside of our
16 cheek. Penetration, whether past it or on top of it or anything like that doesn't --
17 more often than not will not change the properties of the hymen whatsoever.

18 In fact, during our exams, we place Q-tips past the hymen into
19 the vagina, nothing changes about their checkup. And the myth is often that
20 something pops or breaks or changes, and that's actually not -- not true.

21 Also, if there are injuries to it, there's so much vascularity and
22 blood flow and whatnot that hymens can actually heal and look perfectly normal.

23 Q Okay. So it's not unusual, then, to have a normal exam even where
24 you know there's been penetration or touching?

25 A Oh, yes. That's correct.

1 Q Okay. You mentioned before you've done between 2 -- 2,000
2 and 3,000 exams; is that what you said?

3 A Yeah. Probably.

4 Q About that? How many of those have been acute exams and how
5 many of those have been delayed exams?

6 A A percentage, I'd -- I'd have to guess probably 85 to 90 percent are
7 delayed exams.

8 Q Okay. And when I say acute exams, medically, what does that mean?

9 A Yeah. So an -- acute just means recent. So if somebody comes in for
10 a sexual abuse or assault, it means that we can still collect evidence. We can do
11 what would be known as kind of a kit. There may be DNA present. And so it
12 happened within -- for young, young kids, within about three to five days. For
13 teenagers and adults, sometimes up to a week afterwards we would consider
14 acute.

15 Q Okay. So would you agree, then, that some of the limits of a delayed
16 exam are you might not see injuries and you might not get DNA, because the
17 disclosure is sometime subsequent outside that time parameter?

18 A Yes.

19 Q Okay. Tell me the steps of a sexual assault examination on a kid.

20 A Okay. So at the SNCAC, it's very similar to the ER. But so at our CAC
21 clinic location, each appointment is an hour to an hour and a half. A child will
22 present with a caregiver or parent, a nonoffending parent, and we will go through a
23 medical -- complete medical history with them.

24 So the usual, that's going to be your, you know, surgeries,
25 medical problems, do you have any, you know, particular complaints right now.

1 We go through a triage process, which includes your vital signs,
2 heart rate, you know, respiratory rate. We listen to your heart, lungs. Do kind of a
3 head-to-toe assessment.

4 And then the second part is we have the child go into our exam
5 room, and if that child chooses they can have a parent or some support person
6 there with them. Myself and the nurses will often explain either together or the
7 nurses by themselves will explain to a patient what's going to happen. And we talk
8 to their age.

9 So if it's a four-year-old, we explain that checkup to a
10 four-year-old. If it's a 17-year-old, and everything in between.

11 The way we do our exams is we explain it with all their clothes
12 on. We, you know, don't tell any lies. We explain everything that's going to
13 happen.

14 And then once they change, we place them in either stirrups, so
15 where they have leg rests off the exam table, they're on their backs and we can
16 look at the genital area. The other option, if it's a small kiddo, they may just be able
17 to kind of criss-cross their legs and we'll be able to see everything.

18 Once that happens, I do take -- I take pictures of the genital
19 exam. And then I manipulate the tissue around, so I'll look at the labia majora, so
20 those are the larger lips on the outside. And I kind of pull gently to see the vaginal
21 opening, urethra where we pee, and all the tissue. And then I look at the butt
22 where we, you know, go poop and make sure that that all looks normal.

23 The next thing I do is I get Q-tips, and I will, to the child's comfort
24 level, either insert or wipe outside both the vagina, as well as the anus, to test for
25 certain sexually transmitted infections. And then once that's done, we have them

1 change and then we usually gather blood for the rest of our sexually transmitted
2 infection testing.

3 At some point I talk to the child about their body and what their
4 exam showed, and then I talk to a parent, usually privately, to ask any -- or answer
5 any questions that they may have.

6 Q Okay. And is it your practice to kind of document that per child?

7 A Yes.

8 Q Okay. I'd like to turn your attention to October 20th of 2016. You did
9 exams on four girls; do you recall doing those exams?

10 A Yes.

11 Q And that would have been for a Jatziri Moreno, a Yezline Estrella, a
12 Mirabel Moreno, and a Maradel Moreno?

13 A Correct. Yeah.

14 Q All of -- kind of similar ages?

15 A Yes.

16 Q Yes. Okay. I'd like to talk about Jatziri first.

17 A Okay.

18 Q Do you remember how old Jatziri was on the day of her exam?

19 A I believe she was eight -- or no, she was nine, and the rest of the girls
20 were eight, I believe. Yeah.

21 Q Okay. Did she come with her mom?

22 A Yes.

23 Q And did this exam take place at the Child Advocacy Center?

24 A It did.

25 Q Okay. The steps that you just kind of walked through for us --

1 A Yep.

2 Q -- were those the same steps you took with Jatziri?

3 A Yes.

4 Q And what did you see? What did you conclude?

5 A She had a normal examination. So again, we looked at the labia on the

6 outside. I looked at what area of -- kind of where in puberty she was. So she was

7 a little bit, you know, developed. I looked at the vaginal opening, made sure the

8 hymen from that and, you know, clock area looked normal and that her anus looked

9 normal, and everything looked fine.

10 Q Okay. So no injuries, no -- nothing unusual?

11 A No.

12 Q And is it normal to be normal?

13 A Yes.

14 Q Tell us what that means.

15 A So I think that was initially kind of a term come up by one of sexual

16 abuse physicians: It's normal to be normal. And essentially meaning that a normal

17 exam doesn't mean nothing nefarious or bad has happened or sexual has

18 happened.

19 About 95 percent of our exams, both in the emergency

20 department and at clinic and nationally, are normal. Normal doesn't mean nothing

21 has happened to a child.

22 Q Okay. So in other words, just because you didn't see anything, doesn't

23 mean nothing happened?

24 A Correct.

25 Q And the converse also true, right?

1 A Yes.

2 Q Okay. I'd like to -- I know you saw four kiddos pretty short order that
3 day.

4 A Yeah.

5 Q Do you remember your examination of a Yezline Estrella?

6 A Yes.

7 Q Do you remember how old she was?

8 A She was -- she was eight.

9 Q And again, did you follow the same protocol that you previously
10 discussed?

11 A Yes.

12 Q Okay. What, if anything, did you observe about Yezline?

13 A She had a normal exam.

14 Q And same questions. You examined a Mirabel Moreno; how old was
15 she?

16 A Eight years old.

17 Q Okay. And was she a twin?

18 A Yes.

19 Q Okay. And what about Mirabel's exam?

20 A She had a -- a rash kind of on her buttocks area.

21 Q Okay.

22 A Her hymen was a very -- a thin rim, so I considered those kind of
23 nonspecific findings. And I prescribed her an antibiotic cream called Bactroban so
24 that she could put on that -- that rash, because it almost looked like little kind of
25 pimples almost on her buttocks area.

1 Q Okay. And other than just the thin hymenal tissue and the unrelated, I
2 guess, rash --

3 A Uh-huh.

4 Q -- normal exam?

5 A Yes.

6 Q Okay. Great. And the second twin, Maradel Moreno, did you also
7 perform an examination on her?

8 A Yes.

9 Q And all of these were at the CAC on October 20th, right?

10 A Correct.

11 Q And kind of the same questions. Obviously you don't have any of these
12 kids in the room with any of them -- the other ones at the same time when this is
13 happening; this is an isolated examination, right?

14 A Yes.

15 Q Okay. What were -- same protocol with Maradel?

16 A Yes.

17 Q Okay. And what, if anything, did you [indiscernible]?

18 A She had a very similar looking hymen to her twin sister. It was
19 thin-rimmed. And then she I believe had an anal -- like a skin tag, a little extra skin
20 around her anus.

21 Q And -- but a normal exam?

22 A Yes.

23 Q Okay. Give me just one second.

24 Everything you testified to today regarding those four exams you
25 documented in a medical report?

1 A Yes.

2 Q And placed those on file at the CAC?

3 A Yes.

4 Q When you are doing -- treating kids and kids are brought to you, kids
5 are not only brought to you when there's an allegation of penetration; would that be
6 accurate?

7 A Yes.

8 Q Okay. Sexual abuse encompasses more than penetration, right?

9 A Correct.

10 Q Touching, fondling, things like that?

11 A Yes.

12 Q Okay. Does the lack of physical findings in a sexual assault
13 examination ever preclude a finding of sexual abuse?

14 A No.

15 Q Okay.

16 MS. KOLLINS: I will pass the doctor.

17 THE COURT: Cross-exam?

18 MS. KOLLINS: May I approach your clerk, Your Honor? Thank you.

19 I don't know if I moved for the admission of 58 formally.

20 THE COURT: Any objection?

21 MS. KIERNY: What was that? I'm sorry.

22 THE COURT: That -- that was the demonstrative that she --

23 MS. KIERNY: Oh, no. Go ahead.

24 THE COURT: Okay. It's admitted.

25 [State's Exhibit No. 58 admitted.]

1 THE COURT: Go ahead.

2 MS. KIERNY: Thank you.

3 **CROSS-EXAMINATION**

4 BY MS. KIERNY:

5 Q Good afternoon, Dr. Cetl.

6 A Good afternoon.

7 Q In this case you had information that the alleged abuse was not acute;
8 is that fair to say?

9 A Yes.

10 Q So the abuse was about longer -- probably occurred more than a week
11 ago --

12 A Right, yes.

13 Q -- from what you were relayed?

14 And you had testified earlier that sexual contact -- the idea that
15 sexual contact leaves physical changes doesn't happen in your experience, right?

16 A Not as often as one would think, yes.

17 Q Okay. But there are situations where is sexual abuse will leave
18 findings?

19 A Sometimes, yes.

20 Q And sexual contact that's not abusive can leave findings, as well?

21 A It's pretty unusual, but I suppose it can.

22 Q Okay. You do these exams because there is the possibility of findings?

23 A Well, my priority with them is for the -- kind of the medical assessment
24 part of it, to make sure there aren't any findings that could influence a child's health.
25 I also do these exams for infection testing, because that can be something that they

1 may not have symptoms for. And that -- and the major part of me doing these
2 exams are to tell a child their body looks normal.

3 Q Okay. So, I mean, this is -- you testified this is an invasive exam,
4 there's a -- correct?

5 A It can be, yes.

6 Q All right. And especially for a young child?

7 A I think, you know, it's, really, each child has their own coping
8 mechanisms.

9 Q Sure.

10 A And so I -- in my experience, you know, you've got one-year-old to 18,
11 and they all kind of act a little bit differently. So it -- it can be scary, but I think the
12 little kids actually handle it better.

13 Q Every child is different in your experience --

14 A Correct.

15 Q -- with those 2-3,000. All right. But you won't be doing these same
16 exams if there was no possibility of ever finding findings -- or ever making findings?

17 A I hear what you're saying. Yeah. We have, on occasion, if a parent
18 feels strongly enough, there really isn't any real risk factors for, let's say, sexual
19 abuse. But if a parent is concerned about it, then we do. So there are exceptions
20 to that.

21 At the CAC, though, predominantly is if there were concerns if --
22 you know, possible findings. Sure.

23 Q Okay. And in your 2-3,000 exams that you testified to, there have been
24 situations in children where you did discover findings --

25 A Yeah.

1 Q -- that were concerning?

2 A Yes.

3 Q Okay.

4 MS. KIERNY: Court's brief indulgence.

5 Q But there were no physical findings in this case, correct?

6 A No. No specific ones, no.

7 Q Sure. And you did this exam on October 20th; is that correct?

8 A Yes. October 20th on all four.

9 Q October 20th of 2016, correct?

10 A Correct.

11 Q Okay. Thank you.

12 MS. KIERNY: No further questions.

13 THE COURT: Redirect?

14 MS. KOLLINS: Just very briefly.

15 **REDIRECT EXAMINATION**

16 BY MS. KOLLINS:

17 Q Doctor, I guess I let you use the term generically, and I didn't ask a
18 follow-up question, so that's my fault.

19 What constitutes a finding?

20 A Oh, yeah. So one thing that constitutes a finding will be missing
21 hymenal tissue. So something was so violent. So we don't see this in consensual
22 intercourse. It would have to be kind of a violent penetration, that actual -- there is
23 a solid piece of hymen just missing because of an injury.

24 Sometimes scar tissue, but the hymen itself doesn't scar. It's,
25 again, like the inside of the mouth. So sometimes around the anus or the tissue

1 surrounding, we might see scars.

2 And then sexually transmitted infection, something that's
3 definitive from sexual contact. Those would be the most common types of specific
4 findings to sexual abuse.

5 Q Okay. In your experience, other than the scarring, are those more often
6 in acute examinations?

7 A Yes. Yes.

8 Q Okay.

9 MS. KOLLINS: I have nothing further, Your Honor.

10 THE COURT: Ms. Kierny, anything further?

11 MS. KIERNY: No follow-up on that. Thank you.

12 THE WITNESS: Thank you.

13 THE COURT: All right. Let's see if the jurors have any questions? I
14 don't think so. All right.

15 You may -- Doctor, may be excused.

16 THE WITNESS: Thank you.

17 THE COURT: The State may call its next witness.

18 MR. HAMNER: The State's going to call Detective Robert Garris to the
19 stand.

20 THE COURT: Did you hear that, marshal?

21 MR. HAMNER: Robert Garris.

22 THE MARSHAL: Yes, thank you.

23 THE COURT: Detective, the court clerk over here will administer your
24 oath.

1 **ROBERT GARRIS,**

2 [having been called as a witness and being first duly sworn, testified as follows:]

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

5 THE WITNESS: Robert Garris, R-O-B-E-R-T G-A-R-R-I-S.

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

7 THE COURT: Yes, you may.

8 MR. HAMNER: Thank you very much.

9 **DIRECT EXAMINATION**

10 BY MR. HAMNER:

11 Q Sir, could you explain to the jury what you do for a living?

12 A I work in the Juvenile Sexual Assault Detail for Metro Police.

13 Q And what is your official title?

14 A Detective.

15 Q And how long have you been with the Las Vegas Metropolitan Police
16 Department?

17 A 18 years in July.

18 Q And how long have you been in this particular division?

19 A Total, about a year and a half.

20 Q All right. Before that, where were you?

21 A Missing persons.

22 Q And how long were you there for?

23 A Approximately nine years.

24 Q All right. And where were you before that?

25 A Back in SAJ.

1 Q What is SAJ?

2 A Sexual Assault, Juvenile.

3 Q So this is like a second stint?

4 A Yes.

5 Q Okay. I want to turn your -- and -- and if you could just -- could -- what's

6 kind of the focus of your particular department that you currently work in? What

7 sort of crimes do you guys investigate?

8 A We investigate sexual assaults, specifically, to juveniles under nine and

9 family-related.

10 Q Okay. I want to turn your attention to -- excuse me -- October 17, 2016;

11 were you working on that day?

12 A Yes.

13 Q Where were you working?

14 A At the Southern Nevada Children's Advocacy Center, 701 North Pecos

15 Road.

16 Q And that's here in Clark County?

17 A Yes, it is.

18 Q And what were you doing on that particular day?

19 A I was what they call a bucket detective. You basically handle all the

20 incoming phone calls or walk-in citizens at this SNCAC.

21 Q Okay. So if someone has to report some type of crime that's similar to

22 kind of that area that you work in, those phone calls are routed there and people

23 are physically routed to come over there?

24 A Correct. It -- it's more common that it's phone calls. It's -- it's very rare

25 to have someone actually just show up at the CAC.

1 Q Okay. Now, on that day, did a woman by the name of Amanda Moiza
2 show up?

3 A Yes.

4 Q Did -- was she accompanied by a woman by the name of Maria Estrella
5 Barajas?

6 A Yes.

7 Q And did they bring their children with them?

8 A I remember multiple children.

9 Q Okay. Did they indicate that they wanted to file a report?

10 A Yes.

11 Q Okay. And do you remember the name of the person that they relayed
12 that this involved with?

13 A I remember that they said I believe it was a Jose and then it was
14 something in reference to a candy man, something like that.

15 Q Okay. Okay. Do -- so you don't remember kind of -- do you remember
16 much of the basic details? I want you to get into them, but do you remember some
17 of the basic details?

18 A Some of the basics, yes.

19 Q Okay. Tell -- then, now, as a detective, are you assigned cases to
20 investigate and things of that nature?

21 A Yes, I am.

22 Q Is your role different when you work in the bucket?

23 A Different only in -- in the -- the fact that we document reports or
24 document the phone calls. We create a report number through dispatch. And we
25 would then assign it to the detective who's next up to receive a case.

1 Q Okay. Were you the person next up on that particular day?

2 A I don't recall if I was or not.

3 Q But in other words, did you get assigned this case?

4 A No, I did not.

5 Q Okay. So did you prepare a report with respect to that?

6 A Yes, I did.

7 Q Okay. I -- I just have a couple other kind of quick questions.

8 At that point, when you're in the bucket, are you responsible for
9 setting up forensic interviews, anything like that, on that particular day?

10 A I -- I don't believe I set up forensic interviews, because at the time that
11 this came in, it was determined to be a swing-shift case.

12 Q Okay. So someone else coming in on a different shift was to get it?

13 A Correct.

14 Q Does the name Matthew Campbell sound about right --

15 A Yes, it does.

16 Q -- with respect to this case? Okay. So you didn't -- you didn't set up
17 any forensic interviews? That was left to Mr. -- Detective Campbell?

18 A Yes, sir.

19 Q Okay. Tell me this, when these two mothers came in, did they ask to
20 speak to you only on a condition that you provide them a U visa?

21 A No, they did not.

22 Q Did they even bring up the words U visa?

23 A No. In fact, I haven't heard U visa until today.

24 Q Okay. So you -- you don't even deal with it yourself all that much?

25 A No. No, I don't.

1 Q Okay.

2 MR. HAMNER: Court's indulgence.

3 I have no further questions for this witness.

4 THE COURT: Mr. Westbrook?

5 MR. WESTBROOK: No questions, Your Honor.

6 THE COURT: From the jurors?

7 Detective, you're excused. Thank you, sir.

8 THE WITNESS: Thank you.

9 THE COURT: The State may call its next witness.

10 MS. KIERNY: Your Honor, may we approach briefly before the State
11 calls its next witness?

12 THE COURT: Yeah. Do we need to hold the witness?

13 MS. KIERNY: No, we do not.

14 THE COURT: Okay. Go ahead.

15 [Bench conference transcribed as follows.]

16 THE COURT: What's up?

17 MS. KIERNY: I know that Mr. Hamner did not elicit this, but the name
18 candy man was kind of like a -- I think a nickname that the detectives were calling it
19 when it was in the media. I just --

20 THE COURT: [Indiscernible.]

21 MS. KIERNY: Yeah. I just would ask that -- oh, okay. I just ask -- I
22 don't know if it -- any other witnesses not mention that name.

23 MR. HAMNER: I don't -- I don't think they will. I don't know why he
24 said that, to be honest with you, but --

25 MS. KIERNY: Yeah. It came out of the blue. So that's why I'm not --

1 MR. HAMNER: Yeah. I don't think we're going to anticipate anything
2 like that happening going forward with anyone else.

3 THE COURT: Do you think we need to go so far as to have them
4 admonished before they take the stand?

5 MR. HAMNER: That's your call.

6 MS. KIERNY: Do you think there's any -- I didn't think you would say it,
7 so I don't know if it's --

8 MS. KOLLINS: Yeah, I didn't see that coming.

9 THE COURT: Talking about Detective Campbell?

10 MS. KIERNY: Yeah. I've never seen --

11 THE COURT: All right. So someone just mention it to him before he
12 comes in --

13 MR. HAMNER: Okay.

14 THE COURT: -- not to use that term or mention it.

15 MS. KIERNY: I think that's appropriate.

16 THE COURT: Okay. Okay.

17 MR. HAMNER: If you give me a few seconds, I'll step out, but then I'll
18 call our next witness. Okay?

19 THE COURT: Yeah. Yep.

20 MR. WESTBROOK: Thanks, Your Honor.

21 [End of bench conference.]

22 MR. HAMNER: I'll do it, but I'll -- I'll let him know.

23 The State's going to call Officer Jacob Schmidt.

24 And I -- I can go get him, Your Honor.

25 THE COURT: Okay. Thank you.

1 [Pause in proceedings.]

2 THE COURT: How you doing, sir?

3 MR. SCHMIDT: How's it going, sir?

4 THE COURT: Good. The court clerk will administer your oath.

5 MR. SCHMIDT: All right.

6 **JACOB SCHMIDT,**

7 [having been called as a witness and being first duly sworn, testified as follows.]

8 THE CLERK: Thank you. Please be seated.

9 THE WITNESS: Thank you.

10 THE CLERK: Will you please state and spell your first and last name
11 for the record.

12 THE WITNESS: First name Jacob, J-A-C-O-B, last name Schmidt,
13 S-C-H-M-I-D-T.

14 THE CLERK: Thank you.

15 MR. HAMNER: Okay. May I proceed, Your Honor?

16 THE COURT: Yes.

17 MR. HAMNER: Thank you very much.

18 **DIRECT EXAMINATION**

19 BY MR. HAMNER:

20 Q Why don't you explain to the ladies and gentlemen of the jury what you
21 do for a living.

22 A Police officer in the city of Las Vegas.

23 Q Okay. And who do you work for?

24 A Las Vegas Metropolitan Police Department.

25 Q Okay. How long you been working for Metro, sir?

1 A Just over a year and a half.

2 Q And what's your title?

3 A Police Officer 1.

4 Q Okay. I want to turn your attention specifically to November 8th, 2016,
5 at about 2:00 in the morning. Did you respond over to the Charleston Garden
6 Apartments, approximate the 4800 block of East Charleston, here in Clark County,
7 Nevada?

8 A Yes, I did.

9 Q Okay. And -- and when you did, were you responding to a potential call
10 regarding child touching or molestation, something of that nature?

11 A Yes, I did.

12 Q Okay. Do you remember the name of the person that you met?

13 A I don't remember it specifically.

14 Q Okay. Was it a man or a woman?

15 A It was a man.

16 Q Does the name of Ricardo Rangel sound about right?

17 A Yes, it does.

18 Q Okay. And when he spoke to you, did he -- without getting into any
19 specific details, did he provide you some basic details about something that may
20 have happened to his daughter Scarlett?

21 A Yes, he did.

22 Q Okay. In relation to someone who lived in the apartment complex?

23 A Yes.

24 Q Why don't you tell, just the jury for a minute -- you're a patrol officer,
25 you're not a detective; is that right?

1 A Correct.

2 Q A what are just your responsibilities when you respond to a call like
3 that? What are the sort of things you're supposed to do?

4 A Major responsibility is try to get an idea if what he's saying is a
5 legitimate case that's going on. And after that, I mean, get the base details of what
6 he said happened to his daughter. And then forward that information over to a
7 detective.

8 Q And so did you get the basic details? Without getting into any specifics,
9 did you get the basic details from Mr. Rangel?

10 A Yes.

11 Q Did you prepare a report kind of memorializing those basic details?

12 A Yes, I did.

13 Q And did you refer that information over to Special Victims Unit or a
14 detective over there?

15 A Yes, I did.

16 Q Okay. Do you remember the detective that you forwarded it to? Or
17 does it just randomly go out into the ether and --

18 A I was able to contact an on-call detective, considering the fact that it
19 was at 2:00 in the morning.

20 Q Okay.

21 A I did -- I do remember listing the detective's name in the report, I
22 believe.

23 Q Okay. Well, let me ask you this. When you met with Mr. Rangel, did he
24 qualify anything he was going to say to you, you know, regarding, well, I need to get
25 a U visa for -- for some sort of protection; did he say anything like that?

1 A No, he did not.

2 Q Did the words U visa ever come out of his mouth?

3 A No.

4 Q Did you have any conversations about U visa with anybody that night

5 on that property?

6 A No.

7 Q Okay.

8 MR. HAMNER: I have no further questions of this witness.

9 THE COURT: Okay. Cross?

10 MR. WESTBROOK: Yes, Your Honor.

11 THE COURT: Okay.

12 **CROSS-EXAMINATION**

13 BY MR. WESTBROOK:

14 Q You don't deal with U visas at all, do you?

15 A No.

16 Q Do you even know what a U visa is?

17 A I guess I have a vague idea, just because I know what a work visa is,

18 based on, like, getting work and to be -- able to stay in the country, but...

19 Q When you go to investigate something, you don't wear, like, a button

20 that says, Ask me about U visas?

21 A Correct.

22 Q All right. You interviewed Ricardo Rangel?

23 A Uh-huh.

24 Q Okay. And you said that your idea was to get the basic details, right?

25 A Yes.

1 Q Mr. Rangel told you his daughter was Scarlett?

2 A Correct.

3 Q Okay. And Mr. Rangel told you that his daughter told him she had been
4 touched on her --

5 MR. HAMNER: Objection. Objection. It calls for hearsay.

6 THE COURT: Hmm, why are we getting into this, Mr. Westbrook?

7 MR. WESTBROOK: Prior inconsistent statements, Your Honor.

8 THE COURT: Well, we'll see. Okay. You may proceed.

9 BY MR. WESTBROOK:

10 Q So Ricardo Rangel told you that his daughter told him that she had
11 been touched on her private parts by a man in the apartment complex; is that right?

12 A Correct.

13 MR. WESTBROOK: Nothing further.

14 THE COURT: Is that it?

15 MR. WESTBROOK: That's it for me.

16 THE COURT: Redirect?

17 MR. HAMNER: Court's indulgence.

18 THE COURT: One second.

19 THE WITNESS: Okay.

20 **REDIRECT EXAMINATION**

21 BY MR. HAMNER:

22 Q Do you remember that cross question about what Ricardo was telling
23 you about his daughter; do you remember that?

24 A Correct.

25 Q Well, did -- did she say it happened in the -- did he relay that it

1 happened in the apartment complex, as far as you remember?

2 A He did state that there was a male that would sit -- or be around an
3 apartment. He didn't give me a particular apartment. He didn't know it. But he did
4 say, I think he -- it was a building that was just to the west of his. And he said that
5 the man would offer candy to the children and that would be his way to get the kids
6 to go into the apartment.

7 Q Did you --

8 MR. WESTBROOK: Objection, Your Honor. That's nonresponsive.
9 Move to strike.

10 MR. HAMNER: I think it's responsive, but I can follow up with some
11 other questions.

12 THE COURT: Well, it wasn't a direct response to your question, so I
13 will strike it.

14 MR. HAMNER: Okay.

15 BY MR. HAMNER:

16 Q Did --

17 THE COURT: All right. And you can follow up in a different way.

18 BY MR. HAMNER:

19 Q Did Mr. Rangel relay to you that Scarlett said that this happened when
20 she was playing outside?

21 A Correct. Yes.

22 Q Did Ricardo relay to you that Scarlett said this happened to her when
23 she was playing outside in the apartment complex?

24 A Yes.

25 Q Did Ricardo relay to you that Scarlett said that she was also with

1 another girl whose mother's name was Esther?

2 A Yes.

3 Q Okay. And did -- at the time, did you know anybody by the name of
4 Maria Esther Barajas?

5 A No.

6 Q Okay. Did Mr. Rangel relay to you that he didn't know the names of the
7 other girls, but believed his daughter --

8 MR. WESTBROOK: Objection. This is hearsay, and I think we're
9 outside of the scope of the cross now. Talking about interviewing other people
10 besides Ricardo.

11 THE COURT: You know, I -- I'm going to allow it, because I -- I -- it's
12 potentially related to your question.

13 Go ahead.

14 BY MR. HAMNER:

15 Q Would you like me to repeat the question?

16 A Yes, please.

17 Q Okay. Did Mr. Rangel also relay that he didn't know the names of the
18 girls, but believed his daughter could?

19 A If I remember correctly, that's what he did say.

20 Q Thank you.

21 THE COURT: All right. Your turn, if you want to follow up on that.

22 MR. WESTBROOK: I do, Your Honor.

23 THE COURT: Yeah.

24 [Pause in proceedings.]

25 MR. WESTBROOK: Nothing further, Your Honor.

1 THE COURT: Okay. And you're allowed to change your mind. That's
2 allowed.

3 Anything from the jurors?

4 MR. WESTBROOK: In baseball, that would be a balk.

5 THE COURT: Okay. All right. Officer, you may step down. Thank you
6 for your time.

7 THE WITNESS: All right. Thank you, sir.

8 THE COURT: The State may call its next witness.

9 MR. HAMNER: State's going to call Officer Erich Tschirgi to the stand,
10 Tschirgi.

11 Thanks, Officer.

12 [Pause in proceedings.]

13 THE COURT: Good afternoon, Officer.

14 MR. TSCHIRGI: Good afternoon, Judge.

15 THE COURT: Come on and step up forward and then the court clerk
16 will administer your oath and then she'll ask you to state your name.

17 **ERICH TSCHIRGI,**

18 [having been called as a witness and being first duly sworn, testified as follows.]

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

21 THE WITNESS: Name is Erich Tschirgi, E-R-I-C-H, T-S-C-H-I-R-G-I.

22 THE COURT: Okay. You may proceed.

23 MR. HAMNER: Thank you very much.

24 **DIRECT EXAMINATION**

25 BY MR. HAMNER:

1 Q Sir, why don't you explain to the ladies and gentlemen of the jury what
2 you do for a living?

3 A I'm a police officer with the City of Henderson.

4 Q Okay. How long have you been with the Henderson PD?

5 A Nine years and two months.

6 Q And a what is your kind of official title?

7 A I'm a patrol officer.

8 Q And have you done that for the full nine years you've been with
9 Henderson Police Department?

10 A Yes, I have.

11 Q Okay. I want to turn your attention to November 12th, 2016; were you
12 working that day?

13 A Yes, I was.

14 Q All right. And what shift were you working; do you remember?

15 A Swing shift.

16 Q And what time frame, from when to when?

17 A 2:00 p.m. to midnight.

18 Q Okay. Did you respond that shift over to 1234 North Boulder Highway
19 in Henderson?

20 A Yes, I did.

21 Q Here in Clark County?

22 A Yes.

23 Q Okay. And -- and why were you going to that particular location that
24 day?

25 A There was a gentleman there with his family that stated that they

1 spotted an individual that they believe was responsible for sexually -- sexually
2 assaulting their daughter.

3 Q Okay. And was that someone by the name of Ricardo Rangel?

4 A Yes.

5 Q Okay. I want to show you what has already been admitted as
6 State's 48; what are we looking at there?

7 A That's the -- the auto mechanic shop that we responded to.

8 Q And that's 1234 North Boulder Highway?

9 A Yes.

10 Q And -- and from this view, where are we? What road are we on, if
11 you're looking at it from this vantage point?

12 A It look -- from that angle, that looks like Boulder Highway.

13 Q Okay. Okay. Is this -- publishing 47 -- is that kind of the side street?

14 A Yes, it is.

15 Q Okay.

16 A It should be Wells.

17 Q Okay. And publishing 46 --

18 A That's --

19 Q -- is that kind of looking at the rear of that same building?

20 A Yes.

21 Q All right. Now, did you respond at approximately a quarter to 6:00 in
22 the evening?

23 A Yes, I did.

24 Q All right. Was Mr. Rangel by himself?

25 A No, he was not.

1 Q Okay. Do you remember how many adults he was with?
2 A I believe two more females.
3 Q Okay.
4 A Female adults.
5 Q All right. And do you remember their names offhand?
6 A No.
7 Q Okay. When you spoke with him, did he provide you any photographs?
8 A Yes, he did.
9 Q Okay. And was it of the person he believed to be the man involved with
10 doing something to his daughter?
11 A Yes.
12 Q Okay. Did he provide you a first name?
13 A David.
14 Q On this -- David. When -- and did he indicate to you why that building
15 was -- was relevant or why he thought that -- why did he come to that location? I
16 can't remember if you said it, but --
17 A Well, they believed that they -- they spotted him in the building.
18 Q Okay. When you were there, were you also assisted by another officer,
19 an Officer Narvaez?
20 A Yes.
21 Q Okay. Was he there at that time when you were kind of interacting with
22 Mr. Rangel?
23 A Yes.
24 Q Okay. Do you go up to the entrance -- to the front entrance of the
25 building?

1 A Yes.

2 Q Okay. Do you go with the photograph that was provided to you?

3 A Yes.

4 Q Do you ask anybody in that store if they know someone by the name of

5 David?

6 A Yes.

7 Q And what are the people's response?

8 A They do not know anybody named David and nobody works there

9 named David.

10 Q Okay. So what do you do next?

11 A I show them the picture.

12 Q And what's their reaction to the picture?

13 A They said, well, that gentleman, he's in the back, working.

14 Q Okay. And do you -- do you -- you walk back into that area looking for

15 that gentleman?

16 A Yes.

17 Q Do you find that gentleman in the back of that building?

18 A Yes, I do.

19 Q Do you see that gentleman here in the courtroom today?

20 A Yes, I do.

21 Q Could you please point him out, where he's located in the courtroom

22 and describe an article of clothing that he's wearing?

23 A The gentleman is sitting right there. It looks like a long-sleeve,

24 light-blue shirt.

25 Q Okay. Tie or no tie?

1 A No tie.

2 MR. HAMNER: Let the record reflect the witness has identified the
3 defendant, Jose Azucena.

4 THE COURT: Okay. It does.

5 BY MR. HAMNER:

6 Q All right. After you found him, did you reach out to Metro regarding
7 Mr. Azucena?

8 A Yes, I did.

9 Q Okay. Ultimately, were you asked to take him into custody?

10 A Yes, I was.

11 Q Was he taken into custody without incident?

12 A Yes.

13 Q Okay. And was he transported, essentially, to Metro, like, over to --

14 A To their jurisdiction, yes.

15 Q -- to their jurisdiction?

16 A Yes.

17 Q Okay. Oh, let me ask you this. When you spoke with Ricardo, did he
18 bring up anything about a U visa?

19 A A what, sir?

20 Q A U visa?

21 A I don't recall.

22 Q Okay. Did any of those women talk about U visas to you?

23 A No.

24 Q Any conditions that, We're not speaking until you give us some type of
25 protection; do you remember anything like that when they talked to you?

1 A No, sir.

2 Q Okay.

3 MR. HAMNER: Court's indulgence.

4 No questions -- no further questions.

5 THE COURT: Cross-exam?

6 MR. WESTBROOK: Court's indulgence.

7 THE COURT: Yes, sir.

8 **CROSS-EXAMINATION**

9 BY MR. WESTBROOK:

10 Q I assume you weren't wearing a button that said, Ask me about U visas,
11 right?

12 A No, I was not.

13 Q Okay. Do you expect people to ask you questions that they already
14 know the answer to?

15 MR. HAMNER: Objection. Speculation.

16 THE COURT: Well --

17 MR. HAMNER: And argumentative.

18 THE COURT: It -- sustained.

19 MR. WESTBROOK: All right. Sustained as to speculation?

20 THE COURT: As to argumentative.

21 MR. WESTBROOK: Okay. I'll withdraw it.

22 THE COURT: All right.

23 MR. WESTBROOK: I had a response to the second thing. All right.
24 Not the first one. You're right.

25 BY MR. WESTBROOK:

1 Q Okay. This was a place of business, right?

2 A Yes.

3 Q All right. In fact, when Ricardo Rangel contacted the police, he gave an

4 address, right?

5 A Yes.

6 Q Okay. And you had information that Mr. Azucena was at his workplace,

7 right?

8 A They provided me that. They believed that he was in there.

9 Q Okay. And when you got there, you found him in his workplace, just as

10 you expected, right?

11 A Yes.

12 Q Okay. People that were in there were -- it was just two females, right?

13 A No.

14 Q You said you had talked to two females; were there other people

15 decides the two females that were there?

16 A The females were outside, down the street.

17 Q Oh, outside down the street?

18 A Yes.

19 Q Inside --

20 A With -- with Ricardo.

21 Q With Ricardo?

22 A Yes.

23 Q Oh, okay. I'm sorry, I misunderstood that.

24 When you went into the building, where Mr. Azucena works,

25 were -- was there anybody in the building besides Mr. Azucena?

1 A Yeah. There were -- I believe there was three males.
2 Q Oh, three males?
3 A Yes.
4 Q Okay. These are the people that you asked about the name David?
5 A Yes.
6 Q Okay. And they didn't know him by David?
7 A No.
8 Q Do you know who these people were?
9 A They worked there, just employees. I did not get their name.
10 Q Okay. Do you even know whether they worked in the same company
11 or did they work in a different company?
12 A Nobody had uniforms on.
13 Q Okay.
14 A It looked like a mom-and-pop type auto mechanic.
15 Q Okay. So you don't know whether they worked with Mr. Azucena or
16 whether they worked for some other company entirely or whether they were
17 self-employed?
18 A I do not know.
19 Q Okay. And you didn't actually take a report or a voluntary statement
20 from these guys?
21 A No, I did not.
22 Q All right. You showed them a picture and they directed you to
23 Mr. Azucena, right?
24 A Yes.
25 Q And Mr. Azucena was there, in his workplace, working, right?

1 A Yes.

2 Q Okay. So you went to Mr. Azucena and you asked him what his name
3 was. He told you his name was Jose Azucena, right?

4 A Yes.

5 Q Okay. He didn't give you some fake name, right?

6 A No.

7 Q Okay. When you went up to him, he didn't try to run from you, did he?

8 A No.

9 Q Okay. And, in fact, when you went up to him, you did not have a
10 warrant for his arrest, did you?

11 A No.

12 Q Okay. You asked him to come out to the car with you, and he went with
13 you voluntarily, right?

14 A Yes.

15 Q Okay. And then at that point, per procedure, you tried calling Detective
16 Campbell, right?

17 A Yes.

18 Q Took a while to get Detective Campbell on the phone, didn't it?

19 A Yes, it did.

20 Q About a half an hour?

21 A Approximately.

22 Q Okay. The entire time Jose Azucena waiting there next to you while
23 you try to get Detective Campbell on the phone, right?

24 A Yes.

25 Q He didn't try to run?

1 A No.
2 Q Okay. So would you say he cooperated fully during this time?
3 MR. HAMNER: Objection. Calls for speculation.
4 THE COURT: Well, he can answer to the extent of his personal
5 observations during the period of time that he saw him.

6 BY MR. WESTBROOK:

7 Q Did Jose Azucena cooperate fully during this time?

8 A Yes.

9 MR. WESTBROOK: No further questions.

10 MR. HAMNER: Just --

11 THE COURT: All right.

12 MR. HAMNER: -- real --

13 THE COURT: You can redirect.

14 MR. HAMNER: -- real briefly.

15 **FURTHER REDIRECT EXAMINATION**

16 BY MR. HAMNER:

17 Q So was the level of cooperation to simply stand there?

18 A Yes.

19 MR. HAMNER: No further questions.

20 THE COURT: Okay. All right.

21 Any cross?

22 MR. WESTBROOK: No further questions.

23 THE COURT: All right. Anything from the jurors?

24 Okay. We've got one or two hands. I guess there's just one.

25 Okay.

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[Off-record bench conference.]

THE COURT: All right. Detective, this is from the jury.

Do you speak Spanish? If not, how did you communicate with the defendant?

THE WITNESS: I do not speak Spanish. I requested a Spanish speaking officer from my department to respond to the scene.

THE COURT: All right. Very good. Thank you, sir.

Any follow up from the attorneys?

MR. WESTBROOK: No follow-up.

MR. HAMNER: And just real quick.

ADDITIONAL REDIRECT EXAMINATION

BY MR. HAMNER:

Q And did he respond?

A Yes, he did.

Q Okay.

MR. WESTBROOK: Thank you, Your Honor.

THE COURT: All right. Then that concludes your testimony. You are excused. You may step down. Thank you.

THE WITNESS: Thank you, Your Honor.

THE COURT: State may call its next witness.

MR. HAMNER: State's going to call Officer Narvaez.

THE WITNESS: Narvaez.

[Pause in proceedings.]

THE COURT: Hello, Officer. Well, you've got a lot of gear on.

MR. NARVAEZ: Good afternoon, sir.

1 THE COURT: The court clerk will administer your oath.

2 **SERGIO NARVAEZ,**

3 [having been called as a witness and being first duly sworn, testified as follows.]

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

6 THE WITNESS: Sergio Narvaez. And Sergio is S-E-R-G-I-O, and
7 Narvaez is spelled N-A-R-V-A-E-Z.

8 **DIRECT EXAMINATION**

9 BY MR. HAMNER:

10 Q Officer Narvaez, could you tell the ladies and gentlemen of the jury
11 what you do for a living.

12 A I'm a police officer with the Henderson Police Department.

13 Q And currently what detail are you assigned?

14 A Currently I'm assigned to the K-9 unit.

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

16 A To the patrol division.

17 Q When you were working on the patrol, were you working on patrol on
18 November 12th, 2016?

19 A Yes, sir.

20 Q Were you working on that day?

21 A Yes, I was.

22 Q Did you respond at about a quarter to 6:00 in the evening on that day
23 to 1234 North Boulder Highway, here in Henderson, in Clark County?

24 A Yes, I did.

25 Q Did you assist an Officer Tschirgi in that matter?

1 A Yes, I did.

2 Q Do you speak Spanish?

3 A I do.

4 Q Okay. Did you speak Spanish with an individual on that day that was
5 stopped by Officer Tschirgi?

6 A Yes, I did.

7 Q Okay. Do you see that person here in the courtroom today?

8 A Yes, I believe. Yes, I do.

9 Q Okay. Why don't you describe where they are in the courtroom and
10 maybe describe an article of clothing that they're wearing?

11 A Seated just to my right with my -- I believe with glasses. I believe that's
12 him.

13 Q Tie or no tie?

14 A No tie.

15 MR. HAMNER: Let the record reflect the witness has identified the
16 defendant.

17 THE COURT: It -- it appears so.

18 BY MR. HAMNER:

19 Q Okay. And were you present when Officer Tschirgi interacted with an
20 individual by the name of Ricardo Rangel before you talked to the defendant?

21 A Yes, I do.

22 Q Okay. And were you provided a name of David?

23 A At that time I was.

24 Q Okay. When you met with the defendant, did he identify himself as
25 Jose or David when you spoke to him?

1 A Jose.

2 Q Okay.

3 MR. HAMNER: I have no further questions at this time.

4 THE COURT: Okay. Cross-examine.

5 MR. WESTBROOK: Sure.

6 **CROSS-EXAMINATION**

7 BY MR. WESTBROOK:

8 Q Did you happen to do a separate report on this case?

9 A No, I did not.

10 Q Or any report at all?

11 A I do not believe I did.

12 Q Okay. So do you recall the exact words that were exchanged or is that
13 something that you don't recall, sitting here?

14 A What do you mean, the exact words exchanged?

15 Q I mean, you didn't do your own report?

16 A Correct.

17 Q Okay. And I assume that you didn't record this encounter?

18 A It was all recorded on our in-dash video and body cams -- or correction,
19 body mics.

20 Q Body mics. So you actually had body -- body mics with you?

21 A Correct.

22 Q Okay. And that was recorded?

23 A Yes.

24 Q Okay. Okay. And Jose Azucena told you that his name was Jose
25 Azucena, right?

1 A Yes, sir.

2 Q Okay.

3 MR. WESTBROOK: Nothing further.

4 THE COURT: Redirect?

5 MR. HAMNER: Just one real brief question.

6 **REDIRECT EXAMINATION**

7 BY MR. HAMNER:

8 Q That question about him referring to himself as Jose Azucena; did he
9 ever say something like, But I go by David a lot?

10 A No.

11 Q You know, a lot -- most people call me David, anything like that?

12 A No, sir.

13 MR. HAMNER: Okay. No further questions.

14 THE COURT: All right.

15 **RECROSS-EXAMINATION**

16 BY MR. WESTBROOK:

17 Q Did you ask him the question, Hey, do you go by David a lot?

18 A I did ask him if I -- if he identified himself as David, and he told me no.

19 Q He told you what his legal name was, right?

20 A Correct.

21 Q Jose Azucena?

22 A Yes, sir.

23 Q You were interested in finding out what his legal name was, correct?

24 A Just identifying him, yes, sir.

25 Q Right. So when asked to identify himself to a police officer, he gave

1 you his legal name, correct?

2 A Correct.

3 Q He didn't give you any nicknames, right?

4 A Correct.

5 Q Including David?

6 A Correct.

7 Q Or anything else?

8 A Correct.

9 Q Thank you.

10 THE COURT: Anything from the jurors? No.

11 All right. Officer, you are excused. Thank you for your time.

12 THE WITNESS: Thank you, sir.

13 THE COURT: Have a good day. Stay safe.

14 All right. The State may call its next witness.

15 MR. HAMNER: Court's indulgence. I want to make sure one witness is
16 there and if not, we'll call somebody else.

17 [Pause in proceedings.]

18 MR. HAMNER: The State's going to call Lieutenant Roger Price to the
19 stand.

20 THE COURT: All right. Lieutenant Roger Price.

21 Good afternoon, Lieutenant.

22 MR. PRICE: Good afternoon. How are you?

23 THE COURT: Come forward and the court clerk will administer your
24 oath as soon as you're ready.

25 THE WITNESS: Thank you.

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1 **ROGER PRICE,**

2 [having been called as a witness and being first duly sworn, testified as follows.]

3 THE CLARK: Thank you. Please be seated.

4 THE WITNESS: Thank you.

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

7 THE WITNESS: My name is Roger Price, R-O-G-E-R, P-R-I-C-E.

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

9 THE COURT: Yes.

10 **DIRECT EXAMINATION**

11 BY MR. HAMNER:

12 Q Sir, why don't you tell the ladies and gentlemen of the jury what you do
13 for a living?

14 A I'm a police lieutenant. I run the Special Victims Section of the
15 Las Vegas Metropolitan Police Department.

16 Q How long have you been working for the Las Vegas Metropolitan Police
17 Department?

18 A For the past 20 years.

19 Q All right. How long have you been in this particular detail?

20 A I've been in this detail about eight months now.

21 Q Okay. Prior to that, where were you working in Metro?

22 A I was the administrative lieutenant understand South Central Area
23 Command.

24 Q Okay. So is that a geographic region that Metro has kind of broken up
25 here in the valley?

1 A It is. It's a patrol bureau.

2 Q Okay. Before that, where did you work?

3 A I was a patrol lieutenant, the same station.

4 Q And prior to that, where were you doing?

5 A Prior to that, I was a -- a field training sergeant at Enterprise Area
6 Command, also Southeast Area Command and Northwest Area Command.

7 Q All right. Now, Lieutenant, are you familiar with the term U visa?

8 A Yes.

9 Q Okay. Now, in your particular position, do you have a role in
10 connection with Metro with respect to U visa applications?

11 A Yes. I am the authorized signer for the Las Vegas Metropolitan Police
12 Department.

13 Q Can anyone else sign in Metro other than you?

14 A No.

15 Q Okay. If you could, can you explain to the jury, you know, kind of
16 what's a U visa and why it even came to fruition in the first place?

17 A Yeah. Several years ago, they reviewed crime reporting and
18 determined that there may be some obstacles to people reporting crimes to police
19 departments.

20 MR. WESTBROOK: Your Honor, I have an objection. May we
21 approach?

22 THE COURT: Yes.

23 [Bench conference transcribed as follows.]

24 MR. WESTBROOK: Was he noticed as an expert on U visas?

25 THE COURT: Yeah.

1 MR. WESTBROOK: Because I don't recall that.

2 THE COURT: I -- I knew that was going to be your question.

3 MR. WESTBROOK: I figured you would.

4 MR. HAMNER: Well, we can -- we can skip it, but, I mean, I think it's
5 probably --

6 MS. KOLLINS: Well, it's what he does for his position, and so I don't
7 know that he needs to be noticed as an expert. I mean, that --

8 MR. HAMNER: [Indiscernible] just going to offer a description as to --

9 MS. KOLLINS: It's, like, why we do this and how it got to me as a
10 function as my job as a lieutenant.

11 THE COURT: He's -- but he's going to describe what it is, because it's
12 what he does. It's his personal knowledge, as long as it's -- you don't elicit any
13 opinions from him.

14 MR. HAMNER: He's not going to be offering any opinions about
15 motivations or why people --

16 THE COURT: Some of this is a show of his state of mind, because
17 you're laying the foundation.

18 MR. HAMNER: All I'm just trying to do is give context as to what a
19 U visa is. He's not offering any opinions about any particular person involved in this
20 case.

21 THE COURT: Shouldn't be a problem if there's no opinion.

22 MR. WESTBROOK: What I'm hearing is a history lesson about the
23 history of U visas --

24 MS. KOLLINS: Well, there has to --

25 MR. WESTBROOK: -- and why he thinks, or the perspective, which

1 should be an [indiscernible] expert opinion and [indiscernible] legal lesson.

2 MS. KOLLINS: Well, and I respect that. But at some point Metro had
3 to decide that there was a need that they addressed this in-house. And so I think
4 he's laying a foundation for why Metro --

5 THE COURT: That's what he said.

6 MS. KOLLINS: -- became involved.

7 THE COURT: He said his foundation goes to his state of mind. It's not
8 coming in for the truth of how the U visa process --

9 MR. HAMNER: And I would --

10 THE COURT: -- actually works. No opinions.

11 MR. HAMNER: And I can offer a --

12 THE COURT: Just factual.

13 MR. HAMNER: I can just offer a proffer that he's just going to say that
14 the reason why they passed legislation for U visas was they found reports where
15 undocumented people may not report things for fear of being reported. And that's
16 why the U visa came into fruition.

17 MR. WESTBROOK: And that --

18 THE COURT: That kind of helps your case.

19 MR. WESTBROOK: Well, yeah, yeah. [Indiscernible.]

20 MS. KOLLINS: Well, isn't your -- isn't your expert going to say that the
21 U visa system was created because of the underreporting in undocumented
22 populations?

23 MR. WESTBROOK: Right. Right. My objection is this witness was on
24 notice [indiscernible].

25 MR. HAMNER: So, basically, he wants only his -- his witness to talk

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1 about the [indiscernible]. It's a very basic statement. If it's foundational, I don't
2 think it's appropriate.

3 MS. KOLLINS: Well, just because somebody does something for a
4 living doesn't mean they're giving an expert opinion. I mean, if you called a
5 hairdresser in here that told you how to curl hair, we wouldn't need to notice them
6 as an expert.

7 THE COURT: I think it's a lay opinion, it's not offered as an expert
8 opinion. I'm going to allow it.

9 MS. KOLLINS: Okay.

10 MS. KIERNY: Thank you.

11 THE COURT: Okay.

12 [End of bench conference.]

13 BY MR. HAMNER:

14 Q Let's re-ask that question. Can you explain again kind of how -- why
15 Metro is involved in these? What -- what were you saying about the U visa
16 process, why it's done?

17 THE COURT: This is -- for the jury, this is his understanding based
18 upon his work in the field and it is -- this isn't coming in as an -- as an expert
19 opinion. Okay.

20 Go ahead.

21 THE WITNESS: So, basically, their explanation is that in order to
22 encourage people who are here undocumented to come forward and report crimes
23 to police, as well as cooperate through the investigation, they provide them an
24 opportunity to have legal status while they're involved with the case.

25 BY MR. HAMNER:

1 Q Okay. So I want to talk about your role and Metro's role in this process.
2 If a petitioner prepares an application, when it can comes to your desk, what are
3 you supposed to do from Metro's end?

4 A I read the application. The petitioner provides information on the
5 petitioner and their association with it. So there is what they call a direct victim,
6 which is the person who is reported as the victim of a crime. And then there's an
7 indirect victim which is siblings under 18, unmarried, parents, and there's a group of
8 people who can qualify as an indirect victim to the crime.

9 I then review the case report that they provide in a system we
10 call P1, which is where we take any crime reports and they're stored. And I review
11 that to ensure that, one, it is a qualifying crime, because there's only certain
12 qualifying crimes that would allow somebody to apply for a U visa.

13 That, two, this person is either listed as a victim or can claim the
14 person that they're claiming to be an indirect victim to.

15 Q And let me just kind of stop you there. And then you just kind of
16 essentially read this information in a role in the case?

17 A Correct.

18 Q Okay. And if it meets those criterias, do you sign a certification?

19 A Yes, sir.

20 Q Do you typically meet with any of these people personally?

21 A No, sir.

22 Q Okay. I want to show you what's been already admitted as State's 50
23 and -- and State's 51.

24 MR. HAMNER: May I approach the witness?

25 THE COURT: Yes.

1 BY MR. HAMNER:

2 Q I want you to take a look on this document; is this your certification
3 signing?

4 A Yes, sir.

5 Q And I'm showing the witness State's 50, and that's for an individual by
6 the name of Amanda Moiza; is that correct?

7 A Correct.

8 Q I'm showing you State's 51. Same question, is this the first three
9 pages, this third page have your signature on it?

10 A Yes, sir.

11 Q Okay. And that's in relation to Maria Barajas Navarro?

12 A Yes, sir.

13 Q And you -- and you signed both of these documents on
14 March 20th, 2017?

15 A That's correct.

16 Q Okay.

17 MR. HAMNER: And just for the record, I'm publishing State's 51.

18 BY MR. HAMNER:

19 Q This is Maria's -- and that would be your name there; is that right? If
20 you look on the screen, sir --

21 A That's correct.

22 Q -- it's got your name there? And that's your -- is that your signature
23 there on the bottom?

24 A Yes, sir.

25 Q Okay. And, similarly, for -- publishing State's 50 -- this is Amanda

1 Moiza's application. And on page 3, that's your signature; is that right?

2 A Yes, sir.

3 Q Okay. Lieutenant, I want to ask you, when an application comes to
4 Metro's desk by petition for your signature, at that point, when it's just sitting on
5 your desk, is the petitioner still exposed to the possibility of removal proceedings?

6 A Yes, sir.

7 Q Is there any protection by simply the fact that it's on your desk?

8 A No, sir.

9 Q When you sign the document, like you did on March 20th, are the
10 petitioners still subject to removal proceedings?

11 A Yes, sir.

12 Q Are they afforded any protection just because your signature is on it?

13 A No, sir.

14 Q Okay. After you sign it, is it -- the petitioner or someone who is
15 assisting them, their responsibility to kind of mail it in and then send it to USCIS?

16 A Correct. After I -- after I sign it, we send it back to them, and they
17 complete whatever else needs to be completed.

18 Q And just for the education of the jury, what is USCIS?

19 A The United States Customs Enforcement, basically.

20 Q Okay. When the document's in the mail, based on your training and
21 experience, are the petitioners potentially exposed to removal proceedings?

22 A Yes, sir.

23 Q Are they afforded any protection because of the -- it's in the mail?

24 A No, sir.

25 Q Based on your training and experience, when it arrives at USCIS, is

1 there a waiting list to get approval?

2 A Yes, sir.

3 Q How long is that waiting list, based on your understanding of things?

4 A It's several years, up to six.

5 Q During the waiting list process, is the petitioner subject to potential
6 removal proceedings?

7 MR. WESTBROOK: Objection. Asked and answered.

8 MR. HAMNER: This is a different question. It's the waiting list.

9 THE COURT: Well, it is the waiting list. But does -- does he have --
10 I've got another concern. Does he have personal knowledge -- foundation to
11 answer that question?

12 MR. HAMNER: I can -- I can ask him.

13 THE COURT: All right.

14 MR. HAMNER: Your Honor, I believe he does, based on his -- his job.
15 I can ask him some more foundational questions.

16 THE COURT: Why don't you lay some more foundation.

17 MR. HAMNER: Okay.

18 THE COURT: Because I'm not -- I'm not convinced yet --

19 MR. HAMNER: Okay.

20 THE COURT: -- that he would know the answer to that.

21 BY MR. HAMNER:

22 Q Lieutenant, do you have information about the processing time for the
23 U visa applications?

24 A Yes, sir.

25 Q And what is that based off of?

1 A As part of -- when I got assigned to -- assigned to U visas, I'm thorough
2 at my job and I like to have an understanding of what's expected of me and what
3 the whole process is.

4 Q Did you give her reading materials, go to classes, speak to people?
5 What'd you do?

6 A There's two parts of it. There's -- one, there's a U and T visa law
7 enforcement guide, which basically explains the entire process, which I studied
8 that.

9 And then I also contacted the USCIS and spoke to their representative,
10 who provided me additional information.

11 MR. WESTBROOK: Your Honor -- Your Honor, same objection. Now
12 he's trying to qualify him. I -- I think this is inappropriate for this particular witness.

13 MR. HAMNER: Your Honor asked for foundation. I'm [indiscernible].

14 THE COURT: I wanted foundation to -- so we can -- so we could
15 determine if he could answer the question of whether he has personal knowledge
16 as to the -- the risk that the applicant faces while on the waiting list.

17 I -- give me a moment, because I'm trying to remember your --
18 your earlier objection at the --

19 MR. WESTBROOK: It was regarding the notice, Your Honor.

20 THE COURT: You're talking about the one at the bench?

21 MR. WESTBROOK: Yes.

22 THE COURT: All right.

23 MR. HAMNER: He's not offering an opinion.

24 THE COURT: Well, it is an opinion.

25 MR. HAMNER: I -- I don't believe -- I don't believe a witness who says,

1 Based on my understanding of speaking with people and my training, something
2 takes X period of time to complete, is an opinion. It's -- it's either true or it's not
3 true, based on his background, information, and things that he's researched and
4 the people he's interacted with. I don't think he's an offering an opinion on the
5 situation. He's just saying based on my training and experience --

6 MR. WESTBROOK: Your Honor, I think this might have crossed over
7 into a bench conversation.

8 MR. HAMNER: Well, we -- you didn't ask for approach. I'm more than
9 happy to approach to have this discussion.

10 THE COURT: Yeah. Give us a moment.

11 [Bench conference transcribed as follows.]

12 MR. WESTBROOK: What's happening now is Mr. Hamner is up there
13 qualifying him as a legal expert on immigration issues. That's not his job. His job is
14 to sign forms, for God sakes. That's it.

15 THE COURT: So it seems like he's getting ready to state the level of
16 risk that the applicant has, which is [indiscernible].

17 MR. HAMNER: I don't believe it is. It's a -- it's a --

18 THE COURT: Well, he's -- he's getting a point -- he's -- he's explaining
19 the law, I mean, what he's doing. He's telling us what the law is.

20 MR. HAMNER: He's explaining the U visa process that he's intricately
21 a part of.

22 MR. WESTBROOK: The legal process. Legal process. He's not a
23 lawyer.

24 MR. HAMNER: Yeah, I --

25 MR. WESTBROOK: He's not a -- but he's also not noticed as an

1 expert.

2 MR. HAMNER: Right.

3 MR. WESTBROOK: So even if he had the foundation, he hasn't been
4 noticed.

5 MR. HAMNER: Mr. Westbrook should know that pursuant to Nevada's
6 expert witness statutes, a person's education, training, and experience enables
7 them to potentially offer expert. And if you have a background in a certain area,
8 you don't -- because of what his job is, I think he's more than qualified to say
9 whether or not the waiting process --

10 THE COURT: You're too loud.

11 MR. HAMNER: I think he's more than qualified to say based on what
12 he does for a living --

13 THE COURT: See, not a qualification issue, it's a notice issue. And I
14 think that he is qualified. From what I've heard, I -- I agree he's qualified. Just --
15 was there -- was there sufficient notice so that the defense could prepare to
16 cross-examine him.

17 MS. KOLLINS: Oh --

18 THE COURT: Or are they prejudiced by not [indiscernible].

19 MS. KOLLINS: I don't think he's rendering an expert opinion. Because
20 he knows the -- I mean, a paralegal, a paralegal that worked for an immigration
21 attorney could know this process the same as he did. And we would never notice
22 them as an expert. It's just somebody that's familiar with the paperwork and the
23 process. So I don't -- because he --

24 THE COURT: My corollary concern -- I'm sorry to cut you off -- is that
25 shouldn't this be covered by a jury instruction? [Indiscernible] witness come and

1 explaining the law.

2 MS. KOLLINS: No.

3 THE COURT: I can go research the [indiscernible.]

4 MS. KOLLINS: Well, and -- and, you know, because there's stuff that,
5 you know, we did in preparation to address their defense. They noticed an UNLV
6 professor on immigration. So what we did is we went and hunted down what
7 happened with each one of these applicants, where their applications were in the
8 process, who signed off on them, which would be Lieutenant Price, and just to lay
9 out what happened in this case.

10 So I -- I don't know why that renders an expert necessary. I
11 just -- I'm not following. I mean, these are the people that -- that actually touched
12 the paperwork in this case, and they've noticed a UNLV professor, who is an
13 academic --

14 THE COURT: And where -- where it really is relevant here is the State
15 law in terms of having [indiscernible].

16 MS. KOLLINS: Well --

17 THE COURT: That's really what we're [indiscernible].

18 MR. HAMNER: I would say a couple things [indiscernible]. Sure the
19 state of mind is relevant, but also the process. If the witness has testified, that yes,
20 they had told me that it's a two- to three-year wait, which is what the witness is
21 testifying to, the witness is familiar with the process and says, Yeah, they could be
22 subject to removal, it is a factual piece of information that's relevant for the jury to
23 assess --

24 THE COURT: It's not relevant unless it was communicated to the
25 applicants.

1 MR. HAMNER: And they -- and had we conceded, yes, we are aware
2 that it takes several weeks. Amanda Moiza said it [indiscernible].

3 THE COURT: But did you tie it up yet? Is it -- do you have any more
4 he's going to say [indiscernible]?

5 MR. HAMNER: Yes.

6 MS. KOLLINS: We have the person that actually helped them. He's
7 kind of -- he's kind of out of order.

8 THE COURT: Okay. So that -- so then that's really what you're saying
9 is the opinions were offered not to show the truth of the matter asserted, that the
10 level of risk they actually have on what the law is, but it's corroborative of his
11 testimony -- of his testimony about what he told the applicants. So then it
12 corroborates what the applicants have said.

13 MS. KOLLINS: Oh, [indiscernible].

14 MR. HAMNER: Lieutenant Price hasn't talked to the applicant. It's --
15 there's a woman named Janette Amador, she's sitting outside and she's going to
16 testify today. And she will talk about how -- what she communicated about the
17 process. This is just one more witness that's going to explain --

18 THE COURT: Well, she's -- well, then -- then all we need is to see is
19 what she told the applicants.

20 MR. HAMNER: I understand.

21 THE COURT: I -- I think that you've got to stay away from this one, I'm
22 worried -- I'm worried here that this is unnoticed expert testimony, and plus, it's
23 legal opinion. So let's -- so I'm not going to allow this. Okay.

24 MR. HAMNER: Okay.

25 THE COURT: All right. So let's -- so move on from this area in terms

1 of him explaining what the law is.

2 MR. WESTBROOK: Thank you, Your Honor.

3 MS. KOLLINS: Okay. So -- but so for clarification, because now we
4 have the lady that actually helped these women fill out their applications, forward
5 them to the lieutenant, who signs off, that they've cooperated with law enforcement.
6 And then those applications come back --

7 THE COURT: When she tells them on the law -- what the law is, that's
8 fine. So we can discuss --

9 MS. KOLLINS: Okay.

10 THE COURT: You can introduce what she discussed with them.

11 MS. KOLLINS: Okay.

12 THE COURT: And her state of mind is important, because that's
13 corroborates what she said. So her state of mind of the law --

14 MS. KIERNY: Okay.

15 THE COURT: -- is can -- can [indiscernible]. This gentleman's state of
16 mind of the law, unless he communicated to her out there, won't be allowed.

17 MS. KOLLINS: Okay. So you're -- you're saying it's appropriate --
18 that -- what she has to say is appropriate, because the effect on the hearer --

19 THE COURT: Yes.

20 MS. KOLLINS: -- being Amanda and Maria?

21 THE COURT: Exactly.

22 MS. KOLLINS: Okay. Okay.

23 THE COURT: Okay.

24 MR. WESTBROOK: Just -- this is going to come up --

25 THE COURT: Oh, I think he's still talking.

1 MR. WESTBROOK: Sorry. This is going to come up with the next
2 witness, and it would be pertinent to this, but we -- we've already heard --

3 THE COURT: I'm going to let her testify to what he was going to
4 testify --

5 MR. WESTBROOK: No, I understand.

6 THE COURT: -- because I think it's -- your objection is noted.

7 MR. WESTBROOK: And my objection to that will be we've already
8 heard [indiscernible] she was told -- she told us that she knew about U visas before
9 this case ever happened, and before she went to Hermandad Mexicana, she was
10 clear about that. And she's already told us what she thinks about U visas, which
11 means that additional testimony will be cumulative, and therefore bolstering.

12 THE COURT: I disagree. But I think because credibility is -- of the
13 witnesses is still at issue, the State is within its rights to put on additional evidence
14 to try to support its theory of the case.

15 MR. WESTBROOK: Thank you, Your Honor.

16 [End of bench conference.]

17 THE COURT: All right.

18 MR. HAMNER: Thank you.

19 THE COURT: All right. Thank you for your patience.

20 BY MR. HAMNER:

21 Q And, Lieutenant, let me just ask, did you ever personally meet with
22 Amanda Moiza?

23 A No, sir.

24 Q And did you ever personally meet with Maria Esther Barajas?

25 A No, sir.

1 Q All right.

2 MR. HAMNER: I have no further questions at this time.

3 THE COURT: All right. Now, you can cross.

4 MR. WESTBROOK: Okay.

5 **CROSS-EXAMINATION**

6 BY MR. WESTBROOK:

7 Q All right. So you said that the purpose of the U visa is in order to
8 encourage undocumented people to come forward with reports of crime?

9 A Correct.

10 Q All right. So to encourage people to come forward, there has to be
11 community outreach, right?

12 A I'm sure there is. Yes, sir.

13 Q Okay. Like billboards or pamphlets?

14 A I don't know, sir.

15 Q You don't know of them? What about organizations like Hermandad
16 Mexicana?

17 A Yes, sir. They send in U visa applications.

18 Q Okay. As a certifying official, you're certifying that it's a qualifying
19 crime; is that correct?

20 A I'm certifying that the crime reported is qualifying, yes, sir.

21 Q Okay. Are you also the person who is certifying that the applicants are
22 cooperating with police?

23 A Yes, sir. I'm certifying that the applicants are qualified with the police.

24 Q Okay. And the applicants who do this are getting legal status while
25 they are involved with the case; that's what you said, correct?

A Once they receive conditional approval from USCIS, they get legal status. Yes, sir.

MR. WESTBROOK: Okay. Thank you, Your Honor.

THE COURT: All right. Redirect.

REDIRECT EXAMINATION

BY MR. HAMNER:

Q You were asked a question about -- that last question we were talking about conditional approval?

A Yes, sir.

Q What does that mean?

A That means that USCIS has received their application after all the other signatures have been received, and then after -- when they actually get to processing it, they process it and then they conditionally approve it.

Q Okay.

A And the reason for conditional approval is because there's only 10,000 approved per year, so they'll keep going beyond that 10,000, and if there's one that'll be approved after the 10,000, it's conditional approval for a future date.

Q And to your knowledge has Amanda Moiza been conditionally approved?

A No, sir.

Q To your knowledge has Maria Esther Barajas been conditionally approved?

A No, sir.

Q Have either of those women be approved at all, as far as you know?

A No, sir.

1 MR. HAMNER: No further questions.

2 THE COURT: All right. Let's see, we had --

3 MR. WESTBROOK: This is the last one.

4 THE COURT: Did you have recross?

5 MR. WESTBROOK: Recross, Your Honor.

6 THE COURT: Okay.

7 **RECROSS-EXAMINATION**

8 BY MR. WESTBROOK:

9 Q But they are eligible for approval, correct?

10 A I can only state that from a law enforcement standpoint.

11 Q From a law enforcement standpoint.

12 A I -- I signed off that -- on my portion.

13 Q Okay. You signed off on your portion?

14 A Correct, sir.

15 Q So as far as your job is concerned, they are now eligible for approval,
16 correct?

17 A Again, you're going beyond what I'm allowed to -- what I'm --

18 Q Sure.

19 A So here's -- here's the problem, is that there's --

20 MR. HAMNER: I'm going to -- I'm actually going to object at this point.

21 Can we approach?

22 THE COURT: Yes, you may.

23 [Bench conference transcribed as follows.]

24 THE COURT: Are we still talking about conditional approval?

25 MR. HAMNER: Well, Mr. Westbrook --

1 THE COURT: Or final approval?

2 MR. HAMNER: I'm going to object on the grounds that the --

3 MR. WESTBROOK: Conditional.

4 MR. HAMNER: Well, let me make my objection.

5 My objection is that Mr. Westbrook is asking this witness to offer
6 an expert opinion at this point, an opinion that he complained about on my direct
7 was beyond the scope, because no one was noticed.

8 THE COURT: I -- I had noticed that.

9 MR. HAMNER: So I think at this point --

10 THE COURT: I think -- I think if you're opening the door, we've got to --
11 I've got to let him open the door to bring out the opinions that we stopped.

12 MR. WESTBROOK: Your Honor, I'm simply asking the reverse
13 question that Mr. Hamner just asked. He said to your knowledge -- or have they
14 note been conditionally refused.

15 THE COURT: You actually opened the door on your initial cross by
16 asking the question, are they conditionally approved? And so that he -- that
17 opened the door for him to offer opinions on what conditional approval means.

18 MR. WESTBROOK: I -- I'm sorry, Your Honor. I didn't ask if they were
19 conditionally approved.

20 THE COURT: You did. You -- you used -- you're the first one to use
21 that term, conditional approval.

22 MR. WESTBROOK: I'm quite sure I didn't, Your Honor.

23 MS. KIERNY: That was the answer from the witness.

24 MR. WESTBROOK: That was the answer from the witness --

25 MR. HAMNER: And that would be --

1 THE COURT: The prior answer?
2 MR. WESTBROOK: Yes.
3 MR. HAMNER: No. That would be in --
4 MR. WESTBROOK: [Indiscernible.]
5 MR. HAMNER: And that would be invited by his question got that
6 answer and opened the door.
7 THE COURT: Well, you're -- you're -- so I think, if you're going to ask
8 now --
9 MR. WESTBROOK: I can read exactly what I said. Quote the -- quote
10 the words that he said on direct.
11 THE COURT: The point -- the point is --
12 MR. WESTBROOK: And that's it.
13 THE COURT: Because we're kind of beyond that.
14 MR. WESTBROOK: Sure.
15 THE COURT: The point is are you now going to ask an opinion
16 question regarding the approval status of the applicant if you do ask that. And I
17 have to, in fairness, allow them to ask opinion questions.
18 MR. WESTBROOK: What I asked was [indiscernible] of his job as a
19 certified professional, did he sign the form. And it was the exact opposite question
20 to what Chris asked him.
21 MR. HAMNER: The record's clear, he's opened the door. The
22 answer -- opening the door.
23 THE COURT: Either we can -- we can stop now or you can ask an
24 opinion question. I'm just letting you know, if you ask an opinion question regarding
25 approval status, then you're accepting him as an expert and Mr. Hamner can ask

1 opinion questions.

2 MR. WESTBROOK: Okay. All I've -- all that I asked him was as a
3 certifying, did you sign the form.

4 THE COURT: Well, that's not an opinion question. That's fine.

5 MR. WESTBROOK: Yeah. That's all I asked.

6 THE COURT: Okay. All right.

7 [End of bench conference.]

8 THE COURT: Okay.

9 BY MR. WESTBROOK:

10 Q As the certifying official, did you sign the U visa forms for Amanda
11 Moiza, Maria Barajas, and their respective husbands?

12 A I only know of the two that I've signed. I can't tell you about their
13 respective husbands.

14 Q Okay. And those two are Amanda and Maria?

15 A Correct, sir.

16 Q Okay. So as the certifying official, you signed their forms, right?

17 A Correct, sir.

18 MR. WESTBROOK: Nothing further.

19 THE COURT: All right. Thank -- thank you, Mr. Westbrook.

20 Did we -- did you get two shots at this? Yes, you did.

21 MR. HAMNER: I did. Thank you very much, Your Honor.

22 THE COURT: So then we're ready to ask the jurors if they have any
23 questions. All right.

24 Marshal, I saw two hands back there. Jurors No. 2 and 3. Make
25 sure your names and juror numbers are on there. Thank you.

1 Okay. You guys can approach when you're ready.

2 [Bench conference transcribed as follows.]

3 THE COURT: Okay. These are the questions. I'm not sure
4 [indiscernible] ask them.

5 MR. WESTBROOK: Not for him, unfortunately.

6 MS. KOLLINS: When they come back... Will the outcome of the trial
7 have any effect on the U visa applications? That's a fair --

8 MS. KIERNY: I don't know about the -- their fees.

9 MR. WESTBROOK: Yeah. I think you can't have -- you can't ask
10 [indiscernible].

11 MS. KOLLINS: I don't think he'll --

12 THE COURT: I think these are really cool questions.

13 MR. WESTBROOK: Uh-huh.

14 THE COURT: I mean, you guys can consider drafting something to
15 give to the jury before the close of the case.

16 MS. KIERNY: I don't think I know the answers.

17 MS. KOLLINS: Well, they're -- I mean, and this might either be elicited
18 from his expert on direct or cross, but there are pending U visa applications right
19 now that are from crimes 30 years ago that people have cooperated decades ago.
20 So the answer is no. But we'll get that from someone else, not from him.

21 THE COURT: Okay.

22 MS. KOLLINS: The person removed before approval -- is it approved,
23 can they come back? I don't know the answer, and I don't think he's going to know
24 it.

25 MR. HAMNER: It's beyond the scope of his --

1 THE COURT: Okay. So we can't give these.

2 MR. WESTBROOK: [Indiscernible] not this guy, but we can
3 [indiscernible].

4 MS. KOLLINS: Yeah, we can --

5 THE COURT: You guys figure out what to do with these at closing
6 argument or before closing argument.

7 MR. WESTBROOK: Sure.

8 THE COURT: Okay. Thanks.

9 [End of bench conference.]

10 THE COURT: All right. Jurors, for reasons that you need not -- should
11 not concern yourselves, I am not getting these two questions. Okay. But thank you
12 in any event.

13 I'll go ahead and give these to the court clerk to mark them as
14 court exhibits.

15 Officer Price -- or Lieutenant Price, thank you very much for your
16 time. You are excused, sir.

17 THE WITNESS: Thank you, sir. Have a good day.

18 THE COURT: And watch your step.

19 MR. HAMNER: Is it possible to take a brief 10-minute break
20 or 15-minute break, Your Honor?

21 THE COURT: Why don't we say 15 minutes?

22 MR. HAMNER: Yes, Your Honor.

23 THE COURT: All right?

24 MR. HAMNER: Thank you very much.

25 THE COURT: Ladies and gentlemen, we're taking a 15-minute recess.

1 And the prior admonishment I gave you applies.

2 Don't form any opinions about the case; don't talk to anybody
3 about the case; don't talk to any witnesses, parties, or -- or attorneys; don't do any
4 research or investigations; and don't -- don't use any electronic devices to get any
5 information about the case or the subject matter of the case.

6 All right. You are excused. 15 minutes. Let's say, straight
7 up 4:00. Does that work? All right. Thanks, guys.

8 [Jury recessed at 3:41 p.m.]

9 THE COURT: All right. See you at 4:00.

10 MS. KOLLINS: Yes, sir.

11 THE COURT: All right.

12 [Court recessed at 3:42 p.m., until 4:03 p.m.]

13 [Outside the presence of the jury.]

14 THE COURT: So let's go on the record. And where do we stand,
15 folks?

16 MR. HAMNER: We have two more witnesses. Based on -- we have
17 one we need to -- before we bring the jury in, I just want to recall the exhibits.
18 There was one exhibit that we've agreed upon by stipulation based on a redaction.
19 And it's eliminating the need for one of the witnesses, so --

20 THE COURT: Excellent. Thank you.

21 MR. HAMNER: We're all -- we're all winning.

22 THE COURT: Why don't you identify for the --

23 THE CLERK: Which exhibit is that?

24 MR. HAMNER: So State's proposed -- I want to say it's 49 and 49A. It
25 was a six-pack lineup [indiscernible]. I would like to not offer what you've marked

1 as State's proposed 49A. I would like to offer this one. It's a redaction of the same
2 thing, so I don't know if you want to --

3 THE CLERK: You want to redact.

4 MR. HAMNER: If we can switch --

5 THE CLERK: Yeah, switch it out.

6 MR. HAMNER: If we could take it out and switch it. Let's just switch it.

7 And then with that substitution, the parties will stipulate to
8 admission of State's 49 and State's 49A.

9 THE COURT: 49 and 49A redacted are admitted, based on stipulation
10 of the parties. Thank you.

11 [State's Exhibit Nos. 49 and 49A admitted.]

12 MS. KIERNY: And based on that, I think we can knock two witnesses
13 off their -- perfect. Maybe you covered that I was talking to Ms. Kollins.

14 MR. HAMNER: We have two more witnesses. One will be very, very
15 brief. One should take a bit longer.

16 THE COURT: Let's do it.

17 MR. HAMNER: And then we'll be -- we'll be done for the day.

18 THE COURT: Marshal, we can bring the jurors in. We're all set, sir.

19 [Pause in proceedings.]

20 [Jury reconvened at 4:06 p.m.]

21 THE COURT: All right. Please be seated. We're on the record,
22 continuing with our case.

23 The State may call its next witness.

24 MR. HAMNER: The State is going to call Wendy Losada to the stand.

25 THE COURT: Wendy Losada. All right.

1 [Pause in proceedings.]

2 THE COURT: Please remain standing. The court clerk will administer
3 your oath.

4 **WENDY LOSADA,**

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

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

8 THE WITNESS: Wendy Losada, W-E-N-D-Y L-O-S-A-D-A.

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

10 THE COURT: Yes, you may.

11 MR. HAMNER: Thank you.

12 **DIRECT EXAMINATION**

13 BY MR. HAMNER:

14 Q Ms. Losada, what do you do for a living?

15 A I am a victim advocate.

16 Q Okay. Do you work over at the Rape Crisis Center?

17 A That's correct.

18 Q Okay. Did you have a meeting sometime after October 17th, 2016 --
19 sometime in 2016, with Amanda Moiza, Maria Esther Barajas, and Ricardo Rangel?

20 A I did.

21 Q Okay. And I don't want to get into any specifics, but I want to target on
22 one thing. I want to talk about U visas for a second.

23 A Uh-huh.

24 Q Okay. When they came in, did Amanda ask you about a U visa?

25 A No.

1 Q Did she ask you how to obtain one?
2 A No.
3 Q Did Maria ask you about a U visa?
4 A No.
5 Q Did she ask you how to obtain one?
6 A No.
7 Q Did Ricardo ask you for a U visa?
8 A No.
9 Q Did he ask you how to obtain one?
10 A No.
11 Q Okay. Did you refer them to Hermandad Mexicana Nacional?
12 A I did.
13 Q Okay. Did you specifically tell them about a U visa, if you remember?
14 A I don't think I -- I don't remember if I did. I know I referred them to get
15 services, because they do victim services.
16 Q They can help -- they can help out?
17 A Yes.
18 Q So let me just ask you at least what you're clear about. Are you clear
19 about the fact that those three people did not ask you about U visas versus you
20 referring them potentially there for a U visa?
21 A That's correct.
22 Q Okay.
23 MR. HAMNER: I have no further questions at this time.
24 THE COURT: Cross?
25 MR. WESTBROOK: No questions, Your Honor.

1 THE COURT: Anything from the jurors? Okay.

2 I will excuse you then. Thank you.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you very much for your time.

5 You may call the next witness.

6 MR. HAMNER: The State's going to call Janette Amador to the stand.

7 THE COURT: Hopefully Losada wasn't waiting too long.

8 [Pause in proceedings.]

9 **JANETTE AMADOR,**

10 [having been called as a witness and being first duly sworn, testified as follows.]

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

13 THE WITNESS: Janette, J-A-N-E-T-T-E, Amador, A-M-A-D-O-R.

14 THE CLERK: Thank you.

15 THE COURT: You may proceed.

16 MR. HAMNER: Thank you very much.

17 **DIRECT EXAMINATION**

18 BY MR. HAMNER:

19 Q Ms. Amador, can you explain to the jury what you do for a living?

20 A I am a caseworker for Hermandad Mexicana Transnational, which is a
21 nonprofit organization that provides immigration services.

22 Q Does that also include helping people apply for a U visa?

23 A Yes.

24 Q Okay. What is a U visa?

25 A A U visa is a nonimmigrant legal status. It is a special law that

1 immigration has to protect victims of certain qualifying crimes who assist law
2 enforcement or court and the -- who assist in either the investigation with law
3 enforcement or the court proceedings.

4 Q Okay. And can that apply to victims or parents of victims of crimes --
5 you know, alleged, you know, alleged victims and victims of crime?

6 A It can apply for direct victims and indirect victims.

7 Q Okay. I want to turn your attention specifically to an application
8 process. Did you help -- help a U visa application process with a woman -- by a
9 woman by the name of Amanda Moiza?

10 A I did.

11 Q As well as her husband?

12 A Yes.

13 Q Okay. Did you help with an application process for a woman by the
14 name of Maria Estrella Barajas?

15 A I did.

16 Q And her husband?

17 A I did, yes.

18 Q And just to be clear, you never helped prepare an application for
19 Ricardo Rangel; is that right?

20 A Correct.

21 Q Okay. I want to talk about the process. What would be the first step for
22 an applicant if they came to your nonprofit organization?

23 A The first step would be to verify that the victim is a victim of a qualifying
24 crime, as outlined by USCIS.

25 Q Okay. So do they meet the director of your organization?

1 A Typically, yes.

2 Q And speak with them?

3 A Yes.

4 Q Okay. And I don't want to get into specifics, but did Maria and Amanda
5 do this with your director?

6 A No, they did not.

7 Q Okay. Who did they meet with?

8 A They met with me.

9 Q Okay. Did you do that screening process?

10 A I did.

11 Q Okay. What is the next step after that, if someone -- you feel as if they
12 qualify and can move on to the next step, what's the next step?

13 A If the victim who comes in has a police report stating that they are a
14 victim of a --

15 Q And if we could, why don't we just refer to them as applicants, if we
16 could? Can we do that?

17 A Correct.

18 Q Great.

19 A If the applicant comes in and they provide a police report that states
20 that the crime investigated is listed as the qualifying crime as outlined by USCIS,
21 we proceed to complete what is called a certification.

22 A certification is an immigration form that is signed by law
23 enforcement, because they certify that the person listed on the report has been a
24 victim of said crime and has been helpful in that investigation of said crime.

25 Q And did you do that in this case with respect to Amanda and Maria?

150

1 A I did.

2 Q Okay. And did you send them off to Lieutenant Price at Metro?

3 A I sent them to Metro to be certified, yes.

4 Q And were they certified by Lieutenant Price, as far as you know? Were
5 they certified by Metro, I guess would be the...

6 A The applications for Maria and Amanda were certified. However, the
7 applications for the husbands of each applicant were -- are -- are still pending.

8 Q Okay. So those are pending. Okay. I want to at least show you what's
9 been marked -- already admitted as State's 50 and State's 51. Is this -- Amanda is
10 State's 50?

11 A Yes.

12 Q Okay. And State's 51, is that Maria's?

13 A Yes.

14 Q Okay. Do you advise applicants about whether they're potentially
15 exposed or protected at different stages of the application process? Do you do that
16 with your applicants?

17 A We explain the whole process to them.

18 Q Okay. Did you explain to them whether or not -- let me ask you this,
19 when they come and meet with the director and applicant, are they subject to
20 removal proceedings potentially, or is there a protection set up, when they just sit
21 down and do a vetting with your organization?

22 A Just my meeting with either the director or myself to ask about
23 eligibility, there is absolutely no protection.

24 Q Did you inform Amanda and Maria about that?

25 A Yes.

1 Q Okay. Then you mentioned the next step was sending the request to
2 Metro for certification?

3 A Correct.

4 Q Okay. Did -- is there protection for these applicants when those
5 documents get sent off to Metro for certification?

6 A There is not.

7 Q Did you advise Amanda and Maria at that point about what level of
8 exposure they're at by sending it to Metro?

9 A There was no meeting in between the first meeting and once they were
10 signed --

11 Q But at the --

12 A -- at the beginning stages.

13 Q But let me ask you this, at that first meeting, did you explain to them
14 when we send it off to Metro, there's no protection at this point?

15 A Yes.

16 Q Okay. And you did that for Amanda and Maria?

17 A Yes.

18 Q Okay. After -- let's say Metro decides to certify, that would be Step 3?

19 A Yes.

20 Q Okay. Is an applicant -- is an applicant at that point, just because Metro
21 signed off on the certification, are they protected from being removed at this point?

22 A There is no protection at that point.

23 Q At that first meeting, did you explain that to Amanda and Maria?

24 A Yes.

25 Q Let's move on to Step 4. Metro signs off; then what happens to the

1 potential application?

2 A Once Metro signs the certification, the applicant is provided with a list of
3 required documents that they need to gather in order for us to process their case,
4 as well as a packet that they must complete with their personal information for us to
5 be able to complete all the immigration forms.

6 Q What sort of documents are we talking about?

7 A Personal documents such as identifications, birth certificates, any
8 background checks.

9 Q Okay. Do they have to prepare, like, a voluntary statement as well?

10 A Yes, they do.

11 Q Okay. At this stage, when you're compiling information, is an applicant
12 protected from being potentially removed?

13 A They are not.

14 Q Did you explain this to Amanda and Maria at your first meeting?

15 A Yes.

16 Q Once all that information is provided to your organization, what do you
17 do as an organization with all that information?

18 A Once an applicant brings in all of the required documentation, as well
19 as the packet filled out with all their personal information, it must be reviewed by the
20 director to make sure that we can continue with the process and it does not need to
21 be reviewed by an immigration attorney. And if everything is okay, then we can
22 proceed to complete the immigration forms.

23 Q Okay. During that process, is an applicant still exposed to potential
24 removal?

25 A Yes, they are.

1 Q Okay. Did you explain that to Amanda and Maria during your first
2 meeting?

3 A Yes.

4 Q Let's say everything kind of checks out, everyone dots all the I's,
5 crosses all the T's, and everyone signs off, where does the application go then?

6 A Once the application is signed by all parties and mailed, it is mailed to
7 USCIS.

8 Q Once that application is in the mail, is an applicant protected from
9 removal, just by it being in the mail?

10 A No, they are not.

11 Q Okay. So they're still potentially exposed to removal?

12 A Yes, they are.

13 Q Was Amanda -- was that explained to Amanda and Maria?

14 A Yes.

15 Q Okay. How long does -- and let me just ask, does -- does your
16 organization kind of monitor the processing of these applications for people that you
17 help out?

18 A Do we -- we notify the clients at every step of any notification that
19 USCIS provides.

20 Q So if there's some update from USCIS, you're going to keep them
21 up-to-date as to what's going on?

22 A Correct.

23 Q Okay. How long does it take, typically, for a U visa to be approved?

24 A At this moment there is an incredible backlog. Therefore, we are
25 seeing very, very, very long wait times. It is hard to say exactly how long it is

1 taking, but I do know that USCIS is currently processing cases that they -- that were
2 received in June of 2014, which the cases -- that means that the cases that are
3 being approved today have waited three years for a U visa.

4 Q Okay. While it's in this waiting list process, is an applicant potentially
5 subject to removal proceedings?

6 A Prior to Immigration making a decision, yes.

7 Q Okay. So this two -- two and a half years that you may be waiting,
8 you're still potentially exposed to being removed?

9 A Yes.

10 Q Was that explained to Amanda and Maria when you met with them
11 initially?

12 A Yes.

13 Q Okay. Have they been approved by USCIS at this point?

14 A No, they have not.

15 Q Okay. So at this point, are Maria and Amanda still exposed to potential
16 removal?

17 A Yes, they are.

18 Q And -- and just when you met with them initially, did either of them
19 indicate to you that prior to coming to your office, they were ever subject to any
20 previous removal proceeding?

21 A Not to my memory.

22 Q Okay. And you indicated the father's applications, as far as you know,
23 are still pending certification from Metro?

24 A Correct.

25 Q So was that explained to either Amanda or Maria or they -- or the

1 fathers themselves? Was that explained to them as far as you know?

2 A When I received the certifications for Amanda and Maria, I did notify
3 them that their husbands -- I did notify them respectively that their husbands' were
4 pending.

5 Q Were still -- were still pending. So at that point, if it's still pending,
6 they're still subject, potentially, to removal proceedings?

7 A Correct.

8 Q Okay.

9 MR. HAMNER: Court's indulgence.

10 THE COURT: What -- it's pending what? Who -- what are we waiting --

11 MR. HAMNER: Pending -- pending --

12 THE COURT: What are they waiting for?

13 MR. HAMNER: Pending approval --

14 THE COURT: By who?

15 MR. HAMNER: -- of certification for Metro.

16 THE COURT: Okay.

17 MR. HAMNER: That -- is that --

18 BY MR. HAMNER:

19 Q Would that be correct, ma'am?

20 A The husbands' certifications are pending a signature from Metro.

21 Q So that's kind of that Step 2 in the process, sending the information to
22 Metro, the initial information and having someone like a Lieutenant Price sign off
23 and certify it?

24 A The first step.

25 Q Okay. The first time. Because then after that is there a process of

1 collecting additional information and then sending the application to USCIS?

2 A Yes. The -- the husbands are each on the first step and the wives are
3 each on the second step.

4 Q Great.

5 MR. HAMNER: Court's indulgence.

6 THE COURT: Sure.

7 BY MR. HAMNER:

8 Q Oh, let me -- let me ask you this. As far as you know, when Amanda --
9 when you met with Amanda and Maria, did they tell you that they were referred to
10 you by the District Attorney's Office?

11 A No, they did not.

12 MR. HAMNER: No further questions at this time.

13 THE COURT: Okay. Cross.

14 MR. WESTBROOK: Court's indulgence.

15 THE COURT: Sure.

16 **CROSS-EXAMINATION**

17 BY MR. WESTBROOK:

18 Q Hi, Janette, how are you?

19 A Hi. I'm well, thank you. How about yourself?

20 Q I'm very well. Thanks.

21 When a person is undocumented, they can be removed any
22 time, right?

23 A Correct.

24 Q Okay. But in their daily lives, whether they're applies for a U visa or
25 not, if they're undocumented, they're always subject to removal, correct?

1 A Correct.

2 Q Okay. So in their daily lives, they have no protection, right?

3 A Correct.

4 Q They could, for example, get stopped for speeding and the police officer

5 could ask for their papers, they don't have any papers, and the police officer could

6 report them to the federal authorities and they could be deported, right?

7 A Yes.

8 Q Okay. In fact, that's a common way for people to be discovered by

9 immigration enforcement, isn't it? Police officers, local police discover them and

10 then report them to the federal government?

11 A I wouldn't know. But I would imagine so.

12 Q Okay. This law exists in part to remove the fear of deportation, right?

13 MR. HAMNER: Your Honor, could we just briefly approach?

14 MR. WESTBROOK: Sure.

15 THE COURT: Okay.

16 [Bench conference transcribed as follows.]

17 MR. HAMNER: I just wanted just to be clear about the -- the ruling. Is

18 this an area where the court's permitting to opine, offer opinions on the purpose

19 and the motivation? I just want to be clear.

20 THE COURT: Yeah. I'm allowing her to opine on all that --

21 MR. HAMNER: Okay.

22 THE COURT: -- because it's reflective of her state of mind.

23 MR. HAMNER: Okay. Sure.

24 THE COURT: Which helps to -- to lend credibility or incredibility to her

25 testimony --

1 MR. HAMNER: That's fine.

2 THE COURT: -- about what she told them.

3 MR. HAMNER: Just wanted to be clear.

4 MR. WESTBROOK: And honestly, I haven't objected to her opining,
5 because it's her job. It was just that the detective just didn't have the --

6 THE COURT: That's perfect.

7 [End of bench conference.]

8 BY MR. WESTBROOK:

9 Q Okay. So we were talking about this law existing in -- in part, to remove
10 fear of deportation, right?

11 A I'm not sure if I'm qualified to answer that question.

12 Q Okay. Well, let me put it another way. You want people who have
13 been victims of crime -- and when I say you, I'm sorry -- the law in this particular
14 case -- U visas exist so that people who are victims on crime can report to the
15 police without worrying that the police will then deport them, right?

16 A To the best of my knowledge.

17 Q Okay. So in a way, it's to remove that fear of deportation?

18 A I suppose.

19 Q Okay. It also helping local law enforcement work with people better,
20 right?

21 A I would say so.

22 Q Sure. And, in fact, your organization works closely with local law
23 enforcement, right?

24 A They do.

25 MR. WESTBROOK: Court's indulgence.

1 THE COURT: Sure.

2 BY MR. WESTBROOK:

3 Q Now, we've used the word victim a lot here. Somebody who is
4 reporting a crime often is referred to, I think in your documentation and in your
5 testimony just now, as a victim. Whether or not they are a victim, that's not what
6 you're actually deciding over at your office, right?

7 A Correct.

8 Q Okay. What you're deciding is whether or not they have made an
9 allegation that they are a victim, right?

10 A No. It is not my job to decide that.

11 Q Okay. Well, I mean -- let me be more specific. When you're looking for
12 somebody who has told you that they are a victim of a qualifying crime, you're not
13 questioning whether they're really a victim, or whether it's -- the story that they're
14 telling you is untrue, right?

15 A That is not my job.

16 Q Right. That's not your job at all. Your job is to find out whether or not
17 what they say happened is, if it's true, a qualifying crime, right?

18 A I'm not sure I understand the question.

19 Q Okay. Let me put it this way. If an undocumented immigrant comes in
20 to -- to your office to ask questions about a U visa, and they say, Hey, I was a
21 victim of a burglary, is that a qualifying crime?

22 A No, it is not.

23 Q Okay. If they come in and they say, I'm a -- I'm a victim of domestic
24 violence, you know, my husband beats me, is that a qualifying crime?

25 A Domestic violence is a qualifying crime.

1 Q Okay. So the first person you wouldn't be able to help, right?

2 A Correct.

3 Q The second person you would be able to help?

4 A Potentially.

5 Q Okay. And when you decide to help them or not help them, what you're

6 looking at is the crime that they're alleging, right?

7 A Correct.

8 Q You're not reviewing the allegations to see whether they are true or not;

9 does that make sense?

10 A Yes. That is not my job.

11 Q Yeah. I mean, your job is not to cross-examine them, right?

12 A Correct.

13 Q And your job is not to investigate the allegations to see if they're true,

14 right?

15 A Correct.

16 Q All you're looking for is the accusation and whether or not it qualifies

17 under the statutes, right?

18 A Correct.

19 Q Okay.

20 MR. WESTBROOK: May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 BY MR. WESTBROOK:

23 Q I have what is preliminarily marked as defense next in order.

24 MS. KOLLINS: Which ones?

25 MR. WESTBROOK: The pink and the -- and what's in the folder.

1 MS. KOLLINS: Okay.

2 THE COURT: What exhibit numbers?

3 THE CLERK: A and B.

4 THE COURT: All right.

5 MR. WESTBROOK: Okay. May I approach the witness?

6 THE COURT: Yes.

7 MR. WESTBROOK: Thank you.

8 BY MR. WESTBROOK:

9 Q I'm showing you what's marked as Defense Proposed A and Defense
10 Proposed B; do you recognize these?

11 A I do.

12 Q Okay. Could you tell me what they are?

13 A The -- the first is a guideline of the steps that our office takes to process
14 a U visa.

15 Q Okay. And that's the pink sheet?

16 A Yes.

17 Q Okay. Is this something that your office produces?

18 A Yes.

19 Q And so you've seen this one before?

20 A I have.

21 Q Even on this paper?

22 A Yes.

23 Q Okay. And is it on English one side and then on the other side it's in
24 Spanish?

25 A It is.

1 Q So it's the same thing, just two different languages?

2 A Correct.

3 Q Okay. And then the other one is Defense Proposed Exhibit B; do you
4 recognize that?

5 A I do.

6 Q Okay. And what is that?

7 A This is a pamphlet provided by USCIS that talks about options for
8 victims of crimes.

9 Q Okay. And this one's just in Spanish, right?

10 A This one is -- this one is just in Spanish. It does exist in English online.

11 Q Okay. But this particular one --

12 A This particular one is in Spanish.

13 Q Okay. And do these look like fair and accurate representations of the
14 pamphlets and material that you hand out?

15 A We don't hand this -- the hot pink sheet out just to anyone.

16 Q Okay. Who do you hand it out to?

17 A These are provided to people who have been screened and we are
18 considering doing a U visa process for them.

19 Q I see. So the pink ones are for people who've started the U visa
20 process and have gotten to a certain point through the screening.

21 A Correct.

22 Q But the -- the pamphlet -- the big, color pamphlets -- well, big -- the
23 color pamphlets, those are for more general information?

24 A Correct.

25 Q Okay.

1 MR. WESTBROOK: I'd like to move to enter these two exhibits into the
2 evidence.

3 THE COURT: Mr. Hamner?

4 MR. HAMNER: You know, we were -- we were provided them today,
5 so we don't have any objections at this time.

6 THE COURT: All right. They are admitted, A and B.

7 [Defense Exhibit Nos. A and B admitted.]

8 MR. WESTBROOK: Thank you.

9 MS. KOLLINS: Is this one of English that he's admitting? Because he
10 can't admit it in Spanish. Is it --

11 MR. HAMNER: Well, court's -- just -- could we just briefly approach
12 and --

13 MR. WESTBROOK: Sure.

14 THE COURT: Okay. Yeah.

15 MR. HAMNER: Just real brief.

16 [Pause in proceedings.]

17 MR. WESTBROOK: All right.

18 THE COURT: All right. Am I hearing that there's no objection and they
19 can be admitted?

20 MR. WESTBROOK: Yes, Your Honor.

21 THE COURT: All right. So ordered. Let's continue.

22 MR. WESTBROOK: Okay.

23 BY MR. WESTBROOK:

24 Q The -- part of what you're doing at your organization is community
25 outreach; is that fair to say?

1 A Yes.

2 Q Okay. The community needs to know you're there in order to use you;
3 is that fair?

4 A Yes.

5 Q Okay. Is this pamphlet an example of the type of material that you're
6 using to -- I won't say advertise your service, because you're a nonprofit, but to
7 make people aware of your service?

8 A That particular pamphlet was dropped off by North Las Vegas Police
9 Department when they came to our event.

10 Q Oh, I see. So the -- the North Las Vegas Police Department also is one
11 of the organizations that -- that potentially advertises your services and U visa
12 services to the public?

13 MR. HAMNER: I'm going to -- I'm going to object to the word -- the use
14 of the word advertise as being argumentative.

15 THE COURT: Yeah. It's sustained. It misstates the witness's
16 testimony.

17 MR. WESTBROOK: Would -- would publicize be a better word for that?
18 Makes people aware?

19 MR. HAMNER: I would just say provides, you know, provide the
20 pamphlets.

21 THE COURT: Well, let's hear from the witness's own testimony as to
22 what -- what -- I -- I mean, ask the question --

23 MR. WESTBROOK: Okay.

24 THE COURT: -- that I think you're trying to ask, which is what does
25 Hermandad Mexicana Nacional do to let -- if anything, to let the public know about

1 the U visa process?

2 MR. WESTBROOK: That works.

3 THE WITNESS: Okay. Most of the time, we are asked by
4 organizations to come and provide information about our services.

5 BY MR. WESTBROOK:

6 Q Okay. And what kind of organizations --

7 A But we mostly depend on word of mouth.

8 Q Okay. Word of mouth?

9 A Yes.

10 Q Okay. And do the organizations include police departments?

11 A They do.

12 Q Okay.

13 A Well, hold on. Can I take that back?

14 Q Oh, absolutely.

15 A Police departments do not ask us to come and give information.

16 Q Okay. But they do distribute your information, right?

17 A That is not our information.

18 Q Okay.

19 A That particular -- is USCIS information.

20 Q Oh, I see.

21 A That's printed by USCIS.

22 Q I see. Do you have these on hand at your organization?

23 A I don't.

24 Q Not usually?

25 A No.

1 Q Okay. All right.

2 MR. WESTBROOK: That's kind of a misunderstanding. I would
3 probably go ahead and take this out then of -- of the evidence. Because my
4 understanding, from the testimony, was that it was something she distributes, but
5 it's not.

6 THE COURT: So B will be removed as an exhibit?

7 MR. WESTBROOK: Yes. That would be my request.

8 THE COURT: Any objection to having B removed?

9 MS. KOLLINS: No, sir.

10 MR. HAMNER: No, Your Honor.

11 THE COURT: All right. B is removed.

12 [Defense Exhibit No. B removed.]

13 BY MR. WESTBROOK:

14 Q Okay. But you did say this was something at some point that they
15 dropped off at your organization?

16 A Yes.

17 Q Okay. That makes sense.

18 This one, the pink one, though, that is something that you guys
19 create and distribute; is that right?

20 A Correct.

21 Q Okay. What other kind of organizations ask you to provide information
22 to the public?

23 A Mostly schools.

24 Q Oh, schools.

25 A Yes.

1 Q Okay. Like public Clark County schools?

2 A Yes.

3 Q Okay. Schools that have a large Hispanic population?

4 A I wouldn't know 100 percent for sure, but I would imagine so.

5 Q Okay. And when you -- when you print materials like this, you're
6 printing them both in English and in Spanish, so that Spanish speakers can be
7 aware of the contents, right?

8 A Correct.

9 Q Okay. So when you're talking about the eligibility for getting a U visa,
10 first you have to be the victim of a qualifying criminal activity. We went over that,
11 right?

12 A Yes.

13 Q Okay. And by being the victim of the activity, what you're saying is they
14 have to claim to be the victim of the activity, right?

15 A I wouldn't say that, necessarily. I would say that they need to present a
16 police report where they appear as a victim of a qualifying crime.

17 Q Okay. That's sort of a -- a secondary step, right? They have to say that
18 they're the victim of a qualifying crime, and then there needs to be a police report
19 so that there's some kind of government action, right?

20 MR. HAMNER: I'm going to object. That misstates the witness's
21 testimony. She specifically said it wouldn't require someone -- an applicant to say
22 I'm a victim. She indicated with that answer that it was -- she needs to have
23 information provided in terms of a formal report.

24 THE COURT: Well, there's -- there has to be some indicia that the
25 potential applicant has been a victim.

1 MR. WESTBROOK: Right.

2 THE COURT: Is that -- does that -- I mean that's the gist of your
3 testimony, right?

4 MR. WESTBROOK: And I can -- I can restate it, too.

5 THE COURT: Okay.

6 THE WITNESS: Okay.

7 BY MR. WESTBROOK:

8 Q Okay. So it's not enough for somebody just to come in and say, you
9 know, my daughter was a victim of sexual abuse; it actually has to have gone to the
10 police and initiated some kind of paperwork, correct?

11 A In order for us to serve them, they have to have a police report.

12 Q Okay. But if they've done that, you're not reviewing that for truth or
13 false or evidence or no evidence. Once they have the police report, they come in
14 and they've passed that first step; is that fair to say?

15 A The first step on the pink sheet?

16 Q Yeah. For -- for the -- the being a victim of a qualifying activity report.
17 If they've gone to the police, they've gotten a report, and if they've claimed to be a
18 victim of a qualifying activity, such as domestic violence or a sexual assault, then
19 they've passed that first bullet point, right?

20 A If they provide a police report stating that they are a victim of a
21 qualifying crime, then they would have passed that first step.

22 Q Okay. During the process of -- during the process of processing the
23 forms, you check in with law enforcement to make sure that the applicant is
24 cooperating with the police, right?

25 A I do not.

1 Q Okay. Does somebody from your office do that?

2 A No, we don't.

3 Q There is not communication with the victim witness office to see if
4 they're still cooperating with police?

5 A No, there isn't.

6 Q Okay. Who does handle that?

7 A The only thing that we do is request a certification from the police.

8 Q I see. That cooperation stuff happens precertification; is that fair to
9 say?

10 A On most occasions.

11 Q Okay. I'm going to grab the U visa app over here.

12 So I'm going to refer first to State's Exhibit 51.

13 And you've already identified that State's Exhibit 51 includes the
14 U visa application of Maria Barajas, correct?

15 A Correct.

16 Q Okay. There are two applications, though, in here, aren't there? Or
17 should I just approach --

18 A May I see?

19 Q -- so you can take a look at it?

20 A Uh-huh.

21 MR. WESTBROOK: I'm sorry, Judge. May I approach?

22 THE COURT: Yes.

23 BY MR. WESTBROOK:

24 Q So once you go back here, there's a supplement B.

25 A Okay. Yes. These are two separate applications. The first application

1 at the front is the application for Maria. And the second application is unrelated to
2 Maria, but it is for a Nicholas Estrella.

3 Q Okay. So Nicholas Estrella is related in that he's her husband, but the
4 two applications are unrelated, right?

5 A Well, to my knowledge, they are not legally married.

6 Q Oh, okay. So he filed a separate application?

7 A Correct.

8 Q Okay. And in his separate application, I believe you said that while
9 Maria has been certified, Nicholas has not yet been certified; is that right?

10 A Correct.

11 Q Okay. Now, in the application there is a section on part 4 called
12 Helpfulness of The Victim, right?

13 A Yes.

14 Q Okay. And again, this is just a term that we're using to identify people;
15 it's not -- at this point this is an alleged victim, right?

16 A They are considered victims. That's what the form states.

17 Q On the application?

18 A Yes.

19 Q Okay.

20 MR. WESTBROOK: So may I approach again?

21 THE COURT: Yes.

22 BY MR. WESTBROOK:

23 Q This is the part concerning helpfulness, and in this particular one, it
24 indicates that Nicholas has been cooperative with police and is willing to assist in
25 any possible what way, right?

1 A Yes.

2 Q Okay. This hasn't been certified yet, so his cooperation is being
3 checked by the police, right?

4 A I would imagine so.

5 Q Okay. And if he's not cooperating with police, then we won't be
6 certified, right?

7 A It depends on the lieutenant who reviews these to make that
8 determination.

9 Q Generally speaking, cooperation is required, right?

10 A Yes.

11 Q Okay. If somebody is an alleged victim of a crime or a family member,
12 qualifying family member who is an alleged victim of a crime, and they are working
13 with the police, it's unlikely that the police are then going to report them --

14 MR. HAMNER: Objection.

15 BY MR. WESTBROOK:

16 Q -- to ICE, right?

17 MR. HAMNER: Objection. Calls for speculation.

18 THE COURT: Yes. Sustained. You've got to lay more foundation
19 before you ask that --

20 MR. WESTBROOK: Sure.

21 THE COURT: -- that type of question.

22 MR. WESTBROOK: I will.

23 BY MR. WESTBROOK:

24 Q We talked about the purpose of -- of the law, the U visa law, right? The
25 purpose of the U visa law, you know, in your experience as a person who handles

1 these applications and who works for this organization, is to make it so that people
2 don't have to be afraid of going to the police when something happens, right?

3 A Yes.

4 Q Okay. And the idea behind that is if they feel like they can trust the
5 police not to report them to the federal government for deportation, then they are
6 more likely to go to the police, right?

7 A Yes.

8 Q So by working with the police, they are less likely to be reported by the
9 police --

10 MR. HAMNER: Objection.

11 BY MR. WESTBROOK:

12 Q -- to the federal government?

13 MR. HAMNER: Objection. It calls for speculation. She's not a police
14 officer. This is --

15 THE COURT: No. I understand. That's -- that's sustained still.

16 MR. WESTBROOK: Okay.

17 THE COURT: And you haven't -- you haven't established that she is
18 knowledgeable about the procedures or protocol by which the police will certify.

19 MR. WESTBROOK: Okay.

20 THE COURT: I mean, you have -- we have generalities --

21 BY MR. WESTBROOK:

22 Q Is that being --

23 THE COURT: -- here, but she --

24 MR. WESTBROOK: Sure.

25 THE COURT: -- she can't, you know, answer your specific question

1 without --

2 MR. WESTBROOK: Okay.

3 THE COURT: -- without a foundation. Otherwise, it's speculation.

4 MR. WESTBROOK: Sounds good. I will lay some more foundation.

5 THE COURT: Uh-huh.

6 BY MR. WESTBROOK:

7 Q You've worked with these people, you know -- how many cases do you
8 handle, do you think, a year?

9 A I wouldn't be able to provide an exact number. But it's in the hundreds.

10 Q In the hundreds. Okay. That is you personally, right?

11 A No.

12 Q Okay. Is it just Hermandad Mexicana?

13 A It's the organization as a whole.

14 Q Okay. So you -- you see a lot of different people come into your
15 organization, right?

16 A We do.

17 Q Okay. And they come in, not just to file applications, but they come in
18 for seminars, right?

19 A Yes.

20 Q Okay. And just to learn more about the process, right?

21 A To learn about immigration in general.

22 Q Okay. Have you noticed, in your experience with the people who come
23 into your organization, a fear or distrust of police departments?

24 A Yes.

25 Q Okay. And in order to make that better, your organization works with

1 police departments, right?

2 A We do.

3 Q In fact, you're in the process of establishing is it a justice center with
4 local police, in order to process these applications?

5 A Not specifically, no.

6 Q Hoc. What is it that you're working with?

7 A Metro is working on creating what is called a Family Justice Center --

8 Q Okay.

9 A -- which is a one-stop shop for victims of crimes, such as domestic
10 violence, sexual assault, and human trafficking. We are a community partner, but it
11 is only for us to be there in case anybody requires our services.

12 Q Okay. Community partner, so you want to be a community partner,
13 right, your organization?

14 A We were invited to be a community partner.

15 Q Okay. And the police want to partner with the community, correct?

16 A Correct.

17 Q Okay. And partnering with the community helps remove the fear that
18 we were talking about of deportation?

19 A I would imagine so.

20 Q Okay. And it makes the U visa thing work?

21 MR. HAMNER: What?

22 BY MR. WESTBROOK:

23 Q It makes the U visa application process work?

24 MR. HAMNER: Objection. Calls for speculation.

25 MR. WESTBROOK: It seems to me like she's qualified.

1 THE COURT: Well, it's a -- she can give a general statement as to -- I
2 mean, her -- based on her understanding of whether the system --

3 MR. WESTBROOK: Okay.

4 THE COURT: -- works with -- under these conditions.

5 MR. WESTBROOK: And I can ask a more specific question.

6 THE COURT: Well, so you want to withdraw that question?

7 MR. WESTBROOK: I'll withdraw that question and ask this one.

8 THE COURT: All right. So let's hear the next one.

9 BY MR. WESTBROOK:

10 Q The U visa process would not work if people were too afraid of
11 deportation to go to the police, right?

12 A I'm not sure.

13 Q Okay. This process wouldn't work if people didn't report things to the
14 police, right?

15 A Right.

16 Q Okay. And if they are too afraid to report to -- to -- if they are too afraid
17 of deportation to report things to the local police, then this wouldn't work, right?

18 A Right.

19 Q Okay.

20 MR. WESTBROOK: Court's indulgence.

21 THE COURT: Sure.

22 MR. WESTBROOK: Nothing further.

23 Thank you.

24 THE COURT: So I actually want to ask a question.

25 MR. HAMNER: Yes, Your Honor.

1 THE COURT: Because I think it's helpful, and I haven't heard either
2 one of you get to it yet, so.

3 MR. WESTBROOK: Okay.

4 MS. KIERNY: Okay.

5 THE COURT: Let me see here.

6 So Ms. Losada?

7 THE WITNESS: No.

8 THE COURT: I'm sorry. Amador.

9 THE WITNESS: Correct.

10 THE COURT: Yes, sorry. Ms. Amador, did -- did you ever tell or
11 suggest to Amanda Moiza or Maria Barajas that USCIS approval of the U -- of their
12 U visa applications was dependent upon how they or any of their family members
13 would testify in court?

14 THE WITNESS: I did not. Or can you say the question one more time?

15 THE COURT: Yeah. Did you ever tell or suggest to either Amanda
16 Moiza or Maria Barajas that -- that USCIS approval of their U visas would be
17 dependent upon how they or any of their family members would testify in court?

18 THE WITNESS: I did not.

19 THE COURT: Okay. Thank you.

20 You can -- you can go next, State.

21 MR. HAMNER: Okay.

22 **REDIRECT EXAMINATION**

23 BY MR. HAMNER:

24 Q So I want to follow up on -- on the judge's question.

25 So does their ability to testify have any effect on your vetting

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1 process in Step 1?

2 A Does their what?

3 Q Does the vetting process that you do in Step 1, when you meet them,
4 how they testify in court, does that matter to you guys?

5 A It does not.

6 Q Okay. Does it matter for you when you send in an application on their
7 behalf?

8 A It does not.

9 Q Okay. And -- and as far as you know, is there any district attorney
10 certification process in any of this?

11 A Not that I'm aware of.

12 Q Okay. You were asked at the beginning of cross-examination about,
13 you know, when people are illegal, they're always subject to removal; do you
14 remember those questions?

15 A I do.

16 Q Okay. So let's just say, hypothetically, if someone's been living here,
17 let's say, 13 years, from day one, they're subject to removal; is that right?
18 Potentially?

19 A Potentially.

20 Q So in theory, they could walk in on day 1 or year 1 or year 2, and ask
21 for this application; is that right?

22 A If they were a victim.

23 Q If they're a victim. But, I mean, let's just say they're making it up?

24 A Uh-huh.

25 Q They could walk into your office, in theory, at any point in time on any

1 day that they're in this country illegally, right?

2 A They could walk in on any day if -- but they would need a report.

3 Q Okay. I want to talk about this form, Defense A. You -- if we're looking
4 at Step 5 here, you even say here that this process can take two years or more,
5 right? That's actually literally on the form?

6 A It is.

7 Q Okay. And -- and to be clear, this isn't a form that you just hand out to
8 anyone; this is people who come in for that Step 1 process?

9 A Correct.

10 Q Are you handing these out to little kids at school?

11 A I am not.

12 Q Okay. Is your organization, not you personally, but anyone in the
13 organization walking around schools just giving them to little kids?

14 A We are not.

15 Q Okay. How about to their teachers, anything like that?

16 A We do not.

17 Q Okay. So this is really just for the Step 1 people that walk in?

18 A Precisely.

19 Q And you were asked a lot of questions about, well, you're not there to
20 evaluate, you know, the merits or anything like that in that Step 1 process, right?
21 Do you remember being asked that? If they walk in with a police report and they
22 kind of make some sort of general statement about what happened to them, that
23 would be essentially sufficient, right, to get it to the certification process, right?

24 A The police report would be sufficient for us to submit it for certification.

25 Q But is Step 2 a certification from Metro on the other end of the

1 spectrum, looking at those same reports and things like that?

2 A I'm not sure I understand.

3 Q Is Metro -- is Step 2 Metro stepping in and then looking at those same
4 kind of documents?

5 MS. KIERNY: Objection. I don't think she'd know what Metro is doing
6 on their end.

7 MR. HAMNER: She was just asked on cross about this and she
8 testified about it on direct.

9 THE COURT: Overruled.

10 I'll allow you to answer if you know the answer.

11 BY MR. HAMNER:

12 Q I mean, if you know. If you don't, it's okay.

13 A One more time.

14 Q The second step of the process is you send, let's say, the report that a
15 petitioner gives you, maybe some general statement of what they've provided you,
16 and you send that to Metro, and then Metro kind of looks on their end to certify or
17 verify to some extent; is that right?

18 A To my knowledge, yes.

19 Q Okay. There was some talk about victim witness and whether you work
20 with victim witness advocacy groups; do you remember being asked that on cross?

21 A Some -- somewhat.

22 Q Something to that effect?

23 A Yes.

24 Q I want to be clear, has your organization done anything with the district
25 attorney's victim witness advocacy office?

1 A For this case in particular?

2 Q For this case.

3 A No, we have not.

4 Q And let me ask -- you were asked a lot of questions about Nicholas
5 having a pending certification from Metro, right?

6 A Yes.

7 Q That's that Step 2 in the process, right?

8 A Yes.

9 Q So we have a situation where you have the same child, two different
10 parents, and Metro has approved one, but still pending on another; is that right?

11 A Yes.

12 Q Even though it's the same case, same kid; is that right?

13 A Yes.

14 Q Okay.

15 MR. HAMNER: I have no further questions at this time.

16 MR. WESTBROOK: Court's indulgence.

17 THE COURT: You know, I -- I have a question. What -- what have you
18 personally done, or -- or do you do anything personally to provide information to the
19 general public about the U visa process? Do you personally do anything?

20 THE WITNESS: I do. It's mostly the director who does these type of
21 outreach events. However, when she's not available, I have gone out and done
22 community events myself.

23 THE COURT: Okay. And those are the community events you were
24 talking that -- that people from your office speak to?

25 THE WITNESS: Yes.

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

2 All right. Mr. Westbrook.

3 **RECROSS-EXAMINATION**

4 BY MR. WESTBROOK:

5 Q Your job is not to test the allegations, right?

6 A Correct.

7 Q And your job is not to review the evidence in the case, right?

8 A Correct.

9 Q Okay. And the results of the case, whether it's an acquittal or a
10 conviction, there's nothing on any of these forms where those results are followed,
11 right?

12 A Correct.

13 Q Okay. No one's looking to see whether there was a conviction, and
14 nothing relies on that, right?

15 A Correct.

16 Q Okay. All that's needed is an allegation of a qualifying crime reported to
17 police, right?

18 A I need a police report.

19 Q Right. Police certification, correct?

20 A I need the police to sign.

21 Q Okay. And then it sounds like time?

22 A Yes.

23 Q Okay. The -- there's 10,000 applications a year; is that what I heard?

24 A Immigration has 10,000 U visas available each year. It does not mean
25 that they only receive 10,000 a year.

1 Q I see. So there -- it's two years because the demand for U visas
2 outstrips the supply of U visas; is that fair to say?

3 A Yes.

4 Q Because for some people it's the only way they can get legal; is that
5 right?

6 A I wouldn't know. But --

7 MR. HAMNER: Objection. Calls for speculation.

8 THE COURT: Yeah. That's pretty overbroad, Mr. Westbrook.

9 MR. WESTBROOK: Okay. I'll -- I'll put it this way.

10 BY MR. WESTBROOK:

11 Q Far more than 10,000 people per year are trying to get documented
12 through the U visa program; is that fair?

13 A That is fair.

14 Q All right.

15 MR. WESTBROOK: Nothing further.

16 THE COURT: All right. So I think that concludes the attorneys
17 examination.

18 Anything from the jurors?

19 Very good, ma'am. The marshal will bring it.

20 Why don't you wait a minute, marshal, and see if anyone else
21 has one.

22 THE MARSHAL: Anyone else?

23 [Bench conference transcribed as follows.]

24 MR. WESTBROOK: I'm not sure if they know [indiscernible].

25 MS. KOLLINS: I mean they have to have a qualifying crime, so --

1 THE COURT: I think they're both good questions.
2 MR. WESTBROOK: Yeah, I think she can answer.
3 MS. KOLLINS: Yeah.
4 MR. WESTBROOK: Do you agree?
5 THE COURT: No objection?
6 MS. KIERNY: There's -- I think I may follow up and [indiscernible].
7 MS. KOLLINS: We could just follow up on a qualifying crime after you
8 ask it.
9 MR. HAMNER: Okay.
10 THE COURT: Good.
11 All right. So the court's going to -- all right.
12 [End of bench conference.]
13 THE COURT: The court's going to give two questions.
14 The first question: Is it normal for one parent to be ahead of the
15 other one, getting the application process if it involves just one of -- one of their
16 kids?
17 THE WITNESS: It is -- I don't want to say it is normal. I -- I want to say
18 that it happens, because sometimes police will only list one parent on the police
19 report, even though both parents will assist to every -- every call from police, every
20 call from court. Sometimes only one parent's name gets written down on the police
21 report, that's why we see this happen.
22 THE COURT: Thank you.
23 Next question: Can a person even apply for an -- for a U visa if
24 they didn't report the incident to police first? Meaning, they can't go back and
25 report the crime to police after inquiring about the U visa at your office; is that

1 correct?

2 THE WITNESS: Can you repeat the question?

3 THE COURT: Yeah. Can a person even apply for a U visa if they
4 didn't report the incident to police first? Meaning -- meaning, they can't go back
5 and report the crime to police after inquiring about the U visa at your office, correct?

6 That's the way it's written there, so -- if -- maybe if you think you
7 understand it, you can -- you can explain it.

8 THE WITNESS: Okay. The way I understood that question, if a person
9 can provide our organization a police report where the -- it indicates that they are a
10 victim of a qualifying crime, then it depends on the police to certify.

11 I'm not sure if I answered the question.

12 THE COURT: Well, I can't -- I'm not going to follow up. But we'll see if
13 the attorneys want to follow up on that.

14 **FURTHER REDIRECT EXAMINATION**

15 BY MR. HAMNER:

16 Q Just for clarification, there -- there need -- when they come in for that
17 Step 1, that initial meeting either with you or with the director, there still needs to be
18 some type of qualifying crime?

19 A In order for them to see either the director or myself, we need to have
20 that police report.

21 Q Okay. And so for -- just for -- and we're just speaking for your
22 organization at the very least. We're not talking about other things. But for your
23 organization, you're not holding that meeting with them unless there's some type of
24 police report discussing the qualifying crime?

25 A Correct. Unless -- unless they have a police report stating that they are

1 a victim of a qualifying crime, they do not meet with the director.

2 Q And to be clear, that's the procedures for your organization?

3 A That is the --

4 Q Not necessarily anyone else?

5 A Correct. That is the procedure for our organization only.

6 Q Thank you very much?

7 THE COURT: Mr. Westbrook, anything?

8 MR. WESTBROOK: No follow-up, Your Honor. Thank you.

9 THE COURT: All right. Thank you, jurors.

10 And thank you, Ms. Amador. You are excused. Thank you for
11 your time.

12 THE WITNESS: Thank you.

13 THE COURT: Watch your step there.

14 All right. Does the State have another witness for today?

15 MR. HAMNER: No, we're done for the day, Your Honor. And it's -- it's
16 actually almost closing time.

17 THE COURT: Good timing.

18 So I -- I have 30 matters tomorrow morning, so I can't -- I can't
19 have you guys here before 1:00. So 1:00 is my plan.

20 MR. WESTBROOK: That's fine.

21 MR. HAMNER: That's fine, Your Honor.

22 MS. KIERNY: Will you staff need more time to eat or anything -- do you
23 want to go later?

24 THE COURT: Well, we'll be done -- no, no.

25 MS. KIERNY: Okay.

1 THE COURT: We'll -- I think 1:00 is good. Do we have enough
2 witnesses to go from 1:00 to 5:00 or --

3 MR. HAMNER: Yeah.

4 THE COURT: Or were you suggesting maybe we start at 1:30?

5 MR. HAMNER: My -- my thought is you can make it later. I think that's
6 fine. It's fine to start it at 1:30. And if we could talk to you outside the presence
7 about scheduling kind of where we're at with things.

8 THE COURT: All right. I just don't want to waste time. But 1:30
9 sounds like it might work for my staff better. We -- we -- we got -- we got a lot of
10 criminal matters to handle tomorrow morning. We've got 30 criminal matters. So --
11 but I'll be done and we'll have time to give everyone a lunch break and then we'll be
12 ready to go right at 1:30.

13 MR. WESTBROOK: Sounds good.

14 THE COURT: All right?

15 MS. KIERNY: Yes.

16 THE COURT: All right.

17 Thank you. I think we're making good progress, jurors. I think --
18 you know, I'm not going to hold the attorneys to any estimate now, but my -- my
19 best guess is we're -- today is what, Wednesday -- we need Thursday, Friday,
20 probably Monday -- maybe we can get to closing or maybe we can do jury
21 instructions Monday or Tuesday, closing arguments, Tuesday, maybe deliberations
22 Tuesday and/or Wednesday.

23 That's kind of my thinking. All right? Roughly, right?

24 MS. KOLLINS: Might be even a little quicker than that, Your Honor.

25 THE COURT: Might be a little quicker than that. All right. Good.

1 But plan, right now, you should be planning to have Monday -- all
2 of Monday available for this case, all right? Possibly Tuesday. All right?

3 Ladies and gentlemen, you are admonished overnight not to
4 communicate among yourselves or with anybody else about this trial or the subject
5 matter of this trial; do not communicate at all with any of the parties, attorneys, or
6 witnesses involved in this trial; do not seek or obtain any information or comments
7 about this case from any source, including without limitation newspapers, television,
8 radio, Internet, e-mail, cell phones, or any other electronic device; do not read,
9 watch, or listen to any report of or commentary about the case; do not form or
10 express any opinion on any subject connected with this trial until the case is finally
11 submitted to you for deliberations; and do not perform any research or
12 investigations.

13 You are excused for the evening. Thank you.

14 Drive safe. 1:30, 1:30. Thank you. 1:30.

15 [Jury recessed at 4:59 p.m.]

16 THE COURT: All right. We're outside the presence of the jury. What
17 else did you guys need to discuss?

18 MR. HAMNER: So Your Honor, real briefly, just wanted to kind of give
19 you an update as to kind of where we are with witnesses.

20 The State anticipates that we only have three more witnesses
21 left. And -- and we'll be kind of ready to go. So we're actually -- we made a lot of
22 headway. I think the no translators have helped speed things along.

23 So I believe that we will potentially close evidence as early as the
24 end of Thursday, but I think we could have some spillover with the 1:30 start and --
25 and that last witness, maybe we could have on Friday.

1 I was speaking with defense counsel. It sounds like they have
2 approximately four to five witnesses. From their scheduling, it sounds like they
3 would prefer, from a scheduling perspective, to possibly put on their defense case
4 on Monday. The State doesn't have an objection to it, given that -- given the
5 volume of the case, how many counts with all the witnesses, preparation for closing
6 arguments, we would prefer to start that on Monday or maybe early Tuesday. But
7 we wanted to kind of --

8 THE COURT: I'm not going to waste all of Friday.

9 MR. HAMNER: Okay.

10 MS. KIERNY: Your Honor, at this point --

11 THE COURT: I'm not going to do that.

12 MS. KIERNY: At this point, I don't have any witnesses scheduled for
13 Friday. We do have some --

14 THE COURT: You better get one.

15 MS. KIERNY: Well --

16 THE COURT: I -- I don't to be rude, but --

17 MS. KIERNY: I'm --

18 THE COURT: -- remember, we've got 14 --

19 MS. KIERNY: I'm trying to explain that.

20 THE COURT: -- we've got 14 jurors whose lives have been completely
21 disrupted for this. Right?

22 MS. KIERNY: I understand that, Your Honor. What we did -- you
23 know, with the schedule as it was, we did speak to and schedule them for Monday.
24 We do have two children witnesses. I don't know if their parents will be amenable.
25 We didn't even have them schedule to pretrial with us until Friday afternoon. So --

1 or Friday -- because we anticipated we would move -- I'm going to try to do that
2 when I come back to the -- go back to the office.

3 THE COURT: Just please try, because --

4 MS. KIERNY: And I'm going to try to really --

5 THE COURT: -- I appreciate the -- the difficulty of the logistics in trial,
6 and I know you're doing your best. It's just -- we --

7 MS. KIERNY: I -- I understand that.

8 THE COURT: -- we've got 14 people sitting over there whose lives
9 we're disrupting.

10 MR. WESTBROOK: The witnesses were the late discovered
11 witnesses, Your Honor. That's part of our problem.

12 THE COURT: I'm sorry, what?

13 MR. WESTBROOK: These -- two of these witnesses were the late
14 discovered witnesses. That's part of our issue.

15 MS. KIERNY: I mean, just -- logistically, I'm going to try to call them --

16 THE COURT: All right. I understand that. I mean, I'm --

17 MS. KIERNY: Ultimately, in order to get this done, because the kids
18 have school and everything, and their pretrials, I'm going to have to leave here
19 about 3:00 tomorrow. So Mr. Westbrook will just take over so I can go interview
20 them. That's the only possible way that I can get all this done.

21 So that's what I'm going to do.

22 THE COURT: What about -- what about one of you -- if you have four
23 witnesses, two of the child Monday, is there maybe one of the adults can -- can --
24 you can come up?

25 MS. KIERNY: We're going to talk -- we'll discuss and we're going to try

1 to call them --

2 MR. WESTBROOK: We're going to work on it.

3 MS. KIERNY: I'm going to try to move the kids, right now. I'm going to
4 try to do it. I'm just telling you --

5 THE COURT: You want the kids to go first, right? Is that what you're --

6 MS. KIERNY: Yes.

7 THE COURT: All right. All right. I'm just trying to encourage you to do
8 your best to have someone here Friday. I'm not -- you know, I'm not going to, you
9 know, no one's being punished, or I just was trying to encourage you.

10 MS. KIERNY: Sure.

11 THE COURT: Because we've got jurors whose lives are disrupted.
12 That's all. I -- I'm not -- this isn't scolding you or nothing.

13 MS. KIERNY: I am very aware of that.

14 THE COURT: I'm just trying --

15 MS. KIERNY: No, I --

16 THE COURT: -- to put a little bit of influence on you.

17 MS. KIERNY: Yeah. No, I will do that. Okay.

18 THE COURT: All right. Please don't take it the wrong way.

19 MS. KIERNY: No.

20 THE COURT: All right.

21 MS. KIERNY: That's fine. That's...

22 THE COURT: What else?

23 MS. KOLLINS: We're going to make an attempt to settle jury
24 instructions on Friday, as well. So we have that done before the weekend.

25 THE COURT: Yeah. We could take an hour or two. Can -- can you

1 guys -- well, do you guys have time, the defense, to get me some proposed
2 instructions?

3 MS. KIERNY: We were planning on working on that over the weekend.
4 I don't know if Mr. Westbrook can speak --

5 MR. WESTBROOK: I'll talk to Ms. Kollins, and we're the second chairs,
6 right, so do we have to -- does that burden fall to us?

7 MS. KOLLINS: Yes, sir.

8 MR. WESTBROOK: We'll talk.

9 MS. KOLLINS: Please don't draft anything convoluted.

10 MR. WESTBROOK: No. I only draft legally relevant -

11 MS. KIERNY: Stop. Stop.

12 MR. WESTBROOK: -- and correct instructions.

13 MS. KIERNY: Just stop.

14 MS. KOLLINS: I just have one more issue. I really don't want to put it
15 on the record. May I approach?

16 THE COURT: Yeah. And -- and -- I don't mind studying the -- I'll
17 read -- look, I -- I do a lot of work over the weekend. So if you guys want me to
18 study the proposed instructions with case citations over the weekend, get them to
19 me over the weekend.

20 MR. WESTBROOK: And Your Honor, you're a nerd, and I love that.

21 THE COURT: I don't have a life. This is all I do. I study all this stuff.

22 All right. What else? Anything else?

23 MS. KOLLINS: Yes.

24 THE COURT: Are we off the record?

25 MR. WESTBROOK: This is off the record, Your Honor.

1 [Court recessed at 5:04 p.m., until the following day,
2 May 4, 2017, at 1:35 p.m.]
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13 ATTEST: I do hereby certify that the foregoing is a true and correct transcript, to the
14 best of my ability, from the audio/visual recording of the proceedings in the above-
15 entitled case.
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JOSE AZUCENA) No. 74071
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 Appellant,)
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 v.)
)
 THE STATE OF NEVADA,)
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 Respondent.)
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